

WSR 22-23-006
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-262—Filed November 2, 2022, 1:40 p.m., effective December 3, 2022]

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

Purpose: The purpose of this rule is to allow for alternative commercial fishing gears to be used for commercial fishing in the Lower Columbia River.

Citation of Rules Affected by this Order: WAC 220-360-500, 220-360-510, 220-360-520, 220-360-530, and 220-360-540.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, 77.12.047, 77.70.160, 77.50.030, 77.65.400.

Adopted under notice filed as WSR 22-13-153 on June 21, 2022.

Changes other than editing from proposed to adopted version: There are four changes from the proposed rule and the rule as adopted. The first removes the phrase "Under that license or" from subsection (a) of WAC 220-360-510. The second change is in WAC 220-360-520(2) and extends the application deadline from March 15 to April 30. The third change is in WAC 220-360-520(3) and extends the license and permit issuance deadline from May 15 to May 30. The final revision adds text to define the term "TAC."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 5, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: November 1, 2022.

Kelly Susewind
Director

OTS-3888.2

NEW SECTION

WAC 220-360-500 Designation of an emerging commercial fishery in the Lower Columbia River. (1) The director designates an emerging commercial fishery in the Lower Columbia River. The director has determined a need to limit the number of participants in this fishery.

(2) It is unlawful to fish for, possess, or deliver salmon taken for this fishery unless the fisher possesses a valid emerging commercial fishery license and experimental fishery permit. A violation of this subsection is punishable under RCW 77.15.500 Commercial fishing without a license—Penalty.

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NEW SECTION**WAC 220-360-510 Columbia River emerging commercial fishery—**

Qualifications. To qualify for an emerging commercial fishery license and experimental fishery permit, a person must:

(1) Possess a commercial gillnet salmon license/permit issued by Washington (WA) or Oregon (OR) for the Columbia River; and

(a) Demonstrate by valid Washington or Oregon fish receiving tickets that salmon have been taken in the Columbia River or Columbia River select areas within the most recent five calendar years by the applicant under a commercial salmon license issued for the Columbia River; or

(b) Demonstrate participation in a test fishery (WA) or possession and use of an experimental gear permit (OR) using alternative commercial fishing gears within the most recent five calendar years.

(2) Have at least three years of commercial salmon fishing experience.

(3) Have at least one year of fishing experience (commercially or in a research/test fishery capacity) with purse seines, beach seines, or a pound net.

(4) Be free of a commercial fishing or other related violation within the last 10 years.

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NEW SECTION

WAC 220-360-520 Columbia River emerging commercial fishery—Issuance of an emerging commercial fishery license and experimental fishery permit—License and permit conditions.

(1) To maintain consistency in this fishery enabling the department to gather the best available information, a fisher selected by lottery in the initial year the fishery is offered will be able to renew their permit for the duration of the fishery.

(2) Applications for participation in the one-time lottery are due by April 30th of the initial year in which the fishery is offered.

(a) Only one application per person is allowed, and only one gear type may be permitted per person.

(b) The alternative gear an applicant is interested in fishing is in the applicant's possession by the time their application is submitted.

(3) Issuance of the annual emerging commercial fishery license and experimental fishery permit will occur by May 30th prior to the start of each fishing season.

(a) If the total number of available permits is not filled from the applications received by the deadline, the department may ask for additional applications.

(b) Applicants selected must respond within 10 business days of being notified by the department to accept the permit and purchase the

emerging fishery license. If the applicant fails to purchase the license and permit within 10 business days of notification of selection, the department may issue the license and permit to another applicant.

(4) The conditions of possessing a valid license and permit are as follows:

(a) Fishery participants are not precluded from participation in other commercial fisheries.

(b) Fishery participants are required to have a state observer observing their catch while actively fishing.

(c) If a permit holder fails to make multiple landings during the fishery, the experimental permit issued to that fisher will be voided, that person will have his or her name permanently withdrawn from the applicant pool, and a new applicant will be selected from the applicant pool.

(d) This license and permit are not transferable between persons. The license and permit holder must be present and in possession of a valid license and permit during fishing operations. A violation of this subsection is punishable under RCW 77.15.540 Unlawful use of a commercial fishery license—Penalty.

(e) It is unlawful to violate the conditions of the emerging commercial fishery license and experimental fishery permit. A violation of this subsection is punishable under RCW 77.15.540 Unlawful use of a commercial fishery license—Penalty.

(f) This license and permit may be revoked at the discretion of the director and future licenses and permits denied for failure to comply with conditions specified in the permit or violations of other commercial fishing regulations.

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NEW SECTION

WAC 220-360-530 Columbia River emerging commercial fishery—Season, area, and gear requirements. (1) The following gear is allowable:

(a) Purse seines as defined in WAC 220-350-110.

(b) Beach seines as defined in WAC 220-350-040.

(c) Pound nets as defined here as nets attached to fixed pilings, stakes, and/or anchors to form a lead, guiding fish into at least one heart, pot, or spiller that directs fish into a live well for sorting.

(2) Other gears may be considered for inclusion in this fishery if:

(a) The gear has a *U.S. v Oregon* technical advisory committee (TAC) approved mortality rate; and

(b) It is brought forward by a commercial fisher possessing a Columbia River commercial fishing license.

(3) All other season, area, and gear requirements will be as determined by the states of Oregon and Washington via the Columbia River compact process.

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NEW SECTION

WAC 220-360-540 Columbia River emerging commercial fishery—Allowable possession and sales—Catch handling requirements. (1) Allowable possession and sales: Salmon, and as determined by the states of Oregon and Washington via the Columbia River compact process. All species other than salmon must be carefully handled and promptly returned to the water.

(2) Handling of catch: Salmon catch may only be handled by hand or with rubber coated nets when sorting fish. Fish must be sorted while submerged in the water; it is unlawful to dry sort fish on land or on deck.

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WSR 22-23-008

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed November 3, 2022, 7:37 a.m., effective December 5, 2022]

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

Purpose: Chapter 16-240 WAC, WSDA grain inspection program—Definitions, standards, and fees. The Washington state department of agriculture (WSDA) is amending this chapter by:

1. Increasing the following fees:
 - a. The tonnage rate at tiers one and two for export vessels;
 - b. Submitted United States General Service Agency (USGSA) and WSDA samples for inspections;
 - c. USGSA trucks and containers per unit;
 - d. USGSA and Agricultural Marketing Act (AMA) railcar probe sampling per railcar;
 - e. AMA additional factors per sample;
 - f. Hundred weight fees for both USGSA and AMA;
 - g. Submitted AMA per sample; and
 - h. Phyto fee per certificate.
2. Adding the following fees:
 - a. An additional fee rate under tier 2 for vessels and local with approved automated weighing systems in WAC 16-240-070 (USGSA Table 1) and 16-240-080 (AMA Table 1);
 - b. An official bag fee for any export elevator locations;
 - c. A new fee for class Y weighing in WAC 16-240-070 (USGSA Table 4); and
 - d. A fee for warehousemen samples and reinspections in WAC 16-240-070 (adding USGSA Table 10).
3. Clarifying:
 - a. The language in WAC 16-240-038(2) to include tier 2 charges into the daily revenue minimum along with tier 1, leaving only tier 3 as the rate that will need to be in effect for export locations to not be subject to the monthly/daily revenue minimum charges.

Citation of Rules Affected by this Order: Amending WAC 16-240-038, 16-240-070, 16-240-080, and 16-240-090.

Statutory Authority for Adoption: RCW 22.09.020 and 22.09.790.

Adopted under notice filed as WSR 22-18-102 on September 7, 2022.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

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

Date Adopted: November 2, 2022.

Derek I. Sandison
Director

OTS-4042.3

AMENDATORY SECTION (Amending WSR 17-19-051, filed 9/13/17, effective 10/14/17)

WAC 16-240-038 Revenue minimum determination. The circumstances under which the department adjusts rates to meet the revenue minimum are as follows:

(1) When the daily volume of work at a service location at the established fees does not generate revenue at least equal to the straight time hourly rate per hour, per employee, a sufficient additional amount, calculated by using the straight time hourly rate per hour, per employee, will be added to the established fee amount to meet the revenue minimum, except as provided in subsection (2) of this section.

(2) The daily revenue minimum charge applies only to the Tier 1 and Tier 2 metric tonnage rate shown in WAC 16-240-070 (2)(b) at USGSA Table 1 and in WAC 16-240-080 (2)(b) at AMA Table 1. When (~~either a Tier 2 or~~) the Tier 3 rate is in effect (WAC 16-240-043, 16-240-070, and 16-240-080), export locations will not be subject to daily revenue minimum charges during the (~~Tier 2 or~~) Tier 3 rate period allowed under WAC 16-240-043.

(3) Work volume daily averaging at export locations will be determined as follows:

(a) When the daily volume of work at a service location at the established fees does not generate revenue equivalent to the straight time hourly rate per hour, per employee, including applicable supervisory and clerical employee hours, according to the staffing needs at the facility, the department will charge an additional fee, except as provided in subsection (2) of this section.

(b) The straight time hourly rate will be charged per hour, per employee.

(c) Service cancellation fees, WAC 16-240-054, are not considered to be revenue under daily averaging.

(4) Work volume monthly averaging at export locations will be determined as follows:

(a) When the applicant has requested the department to establish one or more permanent shifts, the applicant may request, in writing, that the revenue minimum required for staffing at the location be determined based on the completed invoices for the calendar month, instead of paying the fees for daily volume of work.

(b) Under this subsection (4), and except for when the work volume monthly averaging for the revenue minimum is determined under (a) of this subsection, when the monthly volume of work at the established fees does not generate revenue equivalent to the straight time hourly rate per hour, per employee, including applicable supervisory and clerical employee hours, according to the staffing needs at the facility, a sufficient additional amount, calculated by using the straight time hourly rate per hour, per employee, will be added to the established fee amount to meet the revenue minimum for each month during which work volume monthly averaging applies. As provided under (f) of this subsection, this revenue minimum adjustment applies only during any month when Tier 1 and Tier 2 rates are in effect.

(c) At export locations, the request for monthly averaging stays in effect until canceled.

(d) An applicant's written request to establish or cancel monthly averaging for the coming month must be received by 2:00 p.m. of the last business day in the month.

(e) Service cancellation fees under WAC 16-240-054 are not considered to be revenue under monthly averaging.

(f) The monthly revenue minimum charge applies only to the Tier 1 and Tier 2 rate shown in USGSA Table 1 under WAC 16-240-070 (2) (b) and AMA Table 1 under WAC 16-240-080 (2) (b) of this schedule. When (~~either the Tier 2 or~~) the Tier 3 rate is in effect, export locations will not be subject to daily revenue minimum charges during the (~~Tier 2 or~~) Tier 3 rate period allowed under WAC 16-240-043.

(i) Upon the applicant's written notification to the department, the monthly revenue minimum will not be applied to the month in which an export facility resumes operations after an extended downtime. This exception for maintenance or repair is available once per fiscal year.

(ii) When the department provides services at a nonexport location or a transloading facility, and the hourly, unit, and applicable travel fees do not cover the cost of providing the service, a sufficient additional amount calculated by using the straight time hourly rate per hour, per employee, will be added to the established fee amount to meet the revenue minimum.

[Statutory Authority: RCW 22.09.020 and chapter 34.05 RCW. WSR 17-19-051, § 16-240-038, filed 9/13/17, effective 10/14/17; WSR 16-12-076, § 16-240-038, filed 5/27/16, effective 7/1/16. Statutory Authority: RCW 15.17.050, 2012 2nd sp.s. c 7, and chapter 34.05 RCW. WSR 12-21-064, § 16-240-038, filed 10/17/12, effective 11/17/12. Statutory Authority: 2003 1st sp.s. c 25 § 309(2); RCW 22.09.790, chapter 34.05 RCW and The United States Department of Agriculture has oversight of fees charged under the Federal Grain Inspection, Packers and Stockyards Administration. WSR 05-11-058, § 16-240-038, filed 5/17/05, effective 6/17/05.]

AMENDATORY SECTION (Amending WSR 17-19-051, filed 9/13/17, effective 10/14/17)

WAC 16-240-070 Fees for services under the United States Grain Standards Act. (1) USGSA Tables 1 through (8) in this section contain fees for official sampling, inspection, weighing services, and fees for other associated services under the United States Grain Standards Act (USGSA). Services available include inspection, sampling, testing, weighing, laboratory analysis, and certification.

(2) Fees that are not otherwise provided for in this chapter for services under the United States Grain Standards Act are described below.

(a) Fees for other services under the United States Grain Standards Act not specifically cited in WAC 16-240-070 are provided at the rates contained in WAC 16-240-080 or 16-240-090 or at the published rates of the laboratory or organization providing the official service or analysis. The program will require the applicant for service to provide advance consent to the rate for any service necessary to be performed at an external laboratory or organization.

(b) An applicant may be required to provide the necessary supplies and equipment when requesting a new or special type of analysis.

**USGSA Table 1
Fees for Combination Inspection and Weighing Services**

1.	In, out, or local, rate for all tiers, per metric ton	\$0.250
2.	Vessels (export and domestic ocean-going), Tier 1 rate, per metric ton	(\$0.250) \$0.300
3.	Vessels and local (export and domestic ocean-going) with approved automated weighing systems, Tier 1 rate, per metric ton	(\$0.230) \$0.280
<p>Note: For automated weighing systems:</p> <ul style="list-style-type: none"> ■ When approved automated weighing systems are not functioning properly, dedicated staff time may be required at the rates established in WAC 16-240-060. 		
4.	Vessels and local (export and domestic ocean-going), Tier 2 rate, per metric ton	(\$0.200) \$0.250
5.	<u>Vessels and local (export and domestic ocean-going) with approved automated weighing systems, Tier 2 rate, per metric ton</u>	\$0.230
6.	Vessels and local (export and domestic ocean-going), Tier 3 rate, per metric ton	\$0.100
7.	<u>Official ship samples</u>	\$7.00
<p>Note: For vessels (export and domestic ocean-going):</p> <ul style="list-style-type: none"> ■ The metric ton vessel rate includes all additional factor inspection services required by the load order. All other additional factor inspection services in USGSA Table 1 are charged at the per factor fee. (■ The metric ton vessel rate includes all official ship samples required by the load order.) ■ Stress crack analysis in corn is included in the fees in USGSA Table 1. ■ During vessel loading, fees for other tests, such as protein analysis, falling number determinations, or mycotoxin analysis will be charged at the per unit rates included under this chapter. 		
(6.) 8.	Trucks or containers, per truck or container	(\$25.00) \$35.00
(7.) 9.	Additional nongrade determining factor analysis, per factor	\$3.00

**USGSA Table 2
Fees for Official Sampling and Inspection Without Weighing Services**

1.	Original or new sample reinspection trucks or containers sampled by approved grain probe, including factor only or sampling only services, per truck or container	(\$20.00) \$30.00
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2.	Barge sampled by USDA approved mechanical sampler, including factor only or sampling only services, per metric ton	\$0.10
3.	Railcars sampled by USDA approved mechanical sampler, including factor only or sampling only services, per railcar	\$20.00
4.	Original or new sample reinspection railcars sampled by USDA approved grain probe, applicant assisted, including factor only or sampling only services, per railcar	\$20.00
5.	Original or new sample reinspection railcars sampled by USDA approved grain probe, including factor only or sampling only services, per railcar	(\$30.00) \$40.00
<p>Note: The following applies to all fees in this table:</p> <ul style="list-style-type: none"> ■ For barley, determining and certifying of dockage to tenths is included in the fees in USGSA Table 2. ■ Stress crack analysis in corn is included in the fees in USGSA Table 2. ■ Analysis that requires additional equipment or personnel will be provided at the applicable hourly rate under this chapter. ■ The per railcar rate applies to each railcar included in a batch grade. A batch grade is two or more cars that are combined, at the applicant's request, for a single grade. ■ <u>FGIS supervision fee will be assessed at current per metric ton rate (WAC 16-240-039).</u> 		
6.	Inspection of bagged grain, including tote bags, per hundredweight (cwt)	(\$0.100) \$0.140
7.	Additional nongrade determining factor analysis, per factor	(\$3.00) \$5.00

**USGSA Table 3
Fees for Official Class X Weighing Services
Without an Inspection of Bulk Grain**

1.	In, out, or local, per metric ton	\$0.200
2.	Vessels (export and domestic ocean-going), per metric ton	\$0.200
3.	Trucks or containers, per weight lot	\$20.00
4.	<u>Class Y weighing per railcar</u>	\$1.00
<ul style="list-style-type: none"> ■ <u>FGIS supervision fee will be assessed at current per metric ton rate (WAC 16-240-039).</u> 		

**USGSA Table 4
Fees for Inspection of Submitted Samples,
Fees for Reinspections Based on Official
File Samples and Fees for Additional Factors**

1.	Submitted samples, including factor-only inspections, per inspection	(\$12.00) \$15.00
2.	Reinspections based on official file sample, including factor-only reinspections, per inspection	(\$12.00) \$15.00
3.	<u>Warehousemen samples</u>	\$15.00
4.	<u>Warehousemen reinspection</u>	\$15.00
5.	Additional, nongrade determining factor analysis, per factor	(\$3.00) \$5.00
(4.) 6.	Stress crack only analysis on corn, per sample	\$9.00
<p>Note: The following applies to all fees in this table:</p> <ul style="list-style-type: none"> ■ When submitted samples are not of sufficient size to allow for official grade analysis, obtainable factors may be provided, upon request of the applicant, at the submitted sample rates shown above. ■ For barley, determining and certifying of dockage to tenths is included in the fees in USGSA Table 4. ■ Stress crack analysis in corn is included in the fees in USGSA Table 4. ■ Analysis that requires additional equipment or personnel will be provided at the applicable hourly rate under this chapter. ■ <u>FGIS supervision fee will be assessed at current per metric ton rate (WAC 16-240-039).</u> 		

**USGSA Table 5
Fees for Miscellaneous Services**

1.	Laboratory analysis, at cost	At cost
2.	All other USGSA services not listed in this section, per hour, per employee	\$56.00
<p>Note: The following applies to all fees in this table:</p> <ul style="list-style-type: none"> ■ On request, shipping arrangements billed directly by shipper to the customer's shipping account may be coordinated by the department. ■ <u>FGIS supervision fee will be assessed at current per metric ton rate (WAC 16-240-039).</u> 		

**USGSA Table 6
Fees for Official Analysis for Protein, Oil, or Other Official Constituents**

Original or reinspection based on file sample, per test	\$9.00
<p>Note: The following applies to the fee in USGSA Table 6:</p> <ul style="list-style-type: none"> ■ When a reinspection service includes a request for a new sample, the appropriate sampling fee will also be charged. ■ Results for multiple criteria achieved in a single testing operation are provided at the single test rate unless certificated separately. ■ <u>FGIS supervision fee will be assessed at current per metric ton rate (WAC 16-240-039).</u> 	

**USGSA Table 7
Fees for Testing for the Presence of Myco-
toxins Using USDA Approved Methods**

Original, reinspection based on official file sample, or submitted sample, per test	\$40.00
Note: The following applies to this table:	
<ul style="list-style-type: none"> ■ When a reinspection service includes a request for a new sample, the appropriate sampling fee to obtain the sample will be charged in addition to the per test fee shown earlier (see WAC 16-240-070, USGSA Table 2). ■ <u>FGIS supervision fee will be assessed at current per metric ton rate (WAC 16-240-039).</u> 	

**USGSA Table 8
Fees for Stowage Examination Services on
Vessels or Ocean-Going Barges and Fees for
Other Stowage Examination Services**

1. Vessels or ocean-going barges stowage examination, original or reinspection, per request	\$500.00
2. Other stowage examinations of railcars, trucks, trailers, or containers, original or reinspection, per inspection	\$9.00

[Statutory Authority: RCW 22.09.020 and chapter 34.05 RCW. WSR 17-19-051, § 16-240-070, filed 9/13/17, effective 10/14/17; WSR 16-12-076, § 16-240-070, filed 5/27/16, effective 7/1/16. Statutory Authority: RCW 15.17.050, 2012 2nd sp.s. c 7, and chapter 34.05 RCW. WSR 12-21-064, § 16-240-070, filed 10/17/12, effective 11/17/12. Statutory Authority: 2003 1st sp.s. c 25 § 309(2); RCW 22.09.790, chapter 34.05 RCW and The United States Department of Agriculture has oversight of fees charged under the Federal Grain Inspection, Packers and Stockyards Administration. WSR 05-11-058, § 16-240-070, filed 5/17/05, effective 6/17/05.]

AMENDATORY SECTION (Amending WSR 17-19-051, filed 9/13/17, effective 10/14/17)

WAC 16-240-080 Fees for services under the Agricultural Marketing Act of 1946. (1) AMA Tables 1 through 5 in this section contain official sampling, inspection, or weighing services and fees for other services under the Agricultural Marketing Act of 1946 (AMA). Services available include inspection, sampling, testing, weighing, laboratory analysis, and certification.

(2) Fees that are not otherwise provided for in this chapter for services under the Agricultural Marketing Act of 1946 are described below.

(a) Fees for other services under the Agricultural Marketing Act of 1946 not contained in WAC 16-240-080 are contained in WAC 16-240-070 or 16-240-090 or at the published rates of the laboratory or organization providing the official service or analysis.

(b) An applicant may be required to provide the necessary supplies or equipment when requesting a new or special type of analysis.

**AMA Table 1
Fees for Combination Sampling, Inspection
and Weighing Services, and Additional Fac-
tors**

1.	In, out, or local, rate for all tiers, per metric ton	\$0.250
2.	Vessels (export or domestic), Tier 1 rate, per metric ton	(\$0.250) \$0.300
3.	Vessels and local (export and domestic ocean-going) with approved automated weighing systems, Tier 1 rate, per metric ton	(\$0.230) \$0.280
Note: For automated weighing systems:		
<ul style="list-style-type: none"> ■ When approved automated weighing systems are not functioning properly, dedicated staff time may be required at the rates established in WAC 16-240-060. 		
4.	Vessels and local (export and domestic ocean-going), Tier 2 rate, per metric ton	(\$0.200) \$0.250
5.	<u>Vessels and local (export and domestic ocean-going) with approved automated weighing systems, Tier 2 rate, per metric ton</u>	\$0.230
6.	Vessels and local (export and domestic ocean-going), Tier 3 rate, per metric ton	\$0.100
7.	<u>Official ship samples</u>	\$7.00
Note: For vessels (export and domestic ocean-going):		
<ul style="list-style-type: none"> ■ The metric ton vessel rate includes all additional factor inspection services required by the load order. All other additional factor inspection services in AMA Table 1 are charged at the per factor fee. 		
(■ The metric ton vessel rate includes all official ship samples required by the load order.)		
<ul style="list-style-type: none"> ■ During vessel loading, fees for other tests, such as protein analysis, falling number determinations, or mycotoxin analysis will be charged at the per unit rates included under this chapter. 		
(6.) 8.	Trucks or containers, per truck or container	\$30.00
(7.) 9.	Additional, nongrade determining factor analysis, per factor	\$3.00
Note: The following applies to all fees in this table:		
<ul style="list-style-type: none"> ■ The rates in the above section also apply to services provided under federal criteria inspection instructions, state established standards, or other applicant requested criteria. ■ Dockage breakdown is included in the basic inspection fee. ■ The metric ton vessel rate includes all additional factor inspection services required by the load order. All other additional factor inspection services in AMA Table 1 are charged at the per factor fee. 		

- Fees for other tests, such as mycotoxin analysis, provided during vessel loading will be charged at the per unit rates included in this fee schedule.

**AMA Table 2
Fees for Official Sampling and Inspection
Without Weighing Services, and Additional
Factors**

1.	Trucks or containers sampled by USDA approved grain probe, including factor only or sampling only services, per truck or container	\$30.00
2.	Barge sampled by USDA approved mechanical sampler, including factor only or sampling only services, per metric ton	\$0.10
3.	Railcars sampled by USDA approved mechanical samplers, including factor only or sampling only services, per railcar	\$30.00
4.	Railcars sampled by USDA approved grain probe, including factor only or sampling only services, per railcar	(\$30.00) \$40.00
5.	Inspection of bagged commodities or tote bags, including factor only or sampling only services, per hundredweight (cwt)	(\$0.100) \$0.140
6.	Additional, nongrade determining factor analysis, per factor	(\$3.00) \$5.00
<p>Note: The following applies to all fees in this table:</p> <ul style="list-style-type: none"> ■ Dockage breakdown is included in the basic inspection fee. ■ Analysis for special grade requirements or criteria analysis that requires additional equipment or personnel will be provided at the hourly rate. ■ The rates shown above also apply to services provided under federal criteria inspection instructions. 		

**AMA Table 3
Fees for Official Weighing Services without
Inspections**

1.	In, out, or local, per metric ton	\$0.200
2.	Vessels (export and domestic ocean-going), per metric ton	\$0.200
3.	Trucks or containers, per weight lot	\$20.00

**AMA Table 4
Fees for Inspecting Submitted Samples**

1.	Submitted sample, thresher run or processed, including factor-only inspections, per sample	(\$20.00) \$24.00
2.	Additional, nongrade determining factor analysis, per factor	(\$3.00) \$5.00
<p>Note: The following applies to all fees in this table:</p>		

- Dockage breakdown is included in the basic inspection fee.
- Analysis for special grade requirements or criteria analysis that requires additional equipment or personnel will be provided at the hourly rate.
- The rates shown above also apply to inspection services provided under federal criteria inspection instructions.
- When the size of a submitted sample is insufficient to perform official grade analysis, factor-only analysis is available on request of the applicant.

**AMA Table 5
Fees for Miscellaneous Services**

1.	Falling number determinations, including liquefaction number on request, per determination	\$20.00
2.	Sampling and handling of processed commodities, per hour, per employee	\$56.00
3.	Laboratory analysis, at cost	At cost
Note: The following applies to all fees in this table:		
<ul style="list-style-type: none"> ■ On request, shipping arrangements billed directly by shipper to the customer's shipping account may be coordinated by the department. 		

[Statutory Authority: RCW 22.09.020 and chapter 34.05 RCW. WSR 17-19-051, § 16-240-080, filed 9/13/17, effective 10/14/17; WSR 16-12-076, § 16-240-080, filed 5/27/16, effective 7/1/16. Statutory Authority: RCW 15.17.050, 2012 2nd sp.s. c 7, and chapter 34.05 RCW. WSR 12-21-064, § 16-240-080, filed 10/17/12, effective 11/17/12. Statutory Authority: 2003 1st sp.s. c 25 § 309(2); RCW 22.09.790, chapter 34.05 RCW and The United States Department of Agriculture has oversight of fees charged under the Federal Grain Inspection, Packers and Stockyards Administration. WSR 05-11-058, § 16-240-080, filed 5/17/05, effective 6/17/05.]

AMENDATORY SECTION (Amending WSR 17-19-051, filed 9/13/17, effective 10/14/17)

WAC 16-240-090 Fees for other services performed by WSDA. (1)

WSDA Tables 1 through 3 in this section contain fees for other services performed at the request of the applicant when no USGSA or AMA standards exist. Services available include inspection, sampling, testing, weighing, laboratory analysis, and certification.

(2) Applicant-defined analysis may be available from the department.

(a) Hourly fees for sampling or sample preparation may be charged.

(b) The analysis will be provided at the established hourly rate or may be provided at the cost quoted by the laboratory or organization providing the service or analysis.

(c) Applicant may be required to provide supplies and equipment when requesting a new analysis or special service.

(3) Official samples, as defined under 7 C.F.R. 800.75, may be provided upon timely request by an interested party, specifying the number of samples requested. Samples are provided in up to five pound bags and are charged the fee stated in Table 3.

**WSDA Table 1
Fees for Inspecting Miscellaneous Agricultural Commodities under Chapter 16-213 WAC**

1. Submitted sample, per sample	(\$12.00) \$15.00
2. Railcars, sampled by USDA approved diverter-type mechanical samplers, per car	\$20.00
3. Railcars, sampled by USDA approved grain probe, per car	(\$30.00) \$40.00
4. Trucks or containers, sampled by USDA approved grain probe, per truck or container	(\$20.00) \$30.00
Note: The following applies to all fees in this table:	
<ul style="list-style-type: none"> ■ These rates also apply to inspection services provided under applicant-specified criteria or standards other than USGSA, AMA or WSDA. For example: Millet may be inspected under state of Montana standards, upon applicant request. 	

**WSDA Table 2
Fees for Phytosanitary Certification**

1. In conjunction with official inspection, per certificate	(\$30.00) \$55.00
2. For phytosanitary certification only, without official inspection, add required sampling time, per hour, per employee	\$56.00

**WSDA Table 3
Fees for Miscellaneous Services**

1. Unofficial constituent analysis, per test	\$9.00
2. Sample pick-up fee, on department established routes, per sample	\$1.25
3. Laboratory analysis, provided at other than WSDA grain inspection program offices, per analysis	At cost
4. Official samples, per bag	\$5.00

[Statutory Authority: RCW 22.09.020 and chapter 34.05 RCW. WSR 17-19-051, § 16-240-090, filed 9/13/17, effective 10/14/17. Statutory Authority: RCW 15.17.050, 2012 2nd sp.s. c 7, and chapter 34.05 RCW. WSR 12-21-064, § 16-240-090, filed 10/17/12, effective 11/17/12. Statutory Authority: 2003 1st sp.s. c 25 § 309(2); RCW 22.09.790, chapter 34.05 RCW and The United States Department of Agriculture has oversight of fees charged under the Federal Grain Inspection, Packers and Stockyards Administration. WSR 05-11-058, § 16-240-090, filed 5/17/05, effective 6/17/05.]

WSR 22-23-021

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed November 4, 2022, 2:20 p.m., effective December 5, 2022]

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

Purpose: The purpose of the proposed new rule is to provide guidance on 2020 and 2022 legislation, ESSB 6492, SSB 5799, and ESB 5800, which imposed a surcharge on select advanced computing businesses as described in RCW 82.04.299.

Citation of Rules Affected by this Order: New WAC 458-20-290 Workforce education investment surcharge—Select advanced computing businesses.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 22-08-111 [22-21-061] on April 6 [October 12], 2022.

Changes Other than Editing from Proposed to Adopted Version: The department updated the subsection (4) (b) (vi) heading from "Hospital exemption" to "Hospital and provider clinic and affiliated organizations exemption" to clarify the entities subject to the new exemption. The department also revised the definition in subsection (3) (g) by changing "taxable income of the business" in the last sentence to "gross income of the business," to follow the language in the statute, RCW 82.04.299 (1) (f) (vi).

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 0, Repealed 0.

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

Date Adopted: November 4, 2022.

Atif Aziz
Rules Coordinator

OTS-3215.5

NEW SECTION

WAC 458-20-290 Workforce education investment surcharge—Select advanced computing businesses. (1) **Introduction.** This rule provides information about the taxability of and surcharge for select advanced computing businesses as described in RCW 82.04.299.

(2) **Examples.** This rule includes examples that identify a number of facts and then state a conclusion. These examples should only be

used as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(3) **Definitions.** The following definitions apply throughout this rule:

(a) **"Advanced computing"** means designing or developing computer software or computer hardware, whether directly or contracting with another person, including:

(i) Modifications to computer software or computer hardware;

(ii) Cloud computing services; or

(iii) Operating as a marketplace facilitator as defined by RCW 82.08.0531, an online search engine, or an online social networking platform.

(b) **"Advanced computing business"** means a business that derives income, including income from affiliates, from engaging in advanced computing.

(c) **"Affiliate"** and **"affiliated"** means a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person.

(d) **"Affiliated group"** means a group of two or more persons that are affiliated with each other.

(e) **"Cloud computing services"** means on-demand delivery of computing resources, such as networks, servers, storage, applications, and services, over the internet.

(f) **"Control"** means the possession, directly or indirectly, of more than 50 percent of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise.

(g) **"Select advanced computing business"** means a person who is a member of an affiliated group with at least one member of the affiliated group engaging in the business of advanced computing, and the affiliated group had worldwide gross revenue of more than \$25,000,000,000 during the immediately preceding calendar year. A select advanced computing business does not include any of the following:

(i) A person primarily engaged within this state in the provision of commercial mobile service, as that term is defined in 47 U.S.C. Sec. 332 (d) (1);

(ii) A person primarily engaged in this state in the operation and provision of access to transmission facilities and infrastructure that the person owns or leases for the transmission of voice, data, text, sound, and video using wired telecommunications networks; or

(iii) A person primarily engaged in business as a "financial institution" as defined in RCW 82.04.29004, as that section existed on January 1, 2020.

For purposes of (g) of this subsection, "primarily" is determined based on the gross income of the business, as defined in RCW 82.04.080.

(h) **"Taxable income of the business"** means the gross income of the business, as defined in RCW 82.04.080, to which the tax rate in RCW 82.04.290(2) is applied to determine the business's tax liability under that B&O tax classification. In other words, it is the business's income taxable under the service and other activities B&O tax classification.

(i) **"Worldwide gross revenue"** means the annual sum of all sources of revenues, worldwide, prior to any subtractions, for all members of an affiliated group.

(4) **Select advanced computing businesses - Taxability.**

(a) **Service and other activities B&O tax.** A select advanced computing business is subject to the service and other activities B&O tax rate of 1.5 percent as required in RCW 82.04.290 (2) (a) (ii).

(b) **Workforce education investment surcharge.** Beginning with business activities occurring on or after April 1, 2020, a workforce education investment surcharge (surcharge) is imposed on select advanced computing businesses. This surcharge is in addition to the B&O taxes described in (a) of this subsection, plus any additional taxes that are due and payable to the department.

(i) Surcharge amount. For each select advanced computing business, the surcharge is equal to the taxable income of the business, multiplied by a rate of 1.22 percent. The combined annual surcharge paid by all members of an affiliated group may not exceed \$9,000,000.

(ii) Surcharge reporting. A select advanced computing business must report and pay the surcharge to the department on a quarterly basis, regardless of the tax reporting frequencies of the members in the select advanced computing business under RCW 82.32.045. The return and amount payable are due by the last day of the month immediately following the end of the quarter. This reporting requirement continues even if the combined annual surcharge paid by all members of an affiliated group reaches the \$9,000,000 annual maximum amount described in (b) (i) of this subsection.

(iii) Surcharge payment agreement. Members of an affiliated group of select advanced computing businesses may enter into an agreement with the department for facilitating the payment of the surcharge for all members of the group.

(iv) Disclosure obligations. The department may require persons believed to be engaging in advanced computing, or affiliated with a person believed to be engaging in advanced computing, to disclose whether they are a member of an affiliated group, and if so, to identify all other members of the affiliated group subject to the surcharge.

(v) Penalties. If the department establishes by clear, cogent, and convincing evidence, that one or more members of an affiliated group, with the intent to evade the surcharge, failed to fully comply with the department's disclosure request, as described in (b) (iv) of this subsection, that person, or those persons collectively, will be assessed a penalty equal to 50 percent of the amount of the total surcharge payable by all members of that affiliated group for the calendar year during which the person or persons failed to comply. This penalty is in lieu of, and not in addition to, the evasion penalty under RCW 82.32.090(7). However, additional penalties may still apply including, but not limited to, the penalty for late payment of tax due on a return. See RCW 82.32.090(1).

(vi) Hospital and provider clinic and affiliated organizations exemption. The surcharge described in (b) of this subsection does not apply to:

(A) A hospital as defined in RCW 70.41.020, including any hospital that comes within the scope of chapter 71.12 RCW if the hospital is also licensed under chapter 70.41 RCW; or

(B) A provider clinic offering primary care, multispecialty and surgical services, including behavioral health services, and any affiliate of the provider clinic if the affiliate is an organization that offers health care services or provides administrative support for a provider clinic, or is an independent practice association or accountable care organization. For purposes of (b) (vi) (B) of this subsection, "health care services" means services offered by health care

providers relating to the prevention, cure, or treatment of illness, injury, or disease, and "primary care" means wellness and prevention services and the diagnosis and treatment of health conditions.

The exemptions under (b)(vi)(A) and (B) of this subsection do not apply to amounts received by any member of an affiliated group other than the businesses described in (b)(vi)(A) and (B) of this subsection.

(c) **Example 1.** Entity X, Entity Y, and Entity Z, an affiliated group, cumulatively had worldwide gross revenue of over \$25,000,000,000 in 2021. Entity X and Entity Y are engaged in advanced computing, and Entity Z is engaged in real estate and leases commercial property to Entity X and Entity Y. All three entities are registered with the department and file and pay taxes on a monthly basis. For the first quarter of 2022, the entities reported the following amounts as taxable income of the business, respectively: Entity X: \$800,000; Entity Y: \$100,000; and Entity Z: \$1,200,000.

The first step is to determine whether the taxable income of the business (the amount subject to tax under the service and other activities B&O tax classification) for each entity is subject to the 1.22 percent surcharge. Because Entities X, Y, and Z are all members of an affiliated group that had more than \$25,000,000,000 of worldwide gross revenue during the preceding calendar year (2021 in this example), and Entity X and Entity Y are engaged in the business of advanced computing, all three entities are considered a "select advanced computing business." Therefore, the taxable income of the business for each entity is subject to the 1.22 percent surcharge as follows:

Entity X: $\$800,000 * 1.22\% = \$9,760$

Entity Y: $\$100,000 * 1.22\% = \$1,220$

Entity Z: $\$1,200,000 * 1.22\% = \$14,640$

The total surcharge owed by this affiliated group of select advanced computing businesses for the first quarter of 2022 is \$25,620. This amount is due no later than April 30, 2022, and each entity must report and pay its respective amount to the department.

The next step is to determine the service and other activities B&O tax rate in RCW 82.04.290(2) to apply to the taxable income reported by each entity. Because the three entities are subject to the 1.22 percent surcharge, the taxable income reported under RCW 82.04.290(2) by each entity will be subject to the B&O tax rate of 1.5 percent as required in RCW 82.04.290 (2)(a)(ii):

Entity X: $\$800,000 (*) 1.5\% (=) \$12,000$

Entity Y: $\$100,000 (*) 1.5\% (=) \$1,500$

Entity Z: $\$1,200,000 (*) 1.5\% (=) \$18,000$

Each entity will continue to file and pay any taxes due on a monthly basis.

(d) **Example 2.** Using the same facts as Example 1, beginning July 1, 2022, if Entity Z was operating a qualifying hospital or provider clinic, as described in (b)(vi)(A) and (B) of this subsection, it would be exempt from the surcharge. However, Entity X and Entity Y would still be subject to the surcharge because neither is a business described in (b)(vi)(A) or (B) of this subsection.

[]

WSR 22-23-022
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed November 4, 2022, 2:49 p.m., effective December 5, 2022]

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

Purpose: Amendments to WAC 388-101D-0030 align with the education qualifications for direct support professionals in Chapter 388-112A WAC and chapter 74.39A RCW, which do not require a GED or high school diploma.

Amendments to WAC 388-101D-0070 align it with WAC 388-101D-0075 and 28 C.F.R. Section 20.33(d). WAC 388-101D-0070(3) was too broad in how long it allowed a fingerprint result to remain valid. Removing subsection (3) aligns this rule with federal regulations. Additionally, the FBI audit guide for noncriminal justice access to criminal history record information (CHRI) has determined that reuse of CHRI is permitted for the "same purpose" but only "within a relatively short period of time." Amendments to WAC 388-101D-0080 correct broken cross-references. On the effective date, these permanent rules supersede emergency rules currently enacted on these sections.

Citation of Rules Affected by this Order: Amending WAC 388-101D-0030, 388-101D-0070, 388-101D-0075, and 388-101D-0080.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: 28 C.F.R. Section 20.33(d); RCW 74.39A.056, 71A.12.040, 71A.12.110.

Adopted under notice filed as WSR 22-18-010 on August 25, 2022.

A final cost-benefit analysis is available by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1500, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, 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 4, Repealed 0.

Date Adopted: November 4, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4931.1

AMENDATORY SECTION (Amending WSR 16-14-058, filed 6/30/16, effective 8/1/16)

WAC 388-101D-0030 Staffing requirements. (1) The ((service)) provider must ensure each ((staff meets the following minimum requirements)) of its employees:

((1) Have) (a) Has a high school diploma or GED equivalent, unless the ((employees were)) employee was hired before September 1, 1991 or is exempt under subsection (2) of this section;

((2) Be at least eighteen years of) (b) Is age 18 or older when employed as a direct ((care staff, or at least twenty-one years of age or older when employed as an administrator)) support professional who provides support services to a client;

(c) Is age 21 or older when employed as an administrator;

((3) Have) (d) Has a clear understanding of job responsibilities and knowledge of individual support plans and client needs; and

((4) Passed the department background check as required by WAC 388-101-3250) (e) Satisfies department background check requirements under chapter 388-825-WAC.

(2) The provider may hire a person without a high school diploma or GED if while working directly with clients the employee has access to another employee or a volunteer who:

(a) Has a high school diploma or GED; or

(b) Was hired before September 1, 1991.

(3) If the provider hires a person under subsection (2) of this section, the provider must have a written plan that states when and how the person must contact another employee for assistance.

[WSR 16-14-058, recodified as § 388-101D-0030, filed 6/30/16, effective 8/1/16. Statutory Authority: Chapter 71A.12 RCW. WSR 08-02-022, § 388-101-3200, filed 12/21/07, effective 2/1/08.]

AMENDATORY SECTION (Amending WSR 17-03-062, filed 1/10/17, effective 2/1/17)

WAC 388-101D-0070 Background checks—National fingerprint background checks. (1) ((Administrators and all caregivers who are)) An applicant as defined in WAC 388-113-0010 hired on or after January 1, 2016, ((and are)) who is not disqualified by the Washington state name and date of birth background check, must complete a national fingerprint background check and follow department procedures.

(2) After receiving the results of the national fingerprint background check the ((service)) provider must ((not employ, directly or by contract,)) prevent an administrator, employee, volunteer, student, or subcontractor ((who has a disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113, or that is a disqualifying negative action under WAC 388-78A-2470 or WAC 388-76-10180.)) from having unsupervised access to a client if the person has a:

(a) Disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC; or

(b) Disqualifying negative action under WAC 388-78A-2470 or WAC 388-76-10180.

~~((3) The service provider may accept a copy of the national fingerprint background check results letter and any additional information from the department's background check central unit from an individual who previously completed a national fingerprint check through the department's background check central unit, provided the national fingerprint background check was completed after January 7, 2012.))~~

[WSR 17-03-062, recodified as § 388-101D-0070, filed 1/10/17, effective 2/1/17. Statutory Authority: Chapters 71A.12, 74.34, and 74.39A RCW. WSR 16-18-040, § 388-101-3202, filed 8/30/16, effective 9/30/16.]

AMENDATORY SECTION (Amending WSR 17-03-062, filed 1/10/17, effective 2/1/17)

WAC 388-101D-0075 Background checks—Requirements for service providers. (1) Service providers must follow the background check requirements described in chapter 388-113 WAC and in this chapter. In the event of an inconsistency, this chapter applies.

(2) The service provider must obtain background checks from the department for all administrators, employees, volunteers, students, and subcontractors who may have unsupervised access to clients.

(3) The service provider must not allow the following persons to have unsupervised access to clients until the service provider receives the department's background check results:

- (a) Administrators;
- (b) Employees;
- (c) Volunteers or students; and
- (d) Subcontractors.

(4) If the department's background check results show that an administrator, employee, volunteer, student, or subcontractor has any of the following, then the service provider must prevent that person from having unsupervised access to clients:

- (a) A disqualifying conviction or pending criminal charge under chapter 388-113 WAC; or
- (b) A disqualifying negative action under chapter 388-113 WAC (~~(388-101-3090)~~).

(5) If the background check results show any of the following, then the service provider must conduct a character, suitability, and competence review before allowing the person unsupervised access to clients:

- (a) The person has a conviction or pending criminal charge, but the conviction or criminal charge is not disqualifying under chapter 388-113 WAC (~~(388-113-0020)~~);
- (b) The person has a conviction or pending criminal charge that meets one of the exceptions listed in WAC (~~(388-113-0040)~~) 388-113-0025; or
- (c) Any of the circumstances described in WAC 388-101-3080 apply to the individual.

(6) When a service provider receives the results of a person's background check, the service provider must:

- (a) Inform the person of the results of the background check;
- (b) Inform the person that they may request a copy in writing of the results of the background check. If requested, a copy of the back-

ground check results must be provided within (~~ten~~) 10 working days of the request; and

(c) Notify the department and other appropriate licensing or certification agency of any person resigning or terminated as a result of having a conviction record.

(7) The service provider must renew the Washington state background check for each administrator, employee, volunteer, student, or subcontractor of a service provider. The service provider must at least every (~~thirty-six~~) 36 months keep current background check results for each administrator, employee, volunteer, student, or subcontractor of a service provider.

(8) Licensed assisted living facilities or adult family homes must adhere to the current regulations in this chapter and in the applicable licensing laws.

(9) All applicants for certification must have a background check.

[WSR 17-03-062, recodified as § 388-101D-0075, filed 1/10/17, effective 2/1/17. Statutory Authority: Chapter 71A.12 RCW. WSR 14-14-030, § 388-101-3250, filed 6/24/14, effective 7/25/14. Statutory Authority: RCW 71A.12.030 and [71A.12].080. WSR 12-02-048, § 388-101-3250, filed 12/30/11, effective 1/30/12. Statutory Authority: RCW 71A.12.080, chapter 74.39A RCW. WSR 10-16-084, § 388-101-3250, filed 7/30/10, effective 1/1/11. Statutory Authority: RCW 71A.12.080. WSR 10-03-065, § 388-101-3250, filed 1/15/10, effective 2/15/10. Statutory Authority: Chapter 71A.12 RCW. WSR 08-02-022, § 388-101-3250, filed 12/21/07, effective 2/1/08.]

AMENDATORY SECTION (Amending WSR 17-03-062, filed 1/10/17, effective 2/1/17)

WAC 388-101D-0080 Background checks—Provisional hire—Pending results. (~~Persons identified in WAC 388-101-3250 and who have~~) Each provider applicant or employee who has lived in Washington state less than three years, or who (~~are~~) is otherwise required to complete a national fingerprint-based background check, may be hired for a (~~one hundred twenty~~) 120-day provisional period when:

(1) The person is not disqualified based on the initial results of the background check from the department; and

(2) A national fingerprint-based background check is pending.

[WSR 17-03-062, recodified as § 388-101D-0080, filed 1/10/17, effective 2/1/17. Statutory Authority: Chapter 71A.12 RCW. WSR 14-14-030, § 388-101-3255, filed 6/24/14, effective 7/25/14. Statutory Authority: RCW 71A.12.030 and [71A.12].080. WSR 12-02-048, § 388-101-3255, filed 12/30/11, effective 1/30/12. Statutory Authority: RCW 71A.12.080, chapter 74.39A RCW. WSR 10-16-084, § 388-101-3255, filed 7/30/10, effective 1/1/11.]

WSR 22-23-030

PERMANENT RULES

WASHINGTON STATE LOTTERY

[Filed November 7, 2022, 1:10 p.m., effective December 8, 2022]

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

Purpose: Amendments to WAC 315-04-180 Procedural rules—Obligations of lottery retailers, which currently requires licensed lottery retailers to reimburse the lottery for lost or stolen tickets. The amended rules grant the director discretion to waive payment or reimbursement for stolen tickets if the retailer can show they have consistently and demonstrably stored them in a safe and secure manner, in addition to reporting the loss promptly and cooperating with all investigations.

Citation of Rules Affected by this Order: New WAC 315-04-180.

Statutory Authority for Adoption: RCW 67.70.040 (1) and (3), 67.70.050(4).

Adopted under notice filed as WSR 22-17-136 on August 23, 2022.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, 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 1, Amended 0, Repealed 0.

Date Adopted: November 7, 2022.

Kristi Weeks
Director of Legal Services

OTS-4055.1

AMENDATORY SECTION (Amending WSR 21-06-052, filed 2/25/21, effective 3/28/21)

WAC 315-04-180 Obligations of lottery retailers. (1)(a) Upon acceptance of a pack of instant tickets from the director, the retailer shall be responsible for the condition and security of the pack. The retailer shall hold the pack in its own safekeeping until it is ready to begin sale of the pack. Immediately prior to beginning sale, the retailer shall place the pack in "activated" status on the lottery-issued terminal. Placement in activated status designates that the tickets in the pack may be sold, and prizes in the pack may be paid. Tickets must not be sold before being placed in active status.

(b) In the event that instant tickets accepted by the retailer are lost, stolen, or in any way unaccounted for prior to their being placed in activated status, the retailer shall, upon discovery of their disappearance, immediately notify the director of each pack or

portion of a pack so unaccounted for, lost, or stolen. The retailer may be required to provide the director a police report or other evidence of the pack's disappearance. The retailer may be charged (~~twenty-five dollars~~) \$25 for each pack or portion of a pack unaccounted for, lost, or stolen.

(c) A retailer may return an unopened pack, at no charge, to the director at any time prior to the pack having been placed in activated status. Within (~~thirty~~) 30 days of the official end of an instant game, a retailer shall return to the director all packs never activated in that game.

(d) Upon placement of a pack in activated status, the retailer shall be liable to the director for payment for the pack, in the amount calculated under WAC 315-06-035. Payment for a pack shall be due to the director (~~(+1)~~) (i) no later than (~~fifty~~) 50 calendar days after the pack has been placed in activated status or when (~~eighty~~) 80 percent of the low tiered prizes have been validated, thereby validating the pack; or (~~(+2)~~) (ii) payment for a pack shall be due to the director no later than (~~twenty-one~~) 21 days after activation. The director shall not reimburse the retailer for any ticket losses which occur after activation of the pack from which the tickets came, except as allowed by subsection (2) of this section, WAC 315-04-210(2), or 315-06-190.

(e) Each lottery retailer and lottery license applicant shall sign and comply with a lottery retailer contract. Failure to sign or to comply shall result in revocation or denial of a retailer's lottery license.

(2)(a) A retailer shall maintain and store all activated instant tickets in a secure manner. For purposes of this subsection "secure manner" means:

(i) Instant tickets are removed from the in-counter dispenser and secured in a locked room or container when the retail location is closed for business;

(ii) Instant tickets are not allowed to hang loosely from, or otherwise be located outside of, the in-counter dispenser when the retail location is open for business; and

(iii) Instant tickets are given, or otherwise made accessible, to customers only after the purchase is complete.

(b) In the case of theft of activated instant tickets from a retailer or retail location, the director may waive payment or reimburse the retailer for some or all of those stolen instant tickets if, in the sole discretion of the director, each of the following conditions is fully met:

(i) Prior to the theft, the retailer consistently and demonstrably maintained and stored activated instant tickets in a secure manner.

(ii) The retailer reported the theft to the lottery, including an accurate accounting of the stolen instant tickets (i.e., game, pack, and ticket number(s)), within two hours of discovery of the event and cooperates fully with any lottery investigation.

(iii) The retailer reported the theft to appropriate law enforcement within two hours of discovery of the event and cooperates fully with any investigation and prosecution.

(iv) The retailer reported the theft to their appropriate insurance company, if any, and cooperates fully with any investigation and recovery. Waived payment or reimbursement from the lottery under this subsection may supplement, but shall not be used in place of, available insurance coverage.

(v) The retailer has not been reimbursed or had payment waived by the director for a separate theft within the 12 months immediately preceding the current event.

(vi) The person who committed, or is reasonably suspected to have committed, the theft is not an employee of the retailer or other person known to the retailer and who had more access to the instant tickets than a typical retail customer.

(c) A retailer whose request for waiver of payment or reimbursement under this subsection is denied by the director may request a brief adjudicative proceeding pursuant to WAC 315-20-125.

(3) Each lottery retailer shall abide by the law, these rules, and all other directives or instructions issued by the director.

~~((3))~~ (4) Each lottery retailer grants to the director an irrevocable license to enter upon the premises of the lottery retailer in which tickets may be sold or any other location under the control of the lottery retailer where the director may have good cause to believe lottery materials and/or tickets are stored or kept in order to inspect said lottery materials and/or tickets and the licensed premises.

~~((4))~~ (5) All property given, except tickets, to a lottery retailer remains the property of the director, and, upon demand, the lottery retailer agrees to deliver forthwith the same to the director. The lottery retailer also agrees to be responsible for the maintenance and security of such property.

~~((5))~~ (6) All books and records pertaining to the lottery retailer's lottery activities shall be made available for inspection and copying, during the normal business hours of the lottery retailer and between 8:00 a.m. and 5:00 p.m., Monday through Friday, upon demand by the director.

~~((6))~~ (7) All books and records pertaining to the lottery retailer's lottery activities shall be subject to seizure by the director without prior notice.

~~((7))~~ (8) No lottery retailer shall advertise or otherwise display advertising in any part of the lottery retailer's premises as a licensed location which may be considered derogatory or adverse to the operations or dignity of the lottery.

[Statutory Authority: RCW 67.70.040 (1), (3). WSR 21-06-052, § 315-04-180, filed 2/25/21, effective 3/28/21. Statutory Authority: RCW 67.70.040 (1) and (3). WSR 16-13-090, § 315-04-180, filed 6/15/16, effective 7/16/16. Statutory Authority: RCW 67.70.040 (1), (3) and 67.70.040. WSR 07-11-154, § 315-04-180, filed 5/22/07, effective 6/22/07. Statutory Authority: RCW 67.70.040. WSR 98-11-091, § 315-04-180, filed 5/20/98, effective 6/20/98; WSR 94-11-027, § 315-04-180, filed 5/6/94, effective 6/6/94; WSR 94-03-020, § 315-04-180, filed 1/7/94, effective 2/9/94; WSR 86-01-060 (Order 83), § 315-04-180, filed 12/16/85; WSR 84-05-008 (Order 51), § 315-04-180, filed 2/7/84; WSR 83-19-019 (Order 36), § 315-04-180, filed 9/12/83. Statutory Authority: 1982 2nd ex.s. c 7. WSR 82-21-037 (Order 2), § 315-04-180, filed 10/15/82.]

WSR 22-23-047
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed November 8, 2022, 1:16 p.m., effective December 9, 2022]

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

Purpose: Clarify the assignment policy related to the transitional certificate and reduce confusion in the field.

Citation of Rules Affected by this Order: Amending WAC 181-82-110 School district response and support for nonmatched endorsements to course assignment of teachers.

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

Adopted under notice filed as WSR 22-18-015 on November 8 [August 26], 2022.

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

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

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

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

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

Date Adopted: November 8, 2022.

Jisu Ryu
Rules Coordinator

OTS-4023.1

AMENDATORY SECTION (Amending WSR 21-22-104, filed 11/2/21, effective 12/3/21)

WAC 181-82-110 School district response and support for non-matched endorsements to course assignment of teachers. (1) Individuals with initial, residency, endorsed continuing, professional, transitional, or emergency teacher certificates who are employed with a school district may be assigned to classes other than in their areas of endorsement. If teachers are so assigned, the following shall apply:

(a) A designated representative of the district and any teacher so assigned shall mutually develop a written plan which provides for necessary assistance to the teacher, and which provides for a reasonable amount of planning and study time associated specifically with the out-of-endorsement assignment;

(b) Such teaching assignments shall be approved by a formal vote of the local school board for each teacher so assigned.

(2) Special education preendorsement waiver:

(a) A teacher who has completed (~~two hundred forty~~) 240 continuing education credit hours under WAC 181-85-030 of course work applicable to a special education, early childhood special education, teacher of the visually impaired, deaf education, or deaf education with ASL proficiency endorsement shall be eligible for a preendorsement waiver from the special education office under chapter 392-172A WAC. Individuals with a preendorsement waiver are considered to have met the requirements for "substantial professional training" for the appropriate endorsement under WAC 392-172A-02090.

(b) All remaining requirements for the special education, early childhood special education, teacher of the visually impaired, deaf education, or deaf education with ASL proficiency endorsement shall be completed within five years.

(3) Teachers are not subject to nonrenewal or probation based on evaluation of their teaching effectiveness in the out-of-endorsement assignments under this section.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-22-104, § 181-82-110, filed 11/2/21, effective 12/3/21; WSR 21-08-024, § 181-82-110, filed 3/29/21, effective 4/29/21; WSR 20-16-144, § 181-82-110, filed 8/4/20, effective 9/4/20. Statutory Authority: RCW 28A.410.210. WSR 14-20-051, § 181-82-110, filed 9/25/14, effective 10/26/14; WSR 14-11-106, § 181-82-110, filed 5/21/14, effective 6/21/14; WSR 12-16-107, § 181-82-110, filed 8/1/12, effective 9/1/12; WSR 08-12-056, § 181-82-110, filed 6/2/08, effective 7/3/08; WSR 06-14-010, § 181-82-110, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-82-110, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010. WSR 03-04-023, § 180-82-110, filed 1/27/03, effective 2/27/03. Statutory Authority: RCW 28A.150.220(4), 28A.305.130(1), 28A.410.018. WSR 00-18-063, § 180-82-110, filed 9/1/00, effective 10/2/00. Statutory Authority: RCW 28A.305.130 (1) and (2), 28A.410.010 and 28A.150.220(4). WSR 99-04-008, § 180-82-110, filed 1/21/99, effective 2/21/99.]

WSR 22-23-054
PERMANENT RULES
LIQUOR AND CANNABIS
BOARD

[Filed November 9, 2022, 11:50 a.m., effective December 10, 2022]

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

Purpose: The Washington state liquor and cannabis board has adopted rule amendments to update obsolete building, email, and web addresses in Title 314 WAC. For example, references to the former headquarters address at 3000 Pacific Avenue Southeast are updated to reflect the current address at 1025 Union Avenue S.E., Olympia, WA 98501. These amendments are needed to ensure that the agency's rules contain accurate address information, and will benefit licensees, staff, and the public by improving transparency, rule consistency, and access to resources.

Citation of Rules Affected by this Order: Amending WAC 314-20-018, 314-24-175, 314-42-001, 314-55-073, 314-60-015, 314-60-025, 314-60-070, and 314-60-080.

Statutory Authority for Adoption: RCW 66.08.030, 69.50.342.

Adopted under notice filed as WSR 22-17-081 on August 17, 2022.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 8, 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 8, Repealed 0.

Date Adopted: November 9, 2022.

David Postman
Chair

OTS-4025.1

AMENDATORY SECTION (Amending WSR 18-02-006, filed 12/20/17, effective 1/20/18)

WAC 314-20-018 Farmer's market beer and wine sampling. (1) To conduct beer and wine tasting at a farmer's market, the following criteria must be met:

(a) The farmer's market must be authorized to allow breweries, microbreweries, and wineries to sell sealed bottled wine and/or beer at retail.

(b) The farmer's market must hold an endorsement to allow sampling of beer and wine or both.

(c) A brewery, microbrewery, or winery offering samples at a farmer's market must have an endorsement from the board to sell beer

or wine of its own production at a farmer's market (see RCW 66.24.170, 66.24.240, and 66.24.244).

(d) No more than three breweries, microbreweries, or wineries combined may offer samples at a qualifying farmer's market per day.

(e) A brewery, microbrewery, or winery may advertise that it offers samples only at its designated booth, stall, or anywhere within the farmer's market.

(2) Samples of beer or wine may be offered only under the following conditions:

(a) Each sample must be two ounces or less, up to a total of two ounces per customer per day.

(b) Beer and wine samples are to be conducted at the booth or stall of the brewery, microbrewery, or winery with a barrier at least (~~forty-two~~) 42 inches in height, where licensees are able to observe and control customers participating in the samples. The barriers may be moveable (an example would be ropes and stanchions).

(c) A brewery, microbrewery, or winery must have food available for customers to consume while sampling beer or wine, or must be adjacent to a vendor offering prepared food.

(d) Customers must remain in the designated sampling area while sampling beer or wine.

(e) Brewery, microbrewery, or winery employees serving beer or wine during sampling events must hold a valid MAST permit.

(f) The brewery, microbrewery, or winery is required to send a list of scheduled beer and wine samplings to the liquor control board at (~~MIWenforce@liq.wa.gov~~ [~~MIWenforce@leb.wa.gov~~])

MIWenforce@lcb.wa.gov at the beginning of each month. The date for each beer and wine sampling must be included.

(g) The farmer's market is also required to send a list of scheduled beer and wine samplings to the liquor control board at (~~MIWenforce@liq.wa.gov~~ [~~MIWenforce@leb.wa.gov~~])

MIWenforce@lcb.wa.gov at the beginning of each month. The date for each beer and wine sampling, and the names of the brewery, microbrewery, and winery providing the samples must be included.

(h) The farmer's market is required to provide a sketch to the licensing division of the area where beer and wine samples will be conducted and to any adjacent food booths.

[Statutory Authority: RCW 66.24.170, 66.24.640, 66.24.695, and 66.08.030. WSR 18-02-006, § 314-20-018, filed 12/20/17, effective 1/20/18. Statutory Authority: RCW 66.24.170, 66.24.240, and 66.24.244. WSR 14-03-084, § 314-20-018, filed 1/16/14, effective 2/16/14.]

OTS-4026.1

AMENDATORY SECTION (Amending WSR 14-03-084, filed 1/16/14, effective 2/16/14)

WAC 314-24-175 Farmer's market beer and wine sampling. (1) To conduct beer and wine tasting at a farmer's market, the following criteria must be met:

(a) The farmer's market must be authorized to allow breweries, microbreweries, and wineries to sell bottled wine and/or beer at retail.

(b) The farmer's market must hold an endorsement to allow sampling of beer and wine or both.

(c) A brewery, microbrewery, or winery offering samples at a farmer's market must have an endorsement from the board to sell beer or wine of its own production at a farmer's market (see RCW 66.24.170, 66.24.240, and 66.24.244).

(d) No more than three breweries, microbreweries, or wineries combined may offer samples at a qualifying farmer's market per day.

(e) A brewery, microbrewery, or winery may advertise that it offers samples only at its designated booth, stall, or anywhere within the farmer's market.

(2) Samples of beer or wine may be offered only under the following conditions:

(a) Each sample must be two ounces or less, up to a total of two ounces per customer per day.

(b) Beer and wine samples are to be conducted at the booth or stall of the brewery, microbrewery, or winery with a barrier at least (~~(forty-two)~~) 42 inches in height, where licensees are able to observe and control customers participating in the samples. The barriers may be moveable (an example would be ropes and stanchions).

(c) A brewery, microbrewery, or winery must have food available for customers to consume while sampling beer or wine, or must be adjacent to a vendor offering prepared food.

(d) Customers must remain in the designated sampling area while sampling beer or wine.

(e) Brewery, microbrewery, or winery employees serving beer or wine during sampling events must hold a valid MAST permit.

(f) The brewery, microbrewery, or winery is required to send a list of scheduled beer and wine samplings to the liquor control board at (~~(MIWenforce@liq.wa.gov [MIWenforce@leb.wa.gov])~~) MIWenforce@lcb.wa.gov at the beginning of each month. The date for each beer and wine sampling must be included.

(g) The farmer's market is also required to send a list of scheduled beer and wine samplings to the liquor control board at (~~(MIWenforce@liq.wa.gov [MIWenforce@leb.wa.gov])~~) MIWenforce@lcb.wa.gov at the beginning of each month. The date for each beer and wine sampling, and the names of the brewery, microbrewery, and winery providing the samples must be included.

(h) The farmer's market is required to provide a sketch to the licensing division of the area where beer and wine samples will be conducted and to any adjacent food booths.

[Statutory Authority: RCW 66.24.170, 66.24.240, and 66.24.244. WSR 14-03-084, § 314-24-175, filed 1/16/14, effective 2/16/14.]

OTS-4027.1

AMENDATORY SECTION (Amending WSR 18-05-006, filed 2/7/18, effective 3/10/18)

WAC 314-42-001 Board operations and procedure. This section details the general course and method by which the operations of the board are channeled and determined in addition to the other functions and procedures of the board as provided in Title 314 WAC.

(1) The "Washington state liquor and cannabis board" or "board" pursuant to RCW 66.08.012 and 66.08.014, consists of three members appointed by the governor, with the consent of the senate, for staggered terms of six years. Where appropriate, the term "board" also refers to the staff and employees of the Washington state liquor and cannabis board.

(2) The board delegates certain administrative functions to an administrative director appointed by the board as provided in WAC 314-42-010.

(3) Pursuant to the requirements of the Open Public Meetings Act, chapter 42.30 RCW all determinations and business of the board will be made and conducted in meetings open to the public, except matters exempt from the act under RCW 42.30.140 or properly conducted in executive session pursuant to RCW 42.30.110.

(a) The board holds regular meetings as published with the office of the code reviser in the *Washington State Register* per RCW 42.30.075 and as published on the board's website at (~~www.lcb.wa.gov~~) lcb.wa.gov. For scheduling purposes, it is the board's intent to schedule petitions, take public testimony, conduct rule making activities, and adopt resolutions at its regular board meetings as published in the *Washington State Register* and posted on the WSLCB website.

(b) Occasionally the board may deem it necessary to cancel meetings or conduct business at times other than as published in the *Washington State Register*. For these occasions, stakeholder notification will occur as provided in the Open Public Meetings Act, chapter 42.30 RCW.

[Statutory Authority: RCW 42.56.120, 34.05.220, 42.56.040, 66.08.030, and 66.08.050. WSR 18-05-006, § 314-42-001, filed 2/7/18, effective 3/10/18.]

OTS-4028.1

AMENDATORY SECTION (Amending WSR 22-14-111, filed 7/6/22, effective 8/6/22)

WAC 314-55-073 Cannabis research license. A cannabis research license allows a holder of the license to produce, process, and possess cannabis for the limited research purposes provided in RCW 69.50.372. The WSLCB designates a scientific reviewer (reviewer) to review research applications and make recommendations for the approval or denial of research projects and to assess licensed research activities. The following provisions are in addition to the requirements for cannabis research licensees provided in RCW 69.50.372.

(1) **Eligibility and continuing requirements for research license applications, prohibitions and restrictions.**

(a) Other than the restrictions listed in this subsection, any person, organization, agency, or business entity may apply for a cannabis research license.

(b) Other cannabis licensees may apply for a research license. Facilities at which the research is conducted must be wholly separate and distinct from the cannabis business, except:

(i) Licensed producers with a research license and approved research project may grow cannabis plants or possess cannabis for research purposes at the producer's licensed premises. However, all cannabis grown or possessed for research purposes or purposes other than those related to the research project must be kept wholly separated and distinct from commercial operations and must not be comingled with or diverted to cannabis grown for commercial purposes or purposes other than those related to the research project; and

(ii) Licensed processors with a research license and approved research project may possess cannabis for research purposes at the processors licensed premises. However, all cannabis possessed for research purposes must be kept wholly separated and distinct from all cannabis possessed for commercial purposes or purposes other than those related to the research project and must not be comingled with or diverted to cannabis possessed for commercial purposes or purposes other than those related to the research project. Licensed processors who do not also hold a producer license may not grow cannabis plants for the purposes of research under a research license at the processor's licensed location.

(c) Labs certified to perform quality assurance testing on cannabis and cannabis products by the WSLCB may apply for a research license. Certified labs with a research license and approved research project must ensure that all cannabis possessed for research purposes is wholly separated from and is not comingled with cannabis possessed for state required testing purposes for licensed producers or processors or cannabis possessed for any reason other than research purposes.

(d) All research license applicants and persons conducting research under the research license must be 21 years of age or older.

(e) All research license applicants and those persons that have managing control over an organization, agency, or business entity must pass a criminal background check and financial investigation prior to being eligible to receive a research license.

(f) Except as otherwise provided by chapter 69.50 RCW and agency rule, no applicant for a research license may possess any cannabis plants or cannabis for research purposes unless and until the research project is approved and the applicant is notified that the research license is approved in writing by the WSLCB.

(g) No research licensee may conduct research unless and until the research project is approved by the reviewer and the WSLCB in writing.

(2) **Initial applications.**

(a) **Application made with business licensing services (BLS).**

(i) Applicants for a research license must apply through BLS to begin the application process for a research license.

(ii) Upon submitting an application for a research license through BLS, the applicant will receive an application letter from the WSLCB directing the applicant to submit the additional application materials directly to the WSLCB's designated scientific reviewer (reviewer).

(A) The applicant must submit complete and accurate additional application materials directly to the reviewer within 30 days of the

date of the application letter from the WSLCB or by the date indicated on the application letter. It is the responsibility of the research license applicant to comply with the application requirements in this section and ensure the application is complete, accurate, and successfully submitted to the reviewer.

(B) Incomplete or incorrect additional application materials, materials that do not adhere to the content requirements in this section, or materials not received by the reviewer by 5:00 p.m. on the 30th day or the application date as indicated on the letter from the WSLCB will not be considered by the reviewer and the WSLCB will withdraw the application after receiving notice in writing from the reviewer.

(b) **Additional application materials requirements.**

(i) Application materials that do not adhere to the content requirements in this section or incomplete or incorrect applications will be withdrawn.

(ii) The applicant is responsible for ensuring that no information is included in the research plan that may compromise the applicant's ability to secure patent, trade secret, or other intellectual property protection. All application documents must be submitted by a person who has the legal authority to represent the entity if the applicant is an entity other than an individual person.

(iii) All documents must be submitted to the reviewer in a legible PDF format.

(iv) All of the following information and documents are required for each initial application:

(A) A completed cover page form, cannabis research license application form, and signature page form created by the WSLCB and available at the WSLCB's website at (~~www.leb.wa.gov~~) lcb.wa.gov.

(B) A research plan limited to eight pages, not including references or citations, that includes the following information:

(I) Purpose and goal(s) of the proposed research project(s);

(II) Key milestones and timelines for the research project(s);

(III) Background and preliminary studies;

(IV) Amount of cannabis to be grown, if applicable, including the justification with respect to milestone tasks;

(V) Anticipated cost of the proposed research project(s) and funding available for the work. The scientific reviewer may request additional information or ask clarifying questions about the cost of the proposal to determine whether the budget meets the scope and design of the proposed project;

(VI) Key personnel and organizations, including names and roles;

(VII) Facilities, equipment, and other resources required and available for conducting the proposed research project(s).

(C) A biosketch for each individual involved in executing the proposed research project limited to two pages per individual performing technical and administrative functions essential to performing the proposed research, including proof that the individual is 21 years of age or older. Biosketches must be prepared using the National Institutes of Health (NIH) biographical sketch format, available at <http://grants.nih.gov/grants/forms/new-renewal-revisions.htm>.

(D) Letters of support limited to two pages per letter confirming the commitment of time and resources from external personnel or organizations if external personnel or organizations will participate in research activities under an approved research project. Letters of support are required to confirm the commitment of time and resources from personnel involved in the proposed research project(s) who are

not employed at the applicant organization. Letters of support must include specific details regarding the type(s) and magnitude of the time and resources being committed to the proposed research project(s) and must be signed by individuals having the authority to make such commitments.

(E) For all project(s) involving human or animal subjects, documentation of all required institutional review board (IRB) or institutional animal care and use committee (IACUC) approvals. Documents must be provided on IRB or IACUC letterhead and be signed by authorized officials of those regulatory bodies.

(v) Documents that do not conform to the requirements in subsection (b) of this section may be withdrawn. All nonform documents must conform to the following requirements:

(A) Eight and one-half by 11-inch portrait-oriented page dimensions;

(B) Single-spaced with all margins measuring at least one inch; and

(C) At least 12-point font in Times New Roman or Arial, not proportionately reduced.

(c) Review by the WSLCB's designated scientific reviewer.

(i) If the applicant submits application materials to the reviewer by the required deadline specified by the WSLCB's application letter and the reviewer determines the additional application materials are complete and meet the document requirements specified in this section, the reviewer will proceed with reviewing the research project to evaluate whether the project complies with the provisions of RCW 69.50.372 (1) and (2). The scientific reviewer may require the applicant to provide additional information if the scientific reviewer determines that more information is necessary to complete the review.

(ii) When evaluating research projects, the reviewer must:

(A) Ensure confidentiality;

(B) Screen members of the reviewer panel for any conflicts of interest and take appropriate measures if a conflict of interest is identified;

(C) Review all information, including the budget, to evaluate whether the scope and design of the proposed project matches the budget and resources of the applicant; and

(D) The scientific reviewer may require the applicant to submit to a site inspection. The site inspection may occur after the initial review and before the license is issued to evaluate the adequacy of the location, facilities, or equipment to complete the proposed project.

(iii) The reviewer will assess fees for the review of the research project proposal directly to the applicant pursuant to RCW 69.50.372(7). The reviewer will not recommend approval of an application for any research license for which an unpaid balance of fees to the reviewer is due regardless of the recommendation of the reviewer regarding the sufficiency of the research project.

(iv) If at any time during the process of review the reviewer finds that the additional application materials are not complete, the reviewer will notify the WSLCB in writing and the WSLCB will withdraw the application.

(v) The reviewer will supply a written evaluation to the WSLCB in writing after completing review of the research project. Evaluations will provide the approval recommendation status; determination(s) of the applicable research category or categories; and, as applicable, the reasons for a "Not Approved" recommendation. The WSLCB will pro-

vide written evaluations to applicants following completion of the review process by the reviewer along with the WSLCB's approval or denial of the research license.

(d) **WSLCB requirements and licensing process.** If the reviewer indicates the application for a research license should be approved, the following requirements must be met prior to final approval of the license by the WSLCB.

(i) The WSLCB will request criminal background and financial information from the research license applicant and evaluate the applicant(s) pursuant to the standards and requirements established in WAC 314-55-020 except that research license applicants are not subject to prioritization under subsection (3) of that section;

(ii) Funding of the proposed research must be disclosed by the applicant(s) in amount, timing and source(s). Funding sources may include organizational resources and individuals and organizations that are not part of the person, organization, agency, or business entity applying for the research license. Out-of-state resources may be included, but must be identified;

(iii) The applicant(s) must adhere to the notice posting requirements under WAC 314-55-020;

(iv) The applicant must demonstrate access to and proficiency with the traceability system; and

(v) The applicant must meet facility security requirements as provided in WAC 314-55-083 prior to being granted a license.

(3) **Research license withdrawal and denials.**

(a) The WSLCB will withdraw an application if:

(i) The application or additional application materials are determined incomplete or incorrect by the WSLCB or its designated reviewer;

(ii) The additional application materials are not timely received by the reviewer as provided in this section; or

(iii) The applicant(s) request withdrawal of a research license application at any time in the application process. The applicant must request the withdrawal in writing and is responsible for any review costs due to the reviewer. The voluntary withdrawal of a research license application does not result in a hearing right.

(b) The WSLCB will deny a research license if:

(i) The scientific reviewer does not recommend approval of the license after reviewing the research proposal for compliance with this section or RCW 69.50.372;

(ii) The applicant does not meet the requirements for a license under this section or RCW 69.50.372; or

(iii) The applicant provides false or misleading information in any of the materials it submits to the WSLCB or the reviewer.

(c) If the WSLCB denies a research application for the reasons provided in (b)(iii) of this subsection or for failing to meet criminal history or administrative violations requirements under this section, the applicant(s) is prohibited from reapplying for a research license for one calendar year from the date of the WSLCB's denial of the license.

(d) A person or entity that has outstanding unpaid review fees owing to the scientific reviewer is prohibited from reapplying for a research license until all review fees are paid to the scientific reviewer.

(4) **Reporting required.**

(a) The WSLCB or the WSLCB's designated reviewer may require reporting by or auditing of research licensees as necessary.

(b) The WSLCB's designated reviewer must submit an annual status report of all completed and ongoing research projects for the previous year to the WSLCB by December 31st of each calendar year.

(c) The licensee must adhere to the reporting requirements in the traceability system under WAC 314-55-083.

(d) The reviewer must immediately notify the WSLCB if it receives information indicating that a research licensee is operating outside the scope of the projects approved under a research license.

(5) Adding an additional research project or changing existing approved research project process (after licensure).

(a) A research licensee is restricted to only those research activities under a research project that has been reviewed and approved by reviewer.

(b) Applications to add a new project or change an existing approved project is the same as what is required for initial application except that a new license application through BLS is not required. To apply to add a new research project or change an existing approved project, a research licensee must submit all materials to the reviewer as required under subsection (2)(b) of this section. Incomplete project applications will not be considered.

(c) The reviewer will review the application for a new research project or change to an existing approved research project pursuant to subsection (2)(c) of this section. The reviewer will supply a written evaluation to the WSLCB and the licensee in writing after completing review of the application for a new research project or a change to an existing approved research project. Evaluations will provide the approval recommendation status; determination(s) of the applicable research category or categories; and, as applicable, the reasons for a "Not Approved" recommendation.

(6) Research license renewals.

(a) Research license renewals operate on an annual basis, based on the license issuance date. A licensee must have an ongoing approved research project or an application for a new research project to be eligible for license renewal. The WSLCB will notify the licensee and reviewer 90 days prior to the license renewal date. The licensee must provide a status report to the reviewer or an application for a new research project if the licensee's ongoing approved research project will end within 30 days prior to or after the renewal date. The status report or application must be received by the reviewer within 30 days of the 90-day renewal notice from the WSLCB or the license will not be renewed.

(b) The reviewer will notify the WSLCB in writing if the licensee meets the requirements for renewal not later than 15 days prior to the licensee's renewal date.

(c) If the reviewer determines that the research project does not meet requirements for renewal due to lack of an ongoing project or for failure to meet the requirements of RCW 69.50.372 or this section for a proposed new project, the reviewer will recommend the WSLCB not renew the license.

(d) The WSLCB will review the licensee's violation history and criminal background check prior to renewal. If the violation history or criminal records disqualifies the licensee from eligibility for a research license under WAC 314-55-050, the WSLCB will not renew the license.

(7) License revocation.

(a) The WSLCB may revoke an application for the following reasons:

(i) The WSLCB has reason to believe that cannabis is being diverted from the research licensee;

(ii) The research licensee operates outside the scope of the research project(s) approved under the license issued to the licensee;

(iii) The applicant makes a misrepresentation of fact, or fails to disclose a material fact to the WSLCB during the application process or any subsequent investigation after a license has been issued;

(iv) The WSLCB finds that the licensee possesses cannabis plants, cannabis, or cannabis products that are not accounted for in the traceability system;

(v) The research licensee makes changes to their operating plan, entity structure, or location without prior approval from the WSLCB;

(vi) The research licensee fails to maintain security requirements for the licensed research facility; or

(vii) The licensee violates any provision of chapter 69.50 RCW or this chapter.

(b) A licensee may request voluntary cancellation of a license at any time. The licensee must request cancellation of a research license to the WSLCB in writing. The voluntary cancellation of a research license does not result in a hearing right.

(8) Cannabis disposal requirements.

(a) Licensees must dispose of cannabis as provided in WAC 314-55-097.

(b) Licensees must dispose of cannabis if the research license is discontinued for any reason. A licensee may transfer plants to another cannabis research licensee. A licensee may work with the WSLCB to dispose of cannabis or cannabis plants.

(9) An applicant or licensee may request an administrative hearing to contest the withdrawal, denial, nonrenewal, or revocation of a research license pursuant to chapter 34.05 RCW. A request for a hearing must be made in writing and received by the WSLCB no later than 20 days after the date the notification of withdrawal, denial, nonrenewal, or revocation was mailed to the applicant or licensee. Appeal requests submitted in paper form may be delivered to the WSLCB in person during normal business hours at (~~3000 Pacific~~) 1025 Union Avenue S.E., Olympia, WA 98501, or mailed to the WSLCB. Mailed appeal requests must be addressed to: WSLCB, ATTN: Adjudicative Proceedings Coordinator, P.O. Box 43076, Olympia, WA 98504-3076 or, for certified mail, WSLCB, ATTN: Adjudicative Proceedings Coordinator, (~~3000 Pacific~~) 1025 Union Avenue S.E., Olympia, WA 98501.

[Statutory Authority: RCW 69.50.342 and 2022 c 16 § 168. WSR 22-14-111, § 314-55-073, filed 7/6/22, effective 8/6/22. Statutory Authority: RCW 69.50.325, 69.50.342, 69.50.345, and 69.50.369. WSR 18-22-055, § 314-55-073, filed 10/31/18, effective 12/1/18. Statutory Authority: RCW 69.50.342, 69.50.345, and 69.50.372. WSR 17-04-038, § 314-55-073, filed 1/25/17, effective 2/25/17.]

OTS-4029.1

AMENDATORY SECTION (Amending WSR 22-14-111, filed 7/6/22, effective 8/6/22)

WAC 314-60-015 Agency description—Contact information. (1)(a)

The Washington state liquor and cannabis board (WSLCB) is an agency created to exercise the police power of the state in administering and enforcing laws and regulations relating to alcoholic beverage control (Title 66 RCW), cannabis (chapter 69.50 RCW), tobacco (chapter 70.155 RCW), and vapor products (chapter 70.345 RCW).

(b) The board issues licenses relating to liquor, cannabis, tobacco, and vapor products; and collects taxes imposed on liquor and cannabis.

(c) The WSLCB is responsible for enforcing laws preventing access to tobacco products by persons under the age of 18 years (chapter 70.155 RCW). The board enforces the tobacco tax laws and the department of revenue administers tobacco tax laws (chapters 82.24 and 82.26 RCW).

(2) The Washington state liquor and cannabis board is organized into seven divisions:

- (a) Board administration;
- (b) Director's office;
- (c) Licensing and regulation;
- (d) Enforcement and education;
- (e) Finance;
- (f) Information technology; and
- (g) Human resources.

(3)(a) The administrative offices of the Washington state liquor and cannabis board are located at (~~3000 Pacific Avenue Southeast, Olympia, Washington 98504-3080~~) 1025 Union Avenue S.E., Olympia, WA 98501.

(b) WSLCB staff is also located at enforcement offices maintained in major cities throughout the state.

Enforcement offices addresses and contact numbers are located on the WSLCB's website at (~~www.leb.wa.gov~~) lcb.wa.gov.

(4) An organizational chart is available from the board's public records office which illustrates the general structure of the WSLCB's operations. More information on the construct of the WSLCB is also available on the WSLCB's website at (~~www.leb.wa.gov~~) lcb.wa.gov.

[Statutory Authority: RCW 69.50.342 and 2022 c 16 § 168. WSR 22-14-111, § 314-60-015, filed 7/6/22, effective 8/6/22. Statutory Authority: RCW 42.56.120, 34.05.220, 42.56.040, 66.08.030, and 66.08.050. WSR 18-05-006, § 314-60-015, filed 2/7/18, effective 3/10/18. Statutory Authority: RCW 66.08.030, 34.05.220, and 42.56.40 [42.56.040]. WSR 09-07-070, § 314-60-015, filed 3/13/09, effective 4/13/09.]

AMENDATORY SECTION (Amending WSR 18-05-006, filed 2/7/18, effective 3/10/18)

WAC 314-60-025 Public records officer. (1) The WSLCB public records officer:

- (a) Receives all public records requests made to the WSLCB;

(b) Provides "fullest assistance" to persons seeking WSLCB public records;

(c) Oversees the WSLCB's compliance with the Public Records Act, including locating, processing, and releasing records responsive to public records requests;

(d) Creates and maintains an index of certain WSLCB public records, to the extent required by RCW 42.56.070; and

(e) Prevents the fulfillment of public records requests from causing excessive interference with essential functions of the department.

(2) Any person wishing to access WSLCB public records should contact the WSLCB's public records officer or designee at:

Mailing Address:

Public Records Officer
Liquor and Cannabis Board
(~~3000 Pacific Avenue Southeast~~) P.O. Box 43090
Olympia, ((Washington)) WA 98504

Building Address:

1025 Union Avenue S.E.
Olympia, WA 98501
Phone: 360-664-1693
(~~Fax: 360-664-9689~~)
Email: publicrecords@lcb.wa.gov

Current contact information is also available on the WSLCB website at (~~www.leb.wa.gov~~) lcb.wa.gov.

(3) The public records officer may designate one or more WSLCB staff to carry out the responsibilities set forth in subsection (1) of this section; and other staff may process public records requests. Therefore, use of the term public records officer in this chapter may include the public records officer's designee(s) or any other staff assisting in processing public records requests, where indicated by context.

[Statutory Authority: RCW 42.56.120, 34.05.220, 42.56.040, 66.08.030, and 66.08.050. WSR 18-05-006, § 314-60-025, filed 2/7/18, effective 3/10/18.]

AMENDATORY SECTION (Amending WSR 18-05-006, filed 2/7/18, effective 3/10/18)

WAC 314-60-070 Availability of public records. (1) Many records are available on the WSLCB's website at (~~www.leb.wa.gov~~) lcb.wa.gov. Requestors are encouraged to search for and view records on the WSLCB's website in lieu of or prior to making a public records request. An index of public records is available as provided in subsection (3) of this section.

(2) Requestors are encouraged to contact the public records officer to determine the location and availability of records prior to or at the time of making a public records request.

(3) **Hours for inspection of records.**

(a) Public records are available for inspection and copying at the main office of the board during normal business hours of the

WSLCB, Monday through Friday, from 9:00 a.m. to noon and from 1:00 p.m. to 4:30 p.m., excluding state legal holidays.

(b) Records must be inspected at the offices of the WSLCB and may not be removed from WSLCB offices. The majority of public records are located at the WSLCB's central office, although some may be located in other locations, including the regional offices.

(4) **Records index.** The WSLCB maintains an index as required under RCW 42.56.070 and updates the index on a biennial basis at minimum. The index of public records is available on the WSLCB's website at (~~www.leb.wa.gov~~) lcb.wa.gov, including:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy, statute and the constitution which have been adopted by the agency; and

(c) Declaratory orders issued pursuant to RCW 34.05.240 containing an analysis or decision of substantial importance to the agency in carrying out its duties.

(5) **Organization of records.** The WSLCB will maintain its records in a reasonably organized manner. The WSLCB will take reasonable actions to protect records from damage and disorganization.

[Statutory Authority: RCW 42.56.120, 34.05.220, 42.56.040, 66.08.030, and 66.08.050. WSR 18-05-006, § 314-60-070, filed 2/7/18, effective 3/10/18. Statutory Authority: RCW 66.08.030, 34.05.220, and 42.56.40 [42.56.040]. WSR 09-07-070, § 314-60-070, filed 3/13/09, effective 4/13/09; Order 22, § 314-60-070, filed 4/17/73, effective 5/18/73.]

AMENDATORY SECTION (Amending WSR 18-05-006, filed 2/7/18, effective 3/10/18)

WAC 314-60-080 Requests for public records. An individual may request a public record orally or in writing. The WSLCB encourages all public records requests be submitted in writing. Public records requests may be sent to the WSLCB via email at publicrecords@lcb.wa.gov.

(1) A form for public records requests prescribed by the WSLCB is available at its main office and on its website at (~~www.leb.wa.gov~~) lcb.wa.gov. A written request or public records request form must be submitted or presented to the public records officer or designee and may be sent to the WSLCB via email at publicrecords@lcb.wa.gov. The request should include the following information:

(a) The name, organization, mailing address, telephone number, and email address of the requestor;

(b) The date and time of day of the request;

(c) Identification of the public records sought, in a form or description adequate for the public records officer to identify and locate the records;

(d) If the matter requested is referenced within the current index maintained by the board, a reference to the requested record as described; and

(e) The address where copies of the record are to be mailed or emailed, or notification that the requestor wants to examine the record at the WSLCB.

(2) If the public records officer or designee accepts a request other than in writing, he or she will confirm receipt of the information and the substance of the request in writing.

[Statutory Authority: RCW 42.56.120, 34.05.220, 42.56.040, 66.08.030, and 66.08.050. WSR 18-05-006, § 314-60-080, filed 2/7/18, effective 3/10/18. Statutory Authority: RCW 66.08.030, 34.05.220, and 42.56.40 [42.56.040]. WSR 09-07-070, § 314-60-080, filed 3/13/09, effective 4/13/09. Statutory Authority: RCW 66.08.030. WSR 94-03-060, § 314-60-080, filed 1/14/94, effective 2/14/94; Order 56, § 314-60-080, filed 5/31/77, effective 7/1/77; Order 22, § 314-60-080, filed 4/17/73, effective 5/18/73.]

WSR 22-23-060
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed November 9, 2022, 1:16 p.m., effective December 10, 2022]

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

Purpose: The office of the superintendent of public instruction is repealing chapter 392-107 WAC because the rules are no longer applicable due to a change in statute. The Washington state legislature passed HB 1974 (2022) moving the administration of elections for educational service district boards of directors to the Washington State School Directors' Association (WSSDA). As WSSDA is now responsible for the administration of these elections and establishing related procedures, the rules under chapter 392-107 WAC are no longer valid.

Citation of Rules Affected by this Order: Repealing chapter 392-107 WAC.

Statutory Authority for Adoption: RCW 28A.310.080.

Adopted under notice filed as WSR 22-17-161 on August 24, 2022.

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

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: November 9, 2022.

Chris P. S. Reykdal
State Superintendent of Public Instruction

OTS-3985.1

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 392-107-200	Purpose and authority.
WAC 392-107-201	Election of educational service district board members.
WAC 392-107-205	Electors.
WAC 392-107-210	Call of election.
WAC 392-107-215	Candidate qualifications—Forms—Filing—Withdrawal of candidacy.
WAC 392-107-220	Balloting.

WAC 392-107-225

Counting—Ineligible votes—Recount—
Certification of election—Special
election.

WSR 22-23-061
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed November 9, 2022, 1:18 p.m., effective December 10, 2022]

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

Purpose: The office of superintendent of public instruction is repealing chapter 392-109 WAC because the rules are no longer applicable due to a change in statute. The Washington state legislature passed HB 1974 (2022) moving the administration of elections for elected members of the state board of education to the Washington State School Directors' Association (WSSDA). As WSSDA is now responsible for the administration of these elections and establishing related procedures, the rules under chapter 392-109 WAC are no longer valid.

Citation of Rules Affected by this Order: Repealing chapter 392-109 WAC.

Statutory Authority for Adoption: RCW 28A.305.021.

Adopted under notice filed as WSR 22-17-162 on August 24, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 22.

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: November 9, 2022.

Chris P. S. Reykdal
State Superintendent of Public Instruction

OTS-3986.1

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 392-109-037	Purpose and authority.
WAC 392-109-040	Composition.
WAC 392-109-043	Election officer.
WAC 392-109-045	Definitions.
WAC 392-109-047	Annual elections.
WAC 392-109-048	Election timeline.
WAC 392-109-050	Elector information.
WAC 392-109-060	Call of election.

WAC 392-109-065	Candidates—Eligibility—Filing.
WAC 392-109-070	Declaration of candidacy form.
WAC 392-109-075	Optional candidate statement.
WAC 392-109-077	Withdrawal of candidacy.
WAC 392-109-080	Ballots—Contents.
WAC 392-109-085	Ballots and envelopes—Mailing to electors.
WAC 392-109-090	Voting—Marking and return of ballots.
WAC 392-109-095	Election counting boards—Appointment and composition.
WAC 392-109-100	Receipt of ballots and count of votes.
WAC 392-109-105	Ineligible votes.
WAC 392-109-111	Run-off election.
WAC 392-109-112	Dispute resolution.
WAC 392-109-115	Report and certification of election.
WAC 392-109-120	Vacancies and appointments.

WSR 22-23-063

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed November 9, 2022, 2:10 p.m., effective December 10, 2022]

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

Purpose: This rule-making order amends chapter 16-233 WAC, Worker protection standards, by making the language and requirements within the chapter consistent with the language and requirements the department of labor and industries recently adopted in chapter 296-307 WAC.

Citation of Rules Affected by this Order: Amending chapter 16-233 WAC caption; WAC 16-233-001, 16-233-021, 16-233-031, 16-233-101, 16-233-201, 16-233-216, 16-233-221, and 16-233-311.

Statutory Authority for Adoption: RCW 15.58.040, 17.21.030, 17.21.440.

Adopted under notice filed as WSR 22-18-054 on August 31, 2022.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 9, Repealed 0.

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

Date Adopted: November 9, 2022.

Derek I. Sandison
Director

OTS-4008.1

**Chapter 16-233 WAC
WORKER PROTECTION STANDARD ((S))**

AMENDATORY SECTION (Amending WSR 18-01-054, filed 12/13/17, effective 1/13/18)

WAC 16-233-001 Federal worker protection standard((s))—Washington state department of labor and industries. This chapter contains the federal Environmental Protection Agency (EPA) worker protection standard((s)) as listed in 40 C.F.R., Part 170. Revisions to the federal language have been incorporated into this chapter in order to be consistent with other requirements of Washington state law. These rules are adopted in conjunction with rules adopted by the Washington state department of labor and industries in chapter 296-307 WAC, Part I.

[Statutory Authority: RCW 15.58.040, 17.21.030 and chapter 34.05 RCW. WSR 18-01-054, § 16-233-001, filed 12/13/17, effective 1/13/18. Statutory Authority: Chapters 15.58 and 17.21 RCW. WSR 09-15-139, § 16-233-001, filed 7/21/09, effective 8/21/09; WSR 96-21-008 (Order 6002), § 16-233-001, filed 10/3/96, effective 11/3/96.]

AMENDATORY SECTION (Amending WSR 20-21-029, filed 10/12/20, effective 11/12/20)

WAC 16-233-021 Agricultural employer duties—40 C.F.R., § 170.309. Agricultural employers must:

(1) Ensure that any pesticide is used in a manner consistent with the pesticide product labeling, including the requirements of this chapter, when applied on the agricultural establishment.

(2) Ensure that each worker and handler subject to this chapter receives the protections required by this chapter.

(3) Ensure that any handler and any early entry worker is at least (~~eighteen~~) 18 years old.

(4) Provide to each person, including labor contractors, who supervises any workers or handlers, information and directions sufficient to ensure that each worker and handler receives the protections required by this chapter. Such information and directions must specify the tasks for which the supervisor is responsible in order to comply with the provisions of this chapter.

(5) Require each person, including labor contractors, who supervises any workers or handlers, to provide sufficient information and directions to each worker and handler to ensure that they can comply with the provisions of this chapter.

(6) Provide emergency assistance in accordance with this subsection. If there is reason to believe that a worker or handler has experienced a potential pesticide exposure during his or her employment on the agricultural establishment or shows symptoms similar to those associated with acute exposure to pesticides during or within (~~seventy-two~~) 72 hours after his or her employment on the agricultural establishment, and needs emergency medical treatment, the agricultural employer must do all of the following promptly after learning of the possible poisoning or injury:

(a) Make available to that person prompt transportation from the agricultural establishment, including any worker housing area on the establishment, to an operating medical care facility capable of providing emergency medical treatment to a person exposed to pesticides.

(b) Provide all of the following information to the treating medical personnel, and upon request to the worker or handler:

(i) Copies of the applicable SDS and the product name(s), EPA registration number(s) and active ingredient(s) for each pesticide product to which the person may have been exposed.

(ii) The circumstances of application or use of the pesticide on the agricultural establishment.

(iii) The circumstances that could have resulted in exposure to the pesticide.

(iv) Antidote, first aid and other medical information from the product labeling.

(7) Ensure that workers or other persons employed or supervised by the agricultural establishment do not clean, repair, or adjust pesticide application equipment, unless trained as a handler under WAC 16-233-201. Before allowing any person not directly employed or supervised by the agricultural establishment to clean, repair, or adjust equipment that has been used to mix, load, transfer, or apply pesticides, the agricultural employer shall assure that pesticide residues have been removed from the equipment if feasible and must provide all of the following information to such person:

(a) Pesticide application equipment may be contaminated with pesticides.

(b) The potentially harmful effects of exposure to pesticides.

(c) Procedures for handling pesticide application equipment and for limiting exposure to pesticide residues.

(d) Personal hygiene practices and decontamination procedures for preventing pesticide exposures and removing pesticide residues.

(8) Display, maintain, and provide access to pesticide safety information and pesticide application and hazard information in accordance with WAC 16-233-026 if workers or handlers are on the establishment and within the last (~~thirty~~) 30 days a pesticide product has been used or a restricted-entry interval for such pesticide has been in effect on the establishment.

(9) Ensure that before a handler uses any equipment for mixing, loading, transferring, or applying pesticides, the handler is instructed in the safe operation of such equipment.

(10) Ensure that before each day of use, equipment used for mixing, loading, transferring, or applying pesticides is inspected for leaks, clogging, and worn or damaged parts, and any damaged equipment is repaired or replaced.

(11) The agricultural employer must notify a commercial pesticide handler employer (CPHER) of specific locations and descriptions of those treated areas and any restrictions on entering the treated areas with restricted-entry intervals (REIs) in effect whenever:

(a) A handler employed by a CIPHER will be on the agricultural establishment; and

(b) The CIPHER handler may be in or may walk within 1/4 mile of any pesticide treated area with restricted-entry interval (REI) in effect.

(12) Ensure that workers do not enter any area on the agricultural establishment where a pesticide has been applied until the applicable pesticide application and hazard information for each pesticide product applied to that area is displayed in accordance with WAC 16-233-026(2), and until after the restricted-entry interval has expired and all treated area warning signs have been removed or covered, except for entry permitted by WAC 16-233-306.

(13) Provide any records or other information required by this section for inspection and copying upon request by an employee of EPA, or any duly authorized representative of the Washington state department of agriculture or department of labor and industries.

(14) Pesticide safety, application, and hazard information must remain legible at all times when the information is required to be displayed. This information must be in accordance with WAC 16-233-026.

[Statutory Authority: RCW 15.58.040 and 17.21.030. WSR 20-21-029, § 16-233-021, filed 10/12/20, effective 11/12/20. Statutory Authority: RCW 15.58.040, 17.21.030 and chapter 34.05 RCW. WSR 18-01-054, § 16-233-021, filed 12/13/17, effective 1/13/18.]

AMENDATORY SECTION (Amending WSR 20-21-029, filed 10/12/20, effective 11/12/20)

- WAC 16-233-031 Commercial pesticide handler employer duties—40 C.F.R., § 170.313.** Commercial pesticide handler employers must:
- (1) Ensure that any pesticide is used in a manner consistent with the pesticide product labeling, including the requirements of this chapter, when applied on an agricultural establishment by a handler employed by the commercial pesticide handling establishment.
 - (2) Ensure each handler employed by the commercial pesticide handling establishment and subject to this chapter receives the protections required by this chapter.
 - (3) Ensure that any handler employed by the commercial pesticide handling establishment is at least (~~eighteen~~) 18 years old.
 - (4) Provide to each person, including labor contractors, who supervises any handlers employed by the commercial pesticide handling establishment, information and directions sufficient to ensure that each handler receives the protections required by this chapter. Such information and directions must specify the tasks for which the supervisor is responsible in order to comply with the provisions of this chapter.
 - (5) Require each person, including labor contractors, who supervises any handlers employed by the commercial pesticide handling establishment, to provide sufficient information and directions to each handler to ensure that the handler can comply with the provisions of this chapter.
 - (6) Ensure that before any handler employed by the commercial pesticide handling establishment uses any equipment for mixing, loading, transferring, or applying pesticides, the handler is instructed in the safe operation of such equipment.
 - (7) Ensure that, before each day of use, equipment used by their employees for mixing, loading, transferring, or applying pesticides is inspected for leaks, obstructions, and worn or damaged parts, and any damaged equipment is repaired or is replaced.
 - (8) Ensure that whenever a handler who is employed by a commercial pesticide handling establishment will be on an agricultural establishment, the handler is provided information about, or is aware of, the specific location and description of any treated areas where a restricted-entry interval is in effect, and the restrictions on entering those areas.
 - (9) Provide the agricultural employer all of the following information before the application of any pesticide on an agricultural establishment:
 - (a) Specific location(s) and description of the area(s) to be treated.
 - (b) The date(s) and start and estimated end times of application.
 - (c) Product name, EPA registration number, and active ingredient(s).
 - (d) The labeling-specified restricted-entry interval applicable for the application.
 - (e) Whether posting, oral notification or both are required under WAC 16-233-121.
 - (f) Any restrictions or use directions on the pesticide product labeling that must be followed for protection of workers, handlers, or other persons during or after application.

(10) If there are any changes to the information provided in subsection (9) (a), (d), (e), and (f) of this section or if the start time for the application will be earlier than originally forecasted or scheduled, ensure that the agricultural employer is provided updated information prior to the application. If there are any changes to any other information provided pursuant to subsection (9) of this section, the commercial pesticide handler employer must provide updated information to the agricultural employer within two hours after completing the application. Changes to the estimated application end time of less than one hour need not be reported to the agricultural employer.

(11) Provide emergency assistance in accordance with this subsection. If there is reason to believe that a handler employed by the commercial pesticide handling establishment has experienced a potential pesticide exposure during his or her employment by the commercial pesticide handling establishment or shows symptoms similar to those associated with acute exposure to pesticides during or within (~~seven-ty-two~~) 72 hours after his or her employment by the commercial pesticide handling establishment, and needs emergency medical treatment, the commercial pesticide handler employer must do all of the following promptly after learning of the possible poisoning or injury:

(a) Make available to that person prompt transportation from the commercial pesticide handling establishment, or any agricultural establishment on which that handler may be working on behalf of the commercial pesticide handling establishment, to an operating medical care facility capable of providing emergency medical treatment to a person exposed to pesticides.

(b) Provide all of the following information to the treating medical personnel:

(i) Copies of the applicable safety data sheet(s) (SDS) and the product name(s), EPA registration number(s) and active ingredient(s) for each pesticide product to which the person may have been exposed.

(ii) The circumstances of application or use of the pesticide.

(iii) The circumstances that could have resulted in exposure to the pesticide.

(iv) Antidote, first aid and other medical information from the product labeling.

(12) Ensure that persons directly employed by the commercial pesticide handling establishment do not clean, repair, or adjust pesticide application equipment, unless trained as a handler under WAC 16-233-201. Before allowing any person not directly employed by the commercial pesticide handling establishment to clean, repair, or adjust equipment that has been used to mix, load, transfer, or apply pesticides, the commercial pesticide handler employer shall assure that pesticide residues have been removed from the equipment if feasible and must provide all of the following information to such persons:

(a) Notice that the pesticide application equipment may be contaminated with pesticides.

(b) The potentially harmful effects of exposure to pesticides.

(c) Procedures for handling pesticide application equipment and for limiting exposure to pesticide residues.

(d) Personal hygiene practices and decontamination procedures for preventing pesticide exposures and removing pesticide residues.

(13) Provide any records or other information required by this chapter for inspection and copying upon request by an employee of EPA or any duly authorized representative of the Washington state department of agriculture or the department of labor and industries.

[Statutory Authority: RCW 15.58.040 and 17.21.030. WSR 20-21-029, § 16-233-031, filed 10/12/20, effective 11/12/20. Statutory Authority: RCW 15.58.040, 17.21.030 and chapter 34.05 RCW. WSR 18-01-054, § 16-233-031, filed 12/13/17, effective 1/13/18.]

AMENDATORY SECTION (Amending WSR 20-21-029, filed 10/12/20, effective 11/12/20)

WAC 16-233-101 Training requirements for workers—40 C.F.R., § 170.401. (1) *General requirement.* Before any worker performs any task in a treated area on an agricultural establishment where within the last (~~thirty~~) 30 days a pesticide product has been used or a restricted-entry interval for such pesticide has been in effect, the agricultural employer must ensure that each worker has been trained in accordance with this section within the last (~~twelve~~) 12 months, except as provided in subsection (2) of this section.

(2) *Exceptions.* The following workers need not be trained under this section:

(a) A worker who is currently certified as an applicator of restricted use pesticides under chapter 17.21 RCW.

(b) A worker who has satisfied the handler training requirements in WAC 16-233-201.

(c) A worker who is certified or licensed as a crop advisor by the Washington state department of agriculture under RCW 15.58.230: Provided, That a requirement for such certification or licensing is pesticide safety training that includes all the topics in WAC 16-233-201 (3)(b) or (c) as applicable depending on the date of training.

(3) *Training programs.*

(a) Pesticide safety training must be presented to workers either orally from written materials or audio-visually, at a location that is reasonably free from distraction and conducive to training. All training materials must be EPA-approved. The training must be presented in a manner that the workers can understand, such as through a translator. The training must be conducted by a person who meets the worker trainer requirements of (d) of this subsection, and who must be present during the entire training program and must respond to workers' questions.

(b) The training must include, at a minimum, all of the following topics:

(i) Where and in what form pesticides may be encountered during work activities.

(ii) Hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and sensitization.

(iii) Routes through which pesticides can enter the body.

(iv) Signs and symptoms of common types of pesticide poisoning.

(v) Emergency first aid for pesticide injuries or poisonings.

(vi) How to obtain emergency medical care.

(vii) Routine and emergency decontamination procedures, including emergency eye flushing techniques.

(viii) Hazards from chemigation and drift.

(ix) Hazards from pesticide residues on clothing.

(x) Warnings about taking pesticides or pesticide containers home.

(xi) Requirements of this section designed to reduce the risks of illness or injury resulting from workers' occupational exposure to pesticides, including application and entry restrictions, the design of the warning sign, posting of warning signs, oral warnings, the availability of specific information about applications, and the protection against retaliatory acts.

(c) EPA intends to make available to the public training materials that may be used to conduct training conforming to the requirements of this section. Within (~~one hundred eighty-one~~) 181 days after a notice of availability of such training materials appears in the FEDERAL REGISTER, training programs required under this section must include, at a minimum, all of the topics listed in (c)(i) through (xxiii) of this subsection instead of the topics listed in (b)(i) through (xi) of this subsection.

(i) The responsibility of agricultural employers to provide workers and handlers with information and protections designed to reduce work-related pesticide exposures and illnesses. This includes ensuring workers and handlers have been trained on pesticide safety, providing pesticide safety and application and hazard information, decontamination supplies and emergency medical assistance, and notifying workers of restrictions during applications and on entering pesticide treated areas. A worker or handler may designate in writing a representative to request access to pesticide application and hazard information.

(ii) How to recognize and understand the meaning of the posted warning signs used for notifying workers of restrictions on entering pesticide treated areas on the establishment.

(iii) How to follow directions and/or signs about keeping out of pesticide treated areas subject to a restricted-entry interval and application exclusion zones.

(iv) Where and in what forms pesticides may be encountered during work activities, and potential sources of pesticide exposure on the agricultural establishment. This includes exposure to pesticide residues that may be on or in plants, soil, tractors, application and chemigation equipment, or used personal protective equipment, and that pesticides may drift through the air from nearby applications or be in irrigation water.

(v) Potential hazards from toxicity and exposure that pesticides present to workers and their families, including acute and chronic effects, delayed effects, and sensitization.

(vi) Routes through which pesticides can enter the body.

(vii) Signs and symptoms of common types of pesticide poisoning.

(viii) Emergency first aid for pesticide injuries or poisonings.

(ix) Routine and emergency decontamination procedures, including emergency eye flushing techniques, and if pesticides are spilled or sprayed on the body to use decontamination supplies to wash immediately or rinse off in the nearest clean water, including springs, streams, lakes or other sources if more readily available than decontamination supplies, and as soon as possible, wash or shower with soap and water, shampoo hair, and change into clean clothes.

(x) How and when to obtain emergency medical care.

(xi) When working in pesticide treated areas, wear work clothing that protects the body from pesticide residues and wash hands before eating, drinking, using chewing gum or tobacco, or using the toilet.

(xii) Wash or shower with soap and water, shampoo hair, and change into clean clothes as soon as possible after working in pesticide treated areas.

(xiii) Potential hazards from pesticide residues on clothing.

(xiv) Wash work clothes before wearing them again and wash them separately from other clothes.

(xv) Do not take pesticides or pesticide containers used at work to your home.

(xvi) SDSs provide hazard, emergency medical treatment and other information about the pesticides used on the establishment they may come in contact with. The responsibility of agricultural employers to do all of the following:

(A) Display SDSs for all pesticides used on the establishment.

(B) Provide workers and handlers information about the location of the SDSs on the establishment.

(C) Provide workers and handlers unimpeded access to safety data sheets during normal work hours.

(xvii) This section prohibits agricultural employers from allowing or directing any worker to mix, load or apply pesticides or assist in the application of pesticides unless the worker has been trained as a handler.

(xviii) The responsibility of agricultural employers to provide specific information to workers before directing them to perform early-entry activities. Workers must be ((eighteen)) 18 years old to perform early-entry activities.

(xix) Potential hazards to children and pregnant women from pesticide exposure.

(xx) Keep children and nonworking family members away from pesticide treated areas.

(xxi) After working in pesticide treated areas, remove work boots or shoes before entering your home, and remove work clothes and wash or shower before physical contact with children or family members.

(xxii) How to report suspected pesticide use violations to the Washington state department of agriculture.

(xxiii) This section prohibits agricultural employers from intimidating, threatening, coercing, or discriminating against any worker or handler for complying with or attempting to comply with the requirements of this chapter, or because the worker or handler provided, caused to be provided or is about to provide information to the employer, the EPA or its agents, or any duly authorized representative of the Washington state department of agriculture regarding conduct that the employee reasonably believes violates this chapter, and/or made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing concerning compliance with this chapter.

(d) The person who conducts the training must meet one of the following criteria:

(i) Be currently designated as a trainer of certified applicators or pesticide handlers by the Washington state department of agriculture in accordance with chapters 15.58 and 17.21 RCW; or

(ii) Have completed ((a)) an EPA-approved pesticide safety train-the-trainer program (~~approved by the Washington state department of agriculture in accordance with chapters 15.58 and 17.21 RCW~~) for trainers of workers; or

(iii) Be currently certified as an applicator of restricted use pesticides under chapter 17.21 RCW.

(4) *Recordkeeping.*

(a) For each worker required to be trained under subsection (1) of this section, the agricultural employer must maintain on the agricultural establishment, for two years from the date of the training, a record documenting each worker's training including all of the following:

(i) The trained worker's printed name and signature.

(ii) The date of the training.

(iii) Information identifying which EPA-approved training materials were used.

(iv) The trainer's name and documentation showing that the trainer met the requirements of subsection (3)(d) of this section at the time of training.

(v) The agricultural employer's name.

(b) An agricultural employer who provides, directly or indirectly, training required under subsection (1) of this section must provide to the worker upon request a copy of the record of the training that contains the information required under (a) of this subsection.

[Statutory Authority: RCW 15.58.040 and 17.21.030. WSR 20-21-029, § 16-233-101, filed 10/12/20, effective 11/12/20. Statutory Authority: RCW 15.58.040, 17.21.030 and chapter 34.05 RCW. WSR 18-01-054, § 16-233-101, filed 12/13/17, effective 1/13/18.]

AMENDATORY SECTION (Amending WSR 18-01-054, filed 12/13/17, effective 1/13/18)

WAC 16-233-201 Training requirements for handlers—40 C.F.R., § 170.501. (1) *General requirement.* Before any handler performs any handler activity involving a pesticide product, the handler employer must ensure that the handler has been trained in accordance with this section within the last (~~twelve~~) 12 months, except as provided in subsection (2) of this section.

(2) *Exceptions.* The following handlers need not be trained under this section:

(a) A handler who is currently certified as an applicator of restricted use pesticides under chapter 17.21 RCW.

(b) A handler who is certified or licensed as a crop advisor by the Washington state department of agriculture under RCW 15.58.230, provided that a requirement for such certification or licensing is pesticide safety training that includes all the topics set out in subsection (3)(b) or (c) of this section as applicable depending on the date of training.

(3) *Training programs.*

(a) Pesticide safety training must be presented to handlers either orally from written materials or audio-visually, at a location that is reasonably free from distraction and conducive to training. All training materials must be EPA-approved. The training must be presented in a manner that the handlers can understand, such as through a translator. The training must be conducted by a person who meets the handler trainer requirements of (d) of this subsection, and who must be present during the entire training program and must respond to handlers' questions.

(b) The pesticide safety training materials must include, at a minimum, all of the following topics:

(i) Format and meaning of information contained on pesticide labels and in labeling, including safety information such as precautionary statements about human health hazards.

(ii) Hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and sensitization.

(iii) Routes by which pesticides can enter the body.

(iv) Signs and symptoms of common types of pesticide poisoning.

(v) Emergency first aid for pesticide injuries or poisonings.

(vi) How to obtain emergency medical care.

(vii) Routine and emergency decontamination procedures.

(viii) Need for and appropriate use of personal protective equipment.

(ix) Prevention, recognition, and first-aid treatment of heat-related illness.

(x) Safety requirements for handling, transporting, storing, and disposing of pesticides, including general procedures for spill clean-up.

(xi) Environmental concerns such as drift, runoff, and wildlife hazards.

(xii) Warnings about taking pesticides or pesticide containers home.

(xiii) Requirements of this section that must be followed by handler employers for the protection of handlers and other persons, including the prohibition against applying pesticides in a manner that will cause contact with workers or other persons, the requirement to use personal protective equipment, the provisions for training and decontamination, and the protection against retaliatory acts.

(c) EPA intends to make available to the public training materials that may be used to conduct training conforming to the requirements of this section. Within (~~one hundred eighty~~) 180 days after a notice of availability of such training materials appears in the FEDERAL REGISTER, training programs required under this section must include, at a minimum, all of the topics listed in (c) (i) through (xiv) of this subsection instead of the points listed in (b) (i) through (xiii) of this subsection.

(i) All the topics required in WAC 16-233-101 (3) (c).

(ii) Information on proper application and use of pesticides.

(iii) Handlers must follow the portions of the labeling applicable to the safe use of the pesticide.

(iv) Format and meaning of information contained on pesticide labels and in labeling applicable to the safe use of the pesticide.

(v) Need for and appropriate use and removal of all personal protective equipment.

(vi) How to recognize, prevent, and provide first-aid treatment for heat-related illness.

(vii) Safety requirements for handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup.

(viii) Environmental concerns, such as drift, runoff, and wildlife hazards.

(ix) Handlers must not apply pesticides in a manner that results in contact with workers or other persons.

(x) The responsibility of handler employers to provide handlers with information and protections designed to reduce work-related pesticide exposures and illnesses. This includes providing, cleaning, maintaining, storing, and ensuring proper use of all required personal

protective equipment; providing decontamination supplies; and providing specific information about pesticide use and labeling information.

(xi) Handlers must suspend a pesticide application if workers or other persons are in the application exclusion zone.

(xii) Handlers must be at least ~~((eighteen))~~ 18 years old.

(xiii) The responsibility of handler employers to ensure handlers have received respirator fit-testing, training and medical evaluation if they are required to wear a respirator by the product labeling.

(xiv) The responsibility of agricultural employers to post treated areas as required by this chapter.

(d) The person who conducts the training must have one of the following qualifications:

(i) Be currently designated as a trainer of certified applicators or pesticide handlers by the Washington state department of agriculture under chapter 15.58 or 17.21 RCW; or

(ii) Have completed ~~((a))~~ an EPA-approved pesticide safety train-the-trainer program ((approved by a state, federal, or tribal agency having jurisdiction.)) for trainers of handlers; or

(iii) Be currently certified as an applicator of restricted use pesticides under chapter 17.21 RCW.

(4) *Recordkeeping.*

(a) Handler employers must maintain records of training for handlers employed by their establishment for two years after the date of the training. The records must be maintained on the establishment and must include all of the following information:

(i) The trained handler's printed name and signature.

(ii) The date of the training.

(iii) Information identifying which EPA-approved training materials were used.

(iv) The trainer's name and documentation showing that the trainer met the requirements of subsection (3)(d) of this section at the time of training.

(v) The handler employer's name.

(b) The handler employer must, upon request by a handler trained on the establishment, provide to the handler a copy of the record of the training that contains the information required under (a) of this subsection.

[Statutory Authority: RCW 15.58.040, 17.21.030 and chapter 34.05 RCW. WSR 18-01-054, § 16-233-201, filed 12/13/17, effective 1/13/18.]

AMENDATORY SECTION (Amending WSR 20-21-029, filed 10/12/20, effective 11/12/20)

WAC 16-233-216 Personal protective equipment—40 C.F.R., §

170.507. (1) *Handler responsibilities.* Any person who performs handler activities involving a pesticide product must use the clothing and personal protective equipment specified on the pesticide product labeling for use of the product, except as provided in WAC 16-233-316.

(2) *Employer responsibilities for providing personal protective equipment.* The handler employer must provide to the handler the personal protective equipment required by the pesticide product labeling in accordance with this section. The handler employer must ensure that the personal protective equipment fits, is clean and in proper operat-

ing condition. When two or more pesticides are applied to the treated area at the same time, the employer must ensure employees, workers, and handlers wear the applicable PPE that would protect against all of the pesticides as a mixture and combined product. For the purposes of this section, long-sleeved shirts, short-sleeved shirts, long pants, short pants, shoes, and socks are not considered personal protective equipment, although such work clothing must be worn if required by the pesticide product labeling.

(a) If the pesticide product labeling requires that "chemical-resistant" personal protective equipment be worn, it must be made of material that allows no measurable movement of the pesticide being used through the material during use.

(b) If the pesticide product labeling requires that "waterproof" personal protective equipment be worn, it must be made of material that allows no measurable movement of water or aqueous solutions through the material during use.

(c) If the pesticide product labeling requires that a "chemical-resistant suit" be worn, it must be a loose-fitting, one- or two-piece chemical-resistant garment that covers, at a minimum, the entire body except head, hands, and feet.

(d) If the pesticide product labeling requires that "coveralls" be worn, they must be loose-fitting, one- or two-piece garments that cover, at a minimum, the entire body except head, hands, and feet.

(e) Gloves must be the type specified on the pesticide product labeling.

(i) Gloves made of leather, cotton, or other absorbent materials may not be worn while performing handler activities unless gloves made of these materials are listed as acceptable for such use on the pesticide product labeling.

(ii) Separable glove liners may be worn beneath chemical-resistant gloves, unless the pesticide product labeling specifically prohibits their use. Separable glove liners are defined as separate glove-like hand coverings, made of lightweight material, with or without fingers. Work gloves made from lightweight cotton or poly-type material are considered to be glove liners if worn beneath chemical-resistant gloves. Separable glove liners may not extend outside the chemical-resistant gloves under which they are worn. Chemical-resistant gloves with nonseparable absorbent lining materials are prohibited.

(iii) If used, separable glove liners must be discarded immediately after a total of no more than (~~ten~~) 10 hours of use or within (~~twenty-four~~) 24 hours of when first put on, whichever comes first. The liners must be replaced immediately if directly contacted by pesticide. Used glove liners must not be reused. Contaminated liners must be disposed of in accordance with any federal, state, or local regulations.

Table 3

Chemical Resistance Category Selection Chart for Gloves

(For use when selecting glove types to be listed in the PPE section on pesticide label. Only select glove(s) that indicate a high level of chemical resistance.)

Note: This table below provides examples of categories of chemical resistant materials that can be used to protect against different kinds of pesticides.

<u>Solvent Category (see Table 4)</u>	<u>Barrier Laminate</u>	<u>Butyl Rubber ≥ 14 mils</u>	<u>Nitrile Rubber ≥ 14 mils</u>	<u>Neoprene Rubber ≥ 14 mils</u>	<u>Natural Rubber* ≥ 14 mils</u>	<u>Polyethylene</u>	<u>Polyvinyl Chloride (PVC) ≥ 14 mils</u>	<u>Viton ≥ 14 mils</u>
<u>A (dry and water-based formulations)</u>	<u>high</u>	<u>high</u>	<u>high</u>	<u>high</u>	<u>high</u>	<u>high</u>	<u>high</u>	<u>high</u>
<u>B</u>	<u>high</u>	<u>high</u>	<u>slight</u>	<u>slight</u>	<u>none</u>	<u>slight</u>	<u>slight</u>	<u>slight</u>
<u>C</u>	<u>high</u>	<u>high</u>	<u>high</u>	<u>high</u>	<u>moderate</u>	<u>moderate</u>	<u>high</u>	<u>high</u>
<u>D</u>	<u>high</u>	<u>high</u>	<u>moderate</u>	<u>moderate</u>	<u>none</u>	<u>none</u>	<u>none</u>	<u>slight</u>
<u>E</u>	<u>high</u>	<u>slight</u>	<u>high</u>	<u>high</u>	<u>slight</u>	<u>none</u>	<u>moderate</u>	<u>high</u>
<u>F</u>	<u>high</u>	<u>high</u>	<u>high</u>	<u>moderate</u>	<u>slight</u>	<u>none</u>	<u>slight</u>	<u>high</u>
<u>G</u>	<u>high</u>	<u>slight</u>	<u>slight</u>	<u>slight</u>	<u>none</u>	<u>none</u>	<u>none</u>	<u>high</u>
<u>H</u>	<u>high</u>	<u>slight</u>	<u>slight</u>	<u>slight</u>	<u>none</u>	<u>none</u>	<u>none</u>	<u>high</u>

* Includes natural rubber blends and laminates.

HIGH: Highly chemical-resistant. Clean or replace PPE at end of each day's work period. Rinse off pesticides at rest breaks.

MODERATE: Moderately chemical-resistant. Clean or replace within an hour or two of contact.

SLIGHT: Slightly chemical-resistant. Clean or replace within 10 minutes of contact.

NONE: No chemical-resistance.

Table 4
Solvent List (PRN 93-7, Supplement 2)

<u>Solvent (chemical name or Trade name)</u>	<u>Chemical Resistance Category</u>	<u>Solvent (chemical name or Trade name)</u>	<u>Chemical Resistance Category</u>
<u>Acetone</u>	<u>B</u>	<u>Isopar L</u>	<u>E</u>
<u>Amyl Acetate</u>	<u>D</u>	<u>Isopar M</u>	<u>E</u>
<u>Aromatic 100</u>	<u>F or G</u>	<u>Isopar V</u>	<u>E</u>
<u>Aromatic 150</u>	<u>F or G</u>	<u>Isophorone</u>	<u>B</u>
<u>Aromatic 200</u>	<u>F or G</u>	<u>Isopropanol</u>	<u>C</u>
<u>Aromatic Petroleum</u>	<u>F or G</u>	<u>Kerosene</u>	<u>E</u>
<u>Butoxypolypropylene glycol</u>	<u>C</u>	<u>Methanol</u>	<u>C</u>
<u>Butyl acetate</u>	<u>D</u>	<u>Methyl amyl ketone</u>	<u>B</u>
<u>Cyclohexanone</u>	<u>B</u>	<u>Methyl Carbitol</u>	<u>C</u>
<u>Diacetone alcohol</u>	<u>C</u>	<u>Methyl isobutyl ketone</u>	<u>B</u>
<u>Diethanolamine</u>	<u>C</u>	<u>Mineral oil</u>	<u>E</u>
<u>Diesel fuel</u>	<u>E</u>	<u>Mineral spirits</u>	<u>E</u>
<u>Dipropylene glycol monoethylether</u>	<u>C</u>	<u>Naphtha</u>	<u>E</u>
<u>Ethanol</u>	<u>C</u>	<u>N-methyl pyrrolidone</u>	<u>B</u>
<u>Ethylene glycol</u>	<u>C</u>	<u>Penreco 2251 oil</u>	<u>E</u>
<u>Exxon 589</u>	<u>E</u>	<u>Petroleum Distillate (aliphatic)</u>	<u>E</u>
<u>Heavy Aromatic Naphtha</u>	<u>F or G</u>	<u>Petroleum oil</u>	<u>E</u>
<u>Hexylene glycol</u>	<u>C</u>	<u>Propylene glycol</u>	<u>C</u>

<u>Solvent (chemical name or Trade name)</u>	<u>Chemical Resistance Category</u>	<u>Solvent (chemical name or Trade name)</u>	<u>Chemical Resistance Category</u>
<u>Isopar B</u>	<u>E</u>	<u>T 500-100</u>	<u>F or G</u>
<u>Isopar C</u>	<u>E</u>	<u>Tetrahydro-furfuryl alcohol</u>	<u>C</u>
<u>Isopar E</u>	<u>E</u>	<u>1,1,1-Trichloroethane</u>	<u>H</u>
<u>Isopar G</u>	<u>E</u>	<u>Water</u>	<u>A</u>
<u>Isopar H</u>	<u>E</u>	<u>Xylene</u>	<u>F or G</u>
<u>Isopar K</u>	<u>E</u>	<u>Xylene range solvents</u>	<u>F or G</u>

(f) If the pesticide product labeling requires that "chemical-resistant footwear" be worn, one of the following types of footwear must be worn:

- (i) Chemical-resistant shoes.
- (ii) Chemical-resistant boots.
- (iii) Chemical-resistant shoe coverings worn over shoes or boots.

(g) If the pesticide product labeling requires that "protective eyewear" be worn, one of the following types of eyewear must be worn:

- (i) Goggles.
- (ii) Face shield.
- (iii) Safety glasses with front, brow, and temple protection.
- (iv) Full-face respirator.

(h) If the pesticide product labeling requires that a "chemical-resistant apron" be worn, a chemical-resistant apron that covers the front of the body from mid-chest to the knees must be worn.

(i) If the pesticide product labeling requires that "chemical-resistant headgear" be worn, it must be either a chemical-resistant hood or a chemical-resistant hat with a wide brim.

(j) The respirator specified by the pesticide product labeling must be used. If the label does not specify the type of respirator to be used, it shall meet the requirements of chapter 296-307 WAC, Part Y-5. Whenever a respirator is required by the pesticide product labeling, the handler employer must ensure that the requirements of (j)(i) through (iii) of this subsection are met before the handler performs any handler activity where the respirator is required to be worn. The respiratory protection requirements of chapter 296-307 WAC, Part Y-5, shall apply. The handler employer must maintain for two years, on the establishment, records documenting the completion of the requirements of (j)(i) through (iii) of this subsection.

(i) The handler employer shall assure that the respirator fits correctly by using the procedures consistent with chapter 296-307 WAC, Part Y-5.

(ii) Handler employers must provide handlers with training in the use of the respirator specified on the pesticide product labeling in a manner that conforms to the provisions of chapter 296-307 WAC, Part Y-5 Respirators.

(iii) Handler employers must provide handlers with a medical evaluation by a physician or other licensed health care professional that conforms to the provisions of WAC 296-307-604 to ensure the handler's physical ability to safely wear the respirator specified on the pesticide product labeling.

(3) *Use of personal protective equipment.*

(a) The handler employer must ensure that personal protective equipment is used correctly for its intended purpose and is used according to the manufacturer's instructions.

(b) The handler employer must ensure that, before each day of use, all personal protective equipment is inspected for leaks, holes,

tears, or worn places, and any damaged equipment is repaired or discarded.

(4) *Cleaning and maintenance.*

(a) The handler employer must ensure that all personal protective equipment is cleaned according to the manufacturer's instructions or pesticide product labeling instructions before each day of reuse. In the absence of any such instructions, it must be washed thoroughly in detergent and hot water.

(b) If any personal protective equipment cannot or will not be cleaned properly, the handler employer must ensure the contaminated personal protective equipment is made unusable as apparel or is made unavailable for further use by employees or third parties. The contaminated personal protective equipment must be disposed of in accordance with any applicable laws or regulations. Coveralls or other absorbent materials that have been drenched or heavily contaminated with a pesticide that has the signal word "DANGER" or "WARNING" on the label must not be reused and must be disposed of as specified in this subsection. Handler employers must ensure that any person who handles contaminated personal protective equipment described in this subsection wears the gloves specified on the pesticide product labeling for mixing and loading the product(s) comprising the contaminant(s) on the equipment. If two or more pesticides are included in the contaminants, the gloves worn must meet the requirements for mixing and loading all of the pesticide products.

(c) The handler employer must ensure that contaminated personal protective equipment is kept separate from noncontaminated personal protective equipment, other clothing or laundry and washed separately from any other clothing or laundry.

(d) The handler employer must ensure that all washed personal protective equipment is dried thoroughly before being stored or reused.

(e) The handler employer must ensure that all clean personal protective equipment is stored separately from personal clothing and apart from pesticide-contaminated areas.

(f) The handler employer must ensure that when (~~filtering face-piece~~) respirators with particulate filtering elements are used, (~~they~~) particulate filtering elements are replaced (~~when~~) as soon as any one of the following conditions is met:

(i) When breathing resistance becomes excessive.

(ii) When the filter element has physical damage or tears.

(iii) According to manufacturer's recommendations or pesticide product labeling, whichever is more frequent.

(iv) In the absence of any other instructions or indications of service life, at the end of each day's work period.

(g) The handler employer must ensure that when gas- or vapor-removing respirators are used, the gas- or vapor-removing canisters or cartridges are replaced before further respirator use when one of the following conditions is met:

(i) At the first indication of odor, taste, or irritation.

(ii) When the maximum use time is reached as determined by a change schedule conforming to the provisions of chapter 296-307 WAC, Part Y-5 Respirators.

(iii) When breathing resistance becomes excessive.

(iv) When required according to manufacturer's recommendations or pesticide product labeling instructions, whichever is more frequent.

(v) In the absence of any other instructions or indications of service life, at the end of each day's work period.

(h) The handler employer must inform any person who cleans or launders personal protective equipment of all the following:

(i) That such equipment may be contaminated with pesticides and there are potentially harmful effects from exposure to pesticides.

(ii) The correct way(s) to clean personal protective equipment and how to protect themselves when handling such equipment.

(iii) Proper decontamination procedures that should be followed after handling contaminated personal protective equipment.

(i) The handler employer must ensure that handlers have a place(s) away from pesticide storage and pesticide use areas where they may do all of the following:

(i) Store personal clothing not worn during handling activities.

(ii) Put on personal protective equipment at the start of any exposure period.

(iii) Remove personal protective equipment at the end of any exposure period.

(j) The handler employer must not allow or direct any handler to wear home or to take home employer-provided personal protective equipment contaminated with pesticides.

(5) *Heat-related illness.* Where a pesticide's labeling requires the use of personal protective equipment for a handler activity, the handler employer must ensure that no handler is allowed or directed to wear personal protective equipment without implementing measures sufficient to prevent heat-related illness and that each handler is instructed in the prevention, recognition, and first-aid treatment of heat-related illness.

[Statutory Authority: RCW 15.58.040 and 17.21.030. WSR 20-21-029, § 16-233-216, filed 10/12/20, effective 11/12/20. Statutory Authority: RCW 15.58.040, 17.21.030 and chapter 34.05 RCW. WSR 18-01-054, § 16-233-216, filed 12/13/17, effective 1/13/18.]

AMENDATORY SECTION (Amending WSR 20-21-029, filed 10/12/20, effective 11/12/20)

WAC 16-233-221 Decontamination and eye flushing supplies for handlers—40 C.F.R., § 170.509. (1) *Requirement.* The handler employer must provide decontamination and eye flushing supplies in accordance with this section for any handler that is performing any handler activity or removing personal protective equipment at the place for changing required in WAC 16-233-216 (4) (i).

(2) *General conditions.* The decontamination supplies required in subsection (1) of this section must include: At the site where handlers remove personal protective equipment, soap, single-use towels, and a sufficient amount of water so that handlers may wash thoroughly. At least (~~ten~~) 10 gallons of water for one employee and (~~twenty~~) 20 gallons of water for two or more employees shall be provided at mixing and loading sites that do not have running water. The decontamination and eye flushing supplies required in subsection (1) of this section must meet all of the following requirements:

(a) *Water.* At all times when this section requires handler employers to make water available to handlers for routine washing, emergency decontamination or eye flushing, the handler employer must ensure that it is of a quality and temperature that will not cause ill-

ness or injury when it contacts the skin or eyes or if it is swallowed. If a water source is used for mixing pesticides, it must not be used for decontamination or eye flushing supplies, unless equipped with properly functioning valves or other mechanisms that prevent contamination of the water with pesticides, such as anti-backflow siphons, one-way or check valves, or an air gap sufficient to prevent contamination.

(b) *Soap and single-use towels.* The handler employer must provide soap and single-use towels for drying in quantities sufficient to meet the handlers' needs. Hand sanitizing gels and liquids or wet towelettes do not meet the requirement for soap. Wet towelettes do not meet the requirement for single-use towels.

(c) *Clean change of clothing.* The handler employer must provide one clean change of clothing, such as coveralls, for use in an emergency.

(3) *Location.* The decontamination supplies must be located together outside any treated area or area subject to a restricted-entry interval, and must be reasonably accessible to each handler during the handler activity. The decontamination supplies must not be more than 1/4 mile from the handler, except that where the handler activity is more than 1/4 mile from the nearest place of vehicular access or more than 1/4 mile from any nontreated area, the decontamination supplies may be at the nearest place of vehicular access outside any treated area or area subject to a restricted-entry interval.

(a) *Mixing sites.* Decontamination supplies must be provided at any mixing site.

(b) *Exception for pilots.* Decontamination supplies for a pilot who is applying pesticides aurally must be in the aircraft or at the aircraft loading site.

(c) *Exception for treated areas.* The decontamination supplies must be outside any treated area or area subject to a restricted-entry interval, unless the soap, single-use towels, water and clean change of clothing are protected from pesticide contamination in closed containers.

(4) *Emergency ((eye-flushing)) eye flushing.*

(a) Whenever a handler is mixing or loading a pesticide product whose labeling requires protective eyewear for handlers, or is mixing or loading any pesticide using a closed system operating under pressure, the handler employer must provide at each mixing/loading station and handler decontamination sites, immediately available to the handler, at least one plumbed or portable eye wash system that is capable of delivering gently running water at a rate of at least 0.4 gallons (1.5 liters) per minute for at least ((fifteen)) 15 minutes, at least six gallons of water. A plumbed or portable system meeting the above requirements shall be provided at all permanent mixing and loading sites.

(b) Whenever a handler is applying a pesticide product whose labeling requires protective eyewear for handlers, the handler employer must provide at least one pint of water per handler in portable containers that are immediately available to each handler.

[Statutory Authority: RCW 15.58.040 and 17.21.030. WSR 20-21-029, § 16-233-221, filed 10/12/20, effective 11/12/20. Statutory Authority: RCW 15.58.040, 17.21.030 and chapter 34.05 RCW. WSR 18-01-054, § 16-233-221, filed 12/13/17, effective 1/13/18.]

AMENDATORY SECTION (Amending WSR 20-21-029, filed 10/12/20, effective 11/12/20)

WAC 16-233-311 Agricultural employer responsibilities to protect workers entering treated areas during a restricted-entry interval—40 C.F.R., § 170.605.

If an agricultural employer directs a worker to perform activities in a treated area where a restricted-entry interval is in effect, all of the following requirements must be met:

- (1) The agricultural employer must ensure that the worker is at least ~~((eighteen))~~ 18 years old.
- (2) Prior to early entry, the agricultural employer must provide to each early-entry worker the information described in (a) through (h) of this subsection. The information must be provided orally in a manner that the worker can understand.
 - (a) Location of early-entry area where work activities are to be performed.
 - (b) Pesticide(s) applied.
 - (c) Dates and times that the restricted-entry interval begins and ends.
 - (d) Which exception in WAC 16-233-306 is the basis for the early entry, and a description of tasks that may be performed under the exception.
 - (e) Whether contact with treated surfaces is permitted under the exception.
 - (f) Amount of time the worker is allowed to remain in the treated area.
 - (g) Personal protective equipment required by the pesticide product labeling for early entry.
 - (h) Location of the pesticide safety information required in WAC 16-233-026(1) and the location of the decontamination supplies required in subsection (8) of this section.
- (3) Prior to early entry, the agricultural employer must ensure that each worker either has read the applicable pesticide product labeling or has been informed, in a manner that the worker can understand, of all labeling requirements and statements related to human hazards or precautions, first aid, and user safety.
- (4) The agricultural employer must ensure that each worker who enters a treated area during a restricted-entry interval is provided the personal protective equipment specified in the pesticide product labeling for early entry. The agricultural employer must ensure that the worker uses the personal protective equipment as intended according to manufacturer's instructions and follows any other applicable requirements on the pesticide product labeling. Personal protective equipment must conform to the standards in WAC 16-233-216 (2) (a) through (i).
- (5) The agricultural employer must maintain the personal protective equipment in accordance with WAC 16-233-216 (3) and (4).
- (6) The agricultural employer must ensure that no worker is allowed or directed to wear personal protective equipment without implementing measures sufficient to prevent heat-related illness and that each worker is instructed in the prevention, recognition, and first-aid treatment of heat-related illness.
- (7) (a) The agricultural employer must instruct each worker on the proper use and removal of the personal protective equipment, and as appropriate, on its cleaning, maintenance and disposal. The agricultural employer must not allow or direct any worker to wear home or to

take home employer-provided personal protective equipment contaminated with pesticides.

(b) Each worker is instructed in the prevention, recognition, and first-aid treatment of heat-related illness.

(8) During any early-entry activity, the agricultural employer must provide decontamination supplies in accordance with WAC 16-233-221, except the decontamination supplies must be outside any area being treated with pesticides or subject to a restricted-entry interval, unless the decontamination supplies would otherwise not be reasonably accessible to workers performing early-entry tasks.

(9) If the pesticide product labeling of the product applied requires protective eyewear, the agricultural employer must provide at least one pint of water per worker in portable containers for (~~eye-flushing~~) eye flushing that is immediately available to each worker who is performing early-entry activities.

(10) At the end of any early-entry activities the agricultural employer must provide, at the site where the workers remove personal protective equipment, soap, single-use towels and an adequate amount of water so that the workers may wash thoroughly. At least (~~ten~~) 10 gallons of water for one employee and (~~twenty~~) 20 gallons of water for two or more employees shall be provided at early entry sites that do not have running water.

[Statutory Authority: RCW 15.58.040 and 17.21.030. WSR 20-21-029, § 16-233-311, filed 10/12/20, effective 11/12/20. Statutory Authority: RCW 15.58.040, 17.21.030 and chapter 34.05 RCW. WSR 18-01-054, § 16-233-311, filed 12/13/17, effective 1/13/18.]

WSR 22-23-064

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed November 9, 2022, 2:10 p.m., effective December 10, 2022]

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

Purpose: The new proceedings create an accelerated path for claims to be adjudicated that will allow the office of administrative hearings to resolve cases more quickly.

Citation of Rules Affected by this Order: New WAC 192-04-145.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule-making authority to the employment security department; RCW 34.05.410 (1)(a), 34.05.220, 50.32.060, 50.32.080.

Adopted under notice filed as WSR 22-19-059 on September 16, 2022.

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

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

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

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

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

Date Adopted: November 9, 2022.

Dan Zeitlin
Employment System Policy Director

OTS-3641.1

NEW SECTION

WAC 192-04-145 Brief adjudicative proceedings. (1) **Adoption of brief adjudicative proceedings.** Pursuant to RCW 34.05.410 (1)(a), the department hereby adopts the use of brief adjudicative proceedings for use in appeals.

(a) RCW 34.05.488 and 34.05.491 shall not apply to brief adjudicative proceedings under this rule.

(b) Brief adjudicative proceedings will only be used if:

(i) The appeal involves a claim for benefits;

(ii) The appeal is filed by a claimant;

(iii) No employer is an interested party pursuant to WAC 192-04-040; and

(iv) The presiding administrative law judge, in their sole discretion, determines a brief adjudicating proceeding is warranted.

(2) **Procedure for brief adjudicative proceedings.** The following procedural rules will apply to brief adjudicative proceedings:

(a) An administrative law judge with the office of administrative hearings will conduct the brief adjudicative proceeding.

(b) Not less than seven days before the date of the hearing, the office of administrative hearings shall serve notice on the claimant pursuant to WAC 10-08-040 that a brief adjudicative proceeding will occur. The notice of hearing will contain the following:

(i) Notice that the claimant may submit additional relevant documentary evidence and sworn oral statements, if desired, along with a date by which these submissions must be made and instructions for doing so;

(ii) Instructions for how the department or claimant may request that the brief adjudicative proceeding may be converted to a regular proceeding pursuant to subsection (4) of this section and the date by which such request must be submitted; and

(iii) The date of the brief adjudicative proceeding.

(c) The administrative law judge, in their sole discretion, may send a written request for additional evidence from the claimant or the department. The request will contain instructions for how to submit the additional evidence and the date by which additional evidence must be submitted.

(d) The administrative law judge's review will be limited to the record defined in subsection (3) of this section.

(e) If the claimant fails to provide any additional relevant documentary evidence or sworn oral statements, the administrative law judge will affirm the department's determination unless the evidence provided by the department is sufficient to resolve the matter in the claimant's favor.

(f) The administrative law judge shall issue a written decision consistent with WAC 192-04-150.

(3) **Record for brief adjudicative proceeding.** The record with respect to brief adjudicative proceedings will consist of the following:

(a) The department's determination letter;

(b) The claimant's appeal of the determination letter;

(c) All records relied upon by the department in support of its determination letter;

(d) Any additional records submitted by the department;

(e) Any additional records or sworn oral statements submitted by the claimant; and

(f) Any additional evidence submitted by the parties at the written request of the administrative law judge.

(4) **Conversion of brief adjudicative proceeding to regular proceeding.**

(a) A brief adjudicative proceeding will be converted to a regular proceeding if:

(i) The claimant files a conversion request by the deadline listed in the notice of the brief adjudicative proceeding. Such a request shall be automatically granted by the administrative law judge; or

(ii) The department files a conversion request by the deadline listed in the notice of the brief adjudicative proceeding. Such a request shall be automatically granted by the administrative law judge; or

(iii) The administrative law judge, at any time prior to issuing a written decision, determines the brief adjudicative proceeding shall be converted to a regular proceeding. Reasons the administrative law judge may convert the brief adjudicative proceeding to a regular proceeding may include, but are not limited to:

(A) The use of the brief adjudicative proceeding procedures violates any provision of law;

(B) The protection of the public interest requires that notice and an opportunity to be heard be given to persons other than the claimant and the department;

(C) A regular proceeding is required to adequately develop the record and decide the issues in the appeal; or

(D) The issues and interests involved otherwise warrant the use of the procedures in a regular proceeding.

(b) When a brief adjudicative proceeding is converted to a regular proceeding, the office of administrative hearings shall issue a new notice of hearing.

(5) **Right to petition for review.** A party aggrieved by a decision issued by an administrative law judge pursuant to a brief adjudicative proceeding shall have the same right to petition for review as contained in WAC 192-04-060. In conducting this review of the brief adjudicative proceeding, prior to rendering a decision, the commissioner shall order the taking of additional evidence by the office of administrative hearings to be made a part of the record in the case.

[]

WSR 22-23-069
PERMANENT RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2022-07—Filed November 10, 2022, 10:03 a.m., effective December 11, 2022]

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

Purpose: To adopt conforming regulations reflecting changes in filing tier II appeals by small pharmacies against pharmacy benefit manager reimbursement settlements.

Citation of Rules Affected by this Order: Amending WAC 284-180-515, 284-180-520, 284-180-530, and 284-180-540.

Statutory Authority for Adoption: RCW 48.02.060, 48.200.280(6), 34.05.485 (1)(c), 48.02.100.

Adopted under notice filed as WSR 22-18-082 on September 6, 2022.

A final cost-benefit analysis is available by contacting Simon Casson, P.O. Box 40260, Olympia, WA 98504, phone 360-725-7038, fax 360-586-3109, email Simon.Casson@OIC.wa.gov4 [Simon.Casson@OIC.wa.gov].

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

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

Date Adopted: November 10, 2022.

Mike Kreidler
Insurance Commissioner

OTS-4037.2

AMENDATORY SECTION (Amending WSR 21-02-034, filed 12/29/20, effective 1/1/22)

WAC 284-180-515 Use of brief adjudicative proceedings for appeals by network pharmacies to the commissioner. The commissioner has adopted the procedure for brief adjudicative proceedings provided in RCW 34.05.482 through 34.05.494 for actions involving a network pharmacy's appeal of a pharmacy benefit manager's reimbursement for a drug subject to predetermined reimbursement costs for multisource generic drugs (reimbursement). WAC 284-180-500 through 284-180-540 describe the procedures for how the commissioner processes a network pharmacy's appeal (second tier appeal) of the pharmacy benefit manager's decision in the first tier appeal (~~((second tier appeal))~~) through a brief adjudicative proceeding.

This rule does not apply to adjudicative proceedings under WAC 284-02-070, including converted brief adjudicative proceedings.

[Statutory Authority: RCW 48.02.060 and 48.200.900. WSR 21-02-034, amended and recodified as § 284-180-515, filed 12/29/20, effective 1/1/22. Statutory Authority: RCW 48.02.060, 19.340.010, 19.340.030, 19.340.100, 19.340.110, and 2016 c 210 §§ 1 and 2 through 7. WSR 17-01-139 (Matter No. R 2016-07), § 284-180-410, filed 12/20/16, effective 1/1/17.]

AMENDATORY SECTION (Amending WSR 21-02-034, filed 12/29/20, effective 1/1/22)

WAC 284-180-520 Appeals by network pharmacies to the commissioner. The following procedure applies to brief adjudicative proceedings before the commissioner for actions involving a network pharmacy's appeal of a pharmacy benefit manager's decision in a first tier appeal regarding reimbursement for a drug subject to predetermined reimbursement costs for multisource generic drugs, unless the matter is converted to a formal proceeding as provided in WAC 284-180-540(3).

(1) **Grounds for appeal.** A network pharmacy or its representative may appeal a pharmacy benefit manager's decision to the commissioner if it meets all the following requirements:

(a) The pharmacy benefit manager's decision must have denied the network pharmacy's appeal, or the network pharmacy must be unsatisfied with the outcome of its appeal to the pharmacy benefit manager;

(b) The network pharmacy must request review of the pharmacy benefit manager's decision by ~~((filing a written petition for review form. A form for this purpose is available))~~ submitting a petition at www.insurance.wa.gov according to the filing instructions.

The petition for review must include:

(i) The network pharmacy's basis for appealing the pharmacy benefit manager's decision in the first tier appeal;

(ii) The network pharmacy's ~~((federal identification number, unified business identifier number,))~~ business address ~~((r))~~ and mailing address; and

(iii) Documents supporting the appeal;

(c) Documents supporting the appeal include:

(i) The documents from the first tier review, including the documents that the pharmacy submitted to the pharmacy benefit manager as well as the documents that the pharmacy benefit manager provided to the pharmacy in response to the first tier review, if any (if the pharmacy benefit manager has not issued a decision on the first tier appeal in a timely manner, a signed attestation to that fact must be submitted by the appealing pharmacy);

~~((iv))~~ (ii) Documentation evidencing the net amount paid for the drug by the small pharmacy;

~~((v))~~ (iii) If the first-tier appeal was denied by the pharmacy benefit manager because a therapeutically equivalent drug was available in the state of Washington at a price less than or equal to the predetermined reimbursement cost for the multisource generic drug and documentation provided by the pharmacy benefit manager evidencing the national drug code of the therapeutically equivalent drug; and

~~((vi))~~ (iv) Any additional information that the commissioner may require((-

~~(c) The network pharmacy must deliver the petition for review to the commissioner's Tumwater office by mail, hand delivery, or by other methods that the commissioner may make available);~~

(d) The network pharmacy must file the petition for review with the commissioner within ~~((thirty))~~ 30 days of receipt of the pharmacy benefit manager's decision or within 30 days after the deadline for the pharmacy benefit manager's deadline for responding to the first tier appeal; ~~((and))~~

(e) The network pharmacy making the appeal must have less than ~~((fifteen))~~ 15 retail outlets within the state of Washington under its corporate umbrella. The petition for review that the network pharmacy submits to the commissioner must ~~((state))~~ include a signed attestation that this requirement is satisfied ~~((, and must be signed and verified by an officer or authorized representative of the network pharmacy)); and~~

(f) Electronic signatures and electronic records may be used to facilitate electronic transactions consistent with the Uniform Electronic Transactions Act chapter 1.80 RCW.

(2) **Time frames governing appeals to the commissioner.** The commissioner must complete the appeal within ~~((thirty))~~ 30 calendar days of the receipt of the network pharmacy's complete petition for review. A complete petition for review means that all requirements under (1) of this subsection have been satisfied, including the submission of all required documents and documentation. An appeal before the commissioner is deemed complete when a presiding officer issues an initial order on behalf of the commissioner to both the network pharmacy and pharmacy benefit manager under subsection (8) of this section. Within seven calendar days of the resolution of a dispute, the presiding officer shall provide a copy of the initial order to both the network pharmacy and pharmacy benefit manager.

(3) **Relief the commissioner may provide.** The commissioner, by and through a presiding officer or reviewing officer, may enter an order directing the pharmacy benefit manager to make an adjustment to the disputed claim, denying the network pharmacy's appeal, issuing civil penalties pursuant to RCW 48.200.290, or ~~((may take))~~ taking other actions deemed fair and equitable.

(4) **Notice.** If the presiding officer under the use of discretion chooses to conduct an oral hearing, the presiding officer will set the time and place of the hearing. Written notice shall be served upon both the network pharmacy and pharmacy benefit manager at least seven days before the date of the hearing. Service is to be made pursuant to WAC 284-180-440(2). The notice must include:

(a) The names and addresses of each party to whom the proceedings apply and, if known, the names and addresses of any representatives of such parties;

(b) The official file or other reference number and name of the proceeding, if applicable;

(c) The name, official title, mailing address and telephone number of the presiding officer, if known;

(d) A statement of the time, place and nature of the proceeding;

(e) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(f) A reference to the particular sections of the statutes or rules involved;

(g) A short and plain statement of the matters asserted by the network pharmacy against the pharmacy benefit manager and the potential action to be taken; and

(h) A statement that if either party fails to attend or participate in a hearing, the hearing can proceed and the presiding or reviewing officer may take adverse action against that party.

(5) **Appearance and practice at a brief adjudicative proceeding.** The right to practice before the commissioner in a brief adjudicative proceeding is limited to:

(a) Persons who are natural persons representing themselves;

(b) Attorneys at law duly qualified and entitled to practice in the courts of the state of Washington;

(c) Attorneys at law entitled to practice before the highest court of record of any other state, if attorneys licensed in Washington are permitted to appear before the courts of such other state in a representative capacity, and if not otherwise prohibited by state law;

(d) Public officials in their official capacity;

(e) A duly authorized director, officer, or full-time employee of an individual firm, association, partnership, or corporation who appears for such firm, association, partnership, or corporation;

(f) Partners, joint venturers or trustees representing their respective partnerships, joint ventures, or trusts; and

(g) Other persons designated by a person to whom the proceedings apply with the approval of the presiding officer.

In the event a proceeding is converted from a brief adjudicative proceeding to a formal proceeding, representation is limited to the provisions of law and RCW 34.05.428.

(6) **Method of response.** Upon receipt of any inquiry from the commissioner concerning a network pharmacy's appeal of a pharmacy benefit manager's decision in the first tier appeal regarding reimbursement for a drug subject to predetermined reimbursement costs for multi-source generic drugs, pharmacy benefit managers must respond to the commissioner using the commissioner's electronic pharmacy appeals system.

(7) **Hearings by telephone.** If the presiding officer chooses to conduct a hearing, then the presiding officer may choose to conduct the hearing telephonically. The conversation will be recorded and will be part of the record of the hearing.

(8) **Presiding officer.**

(a) Per RCW 34.05.485, the presiding officer may be the commissioner, one or more other persons designated by the commissioner per RCW 48.02.100, or one or more other administrative law judges employed by the office of administrative hearings. The commissioner's choice of presiding officer is entirely discretionary and subject to change at any time. However, it must not violate RCW 34.05.425 or 34.05.458.

(b) The presiding officer shall conduct the proceeding in a just and fair manner. Before taking action, the presiding officer shall provide both parties the opportunity to be informed of the presiding officer's position on the pending matter and to explain their views of the matter. During the course of the proceedings before the presiding officer, the parties may present all relevant information.

(c) The presiding officer may request additional evidence from either party at any time during review of the initial order. After the presiding officer requests evidence from a party, the party has seven days after service of the request to supply the evidence to the presiding officer, unless the presiding officer, under the use of discretion, allows additional time to submit the evidence.

(d) The presiding officer has all authority granted under chapter 34.05 RCW.

(9) **Entry of orders.**

(a) When the presiding officer issues a decision, the presiding officer shall briefly state the basis and legal authority for the decision. Within (~~ten~~) 10 days of issuing the decision, the presiding officer shall serve upon the parties the initial order, as well as information regarding any administrative review that may be available before the commissioner. The presiding officer's issuance of a decision within the (~~ten-day~~) 10-day time frame satisfies the seven day requirement in subsection (2) of this section.

(b) The initial order consists of the decision and the brief written statement of the basis and legal authority. The initial order will become a final order if neither party requests a review as provided in WAC 284-180-530(1).

(10) **Filing instructions.** When a small pharmacy or a pharmacy benefit manager provides information to the commissioner regarding appeals under WAC 284-180-520, the small pharmacy or pharmacy benefit manager must follow the commissioner's filing instructions, which are available at www.insurance.wa.gov.

[Statutory Authority: RCW 48.02.060 and 48.200.900. WSR 21-02-034, amended and recodified as § 284-180-520, filed 12/29/20, effective 1/1/22. Statutory Authority: RCW 48.02.060, 48.02.220 and chapter 19.340 RCW. WSR 18-13-023, § 284-180-420, filed 6/8/18, effective 7/9/18. Statutory Authority: RCW 48.02.060, 19.340.010, 19.340.030, 19.340.100, 19.340.110, and 2016 c 210 §§ 1 and 2 through 7. WSR 17-01-139 (Matter No. R 2016-07), § 284-180-420, filed 12/20/16, effective 1/1/17.]

AMENDATORY SECTION (Amending WSR 21-02-034, filed 12/29/20, effective 1/1/22)

WAC 284-180-530 Review of initial orders from brief adjudicative proceedings. The following procedure applies to the commissioner's review of a brief adjudicative proceeding conducted pursuant to WAC 284-180-520, unless the matter is converted to a formal proceeding as provided in WAC 284-180-540(4).

(1) **Request for review of initial order.** A party to a brief adjudicative proceeding under WAC 284-180-520 may request review of the initial order by filing a written petition for review with the commissioner within (~~twenty-one~~) 21 days after service of the initial order is received or deemed to be received by the party. A form for this purpose is available at www.insurance.wa.gov. The request for review must be (~~in writing and delivered to the commissioner's Tumwater office by mail, hand delivery, or by other methods that the commissioner may make available~~) submitted electronically.

(a) When making a petition for review of the initial order, the petitioner must submit to the reviewing officer any evidence or written material relevant to the matter that the party wishes the reviewing officer to consider.

(b) The commissioner may, on its own motion, conduct an administrative review of the initial order as provided for in RCW 34.05.491.

(2) **Reviewing officer.** The commissioner shall appoint a reviewing officer who satisfies the requirements of RCW 34.05.491(2). The reviewing officer shall:

(a) Make such determination as may appear to be just and lawful;

(b) Provide both the network pharmacy and the pharmacy benefit manager an opportunity to explain their positions on the matter; and

(c) Make any inquiries necessary to determine whether the proceeding should be converted to a formal adjudicative proceeding. The review is governed by the brief adjudicative procedures of chapter 34.05 RCW and this rule, or WAC 284-02-070 in the event a brief adjudicative hearing is converted to a formal adjudicative proceeding. The reviewing officer shall have the authority of a presiding officer as provided in WAC 284-180-520.

(3) **Record review.**

(a) Review of an initial order is limited to:

(i) The evidence that the presiding officer considered;

(ii) The initial order;

(iii) The recording of the initial proceeding; and

(iv) Any records and written evidence that the parties submitted to the reviewing officer.

(b) However, the record that the presiding officer made does not need to constitute the exclusive basis for the reviewing officer's decision.

(c) The reviewing officer may request additional evidence from either party at any time during review of the initial order. After the reviewing officer requests evidence from a party, the party has seven days after service of the request to supply the evidence to the reviewing officer, unless the reviewing officer, under the use of discretion, allows additional time to submit the evidence.

(d) If the reviewing officer determines that oral testimony is needed, the officer may schedule a time for both parties to present oral testimony. Oral statements before the reviewing officer shall be by telephone, unless specifically scheduled by the reviewing officer to be in person.

(e) Each party will have an opportunity to respond to the other party's request for review and may also submit any other relevant evidence and written material to the reviewing officer.

(i) The other party must:

(A) Submit material within seven days of service of the material submitted by the party requesting review of the initial order; and

(B) Serve a copy of all evidence and written material provided to the reviewing officer to the party requesting review according to WAC 284-180-540(2).

(ii) Proof of service is required under WAC 284-180-540 (2)(g) when a party submits material to the other party under this subsection.

(4) **Failure to participate.** If a party requesting review of an initial order under subsection (1) of this section fails to participate in the proceeding or fails to provide documentation to the reviewing officer upon request, the reviewing officer may uphold the initial order based upon the record.

(5) **Final orders.**

(a) The reviewing officer's final order must include the decision of the reviewing officer and a brief statement of the basis and legal authority for the decision.

(b) Unless there are continuances, the reviewing officer will issue the final order within (~~twenty~~) 20 days of the petition for review.

(6) **Reconsideration.** Unless otherwise provided in the reviewing officer's order, the reviewing officer's order represents the final position of the commissioner. A petitioner may only seek a reconsider-

ation of the reviewing officer's order if the final order contains a right to a reconsideration.

(7) **Judicial review.** Judicial review of the final order of the commissioner is available under Part V, chapter 34.05 RCW. However, as required by RCW 34.05.534, judicial review may be available only if the petitioner has requested a review of the initial order under this subsection and has exhausted all other administrative remedies.

[Statutory Authority: RCW 48.02.060 and 48.200.900. WSR 21-02-034, amended and recodified as § 284-180-530, filed 12/29/20, effective 1/1/22. Statutory Authority: RCW 48.02.060, 19.340.010, 19.340.030, 19.340.100, 19.340.110, and 2016 c 210 §§ 1 and 2 through 7. WSR 17-01-139 (Matter No. R 2016-07), § 284-180-430, filed 12/20/16, effective 1/1/17.]

AMENDATORY SECTION (Amending WSR 21-02-034, filed 12/29/20, effective 1/1/22)

WAC 284-180-540 General procedures governing brief adjudicative proceedings before the commissioner. (1) Rules of evidence - Record of the proceeding.

(a) Evidence is admissible if in the judgment of the presiding or reviewing officer it is the kind of evidence on which reasonably prudent persons are accustomed to relying on in conducting their affairs. The presiding and reviewing officer should apply RCW 34.05.452 when ruling on evidentiary issues in the proceeding.

(b) All oral testimony must be recorded manually, electronically, or by another type of recording device. The agency record must consist of the documents regarding the matters that were considered or prepared by the presiding officer, or by the reviewing officer in any review, and the recording of the hearing. These records must be maintained by the commissioner as its official record.

(2) **Service.** All notices and other pleadings or papers filed with the presiding or reviewing officer must be served on the network pharmacy and the pharmacy benefit manager.

~~((a) Service is made by one of the following methods:~~

~~(i) In person;~~

~~(ii) By first-class, registered, or certified mail;~~

~~(iii) By fax and same-day mailing of copies;~~

~~(iv) By commercial parcel delivery company; or~~

~~(v)) By electronic delivery as allowed by the presiding officer.~~

~~((b) Service by mail is regarded as completed upon deposit in the United States mail properly stamped and addressed.~~

~~(c) Service by electronic fax is regarded as completed upon the production by the fax machine of confirmation of transmission.~~

~~(d) Service by commercial parcel delivery is regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.~~

~~(e)) Service by electronic delivery is regarded as completed on the date that any party electronically sends the information to other parties or electronically notifies other parties that the information is available for them to access.~~

~~((f) For matters before the reviewing officer, service to the reviewing officer must be sent to:~~

~~Office of the Insurance Commissioner
P.O. Box 40255
Olympia, Washington 98504-0255~~

~~(g) Where proof of service is required, the proof of service must include:~~

~~(i) An acknowledgment of service;
(ii) A certification, signed by the person who served the document, stating the date of service; that the person served the document upon all or one or more of the parties of record in the proceeding by delivering a copy in person to the recipient; and that the service was accomplished by a method of service as provided in this subsection.))~~

(3) Conversion of a brief adjudicative proceeding to a formal proceeding. The presiding or reviewing officer may at any time, on motion of either party or on the officer's own motion, convert the brief adjudicative proceeding to a formal proceeding. The presiding or reviewing officer may convert the proceeding if the officer finds that:

(a) Use of the brief adjudicative proceeding violates any provision of law;
(b) The protection of the public interest requires the agency to give notice to and an opportunity to participate to persons other than the parties; or
(c) The issues and interests involved warrant the use of procedures governed by RCW 34.05.413 through 34.05.476 or 34.05.479.

[Statutory Authority: RCW 48.02.060 and 48.200.900. WSR 21-02-034, recodified as § 284-180-540, filed 12/29/20, effective 1/1/22; WSR 21-02-034, § 284-180-440, filed 12/29/20, effective 1/1/22. Statutory Authority: RCW 48.02.060, 19.340.010, 19.340.030, 19.340.100, 19.340.110, and 2016 c 210 §§ 1 and 2 through 7. WSR 17-01-139 (Matter No. R 2016-07), § 284-180-440, filed 12/20/16, effective 1/1/17.]

WSR 22-23-070
PERMANENT RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2022-05—Filed November 10, 2022, 10:04 a.m., effective December 11, 2022]

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

Purpose: Implementation of SSB 5610 (chapter 228, Laws of 2022) Prescription drug cost sharing—Enrollee contribution calculation. The rule making provides consistency and transparency to enrollees using third party payment assistance. The definitions of cost sharing and out-of-pocket maximum are clarified to include coupons. Additionally, carriers are required to provide enrollees disclosure of their benefits and appeal rights when third party payments are used.

Citation of Rules Affected by this Order: Amending WAC 284-43-5080.

Statutory Authority for Adoption: Section 1(3), chapter 228, Laws of 2022, SSB 5610.

Adopted under notice filed as WSR 22-17-135 on August 23, 2022.

A final cost-benefit analysis is available by contacting Simon Casson, P.O. Box 40260, Olympia, WA 98504, phone 360-725-7038, fax 360-586-3109, email Simon.Casson@OIC.wa.gov.

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

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

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

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

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

Date Adopted: November 10, 2022.

Mike Kreidler
Insurance Commissioner

OTS-3915.3

AMENDATORY SECTION (Amending WSR 20-24-105, filed 12/1/20, effective 1/1/21)

WAC 284-43-5080 Prescription drug benefit design. (1) A carrier may design its prescription drug benefit to include cost control measures, including requiring preferred drug substitution in a given therapeutic class, if the restriction is for a less expensive, equally therapeutic alternative product available to treat the condition.

(2) A carrier may include elements in its prescription drug benefit design that, where clinically feasible, create incentives for the use of generic drugs. Examples of permitted incentives include, but

are not limited to, refusal to pay for higher cost drugs until it can be shown that a lower cost drug or medication is not effective (also known as step therapy protocols or fail-first policies), establishing a preferred brand and nonpreferred brand formulary, or otherwise limiting the benefit to the use of a generic drug in lieu of brand name drugs, subject to a substitution process as set forth in subsection (3) of this section.

(3) A carrier may include a preauthorization requirement for its prescription drug benefit and its substitution process, based on accepted peer reviewed clinical studies, Federal Drug Administration black box warnings, the fact that the drug is available over-the-counter, objective and relevant clinical information about the enrollee's condition, specific medical necessity criteria, patient safety, or other criteria that meet an accepted, medically applicable standard of care.

(4) A carrier may require an enrollee to try an AB-rated generic equivalent or a biological product that is an interchangeable biological product prior to providing coverage for the equivalent branded prescription drug.

(5) A nongrandfathered health plan issued or renewed on or after January 1, 2023, that provides coverage for prescription drugs must comply with RCW 48.43.435.

(a) For the purposes of this subsection, any cost sharing amount paid directly by or on behalf of the enrollee by another person for a covered prescription drug, at the time it is rendered, must be applied in full toward the enrollee's applicable cost-sharing as defined in WAC 284-43-0160 and out-of-pocket maximum as defined in RCW 48.43.005 consistent with RCW 48.43.435.

(b) If an enrollee requests an exception under RCW 48.43.420 or appeals a denial of an exception request, and the request or appeal is still pending, any amount paid by or on behalf of an enrollee for a covered prescription drug must be applied towards the enrollee's contribution to any applicable deductible, copayment, coinsurance, or out-of-pocket maximum until the review is resolved and the status of the request is communicated to the carrier.

(c) The health carrier must disclose to the enrollee information about when third-party payments, including payments made through application of a manufacturer drug coupon or other manufacturer discount, are applied towards the enrollee's annual cost-sharing obligations, including applicable deductibles, copayments, coinsurances, or out-of-pocket maximums. The disclosure shall be included in the certificate of coverage (also commonly referred to as the member booklet or member handbook). Carriers are not required to use verbatim language from either the statute or regulation; however, the information provided to the enrollee about the application of third-party payments must be sufficiently detailed to address the situations set forth in RCW 48.43.435 (1) (a) (i) through (iii).

[Statutory Authority: RCW 48.02.060, 48.43.400, 48.43.410, and 48.43.420. WSR 20-24-105, § 284-43-5080, filed 12/1/20, effective 1/1/21. Statutory Authority: RCW 48.02.060, 48.18.140, and 48.43.510. WSR 17-03-087 (Matter No. R 2016-22), § 284-43-5080, filed 1/12/17, effective 2/12/17. WSR 16-01-081, recodified as § 284-43-5080, filed 12/14/15, effective 12/14/15. Statutory Authority: RCW 48.02.060, 48.02.062, 48.18.140, 48.43.525, 48.44.050, 48.44.440(2), 48.44.460(2), 48.46.200, and 48.46.510. WSR 12-21-019 (Matter No. R 2012-03), § 284-43-817, filed 10/8/12, effective 11/8/12.]

WSR 22-23-075
PERMANENT RULES
NORTHWEST CLEAN
AIR AGENCY

[Filed November 10, 2022, 2:41 p.m., effective December 11, 2022]

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

Purpose:

- Adding vermiculite into the asbestos-containing material definition with an associated test method. Northwest Clean Air Agency ((NWCAA) Section 570).
- Removing seasonal residences from the definition of owner-occupied, single-family residence (NWCAA Section 570).
- Updating notification waiting period table to correspond with the concurrent asbestos program fee schedule change (NWCAA Section 570).
- Updating the adoption-by-reference date to allow implementation of the most recent version of the referenced state and federal rules and adding a couple of federal programs to the list (NWCAA Section 104).
- Correcting a regulation citation cross-reference to reflect previously revised section numbering (NWCAA Section 309).

Citation of Rules Affected by this Order: Amending sections 104, 309, and 570 of the Regulation of the NWCAA.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Adopted under notice filed as WSR 22-17-053 on August 11, 2022.

Date Adopted: November 10, 2022.

Mark Buford
Executive Director

SECTION 104 - ADOPTION OF STATE AND FEDERAL LAWS AND RULES

104.1 All provisions of the following state rules that are in effect as of (~~December 8, 2021~~) August 24, 2022 are hereby adopted by reference and made part of the Regulation of the NWCAA: chapter 173-400 WAC, (except - -025, -030, -035, -036, -040(1) & (7), -045, -075, -099, -100, -101, -102, -103, -104, -105(7), -110, -114, -115, -116, -171, -930), chapter 173-401 WAC, chapter 173-407 WAC, chapter 173-420 WAC, chapter 173-425 WAC, chapter 173-430 WAC, chapter 173-433 WAC, chapter 173-434 WAC, chapter 173-435 WAC, chapter 173-441 WAC, chapter 173-442 WAC, chapter 173-450 WAC, chapter 173-460 WAC, chapter 173-476 WAC, chapter 173-480 WAC, chapter 173-481 WAC, chapter 173-485 WAC, chapter 173-491 WAC. The requirements of the NWCAA Regulation apply in addition to the statewide regulations adopted and enforced under this paragraph.

104.2 All provisions of the following federal rules that are in effect as of (~~December 8, 2021~~) August 24, 2022 are hereby adopted by reference and made part of the Regulation of the NWCAA: 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans) Appendix M; 40 CFR Part 60 (Standards of Performance For New Stationary Sources) subparts A, D, Da, Db, Dc, E, Ea, Eb, Ec, F, G, Ga, H, I, J, Ja, K, Ka, Kb, L, M, N, Na, O, P, Q, R, T, U, V, W, X, Y, Z, AA, AAa, CC, DD, EE, GG, HH, KK, LL, MM, NN, PP, QQ, RR, SS, TT, UU, VV, VVa, WW, XX, AAA, BBB, DDD, FFF, GGG, GGGa, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW, XXX, AAAA, CCCC, EEEE, IIII, JJJJ, KKKK, LLLL, OOOO, OOOOa, QQQQ, and Appendix A

- I; 40 CFR Part 61 (National Emission Standards For Hazardous Air Pollutants) Subparts A, C, D, E, F, J, L, M, N, O, P, V, Y, BB, FF; 40 CFR Part 62 (Approval and Promulgation of State Plans for Designated Facilities and Pollutants) Subpart LLL; 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) Subparts A, B, C, D, F, G, H, I, L, M, N, O, Q, R, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, QQQ, TTT, UUU, VVV, XXX, AAAA, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, JJJJ, KKKK, MMMM, NNNN, OOOO, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYY, ZZZZ, AAAAA, BBBB, CCCC, DDDD, EEEEE, FFFFF, GGGGG, HHHHH, IIIII, LLLLL, MMMM, NNNNN, PPPPP, QQQQQ, RRRRR, SSSSS, TTTTT, UUUUU, WWWW, YYYYY, ZZZZZ, BBBBB, CCCCC, EEEEE, FFFFF, GGGGG, HHHHH, JJJJJ, MMMMM, NNNNN, OOOOO, QQQQQ, SSSSS, TTTTT, VVVVV, WWWW, XXXXX, ZZZZZ, AAAAAA, DDDDDD, EEEEE, and HHHHHH; and 40 CFR Parts 72, 73, 74, 75, 76, 77 and 78 (Acid Rain Program).

PASSED: July 8, 1970 AMENDED: April 14, 1993, September 8, 1993, December 8, 1993, October 13, 1994, May 11, 1995, February 8, 1996, May 9, 1996, March 13, 1997, May 14, 1998, November 12, 1998, November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, June 10, 2010, June 9, 2011, November 17, 2011, August 9, 2012, March 14, 2013, September 11, 2014, August 13, 2015, August 11, 2016, September 13, 2018, April 11, 2019, May 14, 2020, June 10, 2021, February 10, 2022, November 10, 2022

SECTION 309 - REASONABLY AVAILABLE CONTROL TECHNOLOGY

309.1 Reasonably Available Control Technology (RACT) is required for all existing sources except as otherwise provided in RCW 70.94.331(9).

309.2 Where current controls are determined by the NWCAA to be less than RACT, the NWCAA shall define RACT for that source or source category and issue a rule or an order under NWCAA 121 requiring the installation of RACT.

309.3 RACT for each source category containing three or more sources shall be determined by rule, except as provided in NWCAA 309.4.

309.4 Source-specific RACT determinations may be performed under any of the following circumstances:

(A) For replacement or substantial alteration of existing control equipment under NWCAA 300.25 (~~300.13~~);

(B) When required by the federal Clean Air Act;

(C) For sources in source categories containing fewer than three sources;

(D) When an air quality problem, for which the source is a contributor, justifies a source-specific RACT determination prior to development of a categorical RACT rule; or

(E) When a source-specific RACT determination is needed to address either specific air quality problems, for which the source is a significant contributor, or source-specific economic concerns.

309.5 The Control Officer shall have the authority to perform a RACT determination, to hire a consultant to perform relevant RACT analyses in whole or in part, or to order the owner or operator to perform RACT analyses and submit the results to the NWCAA.

309.6 In determining RACT, the NWCAA shall utilize the factors set forth in the RACT definition in NWCAA 200 and shall consider RACT

determinations and guidance made by the EPA, other states, and local authorities for similar sources, and other relevant factors. In establishing or revising RACT requirements, the NWCAA shall address, where practicable, all air contaminants deemed to be of concern for that source or source category.

309.7 The NWCAA shall assess a fee to be paid by any source included in a RACT determination to cover the direct and indirect costs of developing, establishing, or reviewing categorical or source-specific RACT determinations. The fee for RACT determinations shall be as established in NWCAA 324.6. The amount of the fee may not exceed the direct and indirect costs of establishing the requirement for the particular source or the pro rata portion of the direct and indirect costs of establishing the requirement for the relevant source category.

309.8 Emission standards and other requirements contained in rules or regulatory orders in effect at the time of operating permit issuance shall be considered RACT for purposes of operating permit issuance or renewal.

309.9 Replacement or substantial alteration of control equipment under NWCAA 300.13 shall be subject to the New Source Review fees under NWCAA 324.2, in lieu of RACT fees under this section.

PASSED: March 14, 2013 AMENDED: October 8, 2015, November 10, 2022

SECTION 570 ASBESTOS CONTROL STANDARDS

570.1 The Board of Directors of the Northwest Clean Air Agency recognize that asbestos is a serious health hazard. Any asbestos fibers released into the air can be inhaled and can cause lung cancer, pleural mesothelioma, peritoneal mesothelioma or asbestosis. The Board has, therefore, determined that any asbestos emitted to the ambient air is air pollution. Because of the seriousness of the health hazard, the Board of Directors has adopted this regulation to control asbestos emissions from asbestos removal projects in order to protect the public health. In addition, the Board has adopted these regulations to coordinate with the United States Environmental Protection Agency (EPA) asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP); ~~((τ))~~ the federal Occupational Safety & Health Administration (OSHA) asbestos regulation; ~~((τ))~~ the Washington State Department of Labor & Industries asbestos regulations; ~~((τ))~~ the Washington State Department of Ecology Dangerous Waste regulation; ~~((τ))~~ and the solid waste regulations of Island, Skagit and Whatcom Counties.

570.2 DEFINITIONS

AHERA BUILDING INSPECTOR - A person who has successfully completed the training requirements for a building inspector established by EPA Asbestos Model Accreditation Plan (40 CFR Part 763, Subpart E, Appendix C (~~to Subpart E~~)), I.B.3) and whose certification is current.

AHERA PROJECT DESIGNER - A person who has successfully completed the training requirements for an abatement project designer established by EPA regulations (40 CFR Part 763, Subpart E, Appendix C, I.B.5 (~~(40 CFR 763.90(g))~~)) and whose certification is current.

ASBESTOS - The asbestiform varieties of actinolite, amosite (cumingtonite-grunerite), tremolite, chrysotile (serpentinite), crocidolite (riebeckite), or anthophyllite.

ASBESTOS-CONTAINING MATERIAL - Any material containing more than ~~((one))~~ 1 percent asbestos as determined using the method specified in 40 CFR Part 763, Subpart E, Appendix E, Section 1, ((EPA regulations Appendix A, Subpart F, 40 CFR Part 763, Section 1,)) Polarized Light Microscopy. This definition includes any loose vermiculite, unless sampled using the Cincinnati Method (EPA 600/R-04/004) and found to contain 1 percent or less asbestos.

ASBESTOS-CONTAINING WASTE MATERIAL - Any waste that contains or is contaminated with asbestos-containing material. Asbestos-containing waste material includes asbestos waste from control equipment, materials used to enclose the work area during an asbestos project, asbestos-containing material collected for disposal, asbestos-contaminated waste, debris, containers, bags, protective clothing, or HEPA filters. Asbestos-containing waste material does not include samples of asbestos-containing material taken for testing or enforcement purposes.

ASBESTOS PROJECT - Any activity involving the abatement, renovation, demolition, removal, salvage, clean up, or disposal of asbestos-containing material, or any other action that disturbs or is likely to disturb any asbestos-containing material. It includes the removal and disposal of stored asbestos-containing material or asbestos-containing waste material. It does not include the application of duct tape, rewettable glass cloth, canvas, cement, paint, or other non-asbestos materials to seal or fill exposed areas where asbestos fibers may be released.

ASBESTOS SURVEY - A written report describing an inspection using the procedures contained in EPA regulations (40 CFR 763.85 & 763.86), or an alternate method that has received prior written approval from the Control Officer, to determine whether materials or structures to be worked on, renovated, removed, or demolished (including materials on the outside of structures) contain asbestos.

COMPETENT PERSON - A person who is capable of identifying asbestos hazards and selecting the appropriate asbestos control strategy, has the ~~((NWCAA))~~ authority to take prompt corrective measures to eliminate them, and has been trained and is currently certified in accordance with the standards established by the Washington State Department of Labor & Industries, the federal OSHA (~~((Occupational Safety & Health Administration))~~), or the EPA (~~((United States Environmental Protection Agency))~~) (whichever agency has jurisdiction).

COMPONENT - Any equipment, pipe, structural member, or other item covered or coated with, or manufactured from, asbestos-containing material.

DEMOLITION - Wrecking, razing, leveling, dismantling, or burning of a structure, making all or part of the structure permanently uninhabitable or unusable.

FRIABLE ASBESTOS-CONTAINING MATERIAL - Asbestos-containing material that, when dry, can be crumbled, disintegrated, or reduced to powder by hand pressure or by the forces expected to act upon the material in the course of demolition, renovation, or disposal. Such materials include, but are not limited to, thermal system insulation, surfacing material, and cement asbestos products.

LEAK-TIGHT CONTAINER - A dust-tight and liquid-tight container, at least 6-mil thick, that encloses asbestos-containing waste material and prevents solids or liquids from escaping or spilling out. Such containers may include sealed plastic bags, metal or fiber drums, and sealed polyethylene plastic.

NONFRIABLE ASBESTOS-CONTAINING MATERIAL - Asbestos-containing material that, when dry, cannot be crumbled, disintegrated, or reduced

to powder by hand pressure or by the forces expected to act on the material in the course of demolition, renovation, or disposal.

OWNER-OCCUPIED, SINGLE-FAMILY PRIMARY RESIDENCE (OOSFPR) - Any non-multiple unit building containing space for uses such as living, sleeping, preparation of food, and eating that is currently used by one family who owns the property as their primary (~~or seasonal~~) residence. This term includes houses, mobile homes, trailers, detached garages, houseboats, and houses with a "mother-in-law apartment" or "guest room". This term does not include rental property or multiple-family units, nor does this term include any mixed-use building, structure, or installation that contains a residential unit.

PERSON - Any individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

RENOVATION - Altering a facility or a component in any way, except demolition.

SURFACING MATERIAL - Material that is sprayed-on, troweled-on, or otherwise applied to surfaces including, but not limited to, acoustical plaster on ceilings, paints, fireproofing materials on structural members, or other materials on surfaces for decorative purposes.

SUSPECT ASBESTOS-CONTAINING MATERIAL - Material that has historically contained asbestos including, but not limited to, surfacing material, thermal system insulation, roofing material, fire barriers, gaskets, flooring material, and siding.

THERMAL SYSTEM INSULATION - Material applied to pipes, fittings, boilers, tanks, ducts, or other structural components to prevent heat loss or gain.

570.3 ASBESTOS SURVEY REQUIREMENTS

(A) Requirements for Renovations

It shall be unlawful for any person to cause or allow a renovation unless the property owner or the owner's agent determines whether there are suspect asbestos-containing materials in the work area and obtains an asbestos survey of any suspect asbestos-containing materials by an AHERA building inspector. An AHERA building inspector is not required for asbestos surveys associated with the renovation of an owner-occupied, single-family primary residence.

(1) If there are no suspect materials in the work area, this determination shall either be posted at the work site or communicated in writing to all contractors involved in the renovation.

(2) It is not required that an AHERA building inspector evaluate any material presumed to be asbestos-containing material.

(3) Except for renovations of an owner-occupied, single-family primary residence, only an AHERA building inspector may determine that a suspect material does not contain asbestos.

(4) A summary of the results of the asbestos survey shall either be posted by the property owner or the owner's agent at the work site or communicated in writing to all persons who may come into contact with the material.

(B) Requirements for Demolitions

It shall be unlawful for any person to cause or allow any demolition unless the property owner or the owner's agent obtains an asbestos survey by an AHERA building inspector of the structure to be demolished.

(1) It is not required that an AHERA building inspector evaluate any material presumed to be asbestos-containing material.

(2) Only an AHERA building inspector may determine that a suspect material does not contain asbestos.

(3) A summary of the results of the asbestos survey shall either be posted by the property owner or the owner's agent at the work site or communicated in writing to all persons who may come into contact with the material.

570.4 NOTIFICATION REQUIREMENTS

(A) General Requirements

It shall be unlawful for any person to cause or allow any work on an asbestos project or demolition unless a complete notification, including the required fee and any additional information requested by the Control Officer, has been submitted to the NWCAA on approved forms, in accordance with the advance notification period requirements contained in NWCAA 570.4(D) (~~(of this Regulation)~~).

(1) The duration of an asbestos project shall be commensurate with the amount of work involved.

(2) Notification is not required for asbestos projects except demolition involving less than 10 linear feet or 48 square feet (per structure, per calendar year) of any asbestos-containing material.

(3) Notification is not required for removal and disposal of the following nonfriable asbestos-containing materials: caulking, window glazing, or roofing. All other asbestos project and demolition requirements remain in effect except as provided by NWCAA Section 570.

(4) Notification is required for all demolitions of structures with a greater than 120 square feet footprint even if no asbestos-containing material is present. All other demolition requirements remain in effect.

(5) The written notification shall be accompanied by the appropriate nonrefundable fee as set forth in NWCAA 324.8 (~~(of this Regulation)~~) unless prior arrangements for payment have been made with the NWCAA.

(6) A copy of the notification, all amendments to the notification, the asbestos survey, and any (~~Order of Approval~~) written approval from NWCAA for an alternate means of compliance shall be available for inspection at all times at the asbestos project or demolition site.

~~((7) Notification for multiple asbestos projects or demolitions may be filed by a property owner on one form if all the following criteria are met:~~

~~(a) The work will be performed continuously by the same contractor; and~~

~~(b) A work plan is submitted that includes: a map of the structures involved in the project including the site address for each structure; the amount and type of asbestos-containing material in each structure; and the schedule for performing asbestos project and demolition work. For projects where a detailed work schedule cannot be provided the asbestos contractor and/or the demolition contractor shall participate in the NWCAA's work schedule fax program and will continue to participate in the program throughout the duration of the project.)~~

(7) (~~((8))~~) Annual Notification

A property owner may file one annual notification for asbestos projects to be conducted on one or more structures, vessels, or buildings during each calendar year if all of the following conditions are met:

(a) The annual notification shall be filed with the NWCAA before commencing work on any asbestos project included in an annual notification;

(b) The total amount of asbestos-containing material for all asbestos projects (~~(from each structure, vessel, or building)~~) in a calendar year under this section is less than 260 linear feet on pipes or less than 160 square feet on other components; and

(c) The property owner submits quarterly written reports to the Control Officer on NWCAA-approved forms within 15 days after the end of each calendar quarter.

(B) Mandatory Amendments

An amendment shall be submitted to the Control Officer for the following changes in a notification:

(1) Increases in the project type or job size category that increase the fee or change the advance notification period;

(2) Changes in the type of asbestos-containing material that will be removed; or

(3) Changes in the start date, completion date, or work schedule, including hours of work. (~~(Asbestos contractors or property owners participating in the NWCAA work schedule fax program are not required to submit amendments for work schedule changes occurring between the start and completion dates.)~~)

(C) Emergencies

The Control Officer may waive the advance notification period, if the property owner submits a written request that demonstrates to the Control Officer that an asbestos project or demolition must be conducted immediately because of any of the following:

(1) There was a sudden, unexpected event that resulted in a public health or safety hazard;

(2) The project must proceed immediately to protect equipment, ensure continuous vital utilities, or minimize property damage;

(3) Asbestos-containing materials were encountered that were not identified during the asbestos survey; or

(4) The project must proceed to avoid imposing an unreasonable burden.

(D) Notification Period

<u>((Project</u>	<u>Notification Period</u>
<u>Asbestos Project</u>	
Residential - Owner-Occupied - Single Family Residence	<u>Prior Notice</u>
10 - 259 linear feet or 48 - 159 square feet)*	<u>3 days</u>
260 - 999 linear feet or 160 - 4999 square feet	<u>10 days</u>
> 1000 linear feet or > 5000 square feet)	<u>10 days</u>
<u>Demolitions with no Asbestos Project</u>	<u>10 days</u>
<u>Emergency Classification (NWCAA 570.4(C))</u>	<u>Prior Notice</u>
<u>Amendments (NWCAA 570.4(B))</u>	<u>Prior Notice</u>
<u>Annual Notification (NWCAA 570.4(A)(8))</u>	<u>Prior Notice))</u>
<u>Project Categories</u>	<u>Notification Waiting Period</u>
<u>Owner-Occupied Single-Family Primary Residence (OOSFPR) Projects</u>	
<u>>10 Ln Ft or >48 Sq Ft</u>	<u>Prior notice</u>
<u>Demolition*</u>	<u>10 days</u>
<u>Emergency (NWCAA 570.4(C))</u>	<u>Prior notice</u>

Project Categories	<u>Notification Waiting Period</u>
<u>Other Projects</u> <u>10-259 Ln Ft or 48-159 Sq Ft</u> <u>260-999 Ln Ft or 160-4999 Sq Ft</u> <u>1,000-9,999 Ln Ft or 5,000-49,999 Sq Ft</u> <u>≥10,000 Ln Ft or ≥50,000 Sq Ft</u> <u>Demolition*</u> <u>Emergency (NWCAA 570.4(C))</u> <u>Annual (NWCAA 570.4(A)(7))</u>	<u>3 days</u> <u>10 days</u> <u>10 days</u> <u>10 days</u> <u>10 days</u> <u>Prior notice</u> <u>Prior notice</u>
<u>Alternate Means of Compliance and Amendments</u> <u>Alternate Means of Compliance (NWCAA 570.5(B))</u> <u>Amendment (NWCAA 570.4(B))</u>	<u>10 days</u> <u>Prior notice</u>

~~* ((Demolitions with asbestos projects involving less than 10 linear feet or less than 48 square feet may submit an asbestos project notification under this project category and will be eligible for the 3-day notification period.)) At the request of the applicant, NWCAA may reduce or waive the waiting period for demolition projects with an asbestos survey showing <10 linear feet or <48 square feet of asbestos.~~

The Control Officer may waive the notification period, by written authorization, for disposal of unused and intact or abandoned (without the knowledge or consent of the property owner) asbestos-containing materials. All other asbestos project and demolition requirements remain in effect.

570.5 ASBESTOS REMOVAL REQUIREMENTS PRIOR TO RENOVATION OR DEMOLITION

(A) Removal of Asbestos Prior to Renovation or Demolition

Except as provided in NWCAA 570.6(C) (~~of this Regulation~~), it shall be unlawful for any person to cause or allow any demolition or renovation that may disturb asbestos-containing material or damage a structure so as to preclude access to asbestos-containing material for future removal, without first removing all asbestos-containing material in accordance with the requirements of this regulation. Asbestos-containing material need not be removed from a component if the component can be removed, stored, or transported for reuse without disturbing or damaging the asbestos.

(B) Exception for Hazardous Conditions

Asbestos-containing material need not be removed prior to a demolition, if the property owner demonstrates to the Control Officer that it is not accessible because of hazardous conditions such as: structures or buildings that are structurally unsound and in danger of imminent collapse, or other conditions that are immediately dangerous to life and health. The property owner must submit the written determination of the hazard by an authorized government official or a licensed structural engineer, and must submit the procedures that will be followed for controlling asbestos emissions during the demolition or renovation and disposal of the asbestos-containing waste material. This submittal, referred to as an alternate means of compliance, shall be submitted to NWCAA for written approval.

570.6 PROCEDURES FOR ASBESTOS PROJECTS

(A) Training Requirements

It shall be unlawful for any person to cause or allow any work on an asbestos project unless it is performed by persons trained and certified in accordance with the standards established by the Washington State Department of Labor & ~~((and))~~ Industries, the federal OSHA (~~(((~~

Occupational Safety and Health Administration)), or the EPA ((United States Environmental Protection Agency)) (whichever agency has jurisdiction) and whose certification is current. This certification requirement does not apply to individuals who work on asbestos projects on their own owner-occupied single-family primary ((single-family)) residence((~~s~~)), no part of which is used for any commercial purpose.

(B) Asbestos Removal Work Practices

Except as provided in NWCAA 570.6(C) ((~~of this Regulation~~)), it shall be unlawful for any person to cause or allow the removal of asbestos-containing material unless all the following requirements are met:

(1) The asbestos project shall be conducted in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area shall be restricted to authorized personnel only.

(2) If a negative pressure enclosure is employed it shall be equipped with transparent viewing ports, if feasible, and shall be maintained in good working order.

(3) Absorbent, asbestos-containing materials, such as surfacing material and thermal system insulation, shall be saturated with a liquid wetting agent prior to removal. Any unsaturated, absorbent, asbestos-containing materials exposed during removal shall be immediately saturated with a liquid wetting agent.

(4) Nonabsorbent, asbestos-containing materials, such as cement asbestos board or vinyl asbestos tile, shall be continuously coated with a liquid wetting agent on any exposed surface prior to and during removal. Any dry surfaces of nonabsorbent, asbestos-containing materials exposed during removal shall be immediately coated with a liquid wetting agent.

(5) Metal components (such as valves, fire doors, and reactor vessels) that have internal asbestos-containing material are exempt from the requirements of NWCAA 570.6 (B) (3) and 570.6 (B) (4) if all access to the asbestos-containing material is welded shut or the component has mechanical seals, which cannot be removed by hand, that separate the asbestos-containing material from the environment.

(6) Except for surfacing materials being removed inside a negative pressure enclosure, asbestos-containing materials that are being removed, have been removed, or may have fallen off components during an asbestos project shall be carefully lowered to the ground or a lower floor, not dropped, thrown, slid, or otherwise damaged.

(7) All asbestos-containing waste material shall be sealed in leak-tight containers as soon as possible after removal but no later than the end of each work shift.

(8) All absorbent, asbestos-containing waste material shall be kept saturated with a liquid wetting agent until sealed in leak-tight containers while saturated with a liquid wetting agent. All nonabsorbent, asbestos-containing waste material shall be kept coated with a liquid wetting agent until sealed in leak-tight containers while coated with a liquid wetting agent.

(9) The exterior of each leak-tight container shall be free of all asbestos residue and shall be permanently labeled with an asbestos warning sign as specified by the Washington State Department of Labor & ((and)) Industries or the federal OSHA ((Occupational Safety and Health Administration)).

(10) Immediately after sealing, each leak-tight container shall be permanently marked with the date the material was collected for disposal, the name of the waste generator, and the address at which

the waste was generated. This marking must be readable without opening the container.

(11) Leak-tight containers shall not be dropped, thrown, slid, or otherwise damaged.

(12) The asbestos-containing waste material shall be stored in a controlled area until transported to an approved waste disposal site.

(C) Method of Removal for Nonfriable Asbestos-Containing Roofing Material

The following asbestos removal method shall be employed for asbestos-containing roofing material that has been determined to be nonfriable by a Competent Person or an AHERA Project Designer:

(1) The nonfriable asbestos-containing roofing material shall be removed using methods such as spud bar and knife. Removal methods such as sawing or grinding shall not be employed;

(2) Dust control methods shall be used as necessary to assure no fugitive dust is generated from the removal of nonfriable asbestos-containing roofing material;

(3) Nonfriable asbestos-containing roofing material shall be carefully lowered to the ground to prevent fugitive dust;

(4) After being lowered to the ground, the nonfriable asbestos-containing roofing material shall be immediately transferred to a disposal container; and

(5) Each disposal container shall have a sign identifying the material as nonfriable asbestos-containing roofing material.

570.7 COMPLIANCE WITH OTHER RULES

Other government agencies have adopted rules that may apply to asbestos projects regulated under these rules including, but not limited to, the Washington State Department of Labor & Industries, the federal OSHA, and the EPA (~~(U.S. Environmental Protection Agency, the Occupational Safety and Health Administration, and the Department of Labor and Industries)~~). Nothing in the Agency's rules shall be construed as excusing any person from complying with any other applicable local, state, or federal requirement.

570.8 DISPOSAL OF ASBESTOS-CONTAINING WASTE MATERIAL

(A) Except as provided in NWCAA 570.8(C) (~~(of this Regulation)~~), it shall be unlawful for any person to cause or allow the disposal of asbestos-containing waste material unless it is deposited within 10 days of removal at a waste disposal site authorized to accept such waste.

(B) Waste Tracking Requirements

It shall be unlawful for any person to cause or allow the disposal of asbestos-containing waste material unless the following requirements are met:

(1) Maintain waste shipment records, beginning prior to transport, using a form that includes the following information:

(a) The name, address, and telephone number of the waste generator;

(b) The approximate quantity in cubic meters or cubic yards;

(c) The name and telephone number of the disposal site operator;

(d) The name and physical site location of the disposal site;

(e) The date transported;

(f) The name, address, and telephone number of the transporter;

and

(g) A certification that the contents of the consignment are fully and accurately described by proper shipping name and are classi-

fied, packed, marked, and labeled, and are in all respects in proper condition to transport by highway according to applicable international and government regulations.

(2) Provide a copy of the waste shipment record to the disposal site at the same time the asbestos-containing waste material is delivered.

(3) If a copy of the waste shipment record, signed by the owner or operator of the disposal site, is not received by the waste generator within 35 calendar days of the date the waste was accepted by the initial transporter, contact the transporter and/or the owner or operator of the disposal site to determine the status of the waste shipment.

(4) If a copy of the waste shipment record, signed by the owner or operator of the disposal site, is not received by the waste generator within 45 days of the date the waste was accepted by the initial transporter, report in writing to the Control Officer. Include in the report, a copy of the waste shipment record and a cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

(5) Retain a copy of all waste shipment records, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site, for at least 2 years.

(C) Temporary Storage Site

A person may establish a facility for the purpose of collecting and temporarily storing asbestos-containing waste material if the facility is approved by the Control Officer and all the following conditions are met:

(1) Accumulated asbestos-containing waste material shall be kept in a controlled storage area posted with asbestos warning signs and accessible only to authorized persons;

(2) All asbestos-containing waste material shall be stored in leak-tight containers and the leak-tight containers shall be maintained in good condition;

(3) The storage area must be locked except during transfer of asbestos-containing waste material; and

(4) Storage, transportation, disposal, and return of the waste shipment record to the waste generator shall not exceed 90 days.

(D) Disposal of Asbestos Cement Pipe

Asbestos cement pipe used on public right-of-ways, public easements, or other places receiving the prior written approval of the Control Officer may be buried in place if the pipe is covered with at least 3 feet or more of non-asbestos fill material. All asbestos cement pipe fragments that are 1 linear foot or less and other asbestos-containing waste material shall be disposed of at a waste disposal site authorized to accept such waste.

PASSED: November 12, 1998 AMENDED: July 14, 2005, November 8, 2007, September 11, 2014, November 10, 2022

WSR 22-23-079

PERMANENT RULES

BOARD OF TAX APPEALS

[Filed November 14, 2022, 9:16 a.m., effective December 15, 2022]

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

Purpose: Subsection (2) of WAC 456-10-550 lists WAC "458-10-410" as the board's section regarding service; however, the correct citation is WAC 456-10-410.

Citation of Rules Affected by this Order: Amending WAC 456-10-550.

Statutory Authority for Adoption: RCW 82.03.170.

Adopted under notice filed as WSR 22-18-023 on August 31 [29], 2022.

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

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

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

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

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

Date Adopted: November 14, 2022.

Andrea Vingo
Review Officer

OTS-4070.1

AMENDATORY SECTION (Amending WSR 22-13-111, filed 6/15/22, effective 7/16/22)

WAC 456-10-550 Failure to attend and hearings on the record.

(1) When a party has failed to attend a hearing after receiving timely notice, the board will consider a motion for default or dismissal brought by any party to the proceedings, or on its own motion. An order for default or dismissal will include the reason for the order and will be served upon all parties.

(2) Within 14 calendar days of service of the order, the party against whom the order was entered may submit a written objection requesting that the order be vacated. The objection must state the specific reasons why the order should be vacated, together with proof of service pursuant to WAC ((~~458-10-410~~) 456-10-410). The board may set aside a dismissal, default, or final order for good cause.

(3) If the parties agree in writing and the presiding officer approves, an appeal may be submitted to the board on the record and the attendance of one or more parties at the hearing will not be required.

[Statutory Authority: RCW 82.03.170. WSR 22-13-111, § 456-10-550, filed 6/15/22, effective 7/16/22; WSR 05-13-141, § 456-10-550, filed 6/21/05, effective 8/1/05; WSR 89-10-057 (Order 89-03), § 456-10-550, filed 5/2/89.]

WSR 22-23-080

PERMANENT RULES

BOARD OF TAX APPEALS

[Filed November 14, 2022, 9:17 a.m., effective December 15, 2022]

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

Purpose: WAC 456-09-745 indicates that "within 10 calendar days of service ... the party may submit a written objection ..." The board recently amended the entire chapter and intended to make this rule consistent with the equivalent rule in chapter 456-10 WAC, which is 14 days.

Citation of Rules Affected by this Order: Amending WAC 456-09-745.

Statutory Authority for Adoption: RCW 82.03.170.

Adopted under notice filed as WSR 22-18-024 on August 31 [29], 2022.

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

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

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

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

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

Date Adopted: November 14, 2022.

Andrea Vingo
Review Officer

OTS-4069.1

AMENDATORY SECTION (Amending WSR 22-05-051, filed 2/9/22, effective 3/12/22)

WAC 456-09-745 Failure to attend and hearing on the record. (1) When a party has failed to attend a hearing after receiving timely notice, the board will consider a motion for default or dismissal brought by any party to the proceedings or on its own motion. An order for default or dismissal will include the reason for the order and will be served upon all parties.

Within (~~10~~) 14 calendar days of service of the default order or dismissal, the party against whom the order was entered may submit a written objection requesting that the order be vacated. The objection must state the specific reasons why the order should be vacated together with proof of service pursuant to WAC 456-09-345. The board may set aside a dismissal or default for good cause.

(2) If the parties agree in writing and the presiding officer approves, the board may hold an appeal on the record and the attendance of one or more parties will not be required.

[Statutory Authority: RCW 82.03.170. WSR 22-05-051, § 456-09-745, filed 2/9/22, effective 3/12/22; WSR 05-13-141, § 456-09-745, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-745, filed 5/2/89.]

WSR 22-23-092

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed November 15, 2022, 3:20 p.m., effective December 16, 2022]

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

Purpose: The department is amending WAC 458-20-22802 to align the language in subsection (2)(a) of the rule regarding when the department of revenue may waive the electronic filing and payment requirements with the statutory language in RCW 82.32.080 (2)(b) and (3)(b). The rule is also being amended to update the name of the department's electronic filing and payment system.

Citation of Rules Affected by this Order: Amending WAC 458-20-22802 Electronic filing and payment.

Statutory Authority for Adoption: RCW 82.32.085.

Adopted under notice filed as WSR 22-18-067 on September 1, 2022.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: November 15, 2022.

Atif Aziz
Rules Coordinator

OTS-4072.1

AMENDATORY SECTION (Amending WSR 16-06-040, filed 2/24/16, effective 3/26/16)

WAC 458-20-22802 Electronic filing and payment. (1) Introduction. The department of revenue (department) makes electronic filing (~~((also known as e-file))~~) My DOR and electronic payment available to taxpayers. The law requires (~~(certain)~~) all taxpayers to file and pay excise taxes electronically unless a specific waiver applies. RCW 82.32.080.

(a) Taxpayers (~~(who are)~~) required to electronically file and pay their excise taxes must register to use (~~(e-file)~~) My DOR. If they choose to pay using certain electronic payment methods, they must also (~~(furnish)~~) provide the department with the necessary banking information. (~~(Taxpayers who are not specifically required to file or pay taxes electronically are encouraged to voluntarily take advantage of e-file and pay electronically.)~~)

(b) Electronic filing and electronic payment are available for taxes reported on the combined excise tax return, which includes those

taxes administered by the department under chapter 82.32 RCW. For purposes of the taxes under chapter 82.32 RCW, unless the context clearly requires otherwise, the term "tax" is defined under RCW 82.32.020. Electronic filing and electronic payment are not ~~((available))~~ required for city and town taxes on financial institutions (chapter 82.14A RCW), cigarette tax (chapter 82.24 RCW), leasehold excise tax (chapter 82.29A RCW), and forest tax (chapter 84.33 RCW). Taxpayers not required to file or pay taxes electronically are encouraged to voluntarily use My DOR to file and pay electronically.

(2) **Electronic filing and electronic payment.** ~~((E-file))~~ My DOR is an internet-based application ~~((that provides))~~ providing a secure and encrypted method for taxpayers to file and pay Washington state's ~~((business-related))~~ excise taxes.

(a) All taxpayers are required to ~~((use e-file))~~ electronically file using My DOR and pay electronically unless the department waives the requirement for good cause ~~((, or the taxpayer has an assigned reporting frequency that is less than quarterly))~~.

(b) If good cause exists, the department may waive the ~~((e-file and/or))~~ electronic filing and payment requirements for any taxpayer. Waiver for "good cause" is generally temporary. Reasons for good cause include, but are not limited to the following:

(i) The taxpayer does not have the necessary equipment or software;

(ii) The equipment or software necessary is not functioning properly;

(iii) The taxpayer does not have access to the internet using the ~~((taxpayers own))~~ taxpayer's equipment;

(iv) The taxpayer does not have a bank account or credit card;

(v) The taxpayer's bank is unable to send or receive electronic funds transfer transactions; or

(vi) Some other circumstance or condition exists that, in the department's judgment, prevents the taxpayer from complying.

(3) **Electronic payments.** ~~((There are))~~ Taxpayers required to use My DOR to submit their tax return must also pay the associated taxes electronically. The department accepts two electronic payment methods: Electronic funds transfer (EFT) and credit card, as described in (a) and (b) of this subsection. ~~((Those taxpayers who are required to use e-file to submit their tax return must also pay the associated taxes electronically. For a))~~ Taxpayers ~~((who is))~~ required to pay electronically ~~((, electronic funds transfer (EFT) must be used,))~~ must use EFT or credit card unless the department authorizes some other type of electronic payment for ~~((that particular))~~ a specific taxpayer.

(a) **Payment by electronic funds transfer (EFT).** EFT is a method of transferring funds from a taxpayer's bank account into the department's bank account.

(i) **Definitions.** For ~~((the))~~ purposes of this rule, the following terms ~~((will))~~ apply:

(A) "Electronic funds transfer" or "EFT" means any transfer of funds, other than a transaction originated or accomplished by conventional check, drafts, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit a checking or other deposit account. Electronic funds transfer includes payments made by electronic check (e-check).

(B) "ACH" or "automated clearing house" means a central distribution and settlement system for the electronic clearing of debits and credits between financial institutions.

(C) "EFT debit" means the electronic transfer of funds, cleared through the ACH system (~~(that is)~~), generated by the taxpayer instructing the department's bank to charge the taxpayer's account and deposit the funds to the department's account. E-check is a singular payment transaction (~~(that functions)~~) functioning in the same manner as an EFT debit transaction.

(D) "EFT credit" means the electronic transfer of funds, cleared through the ACH system (~~(that is)~~), generated by the taxpayer instructing the taxpayer's bank to charge the taxpayer's account and deposit the funds to the department's account.

(E) "Department's bank" means the bank with which the department of revenue has a contract to assist in the receipt of taxes and includes any agents of the bank.

(F) "Collectible funds" means funds that have completed the electronic funds transfer process and are available for immediate use by the state.

(G) "ACH CCD+addenda" and "ACH CCD+record" mean the information in a required ACH format (~~(that needs to be)~~) transmitted to properly identify the payment.

(ii) **EFT methods.** Taxpayers paying by EFT must use the EFT debit, EFT credit, or e-check methods. In an emergency, the taxpayer should contact the department for alternative methods of payment.

(iii) **Form and content of EFT.** The form and content of EFT will be as follows:

(A) If (~~(the)~~) a taxpayer (~~(wishes to use)~~) uses EFT debit, (~~(the taxpayer)~~) they must furnish the department with the information needed to complete the transaction by registering for electronic funds transfer on the department's website.

(B) If (~~(the)~~) a taxpayer (~~(wishes to use)~~) uses EFT credit, (~~(the taxpayer is)~~) they are responsible for ensuring (~~(that its)~~) their bank has the information necessary (~~(in order)~~) to complete the payment. The payment must be submitted using the ACH CCD+addenda format. The EFT credit payment method requires the taxpayer to complete an EFT authorization form.

(C) If the taxpayer wishes to use e-check, they must enter their bank account and routing number for each payment transaction. The e-check transaction authorizes the department to withdraw the payment amount from the taxpayer's bank account.

(iv) **Due date of EFT payment.** The EFT payment is due on or before the next banking day following the tax return due date.

(A) An EFT payment made using the EFT debit or e-check method is timely if the payment is initiated on or before 11:59 p.m. Pacific Time on the tax return due date, and the effective date for that payment is on or before the next banking day following the tax return due date.

(B) An EFT payment made using the EFT credit method is timely when the state receives collectible U.S. funds on or before 5:00 p.m., Pacific Time, on the EFT payment due date.

(C) The ACH system, either EFT debit or EFT credit, requires (~~(that)~~) the necessary information be in the originating bank's possession on the banking day preceding the date for completion of the transaction. Each bank generally has its own transaction deadlines (~~(and)~~), but it is the responsibility of the taxpayer to ensure timely payment.

(D) The tax return due date is the next business day after the statutory due date if the statutory due date falls on a Saturday, Sunday, or legal holiday. Legal holidays are determined under state of Washington law and banking holidays are those recognized by the Federal Reserve System.

Example. The tax return due date is Friday, December 25th, a legal and banking holiday(~~(, which, for the example, falls on a Friday)~~). The next business day is Monday, December 28th, and this is the ~~((new))~~ holiday-adjusted tax return due date. This means EFT debit and e-check users must initiate their debit payment by 11:59 p.m., Pacific Time, on December 28th, with a payment effective date of Tuesday, December 29th, ~~((in order))~~ for the payment to be considered timely. EFT credit users must contact their bank to ensure funds are deposited in the department's bank no later than 5:00 p.m., Pacific Time, on Tuesday, December 29th, ~~((in order))~~ for the payment to be considered timely.

(b) **Payment by credit card.** Payment by credit card is available using American Express, Discover, Visa, or MasterCard. Taxpayers who wish to make their payment with one of these credit cards are directed to the website of a third-party, nonstate, vendor when they submit their electronic return. Taxpayers then provide their credit card number in the same manner as with any other credit card payment transaction. A credit card payment is considered timely if the payment is completed, including the time it takes to enter the required information on the credit card vendor's website, on or before 11:59 p.m., Pacific Time, on the tax return due date. Each credit card payment may be subject to a convenience fee charged by the third-party, nonstate, vendor.

(4) **Electronic refunds.** If ~~((the))~~ a taxpayer ~~((pays taxes on the combined excise tax return by EFT debit))~~ is due a refund, the taxpayer is entitled to a refund of those taxes by EFT. If the taxpayer wishes to have the refund made by EFT, the taxpayer must provide the department with the information necessary to make an appropriate EFT transaction or the refund will be issued as a paper check. No electronic adjustments or refunds are made directly to ~~((taxpayer))~~ a taxpayer's credit card ~~((accounts or on e-check transactions))~~. Overpayments of tax will either be retained to be credited to future tax liabilities or, at the taxpayer's request, will be refunded.

(5) **Coordinating a paper return and an electronic payment.** ~~((When a))~~ To file a paper return, the taxpayer must qualify for a waiver from electronically filing. If approved, and the taxpayer ~~((voluntarily))~~ uses the EFT credit payment method but files a paper return, the department will match the payment with the return. A paper return will be considered timely filed only if it is received by the department on or before the tax return due date and the taxpayer has been waived from the electronic filing and payment requirements. The associated EFT credit payment must be received by the next banking day after the tax return due date. If both events occur, the return and payment are considered timely, and the late payment penalty does not apply. If the return is sent through the U.S. Postal Service, it will be considered received on the date shown by the post office cancellation mark stamped on the envelope. RCW 82.32.080. ~~((If both events occur, there is timely filing and payment and no penalties apply.))~~

(6) **Crediting and proof of payment.** The department will credit the taxpayer with the amount paid as of the date the payment is received by the department's bank. The proof of payment by the taxpayer will depend on the means of transmission.

(a) EFT debit and e-check transactions may be proved by use of the confirmation number received from the department that the transaction was initiated and bank statements or other evidence from the bank that the transaction was settled.

(b) An EFT credit transaction is initiated by the taxpayer through the taxpayer's bank. The taxpayer is responsible for completion of the transaction. The taxpayer generally will be given a verification number by the taxpayer's bank. This verification number with proof of the ACH CCD+record showing the department's bank and account number, plus confirmation (~~that~~) the transaction has been settled will constitute proof of payment.

(c) A taxpayer using any other electronic payment method is responsible for completion of the transaction. Proof of payment will include transaction initiation date and any other evidence from a financial institution or credit card company (~~that~~) showing the transaction was settled.

(7) **Correcting errors.** Errors in the electronic payment process may result in either an underpayment or an overpayment of the tax. In either case, the taxpayer needs to contact the department to arrange for appropriate action. Overpayments may be used as a credit, or the taxpayer may apply for a refund. The department will expedite a refund where it is caused by an error in transmission. Underpayments should be corrected by the taxpayer immediately to avoid any penalties.

(8) **Penalties.** There are no special provisions for penalties when payment is made by electronic means. WAC 458-20-228 discusses the various penalties that may apply and the limited circumstances under which they may be waived. To avoid the imposition of penalties, the taxpayer must provide correct bank account information to the department, and ensure their payment is timely.

(a) If the department finds (~~that~~) a taxpayer disregarded specific written instructions to file returns or remit payments electronically, as provided by RCW 82.32.080, the department will add a penalty of (~~ten~~) 10 percent to the amount of the tax that should have been reported and/or paid electronically or the additional tax found due if there is a deficiency because of failure to follow written instructions.

(b) A taxpayer will be considered to have willfully disregarded the requirement to file returns or remit payment electronically if the department:

(i) Has mailed or otherwise delivered the specific written instructions to the taxpayer on at least two occasions; and

(ii) Has provided the taxpayer at least (~~forty-five~~) 45 days after the second written notice to come into compliance with its electronic filing and/or payment obligations. (~~WAC 458-20-228 discusses the various penalties that may apply and the limited circumstances under which they may be waived.~~)

(c) In an EFT debit and e-check transaction, the department's bank is the originating bank and is responsible for the accuracy of transmission. If the taxpayer has timely initiated the EFT debit or e-check transaction, provided accurate bank account information, received a confirmation number, and shows adequate funds were available in the account, no late payment penalties will apply with respect to those funds authorized.

(d) In an EFT credit transaction, the taxpayer's bank is the originating bank, and the taxpayer is primarily responsible for its accuracy. The taxpayer must have timely initiated the transaction, provided the correct information for the ACH CCD+record, and shown

~~((that))~~ there were sufficient funds in the account, ~~((in order))~~ to prove timely compliance. If the taxpayer can make this showing, then no late payment penalties will apply with respect to those funds authorized if the transaction is not completed.

(e) When a payment is made using an approved credit card, the credit card company acts as the taxpayer's agent and the taxpayer is primarily responsible for the accuracy of this transaction. If the taxpayer can prove the payment was initiated and submitted timely, no late payment penalties will apply to those funds authorized.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 16-06-040, § 458-20-22802, filed 2/24/16, effective 3/26/16. Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.32.080, and 82.32.085. WSR 13-22-047, § 458-20-22802, filed 11/1/13, effective 12/2/13. Statutory Authority: RCW 82.32.085, 82.32.300, and 82.01.060(2). WSR 06-23-066, § 458-20-22802, filed 11/9/06, effective 12/10/06. Statutory Authority: RCW 82.32.300 and 82.32.085. WSR 01-07-017, § 458-20-22802, filed 3/13/01, effective 4/13/01. Statutory Authority: RCW 82.32.300. WSR 91-24-070, § 458-20-22802, filed 12/2/91, effective 1/2/92; WSR 90-19-052, § 458-20-22802, filed 9/14/90, effective 10/15/90.]

WSR 22-23-094
PERMANENT RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed November 15, 2022, 3:46 p.m., effective December 16, 2022]

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

Purpose: Expand the number of family, friends, and neighbors (FFN) who may participate in the working connections child care program by allowing the department to waive compliance of specific rules for FFN providers. The rules explain the conditions under which the department may waive compliance and clarify review and hearing rights for denied waiver requests.

Citation of Rules Affected by this Order: New WAC 110-16-0045; and amending WAC 110-16-0005.

Statutory Authority for Adoption: 42 U.S.C. 9858; and RCW 43.216.055 and 43.216.065.

Adopted under notice filed as WSR 22-20-110 on October 5, 2022.

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

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

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

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

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

Date Adopted: November 15, 2022.

Brenda Villarreal
Rules Coordinator

OTS-4033.2

AMENDATORY SECTION (Amending WSR 21-15-022, filed 7/12/21, effective 8/12/21)

WAC 110-16-0005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

((1)) **"Benefit"** means a regular payment made by a government agency on behalf of a person eligible to receive it.

((2)) **"Child"** or **"children,"** except when otherwise specified, means a child or children eligible for WCCC benefits under chapter 110-15 WAC.

((3)) **"Days"** means calendar days unless otherwise specified.

((4)) **"Department"** or **"DCYF"** means the department of children, youth, and families.

((5)) **"In-home/relative provider"** or **"family, friends, and neighbors (FFN) provider"** means an individual who is exempt from child

care licensing requirements and is approved for WCCC payments under WAC 110-15-0125. Reference in this chapter to the term "provider" means an in-home/relative or FFN provider, except when otherwise specified.

((+6)) **"In loco parentis"** means the adult caring for a child eligible for WCCC in the absence of the biological adoptive, or step-parents, and who is not a relative, court-ordered guardian, or custodian, and who is responsible for exercising day-to-day care and control of the child.

((+7)) **"Infant"** is a child birth through ~~((eleven))~~ 11 months of age.

((+8)) **"Lockdown"** or **"shelter-in-place"** means to remain inside the home when police or an official emergency response agency notifies a provider that it is unsafe to leave or be outdoors during an emergency situation.

((+9)) **"Parent"** means, for the purposes of this chapter, the "in loco parentis" or the biological, adoptive, or step-parent, court-ordered guardian, or custodian eligible for WCCC benefits under this chapter.

((+10)) **"State plan"** means the DCYF child care and development fund plan submitted by DCYF that must be approved by the United States Department of Health and Human Services.

"Subsidy payment begin date" means the first day a provider is authorized to start billing for care provided to eligible children.

((+11)) **"Supervise"** or **"supervision"** means a provider must be able to see or hear the children they are responsible for at all times. Providers must use their knowledge of each child's development and behavior to anticipate what may occur to prevent unsafe or unhealthy events or conduct, or to intervene in such circumstances as soon as possible. Providers must also reposition themselves or the children to be aware of where children are and what they are doing during care. Providers must reassess and adjust their supervision each time child care activities change.

((+12)) **"Swimming pool"** means a pool that has a water depth greater than two feet.

((+13)) **"Technical assistance"** means the provision of customized supports to develop or strengthen processes, knowledge application, or implementation of services by providers.

((+14)) **"Toddler"** means a child ~~((twelve))~~ 12 months through ~~((twenty-nine))~~ 29 months of age.

((+15)) **"Wading pool"** means a pool that has a water depth of less than two feet. A portable wading pool is one that is formed of molded plastic or inflatable parts and can be removed after use.

((+16)) **"Waiver"** is an official approval by the department allowing an FFN provider not to meet or satisfy a rule in this chapter due to specific needs of a child who is in the FFN provider's care.

"Water activities" refers to the activities in which children in care swim or play in a body of water that poses a risk of drowning for children.

((+17)) **"WCCC"** means the working connections child care program, a child care subsidy program available to eligible families to help pay for child care.

[Statutory Authority: RCW 43.216.055, 43.216.065 and chapter 43.216 RCW. WSR 21-15-022, § 110-16-0005, filed 7/12/21, effective 8/12/21. Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW

and 42 U.S.C. 9858 et seq. WSR 18-20-081, § 110-16-0005, filed 10/1/18, effective 11/1/18.]

NEW SECTION

WAC 110-16-0045 Waiver from department rules—WAC. (1) The department may grant a request for a waiver if the proposed waiver provides clear and convincing evidence that the health, welfare, and safety of all WCCC eligible children in their care is not jeopardized.

(2) The department cannot waive the following:

(a) Requirements described in a federal statute.

(b) Requirements described in a Washington state statute.

(c) State and federal regulations and policies that must be followed by FFN participants and that are referenced in the state plan. If authorized by the state plan, such requirements, regulations, and policies may be waived by DCYF.

(d) Requirements described in a state rule or regulation that is not codified in Title 110 WAC.

(3) The department may approve a waiver from a rule in this chapter if:

(a) The waiver does not jeopardize the health, safety, and welfare of the WCCC-eligible children in care; and

(b) The waiver is not in conflict with the requirements described in subsection (2) of this section.

(4) An FFN provider's request for a waiver from a rule in this chapter must be:

(a) Submitted in writing on the department's form to the department's license exempt team;

(b) Approved in writing by the department secretary or the secretary's designee prior to the FFN provider implementing the waiver from the rule; and

(c) For a specific FFN provider need or WCCC-eligible child.

(5) A granted waiver may be time specific or may remain in effect for as long as the FFN provider continues to comply with the conditions of the waiver. If the waiver from the rule is time limited, the FFN provider must not exceed the time frame established by the department.

(6) The department may revoke a granted waiver if a rule in this chapter was considered in granting the waiver and the rule is materially altered or amended.

(7) An FFN provider does not have the right to appeal the department's disapproval of a waiver request to the office of administrative hearings under chapter 110-03 WAC (Administrative hearings). An FFN provider may request a management review of the disapproval using a department-provided form.

[]

WSR 22-23-101
PERMANENT RULES
PUBLIC EMPLOYMENT
RELATIONS COMMISSION

[Filed November 16, 2022, 10:03 a.m., effective January 1, 2023]

Effective Date of Rule: January 1, 2023.

Purpose: Revision of rules that govern agency practice and procedures in all types of cases, including representation cases, unit clarification cases, unfair labor practice cases, impasse resolution cases, grievance arbitration cases, and grievance mediation cases as well as public records requests. Agency rules need revision to streamline agency procedures to reflect changes in practice to add greater efficiencies and to reflect changes of agency practice based upon recent agency case law. Rules are also needed to implement chapter 13, Laws of 2021 (SB 5055), which requires the agency to maintain a law enforcement disciplinary grievance arbitration roster.

Citation of Rules Affected by this Order: New: WAC 391-08-008, 391-08-155, 391-15-001, 391-15-010, 391-15-020, 391-15-030, 391-15-040, 391-15-050, 391-15-060, 391-15-070, 391-15-080, 391-15-090, 391-25-080, 391-25-215, 391-25-400, 391-55-211, 391-55-321, 391-55-365, 391-75-001, 391-75-010, 391-75-020, 391-75-040, 391-75-050, 391-75-060, 391-75-070 and 391-75-080; repealing WAC 391-08-190, 391-08-630, 391-08-800, 391-08-810, 391-08-820, 391-08-830, 391-08-840, 391-08-850, 391-08-860, 391-08-870, 391-08-880, 391-25-002, 391-25-012, 391-25-032, 391-25-034, 391-25-036, 391-25-037, 391-25-051, 391-25-092, 391-25-136, 391-25-137, 391-25-197, 391-25-217, 391-25-229, 391-25-230, 391-25-250, 391-25-252, 391-25-253, 391-25-391, 391-25-396, 391-25-399, 391-25-410, 391-25-412, 391-25-413, 391-25-416, 391-25-426, 391-25-427, 391-25-436, 391-25-440, 391-25-486, 391-25-531, 391-25-674, 391-35-002, 391-35-026, 391-35-099, 391-35-254, 391-35-300, 391-35-301, 391-35-326, 391-35-327, 391-35-342, 391-35-343, 391-35-344, 391-35-346, 391-35-347, 391-45-002, 391-45-019, 391-45-394, 391-45-552, 391-55-002, 391-55-071, 391-55-0715, 391-55-072, 391-55-110, 391-55-120, 391-55-130, 391-55-150, 391-55-201, 391-55-202, 391-65-002, 391-65-075 and 391-65-130; and amending WAC 391-08-001, 391-08-003, 391-08-007, 391-08-010, 391-08-020, 391-08-030, 391-08-040, 391-08-100, 391-08-120, 391-08-180, 391-08-300, 391-08-310, 391-08-315, 391-08-520, 391-08-610, 391-08-640, 391-08-650, 391-08-670, 391-25-001, 391-25-010, 391-25-030, 391-25-050, 391-25-070, 391-25-090, 391-25-110, 391-25-130, 391-25-140, 391-25-150, 391-25-170, 391-25-190, 391-25-210, 391-25-220, 391-25-270, 391-25-290, 391-25-299, 391-25-310, 391-25-350, 391-25-370, 391-25-390, 391-25-420, 391-25-430, 391-25-450, 391-25-480, 391-25-510, 391-25-530, 391-25-550, 391-25-570, 391-25-590, 391-25-610, 391-25-630, 391-25-650, 391-25-660, 391-25-670, 391-35-001, 391-25-010, 391-35-020, 391-35-030, 391-35-050, 391-35-070, 391-35-085, 391-35-090, 391-35-110, 391-35-130, 391-35-170, 391-35-190, 391-35-210, 391-35-250, 391-35-310, 391-35-320, 391-35-340, 391-45-001, 391-45-010, 391-45-030, 391-45-050, 391-45-070, 391-45-090, 391-45-110, 391-45-130, 391-45-170, 391-45-190, 391-45-210, 391-45-250, 391-45-260, 391-45-270, 391-45-290, 391-45-310, 391-45-330, 391-45-350, 391-45-390, 391-45-410, 391-45-430, 391-45-550, 391-55-001, 391-55-010, 391-55-020, 391-55-030, 391-55-032, 391-55-050,

391-55-070, 391-55-090, 391-55-200, 391-55-205, 391-55-210, 391-55-215, 391-55-220, 391-55-225, 391-55-230, 391-55-235, 391-55-240, 391-55-245, 391-55-255, 391-55-265, 391-55-300, 391-55-310, 391-55-315, 391-55-320, 391-55-325, 391-55-330, 391-55-335, 391-55-340, 391-55-345, 391-55-350, 391-55-355, 391-65-001, 391-65-010, 391-65-030, 391-65-050, 391-65-070, 391-65-090, 391-65-110, and 391-65-150.

Statutory Authority for Adoption: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, 49.39.060.

Adopted under notice filed as WSR 22-17-165 on August 24, 2022.

Changes Other than Editing from Proposed to Adopted Version: The commission declined to adopt staff's recommendation to repeal WAC 391-25-096 and 391-35-356. The language of WAC 391-45-050 (1)(c) was amended to make clear that an unfair labor practice complaint must include only the job titles of the positions impacted by the alleged unfair labor practice. A technical correction was made to WAC 391-55-210(3) and 391-55-211 (1)(c) by removing the reference to "RCW 41.56.450" and inserting "the applicable statute," as this rule operates under multiple statutes.

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 3, Repealed 3.

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 25, Amended 128, Repealed 69.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 26, Amended 131, Repealed 72.

Number of Sections Adopted using Negotiated Rule Making: New 26, Amended 131, Repealed 72; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 8, 2022.

Dario de la Rosa
Rules Coordinator

OTS-3723.1

AMENDATORY SECTION (Amending WSR 12-05-066, filed 2/15/12, effective 3/17/12)

WAC 391-08-001 Application and scope ((of chapter 391-08 WAC)).

((Chapter 391-08 WAC has been added to the Washington Administrative Code by the public employment relations commission pursuant to the authority of section 12, chapter 288, Laws of 1975 1st ex. sess. (RCW 41.59.110); sections 7, 14 and 20, chapter 296, Laws of 1975 1st ex. sess. (RCW 41.58.050, 28B.52.080 and 41.56.090, respectively); and section 232, chapter 354, Laws of 2002 (RCW 41.06.340); section 15, chapter 356, Laws of 2002 (RCW 41.76.060); section 7, chapter 6, Laws of 2010 (RCW 49.39.060); and section 16, chapter 16 (2ESSB 5742), Laws of 2011 1st sp. sess., to promulgate)) The purpose of chapter 391-08

WAC is to provide comprehensive and uniform rules ((for)) of practice and procedure before the agency. This chapter sets forth general rules applicable to all types of proceedings before the agency (~~, and should be read in conjunction with the provisions of:~~

~~(1) Chapter 10-08 WAC, which contains the model rules of procedure promulgated by the chief administrative law judge to regulate adjudicative proceedings under chapters 391-25, 391-35, 391-45 and 391-95 WAC, except:~~

~~(a) WAC 10-08-035, which is replaced by detailed requirements in WAC 391-25-070, 391-25-090, 391-35-050, 391-45-050, and 391-95-110;~~

~~(b) WAC 10-08-050, which relates to office of administrative hearings procedures inapplicable to proceedings before the public employment relations commission;~~

~~(c) WAC 10-08-083, which is replaced by detailed requirements in WAC 391-08-010;~~

~~(d) WAC 10-08-110, which is replaced by detailed requirements in WAC 391-08-120;~~

~~(e) WAC 10-08-120, which is replaced by detailed requirements in WAC 391-08-040, 391-08-300 and 391-08-310;~~

~~(f) WAC 10-08-140, which is limited by WAC 391-08-040, 391-08-300 and 391-08-310;~~

~~(g) WAC 10-08-150, which is limited by WAC 391-08-315;~~

~~(h) WAC 10-08-211, which is replaced by WAC 391-08-640 and detailed requirements in WAC 391-25-390, 391-25-391, 391-25-590, 391-25-630, 391-25-650, 391-25-660, 391-25-670, 391-35-210, 391-35-250, 391-45-350, 391-45-390, 391-95-270, and 391-95-290;~~

~~(i) WAC 10-08-230, which is replaced by detailed requirements in WAC 391-25-150, 391-25-220, 391-25-230, 391-25-250, 391-25-270, 391-35-070, 391-35-080, 391-45-070, 391-45-090, 391-45-260, and 391-95-170; and~~

~~(j) WAC 10-08-250, 10-08-251, and 10-08-252 which are replaced by detailed requirements in WAC 391-08-520.~~

~~(2) Chapter 391-25 WAC, which regulates representation proceedings.~~

~~(3) Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.~~

~~(4) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.~~

~~(5) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.~~

~~(6) Chapter 391-65 WAC, which regulates grievance arbitration and grievance mediation proceedings.~~

~~(7) Chapter 391-95 WAC, which regulates union security nonassociation proceedings)). To the extent these rules of practice and procedure differ from the model rules adopted by the chief administrative law judge under RCW 34.05.250 and found in chapter 10-08 WAC, these rules prevail.~~

~~((In the event of a conflict)) If a conflict arises between a general rule in this chapter and a special rule in another chapter applicable to a particular proceeding, the special rule ((shall)) governs.~~

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-001, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, and 49.39.060. WSR

10-20-172, § 391-08-001, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-08-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-08-001, filed 6/22/01, effective 8/1/01; WSR 00-14-048, § 391-08-001, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-08-001, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-08-001, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-001, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-001, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-045 (Order 80-4), § 391-08-001, filed 9/30/80, effective 11/1/80; Order 77-1, § 391-08-001, filed 1/27/77.]

AMENDATORY SECTION (Amending WSR 90-06-070, filed 3/7/90, effective 4/7/90)

WAC 391-08-003 Policy—Construction—Waiver. The policy of the state being primarily to promote peace in labor relations, these rules and all other rules adopted by the (~~agency shall be~~) commission are liberally construed to effectuate the purposes and provisions of the statutes administered by the agency(~~, and~~). Nothing in any rule (~~shall be construed to~~) prevents the (~~commission and its authorized agents~~) agency from using (~~their~~) its best efforts to adjust any labor dispute. The (~~commission and its authorized agents~~) agency may waive any requirement of the rules unless a party shows that it would be prejudiced by (~~such~~) a waiver.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.58.005(1). WSR 90-06-070, § 391-08-003, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-003, filed 1/27/77.]

AMENDATORY SECTION (Amending WSR 12-05-066, filed 2/15/12, effective 3/17/12)

WAC 391-08-007 Definitions. As used in Title 391 WAC:

- (1) "Agency" means the public employment relations commission, its officers, and its agents;
- (2) "Commission" means the commissioners of the public employment relations commission appointed by the governor;
- (3) "Executive director" means the officer of that title appointed by the commission (~~pursuant to~~) under RCW 41.58.015(2);
- (4) "Labor dispute" means any controversy concerning terms or conditions of employment(~~, or~~) or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(5) (~~"Marine employees' commission" means the marine employees' commission appointed under section 16, chapter 16 (2ESSB 5742), Laws of 2011 1st sp. sess.~~

~~(6)) "Presiding officer" means an agency official((+s)), examiner, or hearing officer ((or other person authorized to act on behalf of the agency)).~~

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-007, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-007, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-007, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-045 (Order 80-4), § 391-08-007, filed 9/30/80, effective 11/1/80; Order 77-1, § 391-08-007, filed 1/27/77.]

NEW SECTION

WAC 391-08-008 Agency structure. (1) The agency maintains an impartial role in all proceedings pending before it.

(2) The commission consists of three citizen members appointed by the governor with the advice and consent of the senate under RCW 41.58.010. Commission members serve on a part-time basis only. All commission members represent the interests of the public. The commission reserves to itself a policy-making and appellate function.

(3) The executive director appointed by the commission under RCW 41.58.015(2) is the full-time agency head with authority to act in administrative and personnel matters. Authority is also delegated to the executive director to make substantive decisions in certain types of cases.

(4) The agency's staff is appointed under RCW 41.58.015(3). Individual members of the agency's staff are assigned to conduct any or all of the types of dispute resolution services provided by the agency.

[]

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-08-010 (~~(Appearance and practice before agency)~~) Who may appear before the agency—Notice of appearance. (1) (~~(No person)~~) Any of the following may appear in a representative capacity before the agency (~~(other than the following:~~

~~(a) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington;~~

~~(b) Attorneys at law duly qualified and entitled to practice before the highest court of record of any other state, if the attorneys at law of the state of Washington are permitted to appear in a repre-~~

~~representative capacity before administrative agencies of such other state, and if not otherwise prohibited by our state law;~~

~~(e)) (a) A bona fide officer, employee, or other authorized representative of ((+)) (i) any employer subject to the jurisdiction of the agency((,)) or (ii) any ((labor or)) employee organization((,));~~
or

~~((iii)) (b) An individual or their authorized representative.~~

(2) Except where the information is already listed in the agency's docket records for the particular case, a person appearing in a representative capacity shall file and serve a notice of appearance listing the representative's name, email address, mailing address, and telephone number ~~((, fax number, and email address)).~~

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-058, § 391-08-010, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 00-14-048, § 391-08-010, filed 6/30/00, effective 8/1/00. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-010, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-010, filed 1/27/77.]

AMENDATORY SECTION (Amending WSR 90-06-070, filed 3/7/90, effective 4/7/90)

WAC 391-08-020 Appearance and practice before agency—Standards of conduct. ~~Misconduct at any hearing conducted by the ((commission or a member of its staff shall be)) agency is grounds for ((summary)) suspension or exclusion from ((the hearing. Misconduct of an aggravated character, when engaged in by an attorney or other person acting in a representative capacity pursuant to WAC 391-08-010, shall be ground for suspension or disbarment by the commission)) appearing before the agency after due notice and hearing.~~

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-020, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-020, filed 1/27/77.]

AMENDATORY SECTION (Amending WSR 96-07-105, filed 3/20/96, effective 4/20/96)

WAC 391-08-030 Appearance and practice before agency—((Appearance by)) Former employee of agency or former member of attorney general's staff as representative. ~~((No)) A former member of the commission, former employee of the agency, or former member of the attorney general's staff assigned to represent the agency ((shall)) may not, at any time after severing ((his or her)) employment with the agency or with the attorney general, appear in a representative capacity on behalf of any party in connection with any case or proceeding in which ((was pending before the agency)) that person participated personally~~

or substantially during the time of (~~his or her~~) employment with the agency or attorney general.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 96-07-105, § 391-08-030, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-030, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-030, filed 1/27/77.]

AMENDATORY SECTION (Amending WSR 96-07-105, filed 3/20/96, effective 4/20/96)

WAC 391-08-040 Appearance and practice before agency—Former employee or former member of attorney general's staff as witness. Except upon the express written consent of the (~~commission, no~~) agency, a former member of the commission, former employee of the agency, or former member of the attorney general's staff assigned to represent the agency (~~shall~~) may not, at any time after severing (~~his or her~~) employment with the agency or with the attorney general, appear as a witness on behalf of any party in connection with any case or proceeding in which (~~was pending before the agency~~) that person participated personally or substantially during the time of (~~his or her~~) employment with the agency or attorney general.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 96-07-105, § 391-08-040, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-040, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-040, filed 1/27/77.]

AMENDATORY SECTION (Amending WSR 98-14-112, filed 7/1/98, effective 8/1/98)

WAC 391-08-100 Computation of time. In computing any period of time prescribed or allowed by any applicable statute or rule, the day of the act, event, or default after which the designated period of time begins to run is not (~~to be~~) included. The last day of the period so computed is (~~to be~~) included, unless it is a Saturday, Sunday, or (~~a~~) legal holiday, in which event the period runs until the end of the next day (~~which~~) that is (~~neither~~) not a Saturday, Sunday (~~nor a~~), or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays (~~shall be~~) are excluded (~~in~~) from the computation.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 98-14-112, § 391-08-100, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-100, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110

and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-100, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-100, filed 1/27/77.]

AMENDATORY SECTION (Amending WSR 16-05-033, filed 2/9/16, effective 3/11/16)

WAC 391-08-120 Filing and service of ((papers)) documents. (1)

~~((Documents filed with the agency shall be filed at the Olympia office.))~~ The agency will post on its website at www.perc.wa.gov information ~~((containing the street address for filing by personal delivery, the mailing addresses for filing by mail, the telephone number for filing by fax transmission, and the email address or other method to be used for electronic filing))~~ for filing using the agency's e-filing system, the email address for filing by email, the mailing address for filing by mail, and the street address for filing by personal delivery.

(2) Documents may be filed with the agency by one of the following methods:

(a) ~~((In person.))~~ E-filing on the agency's website at www.perc.wa.gov;

(b) ~~((By))~~ Email to filing@perc.wa.gov;

(c) First class, registered, or certified mail ~~((-~~

~~e-By))~~ to the agency's Olympia mailing address;

(d) Commercial parcel delivery ~~((company-~~

~~d) Electronically by email, fax transmission, or))~~ to the agency's Olympia office;

(e) Hand delivery to the agency's Olympia office; or

(f) Other methods posted ((by)) on the agency website at www.perc.wa.gov.

(3) Documents filed with the agency ~~((shall))~~ must be served ~~((upon))~~ on all parties on the same day the documents are filed. Service ~~((shall))~~ must be upon counsel and representatives of record, or upon unrepresented parties or upon their agents designated by them or by law.

(4) Unless otherwise ordered by the agency in a particular proceeding, filing and service is complete upon one or a combination of the following methods:

(a) ~~((Hand delivery.))~~ E-filing. Filing is complete when a legible copy of the document is successfully uploaded to the e-filing system. Service is complete upon receipt of the entire electronic transmission by the recipient. The metadata created by the successful transmission of the email will serve as the record of the time of service.

(b) Email. Filing or service is complete upon receipt of the entire electronic transmission by the recipient. The metadata created by the successful transmission of the email will serve as the record of the time of filing or service.

(c) Depositing the ((documents, properly)) document(s) correctly addressed and postage paid, in the U.S. mail.

~~((e))~~ (d) Acceptance of the ((documents)) document(s) for delivery by a commercial parcel delivery company.

~~((d) Receipt of entire fax transmission by the recipient and receipt by the sending party of confirmation of receipt of the fax transmission. If receipt of a fax commences after office hours, the~~

paper will be deemed filed on the next business day the office is open.

~~(e) Receipt of the entire electronic transmission by the recipient. The metadata created by the successful transmission of the email or electronic filing constitutes the time of service. If an electronic filing is received by the agency after office hours, the documents will be deemed filed on the next business day the office is open.~~

~~(5-))~~ (e) Hand delivery.

(5) A document uploaded to the agency's e-filing system or an email received by the agency after 5:00 p.m. is considered filed on the following business day.

(6) On the same day that filing and service of documents is completed under subsection (3) of this section, the person who completed service ((shall)) must take one of the following actions:

(a) Obtain ((an acknowledgment of service from the person who accepted personal service)) the confirmation of filing and service upon the recipient(s) generated by the agency's e-filing system under subsection (4) (a) of this section((; or)).

(b) Make a certificate stating that the person signing the certificate completed service of the ((papers)) document(s) by:

(i) ((Personally delivering a copy under subsection (4) (a-)) Electronically transmitting a copy under subsection (4) (b) of this section; ((or))

(ii) Mailing a copy under subsection (4) ((-b-)) (c) of this section; ((or))

(iii) Depositing a copy ((under subsection (4) (e) of this section)) with a commercial parcel delivery company named in the certificate under subsection (4) (d) of this section; or

(iv) ((Electronically transmitting the documents under subsection (4) (d) or (e-)) Personally delivering a copy under subsection (4) (e) of this section.

((-6-)) (c) Obtain an acknowledgment of service from the person who accepted personal service under subsection (4) (e) of this section.

(7) Where the sufficiency of service is contested, ((an acknowledgment of service obtained under subsection (5) (a) of this section or)) a confirmation of filing obtained under subsection (6) (a) of this section, a certificate of service made under subsection ((-5-)) (6) (b) of this section ((shall)), or an acknowledgment of service obtained under subsection (6) (c) of this section constitutes proof of service.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.280(2), 49.39.060. WSR 16-05-033, § 391-08-120, filed 2/9/16, effective 3/11/16. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.010 (6) and (19). WSR 00-14-048, § 391-08-120, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-08-120, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.010 (6) and (18). WSR 96-07-105, § 391-08-120, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-120, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-053 (Order 88-01), § 391-08-120, filed 5/31/88. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-120, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-120, filed 1/27/77.]

NEW SECTION

WAC 391-08-155 Adjudicative proceedings—Dispositive prehearing motions. Unless controlled by WAC 391-08-180, 391-25-170, 391-25-190, 391-45-070, 391-45-210, or 391-45-250, all prehearing motions must be made in writing and filed and served on all parties of record in accordance with WAC 391-08-120.

(1) When a hearing date(s) has not been established, dispositive prehearing motions may be filed at any time after the answer has been filed. The presiding officer shall establish a schedule for any non-moving party to respond to the motion and for the moving party to file a brief in reply to the response(s).

(2) If a hearing date(s) has been established, all dispositive prehearing motions must be filed with the presiding officer at least 65 days before the first hearing date, unless the presiding officer deems the time frame waivable for good cause shown.

(a) When a dispositive prehearing motion is filed, any nonmoving party may file and serve a response to the motion within 21 days from the date on which the motion was filed.

(b) When a response to the dispositive prehearing motion is filed, the moving party may file and serve a reply to the response within seven days from the date on which the response was filed.

(c) The presiding officer must rule on or respond to the motion at least 21 days before the first hearing date.

(3) All motions must state the relief sought, the specific basis for the request, and the supporting legal authorities. Motions may be accompanied by other supporting materials, such as affidavits.

[]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-08-180 Continuances. (1) Postponements, continuances, extensions of time, and adjournments may be ordered (~~by the presiding officer on his or her~~) on the presiding officer's own motion or may be granted on the timely request of any party, with notice to all other parties, if the party shows good cause.

(2) A request for a continuance may be oral or written. The party seeking the continuance shall notify all other parties of the request. The request for a continuance (~~shall~~) must state whether or not all other parties agree to the continuance.

If all parties do not agree to the continuance, the presiding officer shall promptly schedule a prehearing conference or request written submissions to receive argument and to rule on the request.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 00-14-048, § 391-08-180, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-08-180, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-08-180, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-180, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR

83-24-031 (Order 83-01), § 391-08-180, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-045 (Order 80-4), § 391-08-180, filed 9/30/80, effective 11/1/80; Order 77-1, § 391-08-180, filed 1/27/77.]

AMENDATORY SECTION (Amending WSR 98-14-112, filed 7/1/98, effective 8/1/98)

WAC 391-08-300 ((Subpoenas)) Discovery. ~~((The power of subpoena shall be limited to compelling the testimony of witnesses and production of documents or other tangible evidence at hearings conducted by the agency.~~

Pursuant to)) Under the authority delegated to the agency by RCW 34.05.446(2), ~~((other forms of))~~ prehearing discovery ~~((shall not be))~~ is not available in proceedings before the agency.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.446. WSR 98-14-112, § 391-08-300, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150. WSR 90-06-070, § 391-08-300, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-300, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-300, filed 1/27/77.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-08-310 Subpoenas—Form—Issuance to parties. The power of subpoena is limited to compelling the testimony of witnesses and production of documents or other tangible evidence at hearings conducted by the agency.

(1) Every subpoena ~~((shall))~~ must:

(a) State the name of the agency as ~~((+))~~ state of Washington, public employment relations commission;

(b) State the title of the proceeding and case number; and

(c) Identify the party causing issuance of the subpoena.

(2) Every subpoena shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under ~~((his or her))~~ that person's control at the time and place set for the hearing ~~((, except no subpoena shall))~~. No subpoena shall be issued or given effect to require the attendance and testimony of, or the production of evidence by, ~~((any))~~ a member of the commission or ~~((any member of the))~~ agency staff in any proceeding before the agency.

(3) Upon a showing of general relevance and reasonable scope of the testimony or evidence sought, subpoenas may be issued by the commission or ~~((its))~~ a presiding officer:

(a) On the request of counsel or other representative ~~((authorized to practice before the agency))~~; or

(b) On the request of a party not represented by counsel or other representative (~~(authorized to practice before the agency, but may then be conditioned upon a showing of general relevance and reasonable scope of the testimony or evidence sought)~~).

(4) Subpoenas may be issued by attorneys under the authority conferred upon them by RCW 34.05.446(1).

(5) A subpoena may be served by any suitable person over (~~(eighteen)~~) 18 years of age (~~(7)~~) by exhibiting and reading it to the witness, (~~(or)~~) by giving (~~(him or her)~~) the witness a copy of the subpoena, or by leaving a copy of the subpoena at (~~(the place of his or her)~~) the witness's abode or usual dwelling place. When service is made by any person other than an officer authorized to serve process, proof of service (~~(shall)~~) must be made by affidavit or declaration under penalty of perjury.

(6) The party (~~(which)~~) that issues or requests issuance of a subpoena shall pay the fees and allowances and the cost of producing records required to be produced by subpoena.

(a) Witness fees, mileage, and allowances for meals and lodging (~~(shall)~~) must be at the rates and terms allowed by the superior court for (~~(Thurston County)~~) the county the witness is in when the hearing occurs.

(b) Witnesses (~~(shall be)~~) are entitled to payment in advance for their fees for one day's attendance, together with mileage for traveling to and returning from the place where they are required to attend, if their demand for payment is made to the officer or person serving the subpoena at the time of service.

(7) The presiding officer, upon motion made at or before the time specified in the subpoena (~~(for compliance therewith)~~), may:

(a) Quash or modify the subpoena if it is unreasonable or oppressive; or

(b) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, (~~(papers,)~~) documents, or (~~(tangible)~~) things.

(8) Subpoenas (~~(shall)~~) may be enforced as provided in RCW 34.05.588(1).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 2.40.010, 5.56.010 and 34.05.446. WSR 00-14-048, § 391-08-310, filed 6/30/00, effective 8/1/00; WSR 99-14-060, § 391-08-310, filed 7/1/99, effective 8/1/99; WSR 98-14-112, § 391-08-310, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150. WSR 90-06-070, § 391-08-310, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-310, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-310, filed 1/27/77.]

AMENDATORY SECTION (Amending WSR 98-14-112, filed 7/1/98, effective 8/1/98)

WAC 391-08-315 Interpreters. (1) For all adjudicative proceedings under the Administrative Procedure Act (cases under chapters 391-25, 391-35, and 391-45 (~~(and 391-95)~~) WAC), the provisions of WAC 10-08-150 (~~(as now or hereafter amended shall)~~) apply.

(2) For all cases that are not adjudicative proceedings under the Administrative Procedure Act (cases under chapters 391-55 and 391-65 WAC), the provisions of WAC 10-08-150 (~~(as now or hereafter amended shall)~~) apply, except that all interpreter fees and expenses (~~(shall)~~) must be paid by the party (~~(which)~~) that requests the participation of an impaired person as defined in chapter 2.42 RCW or a non-English-speaking person as defined in chapter 2.43 RCW.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 2.42.120 and 2.43.030. WSR 98-14-112, § 391-08-315, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100, 41.59.150 and chapter 2.42 RCW. WSR 90-06-070, § 391-08-315, filed 3/7/90, effective 4/7/90.]

AMENDATORY SECTION (Amending WSR 12-05-066, filed 2/15/12, effective 3/17/12)

WAC 391-08-520 Declaratory orders. Any person may petition the commission for a declaratory order(~~(r)~~) under RCW 34.05.240(~~(r)~~) with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the (~~(commission)~~) agency. For purposes of this section, the term person includes natural persons, employee organizations, and employers.

(1) A petition for a declaratory order (~~(shall)~~) must generally adhere to the following form:

(a) At the top of the page (~~(shall)~~) must appear the wording "Before the Public Employment Relations Commission," a caption setting out "In the Matter of the Petition of (name of petitioner to be inserted) for a Declaratory Order," and the title "Petition."

(b) The body of the petition (~~(shall)~~) must set out, in numbered paragraphs:

(i) The name, email address, and mailing address of the petitioner and (~~(the name and address, if any,)~~) of the petitioner's representative (~~(appearing on behalf of the petitioner.)~~), if any;

(ii) The name(s), email address(es), and mailing address(es) of any other party (~~(which)~~) that the petitioner seeks to have bound by any declaratory order issued by the commission, and the name(s), email address(es), and mailing address(es) of (~~(their)~~) those parties' representatives, if known(~~(-)~~);

(iii) The rule(s), order(s), or statute(s) from which the controversy arises(~~(-)~~);

(iv) The facts (~~(which)~~) that the petitioner wishes the commission to consider (~~(in issuing a declaratory order.)~~);

(v) The issues (~~(which)~~) that the petitioner wishes the commission to address (~~(in its order.)~~);

(vi) The relief requested by the petitioner(~~(-)~~); and

(vii) The reasons on which the petitioner relies to show that(~~(-)~~) uncertainty necessitating resolution exists; there is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion; the uncertainty adversely affects the petitioner; and the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested.

(c) The petition (~~((shall))~~) must be filed (~~((at the commission's Olympia office))~~) and served as required by WAC 391-08-120(~~((1)),~~ and copies shall be served on other parties named in the petition as required by WAC 391-08-120(~~(3) and (4))~~).

(2) Within (~~((fifteen))~~) 15 days after receipt of a petition for a declaratory order, the executive director or designee shall give notice of the petition to all persons to whom notice is required by law(~~(7)~~) and may give notice to any other person (~~((he or she))~~) the executive director or designee deems desirable. The notice (~~((shall))~~) must establish a deadline for necessary parties other than the petitioner to file written consent to the determination of the matter by a declaratory order.

(3) The petition and any responses from parties (~~((shall))~~) must be forwarded to the commission for consideration. The commission (~~((shall))~~) may not issue a declaratory order if:

(a) The matter is or could have been the subject of any other adjudicative proceeding before the commission; or

(b) A necessary party whose rights would be substantially prejudiced does not consent, in writing, to the determination of the matter by a declaratory order.

(4) The commission may consider the petition without argument and shall, within (~~((thirty))~~) 30 days after receipt of the petition, do one of the following:

(a) Enter an order declaring the applicability of the (~~((state-ute-7))~~) rule, (~~((or))~~) order, or statute in question to the specified circumstances;

(b) Set a reasonable time and place for a hearing to be held within (~~((ninety))~~) 90 days after receipt of the petition, including submission of evidence by the parties if deemed necessary by the commission(~~(7)~~) or submission of written argument (~~((upon the matter))~~) if the material facts are not in dispute. The commission shall give seven days' or more advance written notice to the petitioner and other persons who have been given notice of the petition (~~((pursuant to))~~) under subsection (2) of this section of the time, date, and place for the hearing or submission and of the issues it will be considering;

(c) Set a specified time within (~~((ninety))~~) 90 days after receipt of the petition (~~((by which))~~) when it will enter a declaratory order; (~~((or))~~)

(d) Decline to enter a declaratory order, stating the reasons for its action.

(5) The commission may extend the time limits of subsection (4)(b) and (c) of this section, for good cause.

(6) The commission may, at any time before taking final action on a petition under this section, request submission of additional facts or argument, (~~((including))~~) which may include setting the case for oral argument.

(7) If the commission proceeds in the manner provided in subsection (4)(b) of this section, it shall within a reasonable time after conclusion of the proceeding:

(a) Issue a declaratory order; or

(b) Notify the petitioner and any other party to the proceeding that no declaratory order will be issued and state the reasons for (~~((such))~~) that action.

(8) A declaratory order entered by the commission or a decision to decline to enter a declaratory order (~~((shall))~~) must be in writing(~~(7, and shall))~~) and be served (~~((upon))~~) on all parties identified in subsection (2) of this section. Each declaratory order (~~((shall))~~) must

contain the names of all parties to the proceeding on which it is based, the particular facts on which it is based, and the reasons for its conclusions.

(9) A declaratory order (~~has the same status as any other order entered in an adjudicative proceeding conducted by the commission.~~

~~(10) In the event a declaratory order is filed involving the application of the provisions of chapter 47.64 RCW, the marine employees' commission shall act in place of the commission)~~ is a final agency order.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-520, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.240. WSR 98-14-112, § 391-08-520, filed 7/1/98, effective 8/1/98.]

AMENDATORY SECTION (Amending WSR 90-06-070, filed 3/7/90, effective 4/7/90)

WAC 391-08-610 Agency decisions—Service. Every final order issued by the agency (~~shall~~) must be served on each party or upon the agency designated by the party or by law to receive service of (~~such papers~~) documents; and a copy (~~shall~~) must be furnished to any counsel or person appearing for a party in a representative capacity.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150. WSR 90-06-070, § 391-08-610, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-610, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-610, filed 1/27/77.]

AMENDATORY SECTION (Amending WSR 12-05-066, filed 2/15/12, effective 3/17/12)

WAC 391-08-640 (~~Adjudicative proceedings—Appeals.~~) Amicus briefs—Commission review. (~~Actions by the executive director and other agency staff members in adjudicative proceedings under the Administrative Procedure Act (cases under chapters 391-25, 391-35, 391-45 and 391-95 WAC) are taken under authority delegated by the commission.~~

~~(1) The parties shall have the right to appeal to the commission, as follows:~~

~~(a) Under chapter 391-25 WAC, a direction of election or direction of cross-check and other rulings in the proceedings up to the issuance of a tally are interim orders, and may only be appealed to the commission by objections under WAC 391-25-590 after the election or cross-check.~~

~~(b) Under chapter 391-25 WAC, an order issued under WAC 391-25-390 or 391-25-510 and any rulings in the proceedings up to the issuance of the order, as well as rulings that the employer or employ-~~

ees are subject to the jurisdiction of the commission, may be appealed to the commission under WAC 391-25-660.

~~(c) Under chapter 391-35 WAC, an order issued under WAC 391-35-190 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission under WAC 391-35-210.~~

~~(d) Under chapter 391-45 WAC, an order issued under WAC 391-45-110(1) or 391-45-310 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission under WAC 391-45-350.~~

~~(e) Under chapter 391-95 WAC, an order issued under WAC 391-95-150(1) or 391-95-250 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission under WAC 391-95-270.~~

~~(2) For cases decided under chapter 47.64 RCW, the marine employees' commission shall act in place of the commission.~~

~~(3-))~~ (1) The commission will only consider amicus (~~((friend of the forum))~~) briefs filed in conformity with this subsection.

(a) The person or organization desiring to file an amicus brief must:

(i) Obtain a copy of the decision on appeal, the notice of appeal, and the briefs of the parties;

(ii) Limit any amicus brief to particular issues on appeal;

(iii) Limit any legal analysis to arguments that differ from those advanced by the parties;

(iv) Exclude restatement or reargument of the facts, except as necessary to legal arguments under (a)(iii) of this subsection;

(v) Limit any amicus brief to ~~((twenty-five))~~ 25 pages in total length (double-spaced, 12-point type); and

(vi) File the amicus brief with the commission within ~~((fourteen))~~ 14 days following the filing and service of the parties' briefs ~~((of the parties,))~~ and serve copies of ~~((any such))~~ the amicus brief on each of the original parties ~~((in))~~ to the case.

(b) The commission may extend the deadline for a party wishing to file an amicus brief if the petitioning party demonstrates good cause for ~~((such))~~ an extension.

(c) The original parties to the case may, within ~~((fourteen))~~ 14 days following the filing and service of an amicus brief, file and serve written responses to the amicus brief.

(d) A person or organization that files an amicus brief does not ~~((thereby acquire))~~ have any right to reply to the responses filed by the original parties to the case.

(e) A person or organization that files an amicus brief does not ~~((thereby))~~ become a party to the case for purposes of any further proceedings or appeal.

~~((4))~~ (2) The commission may, on its own motion, review any order which is subject to appeal ~~((under subsection (1) of this section,))~~ by giving written notice to all parties within ~~((thirty))~~ 30 days following the issuance of the order.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, 41.80.080, and 49.39.060. WSR 12-05-066, § 391-08-640, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-08-640, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.464. WSR 98-14-112, § 391-08-640, filed 7/1/98, effective 8/1/98.]

AMENDATORY SECTION (Amending WSR 16-19-058, filed 9/19/16, effective 10/20/16)

WAC 391-08-650 Case docketing and numbering. The agency maintains a ~~((computerized))~~ case docketing and numbering system ~~((which is used to))~~ that tracks and manages all requests for ~~((the))~~ dispute resolution services ~~((provided by the agency))~~.

(1) Each case ~~((processed by the agency is identified by))~~ is assigned an alphanumeric identifier that includes a unique sequential number ~~((consisting of three components.~~

~~((a) The first component, consisting of a five-digit number, indicates the sequential number of cases docketed since the agency commenced operations on January 1, 1976.~~

~~((b) The second component, consisting of one alphabetic code, indicates the type of dispute being processed, as follows:~~

~~"A" indicates a grievance arbitration proceeding under chapter 391-65 WAC, wherein an agency staff member is to interpret or apply an existing collective bargaining agreement.~~

~~"C" indicates a unit clarification proceeding under chapter 391-35 WAC.~~

~~"D" indicates a declaratory ruling or declaratory order proceeding under the Administrative Procedure Act, and formerly included proceedings under chapter 391-95 WAC concerning assertion of the right of nonassociation by employees subject to union security obligations.~~

~~"E" indicates a representation proceeding under chapter 391-25 WAC.~~

~~"F" indicates a fact-finding proceeding under chapter 391-55 WAC, to recommend the terms of a collective bargaining agreement.~~

~~"G" indicates a grievance mediation proceeding under chapter 391-55 WAC after January 1, 1996, concerning the interpretation or application of an existing collective bargaining agreement.~~

~~"I" indicates an interest arbitration proceeding under chapter 391-55 WAC, to establish the terms of a collective bargaining agreement.~~

~~"M" indicates a mediation proceeding under chapter 391-55 WAC, limited after January 1, 1996, to disputes concerning the terms of a collective bargaining agreement.~~

~~"N" indicates a proceeding under chapter 391-95 WAC after January 1, 1996, concerning assertion of the right of nonassociation by employees subject to union security obligations.~~

~~"P" indicates a request for a list of arbitrators from the commission's dispute resolution panel for grievance arbitration proceedings under chapter 391-65 WAC.~~

~~"S" indicates a settlement mediation proceeding for cases under chapters 391-45 and 391-95 WAC.~~

~~"U" indicates an unfair labor practice proceeding under chapter 391-45 WAC.~~

~~((c) The third component, consisting of a two-digit number, indicates the calendar year in which the case is docketed)),~~ an alphabetic letter signifying the type of dispute being processed, and a number indicating the calendar year in which the case was filed.

(2) Cases involving various departments or divisions of an employer entity are docketed under the name of the employer entity.

(3) Cases filed by an employee organization ~~((or labor organization))~~ are docketed under the name of the organization, even if employees represented by that organization are named individually in the pleadings or are affected by the outcome of the proceedings.

(4) Cases filed by two or more individual employees are docketed separately for each employee.

(5) Cases filed by an individual employee involving multiple respondents are docketed separately for each respondent.

[Statutory Authority: RCW 28B.52.080, 41.56.050, 41.59.110, 41.76.060, 41.80.080, 47.64.280(2), 49.39.060. WSR 16-19-058, § 391-08-650, filed 9/19/16, effective 10/20/16. Statutory Authority: RCW 28B.52.080, 34.05.220, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-650, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.220. WSR 96-07-105, § 391-08-650, filed 3/20/96, effective 4/20/96.]

AMENDATORY SECTION (Amending WSR 12-05-066, filed 2/15/12, effective 3/17/12)

WAC 391-08-670 Decision numbering—Citation of cases—Indexing of decisions.

(1) Each decision issued by the agency in an adjudicative proceeding under the Administrative Procedure Act is assigned a unique number consisting of ~~((two or))~~ three or four components, as follows:

(a) The first component ~~((, consisting of))~~ is a number ~~((,))~~ and indicates the sequential number of adjudicative proceedings in which one or more decisions has been issued since the agency ~~((commenced))~~ began operations on January 1, 1976.

(b) The second component (where appropriate) ~~((consisting of an alphabetic code in ascending))~~ is a letter in consecutive alphabetical order ~~((,))~~ and indicates the second and subsequent decisions issued in the case ~~((to which the numerical component was originally assigned))~~.

(c) The third component ~~((, consisting of a four-letter alphabetic code,))~~ is a group of four alphabetical letters that indicates the statute under which the decision was issued:

"CCOL" ~~((indicates cases decided under))~~ - Chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges).

"EDUC" ~~((indicates cases decided under))~~ - Chapter 41.59 RCW (Educational Employment Relations Act).

"FCBA" ~~((indicates cases decided under))~~ - Chapter 41.76 RCW ((faculty at public four-year institutions of higher education)) (Public Four-Year Institutions of Higher Education—Faculty Labor Relations).

"MRNE" ~~((indicates cases decided under))~~ - Chapter 47.64 RCW ((relating to the Washington state ferries system)) (Marine Employees—Public Employment Relations).

"PECB" ~~((indicates cases decided under))~~ - Chapter 41.56 RCW (Public Employees' Collective Bargaining Act), including some cases involving port districts.

"PORT" ~~((indicates cases decided exclusively under))~~ - Chapter 53.18 RCW (Employment Relations—Collective Bargaining and Arbitration), relating to port districts.

"PRIV" ~~((indicates cases decided under))~~ - Chapter 49.08 RCW, relating to private sector employers and employees.

"PSRA" ~~((indicates cases decided under RCW 41.06.340 and/or))~~ - Chapter 41.80 RCW (Personnel System Reform Act).

(d) The fourth component is the year in which the decision was issued.

(2) All citations of agency decisions in subsequent agency decisions, in publications of agency decisions, and in briefs and written arguments filed by parties with the agency (~~(shall)~~) must conform to the formats specified in this section:

GENERAL RULE: Citations (~~(shall)~~) must list only the name of the employer *italicized*, the word "Decision" followed by the decision number, and the statute and year the decision was issued (in (~~(parenthesis)~~) parentheses).

Examples: *City of Roe*, Decision 12345 (PECB, (~~(1992)~~) 2022)
City of Roe, Decision 12345-A (PECB, (~~(1993)~~) 2022)
City of Roe, Decision 12345-B (PECB, (~~(1994)~~) 2022)

EXCEPTION: For decisions in which an employee organization (~~(or labor organization)~~) was named as the respondent in an unfair labor practice case, the citation (~~(shall)~~) must list the name of the union (in (~~(parenthesis)~~) parentheses) following the name of the employer.

Example: *City of Roe (Doe Union)*, Decision 23456 (PECB, (~~(1995)~~) 2022)

~~(3) ((The agency encourages the publication and indexing of its decisions by private firms, but does not contribute financial support to any such firm and declines to declare any private firm as the "official reporter" of agency decisions.~~

~~(4))~~ To satisfy the requirements of RCW (~~(42.17.260(5))~~) 42.56.070(5), the agency publishes its decisions, together with a search engine, on its website at (~~(:—"))~~ www.perc.wa.gov (~~("))~~).

[Statutory Authority: RCW 28B.52.080, 34.05.220, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-670, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, and 34.05.220. WSR 03-11-029, § 391-08-670, filed 5/15/03, effective 6/15/03; WSR 03-03-064, § 391-08-670, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, and 34.05.220. WSR 00-24-044, § 391-08-670, filed 11/30/00, effective 1/1/01; WSR 96-07-105, § 391-08-670, filed 3/20/96, effective 4/20/96.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 391-08-190	Prefiling of collective bargaining agreements.
WAC 391-08-630	Agency structure—Substitution for executive director.
WAC 391-08-800	Agency records—Public records officer—Contact information.
WAC 391-08-810	Agency records—Confidentiality.
WAC 391-08-820	Agency offices.
WAC 391-08-830	Agency records—Availability—Organization—Requests.
WAC 391-08-840	Processing of public records requests.

WAC 391-08-850	Processing of public records—Electronic records.
WAC 391-08-860	Exemptions to public records.
WAC 391-08-870	Costs for providing public records.
WAC 391-08-880	Review of denial of public records.

OTS-3724.1

Chapter 391-15 WAC
PUBLIC RECORDS REQUESTS—PUBLIC EMPLOYMENT RELATIONS COMMISSION

NEW SECTION

WAC 391-15-001 Scope—Contents—Other rules. This chapter governs public records requests submitted to the agency and establishes its procedures to provide full access to its public records under the Public Records Act, chapter 42.56 RCW.

[]

NEW SECTION

WAC 391-15-010 Agency records—Public records officer—Contact information. (1) Any person wishing to request access to public records of the agency or seeking assistance in making that request should contact the agency's public records officer:

Public Records Officer
Public Employment Relations Commission
P.O. Box 40919
Olympia, Washington 98504-0919
360-570-7300
info@perc.wa.gov

Information is also available on the agency's website at www.perc.wa.gov.

(2) The public records officer will oversee compliance with the act but another staff member may process the request. Therefore, these rules refer to the public records officer "or designee." The public records officer or designee will provide the "fullest assistance" to requestors, ensure that public records are protected from damage or disorganization, and prevent fulfilling public records requests from causing excessive interference with essential functions of the agency.

[]

NEW SECTION

WAC 391-15-020 Agency records—Confidentiality. The agency shall preserve the confidentiality of certain records, as follows:

- (1) To protect the privacy of individual employees, the agency shall not disclose evidence furnished as a showing of interest in support of a representation petition or motion for intervention.
- (2) To respect the confidential nature of mediation, the agency shall not disclose notes and memoranda made by any member of the commission or agency staff as a recording of communication made or received while acting in the capacity of a mediator between the parties to a labor dispute.

[]

NEW SECTION

WAC 391-15-030 Agency offices. (1) The agency maintains its principal office in Olympia, Washington.

(a) The street address of the Olympia office is:

112 Henry Street N.E., Suite 300
Olympia, Washington 98506-4470.

(b) The mailing address of the Olympia office is:

P.O. Box 40919
Olympia, Washington 98504-0919.

(2) The agency maintains a branch office at:

9757 N.E. Juanita Drive, Suite 201
Kirkland, Washington 98034.

[]

NEW SECTION

WAC 391-15-040 Agency records—Availability—Organization—Requests. (1) **Hours for inspection of records.** Public records are

available for inspection and copying during normal business hours, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays. Records must be inspected at the agency's Olympia office.

(2) **Organization of records.** The agency will maintain its records in a reasonably organized manner. The agency will take reasonable actions to protect records from damage and disorganization. A requestor may not take agency records from its offices without the permission of the public records officer or designee. A variety of records are available on the agency website at www.perc.wa.gov. Requestors are encouraged to view the documents available on the website before submitting a records request.

(3) **Making a request for public records.**

(a) Any person wishing to inspect or copy the agency's public records should make the request by email to info@perc.wa.gov, by letter, or by submitting the request in person at the agency's Olympia office

addressed to the public records officer and including the following information:

- (i) Name of requestor;
 - (ii) Email address, mailing address, and telephone number of the requestor;
 - (iii) Identification of the public records adequate for the public records officer or designee to locate the records; and
 - (iv) The date and time of the request.
- (b) If the requestor wishes to have copies of the records made instead of simply inspecting them, the requestor should so indicate and make arrangements to pay for copies of the records or make a deposit.
- (c) The public records officer or designee may accept oral requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts an oral request, the records officer will confirm receipt of the information and the substance of the request in writing.
- (d) If requestors refuse to identify themselves or provide sufficient contact information, the agency will respond to the extent feasible and consistent with the law.

[]

NEW SECTION

WAC 391-15-050 Processing of public records requests. (1) **Providing "fullest assistance."** The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

(a) Upon receipt of a request, the agency will assign it a tracking number and enter it into a log.

(b) The public records officer or designee will evaluate the request according to the nature of the request, the volume of requested records, and the availability of the requested records.

(2) **Acknowledging receipt of request.** Within five business days of receipt of the request, the public records officer will do one or more of the following:

(a) Make the records available for inspection or copying by:

(i) If copies are available on the agency's website, providing a link to the website where the requested records are located;

(ii) If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, sending the copies to the requestor;

(b) Provide a reasonable estimate of when records will be available (the public records officer or designee may revise the estimate of when records will be available);

(c) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor.

(i) Clarification may be requested and provided by telephone and memorialized in writing;

(ii) If the requestor fails to respond to a request for clarification and the entire request is unclear, the agency need not respond to it. The agency will respond to those portions of a request that are clear.

(d) Deny the request.

(3) **Protecting rights of others.** If the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, before providing the records, give notice to any persons whose rights may be affected by the disclosure. That notice should be given so as to make it possible for those other persons to contact the requestor and ask the requestor to revise the request or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(4) **Records exempt from disclosure.** Some records are exempt from disclosure, in whole or in part. If the agency believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record were redacted.

(5) **Inspection of records.**

(a) Consistent with other demands, the agency shall promptly provide space to inspect public records. A member of the public may not remove a document from the viewing area without permission or disassemble or alter any document. The requestor may indicate which documents the requestor would like the agency to copy.

(b) The requestor must claim or review the assembled records within 30 days of the agency's notification that the records are available for inspection or copying. The agency will notify the requestor in writing of this requirement and ask the requestor to contact the agency to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the 30-day period or make other arrangements, the agency may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(6) **Providing copies of records.** After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying.

(7) **Providing records in installments.** When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if the public records officer or designee reasonably determine that it would be practical to provide the records in that manner. If, within 30 days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(8) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the agency has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

(9) **Closing withdrawn or abandoned request.** When the requestor either withdraws the request or fails to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the agency has closed the request.

(10) **Later-discovered documents.** If, after the agency has informed the requestor that it has provided all available records, the agency becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

[]

NEW SECTION

WAC 391-15-060 Processing of public records requests—Electronic records. (1) **Requesting electronic records.** The process for requesting electronic public records is the same as for requesting paper public records.

(2) **Providing electronic records.** When a requestor requests electronic records in an electronic format, the public records officer will provide the nonexempt records or portions of those records that are reasonably locatable in an electronic format that is used by the agency and is generally commercially available, or in a format that is reasonably translatable from the format in which the agency keeps the record.

(3) **Customized electronic access services.** With the consent of the requestor, the agency may provide customized access services and assess charges under RCW 42.56.120 (2) (f). A customized service charge applies only if the agency estimates that the request would require the use of information technology expertise to prepare data compilations or provide customized electronic access services when such compilations and customized access services are not used by the agency for other purposes. The agency may charge a fee consistent with RCW 42.56.120 (2) (f) for such customized access.

[]

NEW SECTION

WAC 391-15-070 Exemptions to public records. (1) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any other statute exempts or prohibits disclosure.

(2) The agency is prohibited by statute from disclosing lists of individuals for commercial purposes.

[]

NEW SECTION

WAC 391-15-080 Costs of providing copies of public records. (1) **Inspection.** There is no fee for inspecting public records, including records on the agency website at www.perc.wa.gov.

(2) **Costs.** A requestor may obtain standard copies for 15 cents per page.

(3) **Processing payments.** Before beginning to make the copies or processing a customized service, the public records officer or designee may require a deposit of up to 10 percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The agency will not charge sales tax when it makes copies of public records.

(4) **Electronic records.** There is no charge for emailing electronic records to a requestor, unless another cost applies.

(5) **Costs of mailing.** The agency may also charge actual costs of mailing, including the cost of the shipping container.

(6) Payment may be made by cash, check, or money order to the "Public Employment Relations Commission."

[]

NEW SECTION

WAC 391-15-090 Review of denial of public records. (1) **Petition for internal administrative review of denial of access.** Any person who objects to the initial denial or partial denial of a records request may petition in writing to the public records officer for a review of that decision. The petition must include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) **Consideration of petition for review.** The public records officer shall promptly provide the petition and any other relevant information to the executive director who will immediately consider the petition and either affirm or reverse the denial within two business days, or a mutually agreed time, following the agency's receipt of the petition.

(3) **Review by the attorney general's office.** Under RCW 42.56.530, if the agency denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter under WAC 44-06-160.

(4) **Judicial review.** Any person may obtain court review of denials of public records requests at the conclusion of two business days after the initial denial of the request regardless of any internal administrative appeal.

[]

OTS-3725.3

AMENDATORY SECTION (Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

WAC 391-25-001 Scope—Contents—Other rules. This chapter governs representation proceedings ((before the public employment relations commission on petitions for investigation of questions concerning representation of employees)) under all chapters of the Revised Code of Washington (RCW) administered by the ((commission. The provisions of this chapter should be read in conjunction with:

(1) ~~Chapter 10-08 WAC, which contains the model rules of procedure promulgated by the chief administrative law judge to regulate adjudicative proceedings under chapter 34.05 RCW, except:~~

(a) ~~WAC 10-08-035, which is replaced by detailed requirements in WAC 391-25-070 and 391-25-090;~~

(b) ~~WAC 10-08-050, which relates to office of administrative hearings procedures inapplicable to proceedings before the public employment relations commission;~~

(c) ~~WAC 10-08-211, which is replaced by detailed requirements in WAC 391-25-390, 391-25-391, 391-25-590, 391-25-630, 391-25-650, 391-25-660, and 391-25-670; and~~

(d) ~~WAC 10-08-230, which is replaced by detailed requirements in WAC 391-25-150, 391-25-220, 391-25-230, and 391-25-250.~~

(2) ~~Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission, and which also replaces some provisions of chapter 10-08 WAC.~~

(3) ~~Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.~~

(4) ~~Chapter 391-45 WAC, which regulates unfair labor practice proceedings.~~

(5) ~~Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.~~

(6) ~~Chapter 391-65 WAC, which regulates grievance arbitration and grievance mediation proceedings.~~

(7) ~~Chapter 391-95 WAC, which regulates union security nonassociation proceedings))~~ agency. To the extent these rules of practice and procedure differ from the model rules in chapter 10-08 WAC or this agency's general rules of practice and procedure in chapter 391-08 WAC, these special rules prevail.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-25-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-25-001, filed 6/22/01, effective 8/1/01; WSR 96-07-105, § 391-25-001, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-072, § 391-25-001, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-001, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-010 Representation petition (~~(for investigation of a question concerning representation of employees)~~)—Who may file. A representation petition (~~(for investigation of a question concerning representation of employees)~~) may be filed by any employee, group of employees, employee organization, employer, or their agents.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-25-010, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.56.040. WSR 90-06-072, § 391-25-010, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-010, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 10-20-172, filed 10/6/10, effective 11/6/10)

WAC 391-25-030 Petition—Time for filing. (1) (~~(A "contract bar" exists while a valid collective bargaining agreement is in effect, so that a petition involving any or all of the employees covered by the agreement will be timely only if it is filed during the "window" period not more than ninety nor less than sixty days prior to the stated expiration date of the collective bargaining agreement.~~

~~(a)) A petition may be filed at any time during which no "contract bar" or "certification bar" exists.~~

(2) (a) If a valid collective bargaining agreement is in effect, it operates as a "contract bar" to a petition, and a representation petition may only be filed during the statutory window period.

(i) For state civil service employees who collectively bargain under chapter 41.80 RCW and marine employees who collectively bargain under chapter 47.64 RCW, the statutory window period is not more than 120 days nor less than 90 days before the stated expiration date of the collective bargaining agreement.

(ii) For all other employees, the statutory window period is not more than 90 days nor less than 60 days before the stated expiration date of the collective bargaining agreement.

(b) To constitute a valid collective bargaining agreement for purposes of this subsection:

(i) The agreement must cover a bargaining unit that is appropriate under the terms of the applicable statute;

(ii) The agreement must be in writing, (~~and~~) signed by the parties' representatives, and in effect; and

(iii) The agreement must contain a fixed expiration date not less than (~~ninety~~) 90 days after it was signed(~~; and~~

~~(iv) The agreement will only operate as a bar for the first three years after its effective date).~~

~~((b)) (c) An agreement to extend or replace a collective bargaining agreement (~~shall~~) does not bar a petition filed in the (~~"~~)window(~~"~~) period of the previous agreement.~~

~~((c)) (d) Following the close of the window period described in this subsection, a "protected" period is in effect (~~during the sixty~~~~

days following a "window" period in which no petition is filed, and a successor agreement negotiated by the employer and incumbent exclusive bargaining representative) until the expiration of the existing collective bargaining agreement.

(i) If the employer and incumbent exclusive bargaining representative negotiate a valid collective bargaining agreement during ~~((that))~~ the protected period, a contract bar will be in effect and bar a petition under this chapter.

(ii) If the filing and withdrawal or dismissal of a petition under this chapter intrudes upon the protected period, the employer and incumbent exclusive bargaining representative ~~((shall be))~~ are given a ~~((sixty-day))~~ 60-day protected period commencing on the date the withdrawal or dismissal is final.

~~((d))~~ (e) A certification of issues for interest arbitration issued under WAC 391-55-200 serves as a valid agreement under subsection ~~((1-a))~~ (2)(b) of this ~~((rule))~~ section.

~~((2))~~ (f) For certificated employees who collectively bargain under chapter 41.59 RCW and four-year institution of higher education faculty who collectively bargain under chapter 41.76 RCW, the agreement only operates as a bar for the first three years after its effective date.

(3) A "certification bar" exists where a certification has been issued by the agency ~~((, so that))~~. A petition involving the same bargaining unit or any subdivision of that bargaining unit will ~~((only))~~ be timely only if it is filed ~~((+~~

~~(a))~~ more than ~~((twelve))~~ 12 months following the date of the certification of an exclusive bargaining representative ~~((; or~~

~~(b) More than twelve months following the date of the latest election or cross-check in which the employees failed to select an exclusive bargaining representative.~~

~~(3) Where neither a "contract bar" nor a "certification bar" is in effect under this section, a petition may be filed at any time).~~

(4) Neither a certification bar nor a contract bar ~~((in an underlying existing bargaining unit will))~~ precludes petitions filed under WAC ~~((391-25-440))~~ 391-25-080 from being processed at any time subject to the limitations stated in that rule.

[Statutory Authority: RCW 28B.52.080, 41.06.340, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, and 49.39.060. WSR 10-20-172, § 391-25-030, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.413, 41.56.050, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 01-14-009, § 391-25-030, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.413, 41.56.060, [41.56].070, 41.59.070 and [41.59].080. WSR 96-07-105, § 391-25-030, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-030, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-030, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-050 Petition (~~(in writing Number of copies)~~)—Filing(~~(—)~~) and service. (~~(Each)~~) A representation petition (~~(for investigation of a question concerning representation shall be)~~) may be filed through the agency's online e-filing system, by email, or in writing(~~(, and shall be filed at)~~) to the (~~(commission's)~~) agency's Olympia office, as required by WAC 391-08-120 (1) and (2). The party filing the petition shall serve a copy of the petition (excluding any showing of interest) on the employer and (~~(on)~~) each employee organization named in the petition as having an interest in the proceedings, as required by WAC 391-08-120 (3) and (4).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.413, 41.56.050, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 01-14-009, § 391-25-050, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.413, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 00-14-048, § 391-25-050, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-25-050, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-25-050, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-050, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-050, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-070 Contents of petition filing forms. Each (~~(petition for investigation of a question concerning representation shall contain, in separate numbered paragraphs)~~) completed representation petition filing form, whether obtained from the agency's website or through the agency's e-filing system, must include all of the following:

(1) Information identifying the parties and their representatives (if known), including:

(a) The name, email address, mailing address, and telephone number of the employer(~~(, and the name, address, telephone number, fax number, and email address of its principal)~~) and of the employer's representative.

(~~(2)~~) (b) The name, email address, mailing address, and telephone number(~~(, fax number, and email address)~~) of the petitioner(~~(, and the name, address, telephone number, fax number, and email address of its principal)~~) and of the petitioner's representative.

(~~(3)~~) (c) The name, email address, mailing address, and telephone number of any organization (~~(which)~~) that currently represents the employees involved and (~~(the name, address, telephone number, fax number, and email address)~~) of its principal representative.

(~~(4)~~) An indication that:

(a) There has never been a collective bargaining agreement) (2) Information concerning the parties' relationships, including:

- (a) The employer department or division involved;
 (b) The parties' contractual relationship, indicating that:
 (i) The parties have never had a contract covering the employees involved; or
 ((b)) (ii) The parties have had a contract, and a copy of the current ((+) or most recent ((+)) collective bargaining agreement is attached.
 ((5) Identification of:
 (a) The employer's principal business;
 (b) The employer department or division involved;
 (e)) (3) A description of the proposed or existing bargaining unit which the petitioner claims to be appropriate, specifying inclusions and exclusions ((+)) and ((d)) the number of employees in the proposed or existing bargaining unit;
 (4) A statement consenting to the public employment relations commission's jurisdiction over the public employer and petitioner; and
 (5) The existence of any unfair labor practice complaints involving the petitioned-for employees.
 (6) A statement that:
 (a) The petitioner claims to represent a majority of the employees involved ((+)) and requests certification as exclusive bargaining representative of the bargaining unit; ((+))
 (b) The employees in the bargaining unit desire to change their exclusive bargaining representative ((+)) and to designate the petitioner as their exclusive bargaining representative; or
 (c) The employees in the bargaining unit no longer desire to be represented by any employee organization ((+))
 (d) The employer has been presented with one or more demands for recognition, and requests a determination by the commission; or
 (e) The employer has a good faith belief that a majority of employees no longer desire representation by the incumbent exclusive bargaining representative).
 (7) Any other relevant facts.
 (8) The name, signature, and ((+ if any, +)) title, if any, of the ((petitioner or its representative, and)) person filing the petition as well as the date of the signature.
 (9) Any other information requested in the representation petition filing form found on the agency's website at www.perc.wa.gov or as required through the agency's e-filing system.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.413, 41.56.050, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 01-14-009, § 391-25-070, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.413, 41.56.060, [41.56].070, 41.59.070 and [41.59].080. WSR 96-07-105, § 391-25-070, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 90-06-072, § 391-25-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-070, filed 9/30/80, effective 11/1/80.]

NEW SECTION

WAC 391-25-080 Election for inclusion of unrepresented employees. (1) Where only one employee organization seeks to add an employee or group of previously unrepresented employees to an appropriate bargaining unit that it already represents, the organization may petition for a self-determination election to ascertain the employees' desire to be included in the existing bargaining unit.

(2) To invoke the self-determination election procedures under this section, the petitioning organization shall:

(a) Demonstrate that it has the support of at least 30 percent of the unrepresented employees to be included in the appropriate existing unit;

(b) Affirmatively state on the petition filed under WAC 391-25-070 that it requests a self-determination election to add the petitioned-for employees into an existing appropriate bargaining unit;

(c) Provide an accurate description of the existing bargaining unit that it seeks to merge the unrepresented employees into; and

(d) Demonstrate that the resulting bargaining unit is appropriate under the applicable statute.

(i) If the propriety of the proposed resulting unit is disputed, the executive director or designee shall make a determination following a hearing.

(ii) If the propriety of the proposed resulting unit is stipulated, the executive director or designee shall determine whether the proposed unit is, on its face, an appropriate unit under the applicable statute.

(3) Any notice to employees required to be posted must affirmatively indicate that the petitioning organization seeks to include the petitioned-for employees in an existing bargaining unit of employees represented by that organization through a self-determination election.

(4) If the resulting bargaining unit is determined to be appropriate, the agency shall conduct a self-determination election or card check to ascertain whether the petitioned-for employees desire to become part of the existing unit.

(a) Only the petitioned-for employees are eligible to vote in a self-determination election.

(b) Card check procedures under WAC 391-25-400 apply to this section.

(c) In a self-determination election, if a majority of the eligible employees voting in the election vote for inclusion, they are deemed to have indicated their desire both to become part of the existing unit and to be represented by the petitioner. If a majority of the eligible employees vote against inclusion in the existing unit, they are considered to have indicated a desire to remain unrepresented.

(5) (a) If another organization seeks to intervene in a proceeding filed under this section, it must demonstrate both:

(i) That it has the support of at least 30 percent of the employees subject to the original petition; and

(ii) That if the same group of employees were added to an appropriate unit that it already represents, the resulting unit would be an appropriate unit.

(b) If either (a) (i) or (ii) of this subsection are not established, the request for intervention will be denied and the petition processed in accordance with this section.

(c) If the requirement of both (a)(i) and (ii) of this subsection are met, the election must be for representation by the petitioner as part of the larger unit proposed by the petitioner, representation by the intervenor as part of the larger unit proposed by the intervenor, or no representation.

(6) If a competing employee organization files a representation petition for a stand-alone bargaining unit consisting of the same employees sought by the petitioner under this rule and the petitioned-for bargaining unit is appropriate under the applicable statute, then the self-determination petition will be dismissed.

(7) The existence of a valid collective bargaining agreement does not preclude the processing of a petition filed under this rule.

(8) Petitions filed under this rule do not raise a question concerning representation for the existing appropriate bargaining unit.

(a) The issuance of a certification for the existing appropriate bargaining unit within the previous 12 months does not bar the filing and processing of a petition under this rule.

(b) An amended certification issued under this rule does not affect the certification bar of the existing unit, nor does it create a new certification bar as described in WAC 391-25-030(3).

[]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-090 Petition filed by employer. (1) ~~((Where))~~ If an employer has been presented with one or more demands for recognition of an exclusive bargaining representative of previously unrepresented employees, it may obtain a determination of the question concerning representation by filing a petition under WAC 391-25-070. ~~((Instead of a showing of interest under WAC 391-25-110,))~~ The employer shall attach copies of any written demand(s) for recognition or other correspondence pertaining to the claimed question concerning representation.

(2) ~~((Where))~~ If an employer disputes the majority status of the incumbent exclusive bargaining representative of its employees, it ~~((shall))~~ may obtain a determination of the question concerning representation by filing a petition under WAC 391-25-070.

(a) ~~((Instead of a showing of interest under WAC 391-25-110,))~~ The employer shall attach affidavits and any other documentation ~~((as may be))~~ available to it to demonstrate the existence of a good faith belief that a majority of its employees in an existing bargaining unit no longer desire to be represented by their incumbent exclusive bargaining representative.

(b) ~~((Unsolicited signature documents provided to the employer by employees and filed by the employer in support of a petition under this subsection must be in a form which would qualify under WAC 391-25-110 if filed by the employees directly with the commission, and shall be treated as confidential under WAC 391-25-110.))~~ Any evidence submitted by employees to the employer must be in a form consistent with WAC 391-25-110 and must not be disclosed by the agency consistent with WAC 391-25-110(4).

(3) A petition under this section ~~((shall))~~ may be filed ~~((at the commission's))~~ by email or in writing to the agency's Olympia office,

as required by WAC 391-08-120 (1) and (2). The employer shall serve a copy of the petition (excluding any showing of interest) on each employee organization named in the petition as having an interest in the proceedings, as required by WAC 391-08-120 (3) and (4).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.413, 41.56.050, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 01-14-009, § 391-25-090, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.413, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 00-14-048, § 391-25-090, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-25-090, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-25-090, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.56.040. WSR 90-06-072, § 391-25-090, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-054 (Order 88-02), § 391-25-090, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-090, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-25-110 Supporting evidence—Showing of interest confidential. (1) A petition filed by employees or an employee organization (~~shall~~) must be accompanied by a showing of interest indicating that the petitioner has the support of (~~thirty~~) at least 30 percent (~~or more~~) of the employees in the bargaining unit which the petitioner claims to be appropriate. The showing of interest (~~shall~~) must be (~~furnished~~) filed under the same timeliness standards applicable to the petition (~~τ~~) and (~~shall~~) consist of original or legible paper or electronic copies of individual authorization cards or letters signed and dated by employees in the bargaining unit claimed appropriate. Authorization cards or letters (~~shall not be~~) are not valid unless signed and dated during the one-year period preceding the filing of the petition. The authorization cards submitted in support of a petition under this section must, at a minimum, contain the following:

(a) The employee's name typed or printed legibly, the employee's signature, and the date of the employee's signature;

(b) A statement that the employee designates the named labor organization as the employee's exclusive bargaining representative for purposes of collective bargaining;

(c) A statement that the showing of interest may be used for purposes of a card check election;

(d) A statement that the employee understands that the employee's signature on the card may be used to obtain certification of the named labor organization as the exclusive bargaining representative of the employee without a secret ballot election; and

(e) A statement that the employee has the right to ask the agency to revoke the employee's authorization card for purposes of card check.

(2) The agency shall notify the petitioner of the existence and number of any revocations filed under subsection (1)(e) of this section before the commencement of the card check but shall not disclose the identities of the employees involved.

(3) For any bargaining unit affected by RCW 74.39A.270 and 74.39A.300, the showing of interest requirement described in subsection (1) of this section is 10 percent for either a petitioner or an intervenor.

~~((2))~~ (4) The agency shall not disclose the identities of employees whose authorization cards or letters are ~~((furnished to))~~ filed with the agency in proceedings under this chapter.

(a) A petitioner or intervenor shall not serve its showing of interest on any other party to the proceeding.

(b) The question of whether a showing of interest requirement for a petition or for intervention has been satisfied is a matter for administrative determination by the agency and may not be litigated at any hearing.

~~((In order))~~ To preserve the confidentiality of the showing of interest and the right of employees to freely ~~((to))~~ express their views on the selection of a bargaining representative, the agency shall not honor any attempt by an employee to withdraw any authorization submitted for purposes of this section.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-058, § 391-25-110, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.070 and 41.59.070. WSR 01-14-009, § 391-25-110, filed 6/22/01, effective 8/1/01; WSR 98-14-112, § 391-25-110, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-25-110, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-110, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-054 (Order 88-02), § 391-25-110, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 81-02-034 (Order 81-01), § 391-25-110, filed 1/6/81.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-130 List of employees. ~~((Within ten days following a request by the agency))~~ (1) Unless otherwise specified by the executive director or designee, the employer shall submit to the agency and the petitioner a list containing the names and last known addresses of all of the employees in the bargaining unit described in the petition within 10 days following a request by the agency. ~~((Following administrative determination that the petition is supported by a sufficient showing of interest, the agency shall furnish a copy of the list of names and addresses to the petitioner. Following))~~ After granting ~~((of))~~ a motion for intervention, the agency shall ~~((furnish))~~ provide a copy of the list of names and addresses to the intervenor.

(2) In addition to the information required by subsection (1) of this section, an employer of symphony musicians who are seeking to be represented for the purposes of collective bargaining must, upon re-

quest, provide the executive director with financial information that establishes the agency's jurisdiction over the employer.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.070 and 41.59.070. WSR 01-14-009, § 391-25-130, filed 6/22/01, effective 8/1/01; WSR 96-07-105, § 391-25-130, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-130, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-130, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-25-140 Notice to employees—Limitations on employer actions. (1) ~~(a)~~ The employer shall ~~((post))~~ provide to the petitioned-for employees a copy of the petition and a notice ~~((, in the form specified))~~ created by the ~~((commission,))~~ agency to inform employees of the existence of proceedings under this chapter. ~~The ((agency shall furnish the employer with copies of the petition and notice, and the))~~ employer shall also post ~~((them))~~ the notice in conspicuous places on its premises where notices to affected employees are usually posted. ~~The ((petition and))~~ notice ~~((shall))~~ must remain posted until a ~~((certification or interim certification))~~ direction of election or order of dismissal is issued in the proceeding.

(b) The posting requirement in this subsection does not apply to the bargaining units described in RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.510.

(2) Changes of the status quo concerning wages, hours, or other terms and conditions of employment of employees in the bargaining unit are prohibited during the period that a petition is pending before the ~~((commission))~~ agency under this chapter.

(3) The employer ~~((shall))~~ may not express or otherwise indicate any preference between competing organizations ~~((, where))~~ if two or more employee organizations are seeking to represent its employees.

(4) ~~((Where))~~ If a petition filed under this chapter involves employees who are represented for the purposes of collective bargaining, the employer shall suspend negotiations with the incumbent exclusive bargaining representative on a successor collective bargaining agreement involving employees affected by the petition. The employer and incumbent union may proceed with negotiations covering employees not affected by the petition ~~((,))~~ and shall resume negotiations on a successor agreement covering the affected employees after the question concerning representation is resolved, if the incumbent exclusive bargaining representative retains its status.

~~(5) ((When an order of dismissal issued under WAC 391-25-390 (1)(a) is served upon the parties, the obligations to maintain the status quo under subsection (2) of this section and suspend negotiations with the incumbent exclusive bargaining representative under subsection (4) of this section are lifted.~~

~~(a) If a party to the proceeding files a timely notice of appeal of the order of dismissal, then the obligations under subsections (2)~~

and (4) of this section shall be reinstated once the parties to the proceeding are served the notice of appeal. Those obligations shall remain in effect until a final order is issued by the commission under WAC 391-25-670, unless governed by (b) of this subsection.

~~(b) Where a timely filed notice of appeal reinstates the obligation to maintain the status quo or suspend bargaining,~~) An order dismissing a representation petition lifts the obligations under subsections (2) and (4) of this section. Those obligations are reinstated upon the filing and service of a notice of appeal.

~~(6) Any party to the proceeding may petition the commission to stay ((either of those)) the obligations ((where)) under subsections (2) and (4) of this section if the petitioning party demonstrates a need for a change in terms and conditions of employment due to circumstances that are beyond that party's control((r)) or ((where)) if the failure to resume bargaining would substantially harm the petitioned-for employees and leave ((them)) the parties without an adequate administrative remedy. A petition filed under this subsection ((shall)) must be accompanied by affidavits and evidence.~~

~~((e)) (a) Following the receipt of a petition under ((b) of) this subsection, the due date for any counter-affidavits from other parties is seven days following the date on which that party is served with the petition.~~

~~((d)) (b) The executive director shall forward all petitions and affidavits to the commission, ((who)) which shall determine whether to stay the obligations under subsections (2) and (4) of this section at the next regularly scheduled commission meeting.~~

~~((e)) (c) If the commission uses its authority under ((b) of) this subsection, any party seeking review of the commission's decision ((shall)) may seek relief through the courts.~~

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-058, § 391-25-140, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.050. WSR 01-14-009, § 391-25-140, filed 6/22/01, effective 8/1/01; WSR 96-07-105, § 391-25-140, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.56.050. WSR 90-06-072, § 391-25-140, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-054 (Order 88-02), § 391-25-140, filed 5/31/88.]

AMENDATORY SECTION (Amending WSR 10-20-172, filed 10/6/10, effective 11/6/10)

WAC 391-25-150 Amendment and withdrawal. A petition may be amended or withdrawn by the petitioner at any time ~~((prior to))~~ before the issuance of a notice of election and the mailing of the ballots~~((r))~~ or under ~~((such))~~ any conditions ~~((as))~~ the executive director or the commission may impose.

[Statutory Authority: RCW 28B.52.080, 41.06.340, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, and 49.39.060. WSR 10-20-172, § 391-25-150, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.56.070. WSR 90-06-072, § 391-25-150, filed 3/7/90, effective 4/7/90. Statutory

Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-150, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 96-07-105, filed 3/20/96, effective 4/20/96)

WAC 391-25-170 Intervention—By incumbent representative. An organization which demonstrates that it has been the exclusive representative of all or any part of the bargaining unit involved in proceedings under this chapter during the year preceding the filing of the petition (~~(may, by motion,)~~) must automatically be allowed to intervene in the proceedings without motion and (~~(, upon granting of its motion for intervention, shall be)~~) is entitled to participate in the proceedings and to have its name listed as a choice on the ballot in any election. (~~No motion for intervention shall be considered if made:~~

- ~~(1) After the close of the hearing on the petition;~~
- ~~(2) More than seven days after the filing and posting of an election agreement or cross-check agreement; or~~
- ~~(3) More than seven days after the posting of an investigation statement.)~~

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.070 and 41.59.070. WSR 96-07-105, § 391-25-170, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-170, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-170, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-190 Intervention—By organization other than incumbent. (1) An organization not covered by WAC 391-25-170 may, by motion, intervene in proceedings under this chapter (~~(and, upon granting of its motion for intervention, shall be entitled to participate in the proceedings and have its name listed as a choice on the ballot in any election.)~~) if:

(a) The motion for intervention (~~(shall be)~~) is supported by a showing of interest indicating that the intervenor has the support of (~~(ten)~~) at least 10 percent (~~(or more)~~) of the employees in the bargaining unit which the original petitioner claims to be appropriate (~~(- A showing of interest filed in support of a motion for intervention shall be subject to the requirements and confidentiality protections of WAC 391-25-110. A motion for intervention may be granted conditionally subject to the subsequent furnishing of a showing of interest under such conditions as the agency may impose to avoid undue delay of the proceedings.)~~) ; or

(b) The organization seeking intervention demonstrates, through affidavits or other documentary evidence, that the petitioned-for employees only share a community of interest with a bargaining unit it represents and demonstrates that it has filed a unit clarification petition under chapter 391-35 WAC.

(2) No motion for intervention (~~(shall)~~) may be considered if made:

(a) After the close of the hearing on the petition;

(b) (~~More than seven days after the filing and posting of an election agreement or cross-check agreement; or~~

~~(c))~~ More than seven days after ((the posting of)) an investigation statement has been issued and a notice of election or card check has been posted.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.070 and 41.59.070. WSR 01-14-009, § 391-25-190, filed 6/22/01, effective 8/1/01; WSR 98-14-112, § 391-25-190, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-25-190, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-190, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-054 (Order 88-02), § 391-25-190, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 81-02-034 (Order 81-01), § 391-25-190, filed 1/6/81.]

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-25-210 Bargaining unit configurations—~~New organizing.~~

~~((1) In proceedings on a petition for "decertification" under WAC 391-25-070 (6) (c) or 391-25-090(2), the parties shall not be permitted to remove positions from or add positions to the existing bargaining unit;~~

~~(2) An organization which files a motion for intervention under WAC 391-25-190 shall not be permitted to seek a bargaining unit configuration different than proposed by the original petitioner.~~

~~(3) If petitions filed by two or more organizations under this chapter are pending before the agency at the same time and involve any or all of the same employees, the timeliness of the respective petitions and the sufficiency of the respective showings of interest shall be determined separately and the proceedings shall be consolidated for resolution of all issues concerning the description(s) of the bargaining unit(s). A petition filed after the issuance of a notice of election in another proceeding under WAC 391-25-430 or after the commencement of a cross-check in another proceeding under WAC 391-25-410 shall be dismissed as untimely.~~

~~(4) A party to proceedings under this chapter shall not be permitted to propose more than one bargaining unit configuration for the same employee or employees, except where a merger of bargaining units is proposed under WAC 391-25-420.~~

~~(5) Where a petitioning union seeks severance of a portion of an existing bargaining unit of classified employees at a school district or educational service district, appropriate bargaining units existing~~

~~on July 25, 2005, may not be divided into more than one appropriate bargaining unit without the agreement of the employer and certified bargaining representative of the unit where severance is sought.)~~ (1) A party to proceedings under this chapter may not propose more than one bargaining unit configuration for the same employee(s).

(2) If new organizing petitions filed by two or more organizations are pending at the same time and involve any or all of the same employees, the following process applies:

(a) The timeliness and the sufficiency of the respective showings of interest of each petition must be determined separately;

(b) If multiple petitions are timely and properly supported by the appropriate showing of interest, then the proceedings for each valid petition must be consolidated for resolution of all issues concerning the description(s) of the bargaining unit(s) and eligibility list(s).

(3) A petition filed after the issuance of a notice of election in another proceeding under WAC 391-25-430 or after the commencement of a card check in another proceeding under WAC 391-25-400 must be dismissed as untimely.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-058, § 391-25-210, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 41.56.070, 41.59.070, and 41.80.080. WSR 03-11-029, § 391-25-210, filed 5/15/03, effective 6/15/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.070 and 41.59.070. WSR 01-14-009, § 391-25-210, filed 6/22/01, effective 8/1/01; WSR 98-14-112, § 391-25-210, filed 7/1/98, effective 8/1/98; WSR 90-06-072, § 391-25-210, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-210, filed 9/30/80, effective 11/1/80.]

NEW SECTION

WAC 391-25-215 Bargaining unit configurations—Decertification, change of representation, and severance petitions. (1) A petition to "decertify" under WAC 391-25-070 (6) (c) or 391-25-090(2) may not alter the existing bargaining unit configuration during the representation proceeding;

(2) If an organization files a motion for intervention under WAC 391-25-190 in a decertification proceeding, the intervening organization may not seek a bargaining unit configuration different from the existing bargaining unit configuration.

[]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-220 Investigation conferences. (1) ~~((The agency routinely conducts conferences with the parties, to investigate a representation petition according to a checklist provided to the parties.~~

~~(a) The issues which may properly arise in representation cases include:~~

~~(i) The identification of the parties;~~

~~(ii)) If a representation petition is properly supported under WAC 391-25-110, an investigation conference may be held to determine:~~

~~(a) The jurisdiction of the ~~((commission))~~ agency;~~

~~((iii)) (b) The qualification of the petitioner and any intervenor(s) for certification as exclusive bargaining representative;~~

~~((iv) The existence of a question concerning representation;~~

~~(v)) (c) The timeliness of the petition;~~

~~((vi)) (d) The existence of blocking charges under WAC 391-25-370;~~

~~((vii)) (e) The propriety of the petitioned-for bargaining unit; and~~

~~((viii)) (f) The list of employees eligible to vote or be considered in determining a question concerning representation ~~((r))~~ and the cut-off date for eligibility ~~((r))~~ and~~

~~(ix) The method and arrangements for determining a question concerning representation.~~

~~(b) The investigation conference may be conducted by telephone conference call, or in-person by agency staff;)).~~

~~((e)) (2) The parties are encouraged to reach binding stipulations on all issues during the course of the investigation conference.~~

~~((2)) (3) The stipulations made by the parties during an investigation conference may be set forth in an investigation statement issued ~~((in lieu of an election agreement or cross-check agreement.~~~~

~~(a) Immediately upon receipt of an investigation statement, the employer shall post it in conspicuous places on its premises where notices to affected employees are usually posted, and it shall remain posted for at least seven days.~~

~~(b) An investigation statement shall be) by the executive director or designee and are binding on the parties unless written objections are filed and served as required by WAC 391-08-120 within ~~((ten))~~ 10 days following issuance of the statement.~~

~~((3)) (4) When it appears that all conditions precedent to an election or ~~((cross-check))~~ card check are met, the executive director or designee shall ~~((determine whether the proposed bargaining unit is, on its face, an appropriate bargaining unit under the applicable statute. The agency shall proceed with the determination of the question concerning representation. Objections by parties named in the investigation statement shall be limited to matters relating to specific conduct affecting the results of an election.~~~~

~~(4) The parties may set forth stipulations in election agreements or cross-check agreements under this chapter) proceed with the election or card check.~~

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.431. WSR 01-14-009, § 391-25-220, filed 6/22/01, effective 8/1/01; WSR 98-14-112, § 391-25-220, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-25-220, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110,

28B.52.073 and 41.56.040. WSR 90-06-072, § 391-25-220, filed 3/7/90, effective 4/7/90.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-270 Interim certification—Supplemental proceedings.

Where the matters at issue in a proceeding under this chapter are limited to the eligibility of particular individuals or classifications for inclusion in the bargaining unit, the executive director or designee may expedite the ~~((determination of the question concerning representation))~~ proceedings while reserving the eligibility issues for subsequent determination.

(1) The agency ~~((shall))~~ will conduct an election or ~~((cross-check))~~ card check, as ~~((may be))~~ appropriate.

(a) The individuals whose eligibility is disputed ~~((shall be))~~ are permitted to vote by challenged ballot in an election.

(b) The individuals whose eligibility is disputed ~~((shall))~~ will be listed as challenged in a ~~((cross-check))~~ card check, and any authorizations signed by those individuals ~~((shall))~~ must not be tallied.

(2) After a tally is issued under WAC 391-25-550:

(a) If the number of challenges ~~((are sufficient in number to))~~ would affect the outcome, they ~~((shall))~~ will be determined under subsection (3) of this section ~~((, prior to))~~ before the issuance of a certification.

(b) If ~~((an organization is entitled to certification regardless of the reserved eligibility issues, a))~~ the number of challenges does not affect the outcome, an interim certification ~~((shall))~~ will be issued ~~((, but))~~ and the case ~~((shall))~~ will remain open for supplemental proceedings under subsection (3) of this section. The employer and the exclusive bargaining representative ~~((shall))~~ have the duty to bargain ~~((, under the applicable statute, after a))~~ upon issuance of an interim certification ~~((is issued))~~ under ~~((b) of))~~ this subsection.

(c) If a certification of "no representation" is appropriate regardless of the reserved eligibility issues, a final certification ~~((shall))~~ will be issued and no supplemental proceedings ~~((shall))~~ may be conducted.

(3) All eligibility issues reserved for subsequent determination under this section ~~((shall))~~ must be resolved ~~((under WAC 391-25-290, 391-25-310, 391-25-350 and 391-25-390))~~, without regard to whether the individuals cast challenged ballots.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060, 41.56.070, 41.56.080, 41.59.070, 41.59.080 and 41.59.090. WSR 01-14-009, § 391-25-270, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 00-14-048, § 391-25-270, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-25-270, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 90-06-072, § 391-25-270, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080,

41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-270, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-290 Notice of hearing. If it appears to the executive director or designee that a question concerning representation may exist, a ~~((hearing officer shall issue a))~~ notice of hearing ~~((and have it))~~ will be issued and served on the parties. ~~((Attached to the notice of hearing shall be a copy of the investigation statement issued under WAC 391-25-220.))~~ A notice of hearing may be amended or withdrawn before the close of the hearing.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-25-290, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.56.040. WSR 90-06-072, § 391-25-290, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-054 (Order 88-02), § 391-25-290, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-290, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 10-20-172, filed 10/6/10, effective 11/6/10)

WAC 391-25-299 ~~((Special provision))~~ Private sector and other employees. Except for symphony musicians who exercise collective bargaining rights under chapter 49.39 RCW, the ~~((commission))~~ agency lacks authority to proceed in representation disputes under chapter 49.08 RCW absent the agreement of all parties. ~~((WAC 391-25-290 through 391-25-390 shall not be applicable to proceedings under chapter 49.08 RCW, except for hearings and issues submitted by stipulation of all parties to the proceeding.))~~

[Statutory Authority: RCW 41.58.050 and 49.39.060. WSR 10-20-172, § 391-25-299, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-25-299, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapter 49.08 RCW. WSR 90-06-072, § 391-25-299, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-299, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 90-06-072, filed 3/7/90, effective 4/7/90)

WAC 391-25-310 Hearings—Who ((shall)) may conduct. Hearings may be conducted by the commission, ((by)) the executive director, ((by)) or a member of the agency staff ((or by any other individual designated by the commission or executive director as a hearing officer)). At any time, a hearing officer may be substituted for the hearing officer previously ((presiding)) assigned.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070, 41.59.070, 41.59.080 and 53.18.015. WSR 90-06-072, § 391-25-310, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-310, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-25-350 Hearings—Reopening of hearing—Briefs. (1) Hearings ((shall be)) directed under WAC 391-25-390 are public, ((except where)) unless a protective order is issued under WAC 10-08-200(7), and ((shall be)) are limited to matters concerning the determination of a question concerning representation.

(a) The parties ((shall be)) are responsible for the presentation of their cases.

(b) The hearing officer shall ascertain the respective positions of the parties ((r)) to obtain a full and complete factual record upon which the agency may discharge its responsibilities under the applicable statute. The hearing officer has authority, under WAC 10-08-200(8) and (9), to ask questions, call witnesses, and explore matters not raised or only partially raised by the parties.

(2) Once a hearing has been declared closed, it may be reopened only upon the timely motion of a party ((upon discovery of)) that discovered new evidence which could not with reasonable diligence have been discovered and produced at the hearing.

(3) The hearing officer may ((allow or)) direct the filing of briefs as to any or all of the issues in a case.

(4) Arrangements and due dates for briefs ((shall be)) are established by the hearing officer.

(5) Any brief ((shall)) must be filed ((with the hearing officer)) and served as required by WAC 391-08-120((1), and copies shall be served on all other parties to the proceeding as required by WAC 391-08-120(3) and (4)).

((4)) (6) A party filing a brief under this section must limit ((its)) the brief's total length to ((twenty-five)) 25 pages (double-spaced, ((twelve-point)) 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief ((in order)) to address novel or complex ((legal and/or factual issues raised by the objections)) issues; and

(b) The executive director, ((his or her)) the executive director's designee, or the hearing officer grants ((such a)) the motion for good cause shown((; and)).

((e)) (7) A motion for permission to file a longer brief may be made orally to the hearing officer at the end of the ((administra-
tive)) hearing, and the hearing officer has the authority to orally grant ((such)) the motion at ((such)) that time.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-058, § 391-25-350, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.437, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 01-14-009, § 391-25-350, filed 6/22/01, effective 8/1/01; WSR 00-14-048, § 391-25-350, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-25-350, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-25-350, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070, 41.59.070, 41.59.080 and 53.18.015. WSR 90-06-072, § 391-25-350, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-350, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-25-370 Blocking charges—Suspension of proceedings—Request to proceed. (1) The executive director may suspend the processing of a representation petition under this chapter pending the outcome of related unfair labor practice proceedings(~~(, where))~~ if:

(a) A complaint charging unfair labor practices is filed under the provisions of chapter 391-45 WAC; ~~((and))~~

(b) It appears that the facts as alleged may constitute an unfair labor practice; and

(c) ~~((Such))~~ The unfair labor practice could improperly affect the outcome of a representation election.

(2) The complainant(s) in the unfair labor practice case may file and serve, as required by WAC 391-08-120, a written request to proceed ~~((with the executive director))~~. The request to proceed ~~((shall))~~ must specify the case number of the representation proceeding, ~~((shall))~~ request that the representation petition be processed notwithstanding the pending unfair labor practice case, and ~~((shall))~~ waive the right to file objections under WAC 391-25-590 (1)(a) based on conduct alleged in the unfair labor practice case. Upon the filing of a request to proceed ~~((under this subsection))~~, the executive director may resume the processing of the representation petition and ~~((shall))~~ must summarily dismiss any objections filed in conflict with the request to proceed.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-058, § 391-25-370, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-25-370, filed 6/22/01, effective 8/1/01; WSR 98-14-112, § 391-25-370, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-25-370, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-370, filed 3/7/90,

effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-370, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-25-390 Proceedings before the executive director. (1)

The executive director may proceed upon the record, after submission of briefs or after hearing, as ~~((may be))~~ appropriate.

(a) The executive director shall determine whether a question concerning representation exists~~((τ))~~ and ~~((shall))~~ issue a direction of election, dismiss the petition, or make other disposition of the matter.

(b) Unless otherwise provided in a direction of election, the ~~((cut-off))~~ cutoff date for eligibility to vote in an election ~~((shall be))~~ is the date of issuance of the direction of election.

(2) Where the executive director determines that employee eligibility issues exist, the executive director may delegate authority to ~~((the))~~ a hearing officer to decide those issues.

(3) A direction of election and other rulings in the proceedings up to the issuance of a tally are interim orders~~((τ))~~ and may only be appealed to the commission by objections under WAC 391-25-590 after the election.

(4) (a) A party seeking review by the commission of an interlocutory decision of the executive director, ~~((his or her))~~ the executive director's designee, or a hearing officer must file a motion for discretionary review with the commission and a copy with the ~~((executive director or his or her designee))~~ person who issued the interlocutory decision within seven days after the decision is issued.

(b) Discretionary review of an interlocutory decision issued by the executive director, ~~((his or her))~~ the executive director's designee, or a hearing officer will be accepted by the commission only:

(i) If the executive director ~~((or his or her))~~, the executive director's designee, or the hearing officer has committed an obvious error ~~((which))~~ that would render further proceedings useless; ~~((or))~~

(ii) If the executive director, ~~((his or her))~~ the executive director's designee, or the hearing officer has committed probable error and the interlocutory decision ~~((of the executive director, his or her designee, or hearing officer))~~ substantially alters the status quo or substantially limits the freedom of a party to act; or

(iii) If the executive director, ~~((his or her))~~ the executive director's designee, or the hearing officer has so far departed from the accepted and usual course of administrative proceedings as to call for ~~((the exercise of revisory jurisdiction))~~ immediate review by the commission.

(c) A motion for discretionary review ~~((under this rule))~~, and any response, should not exceed ~~((fifteen))~~ 15 pages ~~((double spaced,))~~ (double-spaced, 12-point type) excluding appendices.

(d) Denial of discretionary review of a decision does not affect the right of a party to obtain later review of the ~~((executive director's, his or her designee's, or hearing officer's))~~ interlocutory decision or the issues pertaining to that decision.

(5) Unless appealed to the commission under WAC 391-25-660, a decision issued under this section ~~((shall be))~~ is the final order of

the agency((r)) with the same force and effect as if issued by the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-058, § 391-25-390, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.060, 41.56.070, 41.56.080, 41.59.070, 41.59.080 and 41.59.090. WSR 01-14-009, § 391-25-390, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 98-14-112, § 391-25-390, filed 7/1/98, effective 8/1/98; WSR 90-06-072, § 391-25-390, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-054 (Order 88-02), § 391-25-390, filed 5/31/88. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 85-19-059 (Resolution No. 85-01), § 391-25-390, filed 9/16/85. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-390, filed 9/30/80, effective 11/1/80.]

NEW SECTION

WAC 391-25-400 Card check. (1) If only one organization is seeking certification as the exclusive representative of unrepresented employees and the showing of interest exceeds 50 percent of the employees subject to the petition, then the executive director or the executive director's designee may direct a card check to determine whether the employees desire to be represented by the petitioner.

(2) Employees desiring to withdraw their showing of interest cards for purposes of the card check may do so by sending an individual card or letter signed by the employee to the executive director or the executive director's designee before the date specified in the direction of card check. The agency shall notify the petitioner of any such request before the commencement of the card check but shall not disclose the identity of the employee submitting the request.

(3) The employer shall make available to the agency original or legible copies of employment records containing the names and signatures of the employees in the bargaining unit.

(4) Before the commencement of the card check, the petitioner may file and serve, as required by WAC 391-08-120, a request that the question concerning representation be determined by a representation election.

(5) All card checks must be by actual comparison of records provided by the parties. The agency shall not disclose the names of employees giving representation authorization in favor of the organization. Following the comparison of records, the agency shall issue a tally sheet demonstrating the outcome of the card check.

(6) The card check procedures described in subsections (1) through (5) of this section are not applicable for certificated employees who collectively bargain under chapter 41.59 RCW, academic employees who collectively bargain under chapter 28B.52 RCW, symphony musicians who collectively bargain under chapter 49.39 RCW, and the bargaining units described in RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.510.

[]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

- WAC 391-25-420 Unit determination elections.** Employees ~~((shall))~~ may not be subjected to examination or cross-examination concerning their views on the configuration of bargaining units. A unit determination election ~~((shall be))~~ is the exclusive method to determine the ~~(())~~ desire ~~(())~~ of the employees involved.
- (1) ~~((Where))~~ If the executive director determines that either of two or more bargaining unit configurations proposed by petitioning or intervening organizations could be appropriate ~~((under other criteria))~~, a unit determination election ~~((shall))~~ must be conducted.
- (2) ~~((Where))~~ Unless governed by RCW 41.56.050(2) or 41.80.070(3), if an organization desires to merge two or more historically separate bargaining units, it may request a unit determination election under this section.
- (a) The organization shall file a petition under WAC 391-25-070, indicating under "other relevant facts" that it is seeking a merger of two or more existing bargaining units.
- (b) The showing of interest ~~((shall))~~ must indicate support for the merger of units ~~((r))~~ and ~~((shall))~~ be evaluated separately in each of the historical bargaining units.
- (c) The proposed merged unit must be an appropriate unit under the applicable statute.
- (i) If the propriety of the merged bargaining unit is disputed, the executive director shall make a determination following a hearing.
- (ii) If the propriety of the merged bargaining unit is stipulated, the executive director or designee shall determine whether the proposed unit is, on its face, an appropriate bargaining unit under the applicable statute.
- (d) If the merged unit is found to be appropriate, the agency shall conduct a unit determination election in each of the bargaining units proposed for merger.
- (i) If the merger is rejected in any of the historical units, the petition ~~((shall))~~ must be dismissed.
- (ii) If the merger is approved in all of the historical units and no motion for intervention has been granted, the executive director shall issue a certification designating the petitioning organization as the exclusive bargaining representative of the merged bargaining unit.
- (iii) If a motion for intervention has been granted under WAC 391-25-170 or 391-25-190, the agency shall conduct a representation election prior to the issuance of a certification.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.060. WSR 01-14-009, § 391-25-420, filed 6/22/01, effective 8/1/01.]

AMENDATORY SECTION (Amending WSR 16-06-019, filed 2/22/16, effective 3/24/16)

WAC 391-25-430 Notice of election or card check. (1) When an election or card check is to be conducted, the agency shall issue a notice to the employer, and the employer shall provide to the petitioned-for employees a copy of the notice of election or card check. The employer shall also post the notice in conspicuous places on its premises where notices to affected employees are usually posted. The notice must contain all of the following:

~~((1) The description of the bargaining unit or voting group(s) in which the election is to be conducted.~~

~~(2)) (a) The deadline for return of mail ballots or the date(s), hours, and polling place(s) for an on-site election; the voting period for an electronic election; or the date of the card check.~~

~~((3)) (b) The cut-off date, if any, or other criteria establishing eligibility to vote in the election or card check, including that the eligible employees are limited to those who continue to be employed within the bargaining unit when they cast a ballot in an on-site election, at the deadline for return of mail ballots, at the closing of polls in an electronic election, or on the date agency staff conducts the card check under WAC 391-25-400.~~

~~((4)) (c) A statement of the purpose of the election or card check and the question to be voted upon (or a sample ballot).~~

~~(Notices of the election shall be posted for at least five business days prior to the date on which the polls are opened for an on-site election or electronic election or five business days prior to the date on which ballots are mailed in a mail ballot election.) (2) Notices of the election or card check must remain posted until a tally of ballots or card check has been issued. The requirement that the employer post the notices of election in conspicuous places on its premises where notices to affected employees are usually posted is inapplicable to the bargaining units described in RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.510.~~

(3) While a notice of election is posted, employees in the bargaining unit or proposed bargaining unit have the right to conduct campaigning activities in the public areas or in the nonworking areas of the employer's premises, during nonworking time of the campaigner and employees being solicited, as long as the activities do not disrupt operations. However, if employees are permitted to discuss non-work subjects or solicit other employees in work areas, the employer cannot discriminatorily regulate employee discussions or solicitations.

(a) Nonemployees have the right to engage in campaigning activities in the employer's public areas consistent with the reasonable use of those areas. Where there are no public areas in an employer's workplace, reasonable comparable access must be granted.

(b) Employer rules and policies may expand these rights. Employer rules and policies must be nondiscriminatory.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.280(2), 49.39.060. WSR 16-06-019, § 391-25-430, filed 2/22/16, effective 3/24/16. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-25-430, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050,

28B.52.030, 41.56.060, 41.56.070 and 41.59.070. WSR 01-14-009, § 391-25-430, filed 6/22/01, effective 8/1/01; WSR 96-07-105, § 391-25-430, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-430, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-430, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 10-20-172, filed 10/6/10, effective 11/6/10)

WAC 391-25-450 Disclaimers. (~~((Prior to the issuance of))~~) Before the agency issues a notice of election and (~~((the mailing of))~~) mails the ballots, an organization may disclaim a bargaining unit and have its name removed from the ballot by written notice filed and served as required by WAC 391-08-120. The organization filing a disclaimer (~~((shall))~~) may not seek to be certified in the bargaining unit, or any subdivision thereof, for a period of at least six months.

[Statutory Authority: RCW 28B.52.080, 41.06.340, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, and 49.39.060. WSR 10-20-172, § 391-25-450, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.070 and 41.59.070. WSR 01-14-009, § 391-25-450, filed 6/22/01, effective 8/1/01; WSR 98-14-112, § 391-25-450, filed 7/1/98, effective 8/1/98; WSR 90-06-072, § 391-25-450, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-450, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 16-06-019, filed 2/22/16, effective 3/24/16)

WAC 391-25-480 Elections—Electioneering—Objectionable conduct.

(1) The executive director (~~((shall have))~~) has discretion to conduct elections electronically, by mail, or on-site. The procedures for each means of election (~~((shall))~~) must be designed to preserve the secrecy of employee voting. Multiple questions, including unit determination elections, may be submitted to employees at the same time on separate ballots.

(2) (~~((Following the close of an electronic or telephonic election,))~~) The agency shall transmit the results of an electronic election to the parties of record.

(3) Following the close of an election by mail, each party may be represented by observers of (~~((its))~~) their own choosing at the tally of any ballots. (~~((Any lists of those who have voted or who have abstained from voting shall be surrendered to the agency at the conclusion of the tally.))~~)

(4) For an on-site election, each party may be represented by observers of (~~((its))~~) their own choosing, subject to (~~((such))~~) any limitations (~~((as))~~) the executive director may prescribe. During the hours of

voting, no management official having authority over bargaining unit employees nor any officer or paid employee of an organization ((shall)) may serve as observer. ((Any lists of those who have voted or who have abstained from voting shall be surrendered to the agency at the conclusion of the tally.))

(5) The following prohibitions apply to assure appropriate conditions for employees to cast their ballots:

(a) The reproduction of any document purporting to suggest, either directly or indirectly, that the agency endorses a particular choice in an election is prohibited.

(b) The use of deceptive campaign practices improperly involving the ((commission)) agency and its processes is prohibited.

(c) The use of forged documents is prohibited.

(d) Coercion or intimidation of eligible voters, or any threat of reprisal or force or promise of benefit to eligible voters, is prohibited.

(e) Conduct in violation of WAC 391-25-140 is prohibited.

(f) Misrepresentations of fact or law are prohibited. To set aside an election, a misrepresentation must:

(i) Be a substantial misrepresentation of fact or law regarding a salient issue;

(ii) Be made by a person having intimate knowledge of the subject matter, so that employees may be expected to attach added significance to the assertion;

(iii) Occur at a time which prevents others from effectively responding; and

(iv) Be reasonably viewed as having had a significant impact on the election, whether a deliberate misrepresentation or not.

(g) Election speeches on the employer's time to massed assemblies of employees are prohibited during the period that the polls are open in an on-site or electronic election or during the period beginning on the scheduled date for a mail ballot election and continuing through the deadline for mail ballots. Other electioneering not prohibited by (a) through (f) of this subsection is permitted during that period.

(h) For on-site elections, ((there shall be)) no electioneering may occur at or ((about)) around the polling place during the hours of voting.

(6) Violations of this rule ((shall be)) are grounds for setting aside an election upon objections properly filed.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.280(2), 49.39.060. WSR 16-06-019, § 391-25-480, filed 2/22/16, effective 3/24/16.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-510 Challenged ballots. (1) Any observer or the election officer may challenge, for good cause, the eligibility of any person seeking to cast a ballot in ((the)) a mail ballot, on-site, or electronic election. No person ((shall)) may be denied the right to cast a challenged ballot ((. The election officer shall not have authority to resolve challenges)), and the ballot of the challenged voter ((shall)) must be placed in a sealed envelope identifying the voter and the observer or election officer challenging the eligibility of

the voter (~~(. The ballot shall not be opened until the challenge is resolved)~~).

(2) Any party may withdraw a challenge previously made and, unless the eligibility of the voter is challenged by another party or ~~((by))~~ the election officer, the challenge ~~((shall be))~~ is resolved.

(3) If the challenged ballots ~~((are insufficient in number to))~~ do not affect the results of the election, they ~~((shall))~~ will be impounded ~~((and no ruling shall be made))~~ and the appropriate certification or interim certification will be issued.

(4) If the number of challenged ballots ~~((are sufficient in number to))~~ would affect the results of the election, the ~~((election officer shall ascertain the position of each party as to each challenged ballot and shall include the information in his or her report. If challenges raise material questions of fact which cannot be resolved without a hearing, there shall be issued and served on each of the parties a notice of hearing before a hearing officer. The rules relating to the conduct of hearings on petitions shall govern hearings on challenges, except that the scope of the hearing shall be limited to matters relevant to the disposition of the challenged ballots. The executive director shall have authority to rule on all challenges except those made by a party to preserve an objection to a ruling previously made by the executive director as to the eligibility of the challenged voter. If challenges of a type excepted from the authority of the executive director are sufficient in number to affect the results of the election, the matter shall be transferred to the commission for its determination under the provisions of WAC 391-25-670))~~ executive director or the executive director's designee shall conduct proceedings under WAC 391-25-390 and rule on all challenges except those made by a party to preserve an objection to a ruling previously made by the executive director or the executive director's designee as to the eligibility of the challenged voter.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060 and 41.59.070. WSR 01-14-009, § 391-25-510, filed 6/22/01, effective 8/1/01; WSR 96-07-105, § 391-25-510, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.56.040. WSR 90-06-072, § 391-25-510, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-510, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-25-530 Votes needed to determine election. ~~((1) Unit determination elections shall be decided by a majority of those eligible to vote in the election.~~

~~(2) Unless governed by WAC 391-25-531, representation elections shall be decided by a majority of those voting. Where there are only two choices on the ballot, a tie vote shall result in a certification of no representative.)~~ (1) Except as provided in subsection (2) of this section, representation elections must be decided by a majority of those voting.

(a) If there are only two choices on the ballot, a tie vote results in a certification of no representative.

(b) If there are only two choices on the ballot and both choices are qualified employee organizations or bargaining representatives, the executive director may direct a rerun election following a tie result for good cause shown.

(2) Unit determination elections and representation elections conducted under chapter 41.56 RCW with three or more choices on the ballot must be decided by a majority of those eligible to vote in the election.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-058, § 391-25-530, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-530, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-530, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 96-07-105, filed 3/20/96, effective 4/20/96)

WAC 391-25-550 Tally sheet. The election officer shall prepare and ~~((furnish to each of the parties))~~ issue a tally of the votes cast on unchallenged ballots and the number of challenged ballots. The tally must indicate whether the results of the election were conclusive or inconclusive. After the ~~((subsequent))~~ resolution of challenged ballots affecting the results of the election, a revised tally ~~((shall))~~ must be issued ~~((and furnished to the parties. The tally shall indicate whether the results of the election were conclusive or inconclusive))~~.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060 and 41.59.070. WSR 96-07-105, § 391-25-550, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-550, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-550, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 90-06-072, filed 3/7/90, effective 4/7/90)

WAC 391-25-570 Procedure following inconclusive election. In any election in which there are ~~((more than two))~~ three or more choices on the ballot, if none of the choices receives the number of votes necessary to determine the election, a run-off election ~~((shall))~~ must be held providing for selection between the two choices receiving the largest numbers of valid ballots cast in the inconclusive election. Any organization ~~((to be))~~ excluded from a run-off election may file objections to specific conduct affecting the results

of the inconclusive election. Where the choice of "no representative" is to be excluded from a run-off election, the employer or decertification petitioner may file objections to specific conduct affecting the results of the inconclusive election. ~~((Such))~~ Any objections ~~((shall))~~ must be resolved ~~((prior to the conduct of))~~ before a run-off election is conducted. All run-off elections ~~((shall))~~ must be determined as provided in WAC 391-25-530.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-570, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-570, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-25-590 ~~((Filing and service of))~~ Objections to improper conduct and interim orders. The due date for objections is seven days after the tally has been served under WAC ~~((391-25-410 or under))~~ 391-25-400 or 391-25-550, regardless of whether the number of challenged ballots ~~((are sufficient in number to))~~ would affect the results of the election. The time ~~((period))~~ for filing objections cannot be extended.

(1) Objections by the petitioner, the employer, or any intervenor ~~((shall))~~ must set forth, in separate numbered paragraphs:

(a) The specific conduct which the party filing the objection claims has improperly affected the results of the election; ~~((and/or))~~ or

(b) The direction of election, direction of ~~((cross-check))~~ card check, or other interim rulings which the objecting party desires to appeal to the commission.

(2) Objections by individual employees are limited to conduct or procedures which prevented them from casting a ballot.

(3) Any objections ~~((shall))~~ must be filed ~~((at the commission's Olympia office))~~ and served as required by WAC 391-08-120 ~~((1), and the party filing the objections shall serve a copy on each of the other parties to the proceedings as required by WAC 391-08-120 (3) and (4))~~.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060 and 41.59.070. WSR 00-14-048, § 391-25-590, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-25-590, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-25-590, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-590, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-590, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-610 Procedure where no objections are filed. If no objections are filed within the time set forth (~~above, and if any~~) in WAC 391-25-590, if the number of challenged ballots (~~are insufficient in number to~~) does not affect the determination of the question concerning representation, and if no run-off election is to be held, the executive director shall issue a certification having the same force and effect as if issued by the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.080 and 41.59.090. WSR 01-14-009, § 391-25-610, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-610, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-610, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 98-14-112, filed 7/1/98, effective 8/1/98)

WAC 391-25-630 Procedure where conduct objections are filed. (~~Where~~) If objections allege improper conduct under WAC 391-25-590 (1) (a) or (2), other parties may be requested to respond to the objections within a period of time established by the agency. The period (~~shall~~) must be seven days or more.

(1) If the objections and any responses indicate there is no genuine issue as to any material fact and that one of the parties is entitled to a judgment as a matter of law, the commission may issue a summary judgment in the matter.

(2) If the objections and any responses raise material questions of fact which cannot be resolved without a hearing, (~~there shall be issued and served on each of the parties a notice of hearing before a hearing officer~~) the matter may be remanded to the executive director to conduct further proceedings under WAC 391-25-390. (~~(a)~~) Hearings on objections to conduct affecting the results of an election may be consolidated with hearings on challenged ballots in the same proceeding.

(~~(b) The rules relating to hearings on petitions shall govern hearings on objections, except that the scope of the hearing shall be limited to matters relevant to the disposition of the objections.~~)

(3) The objections, any responses, and the record made at any hearing on the objections (~~shall~~) must be referred to the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.070 and 41.59.070. WSR 98-14-112, § 391-25-630, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.56.040 and 41.59.110. WSR 90-06-072, § 391-25-630, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-630, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-25-650 Briefs and written arguments on objections. (1)

The due date for any appeal brief which the party filing an objection desires to have considered by the commission (~~(shall be fourteen)~~) is 14 days following the later of:

(a) The issuance of a transcript of a hearing held under WAC 391-25-630(2); or

(b) The filing of objections under WAC 391-25-590 (~~((1)(b))~~).

~~((Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120(3) and (4).))~~

(2) The due date for any responsive brief which any other (~~(parties)~~) party desires to have considered by the commission (~~(shall be fourteen)~~) is 14 days following the date on which that party is served with an appeal brief. ~~((Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120(3) and (4).))~~

(3) The executive director or designee may extend the due date for an appeal brief or responsive brief. (~~(Such)~~) Requests (~~(shall)~~) to extend the due date may only be considered if made (~~(on or before)~~) by the date the brief is due (~~(7)~~) and in compliance with WAC 391-08-180. Extensions of time (~~(shall)~~) may not be routine or automatic.

(4) A party filing a brief under this section must limit (~~(its)~~) the brief's total length to (~~(twenty-five)~~) 25 pages (double-spaced, 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief (~~(in order)~~) to address novel (~~(and/or)~~) or complex issues raised by the objections; and

(b) The commission or its designee grants (~~(such a)~~) the motion for good cause shown.

(5) Any motion filed under ((this)) subsection ((shall)) (4)(a) of this section tolls the due date for briefs under subsections (1) and (2) of this section until the commission or its designee responds to (~~(such))~~ the motion.

(6) Any brief or motion filed under this section must be filed and served as required by WAC 391-08-120.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-25-650, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.070 and 41.59.070. WSR 01-14-009, § 391-25-650, filed 6/22/01, effective 8/1/01; WSR 00-14-048, § 391-25-650, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-25-650, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-650, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 85-19-059 (Resolution No. 85-01), § 391-25-650, filed 9/16/85. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-650, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-25-660 Appeals from orders and jurisdictional rulings.

An order issued under WAC (~~(391-25-390)~~) 391-25-290 or 391-25-510 and any rulings in the proceedings up to the issuance of the order, as well as rulings that the employer or employees are subject to the jurisdiction of the (~~commission~~) agency, may be appealed to the commission as follows:

(1) The due date for a notice of appeal (~~(shall be twenty)~~) is 20 days following the date of issuance of the order being appealed. The time for filing a notice of appeal cannot be extended.

(2) (~~Where~~) If an order has been appealed, the due date for a notice of cross-appeal by other parties (~~(shall be)~~) is seven days after the last date on which a notice of appeal could be timely. The time for filing a notice of cross-appeal cannot be extended.

(3) A notice of appeal or notice of cross-appeal (~~(shall)~~) must identify, in separate numbered paragraphs, the specific rulings, findings of fact, conclusions of law, or orders claimed to be in error.

(4) A party (~~which~~) that desires to cite or reassert a document previously filed in the matter (~~(shall)~~) must do so by reference to the document already on file (~~(7)~~) and shall not file or attach another copy of the document to (~~(papers)~~) documents filed regarding an appeal.

(5) A notice of appeal or notice of cross-appeal (~~(shall)~~) must be filed (~~(at the commission's Olympia office)~~) and served as required by WAC 391-08-120 (~~((1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4)).~~).

(6) The due date for any appeal brief (~~which~~) that the party filing an appeal or cross-appeal desires to have considered by the commission (~~(shall be fourteen)~~) is 14 days following the filing of its notice of appeal or notice of cross-appeal. Any brief (~~(shall)~~) must be filed (~~(at the commission's Olympia office)~~) and served as required by WAC 391-08-120 (~~((1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4)).~~).

(7) The due date for any responsive brief (~~which~~) that a party desires to have considered by the commission (~~(shall be fourteen)~~) is 14 days following the date on which that party is served with an appeal brief. Any brief (~~(shall)~~) must be filed (~~(at the commission's Olympia office)~~) and served as required by WAC 391-08-120 (~~((1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4)).~~).

(8) The executive director or designee may extend the due date for an appeal brief or responsive brief. (~~(Such)~~) Requests (~~(shall)~~) to extend the due date may only be considered if made (~~(on or before)~~) by the date the brief is due (~~(7)~~) and in compliance with WAC 391-08-180. Extensions of time (~~(shall)~~) may not be routine or automatic.

(9) A party filing a brief under this section must limit (~~(its)~~) the brief's total length to (~~(twenty-five)~~) 25 pages (double-spaced, 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief (~~(in order)~~) to address novel (~~(and/or)~~) or complex issues raised by the appeal; and

(b) The commission or its designee grants (~~(such a)~~) the motion for good cause shown.

(10) Any motion filed under ~~((this))~~ subsection ~~((shall))~~ (9)(a) of this section tolls the due date for briefs under subsections (1) and (2) of this section until the commission or its designee responds to ~~((such))~~ the motion.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-25-660, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.464, 41.56.070 and 41.59.070. WSR 00-14-048, § 391-25-660, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-25-660, filed 7/1/98, effective 8/1/98.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-25-670 Commission action on objections and appeals. If there are objections under WAC 391-25-590 or an order is appealed under WAC 391-25-660, the entire record in the proceedings ~~((shall))~~ must be transmitted to the commission ~~((members))~~. The commission may request the parties to appear before it to make oral argument as to any or all of the issues in the matter. The commission shall, on the basis of the entire record transmitted to it, determine the objections or appeal and any challenged ballots referred to the commission ~~((pursuant to))~~ under WAC 391-25-510 ~~((7))~~ and ~~((shall))~~ issue appropriate orders.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.464, 41.56.070 and 41.59.070. WSR 00-14-048, § 391-25-670, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-25-670, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.070. WSR 90-06-072, § 391-25-670, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-670, filed 9/30/80, effective 11/1/80.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 391-25-002	Sequence and numbering of rules—Special provisions.
WAC 391-25-012	Special provision—Educational employees.
WAC 391-25-032	Special provision—Educational employees.
WAC 391-25-034	Special provision—Marine employees.
WAC 391-25-036	Special provision—State civil service employees.

WAC 391-25-037	Special provision—Higher education faculty.
WAC 391-25-051	Special provision—Individual providers of home care under RCW 74.39A.270 and 74.39A.300—Family child care providers under RCW 41.56.208—Adult family home providers under RCW 41.56.029—Language access providers under RCW 41.56.510.
WAC 391-25-092	Special provision—Educational employees.
WAC 391-25-136	Special provision—State civil service employees.
WAC 391-25-137	Special provision—Higher education faculty.
WAC 391-25-197	Special provision—Higher education faculty.
WAC 391-25-217	Special provision—Higher education faculty.
WAC 391-25-229	Special provision—Symphony musicians.
WAC 391-25-230	Election agreements.
WAC 391-25-250	Cross-check agreements.
WAC 391-25-252	Special provision—Educational employees.
WAC 391-25-253	Special provision—Academic employees.
WAC 391-25-391	Special provision—Public employees.
WAC 391-25-399	Special provision—Symphony musicians.
WAC 391-25-410	Cross-check of records.
WAC 391-25-412	Special provision—Educational employees.
WAC 391-25-413	Special provision—Academic employees.
WAC 391-25-416	Special provision—State civil service employees.
WAC 391-25-426	Special provision—State civil service employees.
WAC 391-25-427	Special provision—Higher education faculty.
WAC 391-25-436	Special provision—State civil service employees.
WAC 391-25-440	Election for inclusion of unrepresented employees.
WAC 391-25-486	Special provision—State civil service employees.
WAC 391-25-531	Special provision—Public employees.
WAC 391-25-674	Special provision—Marine employees.

OTS-3726.2

AMENDATORY SECTION (Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

WAC 391-35-001 Scope—Contents—Other rules. This chapter governs unit clarification proceedings ((before the public employment relations commission on petitions for clarification of existing bargaining units)) under all chapters of the Revised Code of Washington (RCW) administered by the ((commission and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300. The provisions of this chapter should be read in conjunction with:

(1) ~~Chapter 10-08 WAC, which contains the model rules of procedure promulgated by the chief administrative law judge to regulate adjudicative proceedings under chapter 34.05 RCW, except:~~

(a) ~~WAC 10-08-035, which is replaced by detailed requirements in WAC 391-35-050;~~

(b) ~~WAC 10-08-050, which relates to office of administrative hearings procedures inapplicable to proceedings before the public employment relations commission;~~

(c) ~~WAC 10-08-211, which is replaced by detailed requirements in WAC 391-35-210 and 391-35-250; and~~

(d) ~~WAC 10-08-230, which is replaced by detailed requirements in WAC 391-35-070.~~

(2) ~~Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission, and which also replaces some provisions of chapter 10-08 WAC.~~

(3) ~~Chapter 391-25 WAC, which regulates representation proceedings.~~

(4) ~~Chapter 391-45 WAC, which regulates unfair labor practice proceedings.~~

(5) ~~Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.~~

(6) ~~Chapter 391-65 WAC, which regulates grievance arbitration and grievance mediation proceedings.~~

(7) ~~Chapter 391-95 WAC, which regulates union security nonassociation proceedings)) agency. To the extent these rules of practice and procedure differ from the model rules in chapter 10-08 WAC or this agency's general rules of practice and procedure in chapter 391-08 WAC, these special rules prevail.~~

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-35-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-35-001, filed 6/22/01, effective 8/1/01; WSR 96-07-105, § 391-35-001, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-073, § 391-35-001, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-001, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 96-07-105, filed 3/20/96, effective 4/20/96)

WAC 391-35-010 Unit clarification petition (~~(for clarification of an existing bargaining unit)~~)—Who may file. A unit clarification petition (~~(for clarification of an existing bargaining unit)~~) may only be filed by the employer, the exclusive representative, (~~(or)~~) their agents, or by the parties jointly.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.413, 41.56.060 and 41.59.080. WSR 96-07-105, § 391-35-010, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-073, § 391-35-010, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-010, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-35-020 Time for filing petition—Limitations on results of proceedings.

TIMELINESS OF PETITION

(1) A unit clarification petition may be filed at any time, with regard to:

(a) Disputes (~~(concerning)~~) about the appropriate bargaining unit placement for newly created positions (~~(which have been newly created by an employer.~~

~~(b) Disputes concerning the allocation of employees or positions claimed by two or more bargaining units.)~~ i

~~((c))~~ (b) Disputes under WAC 391-35-300 concerning a requirement for a professional education certificate ~~((-))~~ i

~~((d))~~ (c) Disputes under WAC 391-35-310 concerning eligibility for interest arbitration ~~((-))~~ i

~~((e))~~ (d) Disputes under WAC 391-35-320 concerning status as a confidential employee ~~((-))~~ i or

~~((f))~~ (e) Disputes under WAC 391-35-330 concerning one-person bargaining units.

(2) A ~~((unit clarification))~~ petition concerning supervisory status (~~(as a supervisor)~~) under WAC 391-35-340 ~~((-))~~ or regular part-time status (~~(as a regular part-time or casual employee)~~) under WAC 391-35-350 ~~((- is subject to the following conditions))~~ will be considered timely if:

(a) ~~((The signing of a collective bargaining agreement will not bar the processing of a petition filed by a party to the agreement, if the petitioner can demonstrate that it put the other party on notice during negotiations that it would contest the inclusion or exclusion of the position or class through a unit clarification proceeding, and it filed the petition prior to signing the current collective bargaining agreement.))~~ All parties agree to raise the issue;

(b) ~~((Except as provided under subsection (2)(a) of this section, the existence of a valid written and signed collective bargaining~~

agreement will bar the processing of a petition filed by a party to the agreement unless the petitioner can demonstrate, by specific evidence, substantial changed circumstances during the term of the agreement which warrant a modification of the bargaining unit by inclusion or exclusion of a position or class.) The petitioner demonstrates that it put the other party on notice during negotiation for the most recent collective bargaining agreement that it would contest the inclusion or exclusion of the position or class through a unit clarification proceeding and the petitioner files the petition before ratification of the current collective bargaining agreement; or

(c) The petitioner demonstrates through evidence that a substantial change in circumstances occurred within a reasonable time before the filing of the petition and that the change in circumstances warrants a modification of the bargaining unit by inclusion or exclusion of a position or class.

LIMITATIONS ON RESULTS OF PROCEEDINGS

(3) Employees or positions may be removed from an existing bargaining unit ~~((in a unit clarification proceeding filed within a reasonable time period after a change of circumstances altering the community of interest of the employees or positions))~~ if the petition was timely filed as provided in subsections (1) and (2) of this section.

(4) Employees or positions may be added to an existing bargaining unit in a unit clarification proceeding if:

(a) ~~((Where a))~~ The petition is filed within a reasonable time period after a change of circumstances altering the community of interest of the employees or positions; ~~((or))~~

(b) ~~((Where))~~ The existing bargaining unit is the only appropriate unit for the employees or positions; or

(c) All parties to the proceeding agree the agency should rule upon the request for clarification.

(5) ~~((Except as provided under subsection (4) of this section, a question concerning representation will exist under chapter 391-25 WAC, and an order clarifying bargaining unit will not be issued under chapter 391-35 WAC:~~

~~(a) Where a unit clarification petition is not filed within a reasonable time period after creation of new positions.~~

~~(b) Where employees or positions have been excluded from a bargaining unit by agreement of the parties or by a certification, and a unit clarification petition is not filed within a reasonable time period after a change of circumstances.~~

~~(c) Where addition of employees or positions to a bargaining unit would create a doubt as to the ongoing majority status of the exclusive bargaining representative.)~~ An order clarifying bargaining unit will not be issued under this section if:

(a) Employees or positions have been excluded from a bargaining unit by agreement of the parties or by a certification, and a unit clarification petition is not filed within a reasonable time period after a change of circumstances; or

(b) Adding the disputed employees or positions to a bargaining unit would create a doubt as to the ongoing majority status of the exclusive bargaining representative.

(6) ~~((Where a petitioning union seeks severance of a portion of an existing))~~ An appropriate bargaining unit of classified employees at a school district or educational service district ~~((, appropriate bargaining units existing on July 25, 2005,))~~ may not be divided into more than one appropriate bargaining unit without the agreement of the

employer and certified bargaining representative of the unit where severance is sought.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.070. WSR 08-04-058, § 391-35-020, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.413, 41.56.060 and 41.59.080. WSR 01-14-009, § 391-35-020, filed 6/22/01, effective 8/1/01; WSR 96-07-105, § 391-35-020, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-073, § 391-35-020, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-061 (Order 88-03), § 391-35-020, filed 5/31/88.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-35-030 Petition (~~(in writing Number of copies Filing)~~)
~~—Filing and service.~~ ((Each)) A unit clarification petition (~~(for clarification of an existing bargaining unit shall)~~) may be filed through the agency's online e-filing system, by email, or in writing (~~(, and shall be filed at)~~) to the ((commission's)) agency's Olympia office, as required by WAC 391-08-120 (1) and (2). If the petition is not filed (~~(other than as a)~~) jointly (~~(filed petition)~~), the party filing the petition shall serve a copy on the other party to the collective bargaining relationship (~~(in which the disagreement arises)~~), as required by WAC 391-08-120 (3) and (4).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.413, 41.56.060 and 41.59.080. WSR 01-14-009, § 391-35-030, filed 6/22/01, effective 8/1/01; WSR 00-14-048, § 391-35-030, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-35-030, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-35-030, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.080. WSR 90-06-073, § 391-35-030, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-030, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-35-050 Contents of petition filing forms. Each completed unit clarification petition (~~(for clarification of an existing bargaining unit shall contain, in separate numbered paragraphs)~~) filing form, whether obtained from the agency's website or through the agency's e-filing system, must include all of the following:

(1) Information identifying the parties and their (~~(relationships)~~) representatives, including:

(a) The name, email address, mailing address, and telephone number of the employer (~~(, and the name, address, telephone number, fax~~

number, and email address of its principal)) and of the employer's representative; and

(b) The name, email address, mailing address, and telephone number (~~(, fax number, and email address)~~) of the exclusive representative (~~(, and the name, address, telephone number, fax number, and email address)~~) and of its principal representative (~~(, and the name, address, telephone number, fax number, and email address)~~) and of its principal representative (~~(, and the name, address, telephone number, fax number, and email address)~~).

~~(c) The employer's principal business;~~
~~(d))~~.

(2) Information concerning the parties' relationships, including:

(a) The parties' contractual relationship, indicating that:

(i) The parties have never had a contract; or

(ii) The parties have had a contract, and a copy of the current ((+)) or most recent ((+)) collective bargaining agreement is attached; ((-e)) (b) The status of negotiations between the parties, indicating that:

(i) The parties' contract is closed; or

(ii) The parties are currently in contract negotiations;

((-f)) (c) The description of the existing bargaining unit, specifying inclusions and exclusions;

((-g)) (d) The number of employees in the bargaining unit; and

((-h)) (e) The history of the bargaining unit, including at least the approximate date of its creation.

((-2)) (3) An explanation of the proposed change and the reasons for the proposed change, including identification of the position(s), classification(s), or group(s) at issue ((-r)); the number of employees in each position, classification, or group ((-r)); and the ((-present)) bargaining unit (inclusion or exclusion) status of each position, classification, or group ((-r); identification of the party proposing that the present status be changed, and the reason for the proposed change)).

((-3)) (4) Identification of other interested employee organizations, including the name ((-s and addresses)), email address, and mailing address of any other employee (organizations) organization(s) claiming to represent any employee ((-s)) affected by the proposed clarification(s) ((-r)) and a brief description ((-s)) of (the contracts, if any,) any contract(s) covering ((-such)) those employees.

((-4)) (5) Any other relevant facts.

((-5)) (6) The name ((-s)), signature ((-s)), and ((-if any,)) title ((-s)), if any, of the ((-representative(s) of the petitioner(s), and)) person(s) filing the petition as well as the date ((-s)) of the signature(s).

(7) Any other information requested in the unit clarification petition filing form found on the agency's website at www.perc.wa.gov or as required through the agency's e-filing system.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.413, 41.56.060 and 41.59.080. WSR 01-14-009, § 391-35-050, filed 6/22/01, effective 8/1/01; WSR 96-07-105, § 391-35-050, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.080. WSR 90-06-073, § 391-35-050, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-050, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 90-06-073, filed 3/7/90, effective 4/7/90)

WAC 391-35-070 Amendment and withdrawal. (~~Any~~) A petition may be amended or withdrawn by the petitioner(s) under (~~such~~) any conditions (~~as~~) the executive director or the commission may impose.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.080. WSR 90-06-073, § 391-35-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-070, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-15-032, filed 7/9/08, effective 8/9/08)

WAC 391-35-085 Amendment of certification. A party may file a petition to amend an existing certification to reflect a minor change in circumstances, such as a change of an employee organization's name or an employer's name, and the executive director may amend the certification (~~(, provided that the purpose of)~~) if the amendment (~~(is to reflect changed circumstances such as the name of a labor organization or the name of an employer, and the bargaining unit is not affected by the change and there is no question concerning representation)~~) does not add or remove positions from the existing bargaining unit or change the bargaining unit's configuration and there is no question concerning representation.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.100, 41.76.060, 41.80.070. WSR 08-15-032, § 391-35-085, filed 7/9/08, effective 8/9/08.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-35-090 Notice of hearing. If it appears to the executive director or designee that a disagreement exists which could be the basis for issuing an order clarifying the bargaining (~~unit or units~~) unit(s), a (~~hearing officer shall issue a~~) notice of hearing (~~and have it~~) will be issued and served on the parties. A notice of hearing may be amended or withdrawn before the close of the hearing.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.434. WSR 01-14-009, § 391-35-090, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.080. WSR 90-06-073, § 391-35-090, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-090, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-35-110 Coordination of proceedings. (1) If a petition for clarification under this chapter is pending at the same time as a petition under chapter 391-25 WAC involving all or any part of the same bargaining unit, the proceedings under this chapter (~~shall~~) must be suspended, and all issues concerning the description of the bargaining unit (~~shall~~) must be resolved in the proceedings under chapter 391-25 WAC.

(2) A unit clarification proceeding may control or be controlled by an unfair labor practice proceeding. If a petition for clarification under this chapter is pending at the same time as a complaint under chapter 391-45 WAC involving all or any part of the same bargaining unit, the executive director or designee (~~shall have~~) has discretion to withhold processing of one of the related proceedings pending the outcome of the other related proceeding.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.070. WSR 01-14-009, § 391-35-110, filed 6/22/01, effective 8/1/01; WSR 96-07-105, § 391-35-110, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-073, § 391-35-110, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-110, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 90-06-073, filed 3/7/90, effective 4/7/90)

WAC 391-35-130 Hearings—Who (~~shall~~) may conduct. Hearings may be conducted by the commission, (~~by~~) the executive director, (~~by~~) or a member of the agency staff (~~or by any other individual designated by the commission or executive director as a hearing officer~~). At any time, a hearing officer may be substituted for the hearing officer previously (~~presiding~~) assigned.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070, 41.59.070, 41.59.080 and 53.18.015. WSR 90-06-073, § 391-35-130, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-130, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-35-170 Hearings—Reopening of hearing—Briefs. (1) Hearings (~~shall be~~) are public, (~~except where~~) unless a protective order is issued under WAC 10-08-200(7), and (~~shall be~~) are limited to matters concerning the clarification of the existing bargaining unit.

(a) The parties (~~((shall be))~~) are responsible for the presentation of their cases.

(b) The hearing officer shall ascertain the respective positions of the parties (~~((r))~~) to obtain a full and complete factual record upon which the agency may discharge its responsibilities under the applicable statute. The hearing officer has authority, under WAC 10-08-200 (8) and (9), to ask questions, call witnesses, and explore matters not raised or only partially raised by the parties.

(2) Once a hearing has been declared closed, it may be reopened only upon the timely motion of a party (~~((upon discovery of))~~) that discovered new evidence which could not with reasonable diligence have been discovered and produced at the hearing.

(3) The hearing officer may (~~((allow or))~~) direct the filing of briefs as to any or all of the issues in a case.

(4) Arrangements and due dates for briefs (~~((shall be))~~) are established by the hearing officer.

(5) Any brief (~~((shall))~~) must be filed (~~((with the hearing officer))~~) and served as required by WAC 391-08-120 (~~((1)), and copies shall be served on all other parties to the proceeding as required by WAC 391-08-120 (3) and (4))~~).

(~~((4))~~) (6) A party filing a brief under this section must limit (~~((its))~~) the brief's total length to (~~((twenty-five))~~) 25 pages (double-spaced, (~~((twelve-point))~~) 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief (~~((in order))~~) to address novel or complex (~~((legal and/or factual issues raised by the objections))~~) issues; and

(b) The executive director, (~~((his or her))~~) the executive director's designee, or the hearing officer grants (~~((such a))~~) the motion for good cause shown (~~((; and))~~).

(~~((e))~~) (7) A motion for permission to file a longer brief may be made orally to the hearing officer at the end of the (~~((administrative))~~) hearing, and the hearing officer has the authority to orally grant (~~((such a))~~) the motion at (~~((such))~~) that time.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.070. WSR 08-04-058, § 391-35-170, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.437, 41.56.060 and 41.59.080. WSR 01-14-009, § 391-35-170, filed 6/22/01, effective 8/1/01; WSR 00-14-048, § 391-35-170, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-35-170, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-35-170, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.59.080 and 53.18.015. WSR 90-06-073, § 391-35-170, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-170, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-35-190 Proceedings before the executive director. (1) The executive director may proceed upon the record, after submission of briefs or after hearing, as (~~((may be))~~) appropriate. The executive director shall determine the status of each position, classification,

or group of employees (~~over which there is a disagreement~~) at issue and issue an order clarifying the bargaining unit, dismiss the petition, or make other disposition of the matter.

(2) (~~Where~~) If the executive director determines that employee eligibility issues exist, the executive director may delegate authority to the hearing officer to decide those issues.

(3) (a) A party seeking review by the commission of an interlocutory decision of the executive director, (~~his or her~~) the executive director's designee, or a hearing officer must file a motion for discretionary review with the commission and a copy with the (~~executive director or his or her designee~~) person who issued the interlocutory decision within seven days after the decision is issued.

(b) Discretionary review of an interlocutory decision issued by the executive director, (~~his or her~~) the executive director's designee, or a hearing officer will be accepted by the commission only:

(i) If the executive director, (~~his or her~~) the executive director's designee, or the hearing officer has committed an obvious error (~~which~~) that would render further proceedings useless; (~~or~~)

(ii) If the executive director (~~or his or her~~), the executive director's designee, or the hearing officer has committed probable error and the interlocutory decision (~~of the executive director, his or her designee, or hearing officer~~) substantially alters the status quo or substantially limits the freedom of a party to act; or

(iii) If the executive director, (~~his or her~~) the executive director's designee, or the hearing officer has so far departed from the accepted and usual course of administrative proceedings as to call for (~~the exercise of revisory jurisdiction~~) immediate review by the commission.

(c) A motion for discretionary review under this rule, and any response, should not exceed (~~fifteen~~) 15 pages (double-spaced, 12-point type) excluding appendices.

(d) Denial of discretionary review of a decision does not affect the right of a party to obtain later review of the (~~executive director's, his or her designee's, or hearing officer's~~) interlocutory decision or the issues pertaining to that decision.

(4) Unless appealed to the commission under WAC 391-35-210, a decision issued under this section (~~shall be~~) is the final order of the agency(~~r~~) with the same force and effect as if issued by the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.070. WSR 08-04-058, § 391-35-190, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.060 and 41.59.080. WSR 01-14-009, § 391-35-190, filed 6/22/01, effective 8/1/01; WSR 98-14-112, § 391-35-190, filed 7/1/98, effective 8/1/98; WSR 90-06-073, § 391-35-190, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 85-19-059 (Resolution No. 85-01), § 391-35-190, filed 9/16/85. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-190, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-35-210 Appeals. An order issued under WAC 391-35-190 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission as follows:

(1) The due date for a notice of appeal (~~((shall be twenty))~~) is 20 days following the date of issuance of the order being appealed. The time for filing a notice of appeal cannot be extended.

(2) (~~Where~~) If an order has been appealed, the due date for a notice of cross-appeal by other parties (~~((shall be))~~) is seven days after the last date on which a notice of appeal could be timely. The time for filing a notice of cross-appeal cannot be extended.

(3) A notice of appeal or notice of cross-appeal (~~((shall))~~) must identify, in separate numbered paragraphs, the specific rulings, findings of fact, conclusions of law, or orders claimed to be in error.

(4) A party (~~(which)~~) that desires to cite or reassert a document previously filed in the matter (~~((shall))~~) must do so by reference to the document already on file (~~((r))~~) and shall not file or attach another copy of the document to (~~((papers))~~) documents filed regarding an appeal.

(5) A notice of appeal or notice of cross-appeal (~~((shall))~~) must be filed (~~((at the commission's Olympia office))~~) and served as required by WAC 391-08-120 (~~((1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4)).~~).

(6) The due date for any appeal brief (~~(which)~~) that the party filing an appeal or cross-appeal desires to have considered by the commission (~~((shall be fourteen))~~) is 14 days following the filing of its notice of appeal or notice of cross-appeal. Any brief (~~((shall))~~) must be filed (~~((at the commission's Olympia office))~~) and served as required by WAC 391-08-120 (~~((1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4)).~~).

(7) The due date for any responsive brief (~~(which)~~) that a party desires to have considered by the commission (~~((shall be fourteen))~~) is 14 days following the date on which that party is served with an appeal brief. Any brief (~~((shall))~~) must be filed (~~((at the commission's Olympia office))~~) and served as required by WAC 391-08-120 (1) (~~((r), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4)).~~).

(8) The executive director or designee may extend the due date for an appeal brief or responsive brief. (~~((Such))~~) Requests (~~((shall))~~) to extend the due date may only be considered if made (~~((on or before))~~) by the date the brief is due (~~((r))~~) and in compliance with WAC 391-08-180. Extensions of time (~~((shall))~~) may not be routine or automatic.

(9) A party filing a brief under this section must limit (~~((its))~~) the brief's total length to (~~((twenty-five))~~) 25 pages (double-spaced, 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief (~~((in order))~~) to address novel (~~((and/or))~~) or complex issues raised by the appeal; and

(b) The commission or its designee grants (~~((such a))~~) the motion for good cause shown.

(10) Any motion filed under (~~((this))~~) subsection (~~((shall))~~) (9) of this section tolls the due date for briefs under subsections (1) and (2) of this section until the commission or its designee responds to (~~((such))~~) the motion.

[Statutory Authority: RCW 41.56.060, 41.56.090, 41.58.050. WSR 08-04-059, § 391-35-210, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.464, 41.56.060 and 41.59.080. WSR 00-14-048, § 391-35-210, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-35-210, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.080. WSR 90-06-073, § 391-35-210, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 85-19-059 (Resolution No. 85-01), § 391-35-210, filed 9/16/85. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-210, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-35-250 Commission action on appeals. If an order is appealed under WAC 391-35-210, the entire record in the proceedings (~~shall~~) must be transmitted to the commission (~~members~~). The commission may request the parties to appear before it to make oral argument as to any or all of the issues in the matter. The commission shall, on the basis of the entire record transmitted to it, determine the status of each position, classification, or group covered by the appeal (~~r~~) and (~~shall~~) issue appropriate orders.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.464, 41.56.060 and 41.59.080. WSR 00-14-048, § 391-35-250, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-35-250, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.080. WSR 90-06-073, § 391-35-250, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-250, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 96-07-105, filed 3/20/96, effective 4/20/96)

WAC 391-35-310 Employees eligible for interest arbitration. Due to the separate impasse resolution procedures established for them, employees occupying positions eligible for interest arbitration (~~shall~~) may not be included in bargaining units (~~which include~~) with employees (~~who~~) occupying positions that are not eligible for interest arbitration.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.430. WSR 96-07-105, § 391-35-310, filed 3/20/96, effective 4/20/96.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-35-320 Exclusion of confidential employees. Confidential employees excluded from all collective bargaining rights (~~shall be~~) are limited to:

(1) Any person who participates directly on behalf of an employer in the formulation of labor relations policy, the preparation for or conduct of collective bargaining, or the administration of collective bargaining agreements, (~~except that~~) and the role of (~~such~~) that person is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment; and

(2) Any person who assists and acts in a confidential capacity to such person.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.030(2) and 41.59.020 (4)(c)(i) and (ii). WSR 01-14-009, § 391-35-320, filed 6/22/01, effective 8/1/01.]

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-35-340 Unit placement of supervisors—Bargaining rights of supervisors. (1) It (~~shall be~~) is presumptively appropriate to exclude persons who exercise authority on behalf of the employer over subordinate employees (usually termed "supervisors") from bargaining units containing their rank-and-file subordinates (~~in order~~) to avoid a potential for conflicts of interest (~~which~~) that would otherwise exist in a combined bargaining unit.

(2) It (~~shall be~~) is presumptively appropriate to include persons who exercise authority on behalf of the employer over subordinate employees (usually termed "supervisors") in separate bargaining units for the purposes of collective bargaining.

(3) The presumptions set forth in this section (~~shall be~~) are subject to modification by adjudication.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.060 and 41.59.080. WSR 01-14-009, § 391-35-340, filed 6/22/01, effective 8/1/01.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 391-35-002	Sequence and numbering of rules—Special provisions.
WAC 391-35-026	Special provision—State civil service employees.
WAC 391-35-099	Special provision—Private sector and other employees.

WAC 391-35-254	Special provision—Marine employees.
WAC 391-35-300	School district employees.
WAC 391-35-301	Higher education employees.
WAC 391-35-326	Special provision—State civil service employees.
WAC 391-35-327	Special provision—Higher education faculty.
WAC 391-35-342	Special provision—Educational employees.
WAC 391-35-343	Special provision—Academic employees.
WAC 391-35-344	Special provision—Marine employees.
WAC 391-35-346	Special provision—State civil service employees.
WAC 391-35-347	Special provision—Higher education faculty.

OTS-3727.2

AMENDATORY SECTION (Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

WAC 391-45-001 Scope—Contents—Other rules. This chapter governs unfair labor practice proceedings ((before the public employment relations commission on complaints charging unfair labor practices)) under all chapters of the Revised Code of Washington (RCW) administered by the ((commission. The provisions of this chapter should be read in conjunction with:

(1) Chapter 10-08 WAC, which contains the model rules of procedure promulgated by the chief administrative law judge to regulate adjudicative proceedings under chapter 34.05 RCW, except:

(a) WAC 10-08-035, which is replaced by detailed requirements in WAC 391-45-050;

(b) WAC 10-08-050, which relates to office of administrative hearings procedures inapplicable to proceedings before the public employment relations commission;

(c) WAC 10-08-211, which is replaced by detailed requirements in WAC 391-45-350 and 391-45-390; and

(d) WAC 10-08-230, which is replaced by detailed requirements in WAC 391-45-070, 391-45-090, and 391-45-260.

(2) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission, and which also replaces some provisions of chapter 10-08 WAC.

(3) Chapter 391-25 WAC, which regulates representation proceedings.

(4) Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.

~~(5) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.~~

~~(6) Chapter 391-65 WAC, which regulates grievance arbitration and grievance mediation proceedings.~~

~~(7) Chapter 391-95 WAC, which regulates union security nonassociation proceedings)) agency. To the extent these rules of practice and procedure differ from the model rules in chapter 10-08 WAC or this agency's general rules of practice and procedure in chapter 391-08 WAC, these special rules prevail.~~

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-45-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-45-001, filed 6/22/01, effective 8/1/01; WSR 00-14-048, § 391-45-001, filed 6/30/00, effective 8/1/00; WSR 96-07-105, § 391-45-001, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59 and 53.18 RCW. WSR 90-06-074, § 391-45-001, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-001, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-010 Complaint charging unfair labor practices—Who may file. A complaint charging that (~~a person~~) an employer or employee organization has engaged in or is engaging in an unfair labor practice may be filed by any employee, employee organization, employer, or their agents.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 41.56.040, 41.58.040, 41.59.060 and 53.18.015. WSR 00-14-048, § 391-45-010, filed 6/30/00, effective 8/1/00; WSR 90-06-074, § 391-45-010, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-010, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-030 Complaint (~~in writing—Number of copies—Filing~~)—Filing and service. (~~Each~~) A complaint charging unfair labor practices (~~shall~~) may be filed through the agency's online e-filing system, by email, or in writing(~~, and shall be filed at~~) to the (~~commission's~~) agency's Olympia office, as required by WAC 391-08-120 (1) and (2). The party filing the complaint shall serve a copy on each party named as a respondent, as required by WAC 391-08-120 (3) and (4).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 34.05.413, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-030, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-030, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-45-030, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.170, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-030, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-030, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-050 Contents of complaint filing forms—Contents of complaint. (~~Each complaint charging unfair labor practices shall contain, in separate numbered paragraphs:~~)

(1) Each completed unfair labor practice complaint filing form, whether obtained from the agency's website or through the agency's e-filing system, must include all of the following:

(a) Information identifying the parties and (~~if known~~) their representatives (if known), including:

(~~a~~) (i) The name, email address, mailing address, and telephone number of the employer(~~, and the name, address, telephone number, fax number, and email address of its principal~~) and of the employer's representative;

(~~b~~) (ii) The name, email address, mailing address, address and telephone number of the entity (employer or employee organization) accused of committing unfair labor practices (the respondent)(~~, and the name, address, telephone number, fax number, and email address of its principal~~) and of the respondent's representative; and

(~~c~~) (iii) The name, email address, mailing address, and telephone number(~~, fax number, and email address~~) of the party filing the complaint (the complainant)(~~, and the name, address, telephone number, fax number, and email address of its principal~~) and of the complainant's representative.

(~~2~~) ~~Clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.~~

~~(3) A statement of the remedy sought by the complainant.~~

~~(4) The name, signature and, if any, title of the person filing the complaint, and the date of the signature.~~

(~~5~~) (b) Information concerning the parties' relationships, including:

(~~a~~) ~~The employer's principal business;~~

(~~b~~) (i) Identification of the employer department or division (~~in which~~) where the dispute (arises) arose; and

(~~c~~) (ii) The parties' contractual relationship, indicating that:

(~~i~~) (A) The parties have never had a contract; or

(~~ii~~) (B) The parties have had a contract, and a copy of the current (~~or~~) or most recent(~~or~~) collective bargaining agreement is attached(~~or~~)

- ~~(d) The status of related grievance proceedings between the parties, indicating that:~~
- ~~(i) No grievance has been filed on the dispute involved; or~~
 - ~~(ii) A grievance on the dispute is being processed under the parties' collective bargaining agreement; or~~
 - ~~(iii) An arbitration award has been issued on a related grievance;~~
- ~~(e) A description of the bargaining unit involved, specifying inclusions and exclusions; and~~
- ~~(f) The number of employees in the bargaining unit.~~
- ~~(6) Indication of the sections of the Revised Code of Washington (RCW) alleged to have been violated).~~
- (c) Job titles of bargaining unit employees who are the subject of the complaint.
- (d) The name, signature, and title, if any, of the person filing the complaint as well as the date of the signature.
- (e) Any other information requested in the unfair labor practice complaint filing form found on the agency's website at www.perc.wa.gov or as required through the agency's e-filing system.
- (2) Each complaint must contain in separate numbered paragraphs:
- (a) Clear and concise statements of the facts constituting the alleged unfair labor practices, including the times, dates, and places of occurrences and the names of the participants; and
 - (b) A statement of the remedy sought by the complainant.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 34.05.413, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-050, filed 6/30/00, effective 8/1/00; WSR 96-07-105, § 391-45-050, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.170, 41.56.180, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-050, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-050, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

- WAC 391-45-070 Amendment.** (1) A complaint may be amended upon motion made by the complainant(~~(r)~~) if:
- (a) The proposed amendment only involves the same parties as the original complaint;
 - (b) The proposed amendment is timely under any statutory limitation as to new facts;
 - (c) The subject matter of the proposed amendment is germane to the subject matter of the complaint as originally filed or previously amended; and
 - (d) Granting the amendment will not cause undue delay of the proceedings.
- (2) A motion((s)) to amend a complaint((s shall be)) is subject to the following limitations:
- (a) ((Prior to)) Before the appointment of an examiner, amendment ((shall be)) is freely allowed upon motion ((to the agency official responsible for making preliminary rulings under WAC 391-45-110));

(b) After the appointment of an examiner but ~~((prior to))~~ before the opening of ~~((an evidentiary))~~ a hearing, amendment may be allowed upon motion to the examiner and subject to due process requirements;

(c) After the opening of ~~((an evidentiary))~~ a hearing, amendment may only be allowed to conform the pleadings to evidence received without objection, upon motion made ~~((prior to))~~ before the close of the ~~((evidentiary))~~ hearing.

(3) ~~((Where))~~ If a motion for amendment is denied, the proposed amendment ~~((shall))~~ will be processed as a separate case.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.073, 41.56.140, 41.56.150, 41.56.170, 41.59.140 and 53.18.015. WSR 00-14-048, § 391-45-070, filed 6/30/00, effective 8/1/00; WSR 90-06-074, § 391-45-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-070, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-090 Withdrawal. (1) A complaint may be withdrawn by the complainant ~~((,))~~ through an email to the examiner or by a written request filed as required by WAC 391-08-120 before issuance of a decision by an examiner.

(2) A withdrawal "without prejudice" ~~((shall))~~ does not vary any statutory time limitation for filing of unfair labor practice complaints ~~((, unless the parties file a written agreement for a different arrangement prior to the expiration of the applicable statutory period))~~.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.073, 41.56.140, 41.56.150, 41.59.140 and 53.18.015. WSR 00-14-048, § 391-45-090, filed 6/30/00, effective 8/1/00; WSR 90-06-074, § 391-45-090, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-090, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-45-110 Deficiency notice—~~((Preliminary ruling))~~ Cause of action statement—Deferral to arbitration. The executive director ~~((or a designated staff member)),~~ the executive director's designee, or an examiner shall determine whether the facts alleged in the complaint may constitute an unfair labor practice within the meaning of the applicable statute.

(1) If the facts alleged do not, as a matter of law, constitute a violation, a deficiency notice ~~((shall be issued and served on all parties,))~~ identifying the defects and specifying a due date for the filing and service of an amended complaint will be issued and served

on all parties. If the defects are not cured within ~~((twenty-one))~~ 21 days, an order ~~((shall be issued and served,))~~ dismissing the defective allegation(s) and stating the reasons for that action must be issued and served on all parties. Unless appealed to the commission under WAC 391-45-350, an order of dismissal issued under this subsection ~~((shall be))~~ is the final order of the agency on the defective allegation(s) ~~((,))~~ with the same force and effect as if issued by the commission.

(2) If one or more allegations state a cause of action for unfair labor practice proceedings before the ~~((commission))~~ agency, a ~~((preliminary ruling))~~ cause of action statement summarizing the allegation(s) ~~((shall))~~ will be issued and served on all parties.

(a) A ~~((preliminary ruling))~~ cause of action statement forwarding a case for further proceedings is an interim order ~~((which))~~ that may only be appealed to the commission by a notice of appeal filed after issuance of an examiner decision under WAC 391-45-310 (2).

(b) The ~~((preliminary ruling))~~ cause of action statement limits the ~~((causes))~~ cause(s) of action before an examiner and the commission. A complainant who claims that the ~~((preliminary ruling))~~ cause of action statement failed to address one or more causes of action ~~((it))~~ the complainant sought to advance in the complaint ~~((must, prior to))~~ may, before the issuance of a notice of hearing, seek clarification from the person ~~((that))~~ who issued the ~~((preliminary ruling))~~ cause of action statement.

(c) The ~~((preliminary ruling shall))~~ cause of action statement must establish the due date for the respondent to file its answer.

(3) The agency may defer the processing of allegations which state a cause of action under subsection (2) of this section ~~((,))~~ pending the outcome of related contractual dispute resolution procedures, but ~~((shall))~~ the agency retains jurisdiction over those allegations.

(a) Deferral to arbitration may be ordered ~~((where))~~ if:

(i) Employer conduct alleged to constitute an unlawful unilateral change of employee wages, hours, or working conditions is arguably protected or prohibited by a collective bargaining agreement in effect between the parties at the time of the alleged unilateral change;

(ii) The parties' collective bargaining agreement provides for final and binding arbitration of grievances concerning its interpretation or application; and

(iii) There are no procedural impediments to a determination on the merits of the contractual issue through proceedings under the contractual dispute resolution procedure.

(b) Processing of the unfair labor practice allegations under this chapter ~~((shall))~~ must be resumed following issuance of an arbitration award or resolution of the grievance, and the contract interpretation made in the contractual proceedings ~~((shall be))~~ is considered binding, except ~~((where))~~ if:

(i) The contractual procedures were not conducted in a fair and orderly manner; or

(ii) The contractual procedures have reached a result ~~((which))~~ that is repugnant to the purposes and policies of the applicable collective bargaining statute.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-45-110, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 28B.52.073, 34.05.419, 41.56.140,

41.56.150 and 41.59.140. WSR 00-14-048, § 391-45-110, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-110, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-45-110, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.140, 41.56.150, 41.59.140 and 53.18.015. WSR 90-06-074, § 391-45-110, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-110, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-130 Examiner—Who may act. The executive director or (~~a designated staff member~~) designee shall assign an examiner to conduct further proceedings in the matter(~~(r)~~) and shall notify the parties of that assignment. (~~The examiner may be a member of the agency staff or any other individual designated by the commission or executive director.~~) Upon notice to all parties, an examiner may be substituted for the examiner previously (~~presiding~~) assigned.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-130, filed 6/30/00, effective 8/1/00; WSR 96-07-105, § 391-45-130, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.160, 41.56.170 and 53.18.015. WSR 90-06-074, § 391-45-130, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-130, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-170 Notice of hearing. The (~~examiner shall issue a~~) notice of hearing (~~and have it~~) will be issued and served on the parties. (~~Attached to the notice of hearing shall be~~) A copy of the (~~preliminary ruling~~) cause of action statement issued under WAC 391-45-110 must be attached to the notice of hearing. A notice of hearing may be amended or withdrawn before the close of the hearing.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 34.05.434, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-170, filed 6/30/00, effective 8/1/00; WSR 96-07-105, § 391-45-170, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.170, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-170, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-170, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-190 Answer—Filing and service. An answer to a complaint charging unfair labor practices (~~shall~~) must be in writing. The respondent shall file and serve its answer as required by WAC 391-08-120 (~~(1)~~, and ~~shall serve a copy on the complainant, as required by WAC 391-08-120 (3) and (4)~~)).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-190, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-190, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-45-190, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.170, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-190, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-190, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-210 Answer—Contents—Amendment—Effect of failure to answer. (1) An answer filed by a respondent (~~shall~~) must specifically admit, deny, or explain each fact alleged in the portions of a complaint found to state a cause of action under WAC 391-45-110. A statement by a respondent that it is without knowledge of an alleged fact (~~, shall~~) operates as a denial. An answer (~~shall~~) must assert any affirmative defenses that are claimed to exist.

(2) Counterclaims by a respondent against a complainant (~~shall~~) must be filed and processed as separate cases, subject to procedures for consolidation of proceedings.

(3) Motions to amend answers (~~shall~~) must be acted upon by the examiner, subject to the following limitations:

(a) Amendment (~~shall be~~) is allowed (~~whenever~~) if a motion to amend the complaint has been granted;

(b) Amendment may be allowed prior to the opening of (~~an evidentiary~~) a hearing, subject to due process requirements;

(c) After the opening of (~~an evidentiary~~) a hearing, amendment may only be allowed to conform the pleadings to evidence received without objection, upon motion made (~~prior to~~) before the close of the (~~evidentiary~~) hearing.

(4) If a respondent fails to file a timely answer or (~~fails~~) to specifically deny or explain a fact alleged in the complaint, the facts alleged in the complaint (~~shall be~~) are deemed to be admitted as true, and the respondent (~~shall be~~) is deemed to have waived its right to a hearing as to the facts so admitted. A motion for acceptance of an answer after its due date (~~shall only~~) may be granted for good cause, unless the complainant can show that it would be prejudiced by such action in accordance with WAC 391-08-003.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.073, 41.56.170, 41.59.150 and 53.18.015. WSR 00-14-048, §

391-45-210, filed 6/30/00, effective 8/1/00; WSR 90-06-074, § 391-45-210, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-210, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-250 Motion to make complaint more definite and detailed. The examiner may direct that the complaint be made more definite and detailed, upon motion of the respondent, if the examiner is satisfied that the complaint is so indefinite as to hamper the respondent in the preparation of its answer.

(1) The respondent shall file its motion (~~(on or before)~~) by the date specified for the filing of an answer. The motion (~~(shall)~~) must be filed and served as required by WAC 391-08-120.

(2) The filing of a motion under this section (~~(shall)~~) extends the due date for the respondent's answer until a date set by the examiner.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-250, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-250, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.170, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-250, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-250, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-45-260 Settlement (~~(conference)~~) mediation. (~~(Separate from any prehearing conference concerning procedural matters held by the examiner under WAC 10-08-130, a settlement conference)~~) A settlement mediation concerning substantive issues may be held under WAC 10-08-200(15).

(1) A (~~(separate)~~) different case number (~~(shall be)~~) is assigned, and all (~~(files and papers)~~) documents for the settlement (~~(conference shall be)~~) mediation are kept in a case separate from the (~~(files and papers for)~~) documents in the unfair labor practice proceedings.

(2) (~~(A commission)~~) An agency staff member other than the assigned examiner (~~(shall be)~~) is assigned to explore settlement between the parties on the substantive issues.

(3) (~~(Any settlement conference shall be held in advance of the scheduled hearing date on)~~) A settlement mediation may be held at any time before issuance of a decision by an examiner in the underlying unfair labor practice proceedings.

(4) During a settlement (~~(conference)~~) mediation, the parties will be encouraged, on factual and legal grounds including precedent

on the particular subject, to resolve the unfair labor practice dispute.

(5) Participation in a settlement (~~(conference)~~) mediation is voluntary and nothing in this rule prohibits parties from exploring settlement on their own. Refusal by a party to participate in a voluntary settlement (~~(conference shall)~~) mediation does not prejudice that party in any manner.

(6) Conversations had and offers made in a settlement (~~(conference shall not be)~~) mediation are not admissible (~~(in)~~) into evidence at a hearing.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-45-260, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.431, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-260, filed 6/30/00, effective 8/1/00; WSR 96-07-105, § 391-45-260, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.160, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-260, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-056 (Order 88-05), § 391-45-260, filed 5/31/88.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-270 Hearings—Reopening of hearing. (1) Hearings (~~(shall be)~~) are public, (~~(except where)~~) unless a protective order is issued under WAC 10-08-200(7), and (~~(shall be)~~) are limited to the portions of a complaint found to state a cause of action under WAC 391-45-110.

(a) The complainant (~~(shall be)~~) is responsible for the presentation of its case(~~(τ)~~) and (~~(shall have)~~) has the burden of proof.

(b) The respondent (~~(shall be)~~) is responsible for the presentation of its defense(~~(τ)~~) and (~~(shall have)~~) has the burden of proof as to any affirmative defenses.

(~~(c) The examiner's authority under WAC 10-08-200 (8) and (9) shall not be construed as authorizing or requiring the examiner to undertake the responsibilities of the complainant or respondent under this subsection.)~~)

(2) Once a hearing has been declared closed, it may be reopened only upon the timely motion of a party (~~(upon discovery of)~~) that discovered new evidence which could not with reasonable diligence have been discovered and produced at the hearing.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 00-14-048, § 391-45-270, filed 6/30/00, effective 8/1/00; WSR 96-07-105, § 391-45-270, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.170, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-270, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-270, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-45-290 Posthearing briefs. (1) Any party (~~(shall be entitled)~~) may, upon request made before the close of the hearing, (~~(to)~~) file a posthearing brief.

(2) The examiner may direct the filing of briefs as to any or all of the issues in a case.

(3) Arrangements and due dates for briefs (~~(shall be)~~) are established by the examiner.

(4) Any brief (~~(shall)~~) must be filed (~~(with the examiner)~~) and served as required by WAC 391-08-120 (~~(1)~~), and copies shall be served on all other parties to the proceeding as required by WAC 391-08-120 (~~(3) and (4)~~).

(~~(2)~~) (5) A party filing a brief under this section must limit (~~(its)~~) the brief's total length to (~~(twenty-five)~~) 25 pages (double-spaced, (~~(twelve-point)~~) 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief (~~(in order)~~) to address novel or complex (~~(legal and/or factual issues raised by the objections)~~) issues; and

(b) The (~~(hearing)~~) examiner grants (~~(such a)~~) the motion for good cause shown (~~(; and)~~).

(~~(e)~~) (6) A motion for permission to file a longer brief may be made orally to the (~~(hearing)~~) examiner at the end of the (~~(administrative)~~) hearing, and the (~~(hearing officer)~~) examiner has the authority to orally grant (~~(such)~~) the motion at (~~(such)~~) that time.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.120. WSR 08-04-058, § 391-45-290, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.437, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-290, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-290, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-45-290, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.180, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-290, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-290, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 10-20-172, filed 10/6/10, effective 11/6/10)

WAC 391-45-310 Motions for discretionary review—Examiner decisions. (1) (a) A party seeking review by the commission of an interlocutory decision of the executive director, (~~(his or her)~~) the executive director's designee, or (~~(a hearing)~~) an examiner must file a motion for discretionary review with the commission and a copy with the (~~(executive director, his or her designee, or a hearing examiner,)~~) person who issued the interlocutory decision within seven days after the decision is issued.

(b) Discretionary review of an interlocutory decision issued by the executive director, (~~(his or her)~~) the executive director's designee,

nee, or ~~((a hearing))~~ an examiner will be accepted by the commission only:

(i) If the executive director, ~~((his or her))~~ the executive director's designee, or ~~((a hearing))~~ the examiner has committed an obvious error ~~((which))~~ that would render further proceedings useless; ~~((or))~~

(ii) If the executive director, ~~((his or her))~~ the executive director's designee, or ~~((a hearing))~~ the examiner has committed probable error and the ~~((decision of the))~~ interlocutory decision ~~((of the hearing examiner))~~ substantially alters the status quo or substantially limits the freedom of a party to act; or

(iii) If the executive director, ~~((his or her))~~ the executive director's designee, or ~~((a hearing))~~ the examiner has so far departed from the accepted and usual course of administrative proceedings as to call for ~~((the exercise of revisory jurisdiction))~~ immediate review by the commission.

(c) The commission will not accept motions for discretionary review of:

(i) The scope of proceedings issued in a ~~((preliminary ruling by the executive director or his or her designee or a hearing examiner))~~ cause of action statement under WAC 391-45-110; ~~((or))~~

(ii) Application of the six-month statute of limitations; or

(iii) Any evidentiary ruling by ~~((a hearing))~~ an examiner during the course of ~~((an administrative))~~ a hearing.

(d) If a motion for discretionary review is filed, the due date for any response is seven days following the date on which a party wishing to file a response is served with the motion. Responses must be filed and served as required by WAC 391-08-120.

(e) A motion for discretionary review ~~((under this rule))~~, and any response, should not exceed ~~((fifteen))~~ 15 pages (double-spaced, 12-point type) excluding appendices.

~~((e))~~ (f) Denial of discretionary review of a decision does not affect the right of a party to obtain later review of the ~~((executive director's, his or her designee's, or hearing examiner's))~~ interlocutory decision or the issues pertaining to that decision.

(2) After the close of ~~((the))~~ a hearing and the filing of all briefs, ~~((the))~~ an examiner shall issue a decision containing findings of fact, conclusions of law, and an order. Unless appealed to the commission under WAC 391-45-350, a decision issued under this section ~~((shall be))~~ is the final order of the agency~~((,))~~ with the same force and effect as if issued by the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.120, and 49.39.060. WSR 10-20-172, § 391-45-310, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.120. WSR 08-04-058, § 391-45-310, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-310, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-310, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.180, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-310, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-310, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-330 Withdrawal or modification of examiner decision.

The examiner may set aside, modify, change, or reverse any findings of fact, conclusions of law, or order((~~r~~)) if any mistake is discovered in the decision.

(1) Action may be taken under this section on the examiner's own motion((~~r~~)) or on a written motion filed and served by any party as required by WAC 391-08-120.

(2) Action may only be taken under this section within ((~~ten~~)) 10 days following issuance of the decision.

(3) This section ((~~shall be~~)) is inoperative after the filing of an appeal to the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 00-14-048, § 391-45-330, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-330, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-45-330, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.180, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-330, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-330, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-45-350 Appeals. An order issued under WAC 391-45-110(1) or 391-45-310 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission as follows:

(1) The due date for a notice of appeal ((~~shall be twenty~~)) is 20 days following the date of issuance of the order being appealed. The time for filing a notice of appeal cannot be extended.

(2) ((~~Where~~)) If an order has been appealed, the due date for a notice of cross-appeal by other parties ((~~shall be~~)) is seven days after the last date on which a notice of appeal could be timely. The time for filing a notice of cross-appeal cannot be extended.

(3) A notice of appeal or notice of cross-appeal ((~~shall~~)) must identify, in separate numbered paragraphs, the specific rulings, findings of fact, conclusions of law, or orders claimed to be in error.

(4) A party ((~~which~~)) that desires to cite or reassert a document previously filed in the matter ((~~shall~~)) must do so by reference to the document already on file((~~r~~)) and shall not file or attach another copy of the document to ((~~papers~~)) documents filed regarding an appeal.

(5) A notice of appeal or notice of cross-appeal ((~~shall~~)) must be filed ((~~at the commission's Olympia office~~)) and served as required by WAC 391-08-120((~~(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4)~~)).

(6) The due date for any appeal brief ((~~which~~)) that the party filing an appeal or cross-appeal desires to have considered by the commission ((~~shall be fourteen~~)) is 14 days following the filing of its notice of appeal or notice of cross-appeal. Any brief ((~~shall~~))

must be filed (~~(at the commission's Olympia office)~~) and served as required by WAC 391-08-120 (~~((1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4)).~~).

(7) The due date for any responsive brief (~~((which))~~) that a party desires to have considered by the commission (~~((shall be fourteen))~~) is 14 days following the date on which that party is served with an appeal brief. Any brief (~~((shall))~~) must be filed (~~((at the commission's Olympia office))~~) and served as required by WAC 391-08-120 (~~((1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4)).~~).

(8) The executive director or designee may extend the due date for an appeal brief or responsive brief. (~~((Such))~~) Requests (~~((shall))~~) to extend the due date may only be considered if made (~~((on or before))~~) by the date the brief is due (~~((7))~~) and in compliance with WAC 391-08-180. Extensions of time (~~((shall))~~) may not be routine or automatic.

(9) A party filing a brief under this section must limit (~~((its))~~) the brief's total length to (~~((twenty-five))~~) 25 pages (double-spaced, 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief (~~((in order))~~) to address novel or complex issues raised by the appeal; and

(b) The commission or its designee grants (~~((such a))~~) the motion for good cause shown.

(10) Any motion filed under (~~((this))~~) subsection (~~((shall))~~) (9) of this section tolls the due date for briefs under subsections (1) and (2) of this section until the commission or its designee responds to (~~((such))~~) the motion.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-45-350, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 34.05.464, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-350, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-350, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.180, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-350, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 85-19-059 (Resolution No. 85-01), § 391-45-350, filed 9/16/85. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-350, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-390 Commission action on appeals. If an order is appealed under WAC 391-45-350, the entire record in the proceedings (~~((shall))~~) must be transmitted to the commission (~~((members))~~). The commission may request the parties to appear before it to make oral argument as to any or all of the issues in the matter. The commission shall, on the basis of the entire record (~~((and any briefs or arguments submitted))~~) transmitted to it, determine the appeal (~~((7))~~) and (~~((shall))~~) issue appropriate orders.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 34.05.464, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-390, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-390, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.180, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-390, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-390, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-410 Unfair labor practice remedies—Back pay. If an unfair labor practice is found to have been committed, the commission or an examiner shall issue a remedial order. In calculating back pay orders, the following (~~shall apply~~) applies:

(1) Individuals reinstated to employment with back pay (~~shall~~) must have deducted from any amount due an amount equal to any earnings the employee may have received during the period of the violation in substitution for the terminated employment, calculated on a quarterly basis.

(2) Individuals reinstated to employment with back pay (~~shall~~) must have deducted from any amount due an amount equal to any unemployment compensation benefits the employee may have received during the period of the violation, and the employer shall provide evidence to the (~~commission~~) agency that the deducted amount has been repaid to the Washington state department of employment security as a credit to the benefit record of the employee.

(3) Money amounts due (~~shall be~~) are subject to interest at the rate (~~which~~) that would accrue on a civil judgment of the Washington state courts(~~r~~) from the date of the violation to the date of payment.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.073, 41.56.160, 41.59.150 and 53.18.015. WSR 00-14-048, § 391-45-410, filed 6/30/00, effective 8/1/00; WSR 90-06-074, § 391-45-410, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-410, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-430 Motion for temporary relief. In addition to the remedies available under WAC 391-45-410, a complainant in an unfair labor practice proceeding may make a motion requesting that the commission seek appropriate temporary relief through the superior court(~~r~~and). All such motions (~~shall~~) must be processed as provided in this section.

(1) When the complaint is filed, or as soon thereafter as facts giving rise to the request for temporary relief become known, the complainant shall file and serve written notice of its intent to make a motion for temporary relief with the executive director as required by WAC 391-08-120 ~~((1), and shall serve a copy of the notice on each of the other parties to the proceedings as required by WAC 391-08-120 (3) and (4))~~.

(2) Upon the filing of a notice of intent to make a motion for temporary relief, the processing of the matter ~~((shall))~~ must be expedited under WAC 391-45-110.

(3) After a determination that the complaint states a cause of action under WAC 391-45-110, the complainant may file and serve, as required by WAC 391-08-120, a motion for temporary relief together with affidavits as to the risk of irreparable harm and the adequacy of legal remedies.

(4) If ~~((there is))~~ a motion for temporary relief is filed, the due date for counter-affidavits ~~((from other parties))~~ is seven days following the date on which ~~((that party))~~ a party wishing to file counter-affidavits is served with a motion for temporary relief. ~~((The))~~ Counter-affidavits ~~((shall))~~ must be filed and served as required by WAC 391-08-120.

(5) The executive director shall forward all motions and affidavits to the commission, which shall determine whether an injunction ~~((pendente lite))~~ for temporary relief should be sought. In making its determination, the commission ~~((shall))~~ must adhere to the following policy:

~~((u))~~ The name and authority of the public employment relations commission ~~((shall))~~ may not be invoked in connection with a request for temporary relief ~~((prior to))~~ before the completion of administrative proceedings under ~~((WAC 391-45-010, et seq.))~~ this chapter, unless it appears that one or more of the allegations in the complaint ~~((of unfair labor practices))~~ is of such a nature that, if sustained, the complainant would have no fair or adequate remedy and ~~((the complainant))~~ would suffer irreparable harm ~~((unless))~~ if the status quo ~~((be preserved))~~ is not returned pending the completion of administrative proceedings. ~~((u))~~

(a) If the commission concludes that temporary relief should be sought, the executive director, acting in the name and on behalf of the commission and with the assistance of the attorney general, shall petition the superior court of the county in which the main office of the employer is located or wherein the person who is alleged to be engaging in unfair labor practices resides or transacts business for an injunction ~~((pendente lite))~~ for temporary relief.

(b) Whenever temporary relief has been procured, the complaint ~~((which))~~ that has been the basis for the temporary relief ~~((shall))~~ must be heard expeditiously, and the case ~~((shall))~~ must be given priority over all other cases except cases of like character.

(c) A determination by the commission that temporary relief should not be sought at a particular time ~~((shall))~~ does not bar renewal of the motion for temporary relief following the completion of administrative proceedings in which unfair labor practice violations have been found to exist.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.160(3) and 41.59.150. WSR 00-14-048, § 391-45-430, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-430, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080,

41.56.090, 41.59.110, 28B.52.073 and 41.59.150. WSR 90-06-074, § 391-45-430, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-430, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-550 Collective bargaining—((Policy)) Agency determines mandatory subjects. It is the policy of the ((~~commission~~)) agency to promote ((~~bilateral~~)) collective bargaining negotiations between employers and the exclusive representatives of their employees. Parties are encouraged to engage in free and open exchange of proposals and positions on all matters coming into the dispute between them. ((~~The commission deems the determination as to~~)) Whether a particular subject is mandatory or nonmandatory ((~~to be~~)) is a question of law and fact to be determined by the ((~~commission, and which~~)) agency and is not subject to waiver by the parties by their action or inaction. It is the policy of the ((~~commission~~)) agency that a party which engages in collective bargaining with respect to a particular issue does not and cannot confer the status of a mandatory subject on a nonmandatory subject.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.073, 41.56.030(4), 41.59.020(2) and 53.18.015. WSR 00-14-048, § 391-45-550, filed 6/30/00, effective 8/1/00; WSR 90-06-074, § 391-45-550, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-550, filed 9/30/80, effective 11/1/80.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 391-45-002	Sequence and numbering of rules—Special provisions.
WAC 391-45-019	Special provision—Private sector employees.
WAC 391-45-394	Special provision—Marine employees.
WAC 391-45-552	Special provision—Educational employees.

OTS-3728.3

AMENDATORY SECTION (Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

WAC 391-55-001 Scope—Contents—Other rules. This chapter governs proceedings ~~((before the public employment relations commission))~~ relating to the resolution of impasses occurring in collective bargaining under all chapters of the Revised Code of Washington (RCW) administered by the ~~((commission. The provisions of this chapter should be read in conjunction with the provisions of:~~

~~(1) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission, and which also replaces some provisions of chapter 10-08 WAC.~~

~~(2) Chapter 391-25 WAC, which regulates representation proceedings.~~

~~(3) Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.~~

~~(4) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.~~

~~(5) Chapter 391-65 WAC, which regulates grievance arbitration proceedings.~~

~~(6) Chapter 391-95 WAC, which regulates union security nonassociation proceedings))~~ agency. To the extent these rules of practice and procedure differ from the model rules in chapter 10-08 WAC or this agency's general rules of practice and procedure in chapter 391-08 WAC, these special rules prevail.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-55-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-55-001, filed 6/22/01, effective 8/1/01; WSR 99-14-060, § 391-55-001, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-001, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-010 Impasses in contract negotiations—Request for contract mediation—Filing and service. A request for contract mediation may be ((made)) filed through the agency's online e-filing system, by email, or in writing((, by electronic telefacsimile transmission, or by telephone, but shall be confirmed in writing if made by telephone. The original request shall be submitted to the commission's)) to the agency's Olympia office, as required by WAC 391-08-120 (1) and (2). If the request is not ~~((submitted))~~ filed jointly, the party ((submitting)) filing the request shall serve a copy((, as required by WAC 391-08-120 (3) and (4)), on the other party to the dispute, as required by WAC 391-08-120 (3) and (4). The party or parties requesting contract mediation shall provide the following ((informa- tion)) to the agency:

(1) The name, email address, mailing address, and telephone number of the employer and ~~((the name, address and telephone number))~~ of ~~((its principal))~~ the employer's representative.

(2) The name, email address, mailing address, and telephone number of the employee organization and ~~((the name, address and telephone number))~~ of ~~((its principal))~~ the employee organization's representative.

~~((3))~~ ~~((The employer's principal business.~~

~~((4))~~) The parties' contractual relationship, indicating that:

(a) The parties ~~((1))~~ have never had a contract; or

(b) The parties have had a contract, and a copy of the current or most recent ((applicable)) collective bargaining agreement is attached.

~~((5))~~) (4) A general description of the employee job classification(s) in the bargaining unit ((involved, specifying inclusions and exclusions)).

~~((6))~~) (5) The number of employees in the bargaining unit.

~~((7))~~ ~~The history of the bargaining unit, including at least the approximate date of its creation.~~

~~((8))~~) (6) The history of the current negotiations, including at least the number of meetings held, the date of the first meeting, and whether both parties concur in the request for mediation.

~~((9))~~) (7) Identification of the issues in dispute ((and the parties' positions on those issues)).

~~((10))~~) (8) The name(s), signature(s), and ((, if any,)) title(s), if any, of the ((representative(s) of the requesting party (parties), and)) person(s) filing the request as well as the date(s) of the signature(s).

(9) Any other information requested in the contract mediation request filing form found on the agency's website at www.perc.wa.gov or as required through the agency's e-filing system.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.060 and 41.56.100. WSR 99-14-060, § 391-55-010, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.060, 34.05.413 and 41.56.100. WSR 96-07-105, § 391-55-010, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-010, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-020 Grievance mediation—Request for grievance mediation—Filing and service. A request for appointment of a grievance mediator may be ~~((made))~~ filed through the agency's online e-filing system, by email, or in writing ((or by electronic telefacsimile transmission. The original request shall be submitted)) to the ~~((commission's))~~ agency's Olympia office, as required by WAC 391-08-120 (1) and (2). If the request is not ~~((submitted))~~ filed jointly, the party ~~((submitting))~~ filing the request shall serve a copy ~~((, as required by WAC 391-08-120 (3) and (4),))~~ on the other party to the collective bargaining agreement under which the dispute arises, as required by

WAC 391-08-120 (3) and (4). The party or parties requesting grievance mediation shall provide the following ~~((information))~~ to the agency:

- (1) Information identifying the parties to the dispute, including:
 - (a) The name, email address, mailing address, and telephone number of the employer and ~~((the name, address and telephone number))~~ of ~~((its principal))~~ the employer's representative;
 - (b) The name, email address, mailing address, and telephone number of the employee organization and ~~((the name, address and telephone number))~~ of ~~((its principal))~~ the employee organization's representative;
 - ~~(c) ((The employer's principal business;~~
 - ~~(d))~~ A copy of the current or most recent applicable collective bargaining agreement;
 - ~~((e))~~ (d) A general description of the employee job classification(s) in the bargaining unit ~~((involved, specifying inclusions and exclusions;~~
 - ~~(f) The number of employees in the bargaining unit;~~
 - ~~(g) The agreement of the party or parties making the request that any unresolved issues shall be submitted to an arbitrator for a final and binding decision; and~~
 - ~~(h) The agreement of the party or parties making the request that there shall be no strike or lockout on the matters submitted to grievance mediation).~~
- (2) Identification of the grievance to be resolved in grievance mediation.
- (3) ~~((Designation of the request as:~~
 - ~~(a) A request for appointment of a member of the agency staff as grievance mediator; or~~
 - ~~(b) A request for the submission of a list containing a specified number of names from the dispute resolution panel created by WAC 391-55-110.~~
- ~~(4))~~ The name(s), signature(s), and ~~((, if any,))~~ title(s), if any, of the ~~((representative(s) of the requesting party (parties), and))~~ person(s) filing the request as well as the date(s) of the signature(s).
- (4) Any other information requested in the grievance mediation request filing form found on the agency's website at www.perc.wa.gov or as required through the agency's e-filing system.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 99-14-060, § 391-55-020, filed 7/1/99, effective 8/1/99.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

- WAC 391-55-030 Assignment of mediator.** (1) Upon submission of a request under WAC 391-55-010 or 391-55-020 ~~((3)(a))~~, a member of the agency staff ~~((shall))~~ will be assigned as mediator at the discretion of the executive director. If the parties have stipulated to the names of one or more persons who are acceptable to both parties as mediator, their request ~~((shall))~~ will be considered in making the assignment.
- (2) ~~((Upon submission of a request for a list under WAC 391-55-020 (3)(b), names shall be referred and a grievance mediator~~

~~shall be selected under WAC 391-55-120.)~~ For negotiations involving a bargaining unit eligible for interest arbitration under RCW 41.56.028, 41.56.029, 41.56.475, 41.56.510, 41.56.516, 41.80.200, 41.80.310, 47.64.300, or 74.39A.270 (2)(c), if an agreement has not been reached by June 1st of the year in which negotiations occurred, a mediator will be preassigned. The parties are encouraged to meet with the mediator as soon as practicable. For bargaining units eligible for interest arbitration under RCW 47.64.300, the parties may still mutually agree to waive mediation under RCW 47.64.230.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 00-14-048, § 391-55-030, filed 6/30/00, effective 8/1/00; WSR 99-14-060, § 391-55-030, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-030, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-032 Special provision—Educational employees. Upon submission of a unilateral request for mediation, the executive director shall consider the position of the other party (~~(other than the party making the request,)~~) and (~~(shall)~~) evaluate whether the parties have exchanged and considered (~~(the)~~) one another's proposals (~~(of one another)~~) and whether the intervention of the agency will have a beneficial impact on the negotiating process. (~~(Prior to)~~) Before making this determination, the executive director or a member of the agency staff may make an on-site investigation and may engage in conciliation under the general authority conferred on the (~~(commission)~~) agency by RCW 41.58.020(1). If it appears that the assistance of the agency is needed, the executive director shall appoint a mediator.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 99-14-060, § 391-55-032, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-032, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-050 Submission of written proposals. Parties requesting the agency's mediation services (~~(of the agency)~~) are encouraged to submit to the assigned mediator, in advance of scheduled meetings, copies of their latest written proposals on each issue in dispute as well as any written material supporting the identified proposals.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 99-14-060, § 391-55-050, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050,

41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-050, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-070 Function of mediator. The mediator (~~shall~~) may meet with the parties or their representatives, or both, either jointly or separately, and (~~shall~~) may take any steps that the mediator deems appropriate to assist the parties in voluntarily resolving their differences and effecting an agreement. All persons providing mediation services under this chapter shall maintain compliance with the "Code of Professional Conduct for Labor Mediators" adopted jointly by the Federal Mediation and Conciliation Service of the United States and the Association of Labor Relations Agencies.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.030, 41.80.090. WSR 08-04-059, § 391-55-070, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 99-14-060, § 391-55-070, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-070, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-090 Confidential nature of mediation. Mediation meetings (~~shall not be~~) are not open to the public. Confidential information acquired by a mediator (~~shall~~) must not be disclosed to others outside of the mediation process for any purpose, and a mediator (~~shall~~) may not give testimony about the mediation in any legal or administrative proceeding.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 5.60.072. WSR 99-14-060, § 391-55-090, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-090, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-090, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 12-05-066, filed 2/15/12, effective 3/17/12)

WAC 391-55-200 Interest arbitration—Certification of issues.

(1) If a dispute involving a bargaining unit eligible for interest arbitration under RCW 41.56.028, 41.56.029, 41.56.030(~~(-7))~~) (14), 41.56.475, 41.56.492, 41.56.496, 41.56.510, 41.56.516, 41.80.200, 41.80.310, 47.64.300, or 74.39A.270 (2) (c) has not been settled after a reasonable period of mediation, and the mediator is of the opinion

that (~~his or her~~) further efforts will not result in an agreement, the following procedure (~~shall~~) will be implemented:

(a) The mediator shall notify the parties of (~~his or her~~) the mediator's intention to recommend that the remaining issues in dispute be submitted to interest arbitration.

(b) Within seven days after being notified by the mediator, each party shall submit to the mediator and (~~serve on~~) the other party a written list (including article and section references to the parties' latest collective bargaining agreement, if any) of the issues that the party believes should be advanced to interest arbitration.

(2) The mediator shall review the lists of issues submitted by the parties.

(a) The mediator shall exclude from certification any issues that have not been mediated.

(b) The mediator shall exclude from certification any issues resolved by the parties in bilateral negotiations or mediation, and the parties may present those agreements as "stipulations" in interest arbitration under RCW 41.56.465 (1)(b), 41.56.475 (~~(+2)~~) (4)(b), or 41.56.492 (2)(b).

(c) The mediator may convene further mediation sessions and take other steps to resolve the dispute.

(3) If the dispute remains unresolved after the completion of the procedures in subsections (1) and (2) of this section, interest arbitration (~~shall~~) must be initiated, as follows:

(a) Except as provided in (b) of this subsection, the mediator shall forward (~~his or her~~) a recommendation and a list of unresolved issues to the executive director, who shall consider the recommendation of the mediator. The executive director may remand the matter for further mediation. If the executive director finds that the parties remain at impasse, the executive director shall certify the unresolved issues for interest arbitration.

(b) For a bargaining unit covered by RCW 41.56.492, the mediator shall certify the unresolved issues for interest arbitration.

[Statutory Authority: RCW 41.56.090, 41.58.050, 41.58.065, 47.64.300, and 74.39A.270. WSR 12-05-066, § 391-55-200, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 41.56.090, 41.58.050, and 74.39A.270. WSR 10-20-172, § 391-55-200, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 41.56.450, [41.56].475, [41.56].492 and 74.39A.270. WSR 03-03-064, § 391-55-200, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.450, 41.56.475 and 41.56.492. WSR 99-14-060, § 391-55-200, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.450 and [41.56].492. WSR 96-07-105, § 391-55-200, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-200, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-205 Interest arbitration—Appointment of partisan arbitrators. For a dispute involving a bargaining unit eligible for interest arbitration under RCW 41.56.030(14), 41.56.492, or 41.56.496 and within seven days following the issuance of a certification of issues for interest arbitration under WAC 391-55-200, each party shall name one person who is available and willing to serve as its member of the arbitration panel (~~(7)~~) and shall notify the opposite party and the executive director of the name, email address, mailing address, and telephone number of the partisan arbitrator. The partisan arbitrators shall meet within seven days following the appointment of the later appointed member to attempt to choose a third member to act as the neutral chairperson of the arbitration panel.

(1) The use of partisan arbitrators (~~(shall be)~~) is deemed waived if neither party has notified the executive director of its appointee within (~~(fourteen)~~) 14 days following the issuance of a certification of issues for interest arbitration, and the parties' (~~(principal)~~) representatives shall then select the neutral chairperson.

(2) A party (~~(which)~~) that has designated a partisan arbitrator may substitute another person as its partisan arbitrator, upon notice to the other party and the executive director.

(3) By mutual agreement, the parties may waive the provisions in this rule and the appointment of partisan arbitrators.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-205, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-205, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-035 (Order 83-05), § 391-55-205, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-205, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-210 Interest arbitration—Selection of neutral chairperson. (1) For a dispute involving a bargaining unit eligible for interest arbitration under RCW 41.56.030(14), 41.56.492, or 41.56.496, if the parties agree on the selection of a neutral chairperson, they shall obtain a commitment from that person to serve (~~(7)~~) and shall notify the executive director of the identity of the chairperson.

(2) If the parties agree to have the (~~(commission)~~) agency appoint a staff member as the neutral chairperson, they shall submit a written joint request to the executive director. The parties are not entitled to influence the designation of a neutral chairperson under this subsection and (~~(shall)~~) may not, either in writing or by other communication, attempt to indicate any preference for or against any person as the neutral chairperson to be appointed by the (~~(commission)~~) agency. Upon the submission of a request (~~(in compliance with this subsection)~~), the executive director shall appoint a neutral chairperson from the (~~(commission)~~) agency staff.

(3) If the parties desire to select a neutral chairperson from a panel of arbitrators, they shall attempt to agree as to whether the public employment relations commission, the Federal Mediation and Conciliation Service, or the American Arbitration Association will supply the list of arbitrators. If the choice of agency is agreed, either party or the parties jointly shall ~~((proceed forthwith to))~~ request a panel of at least five arbitrators specifying ~~((:"))~~ that the request is for interest arbitration proceedings under ((RCW 41.56.450)) the applicable statute. (")) Referrals and selection from the public employment relations commission's dispute resolution panel ~~((shall be))~~ must be made as provided in WAC ~~((391-55-120))~~ 391-75-020. Referrals and selection from other panels ~~((shall))~~ must be made under the rules of the agency supplying the list of arbitrators. The parties shall notify the executive director of the identity of the neutral chairperson.

(4) If the parties have not notified the executive director of their selection of a neutral chairperson within ~~((twenty-eight))~~ 28 days after certification of issues under WAC 391-55-200, the parties ~~((shall be))~~ are deemed to have waived the procedures in subsections (1) through (3) of this section. The ~~((executive director))~~ agency shall issue a list of dispute resolution panel members and the neutral chairperson ~~((shall))~~ must be selected as provided in WAC ~~((391-55-120))~~ 391-75-020 unless the parties notify the executive director that by mutual agreement they have determined an alternative process for selecting a neutral chairperson.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-210, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-210, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-035 (Order 83-05), § 391-55-210, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-210, filed 9/30/80, effective 11/1/80.]

NEW SECTION

WAC 391-55-211 Special provision—Interest arbitration—Selection of neutral chairperson for state. (1) Preceding the commencement of negotiations for bargaining units eligible for interest arbitration under RCW 41.56.028, 41.56.029, 41.56.475, 41.56.510, 41.56.516, 41.80.200, 41.80.310, 47.64.300, or 74.39A.270 (2)(c), but no later than February 1st of each even-numbered year, the parties shall utilize the following procedure to select a neutral chairperson unless an alternative process is specified by law or has been mutually agreed upon by the parties:

(a) If the parties agree on the selection of a neutral chairperson, they shall obtain a commitment from that person to serve and shall notify the executive director of the identity of the chairperson.

(b) If the parties agree to have the agency appoint a staff member as the neutral chairperson, they shall submit a written joint request to the executive director. The parties are not entitled to influence the designation of a neutral chairperson under this subsection

and may not, either in writing or by other communication, attempt to indicate any preference for or against any person as the neutral chairperson to be appointed by the agency. Upon the submission of a request, the executive director shall appoint a neutral chairperson from the agency staff.

(c) If the parties desire to select a neutral chairperson from a panel of arbitrators, they shall attempt to agree as to whether the public employment relations commission, the Federal Mediation and Conciliation Service, or the American Arbitration Association will supply the list of arbitrators. If the choice of agency is agreed, either party or the parties jointly shall request a panel of at least five arbitrators specifying that the request is for interest arbitration proceedings under the applicable statute. Referrals and selection from the public employment relations commission's dispute resolution panel must be made as provided in WAC 391-75-020. Referrals and selection from other panels must be made under the rules of the agency supplying the list of arbitrators. The parties shall notify the executive director of the identity of the neutral chairperson.

(d) If the parties have not notified the executive director of their selection of a neutral chairperson within 28 days after February 1st of each even-numbered year, or requested an extension of time to complete the selection process, the parties are deemed to have waived the procedures in (a) through (c) of this subsection. The executive director shall issue a list of dispute resolution panel members and the neutral chairperson must be selected as provided in WAC 391-75-020.

(2) Once a neutral chairperson is selected, the parties shall work with the neutral chairperson to select a mutually agreeable hearing date(s) and location. This information must be transmitted to the executive director within 30 days of it being finalized.

[]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-215 Interest arbitration—Conduct of proceedings—Waiver of objections. Proceedings (~~shall~~) must be conducted as provided in WAC 391-55-200 through 391-55-255. The neutral chairperson shall interpret and apply all rules relating to the powers and duties of the neutral chairperson. Any party who proceeds with arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state its objection in writing, (~~shall be~~) is deemed to have waived its right to object.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-215, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-215, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-215, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-220 Interest arbitration—Submission of proposals for arbitration. At least ~~((fourteen))~~ 14 days before the date of the hearing, or no later than the next business day after the issuance of the certification if the date between certification and hearing is less than 14 days, each party shall submit to the members of the panel and to the other party written proposals on all of the issues it intends to submit to arbitration. Parties ~~((shall not be))~~ are not entitled to submit issues ~~((which))~~ that were not among the issues certified under WAC 391-55-200.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-220, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-220, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-220, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-225 Interest arbitration—Prehearing conference—Hearing. (1) The neutral chairperson may, upon ~~((his or her))~~ the chairperson's own motion or upon request of a party, convene a prehearing conference ~~((or conferences))~~.

(a) The purpose ~~((or purposes))~~ of a prehearing conference ~~((include))~~ is to consider any one or more of the following:

- (i) Simplification of issues;
- (ii) The possibility of obtaining stipulations, admissions of fact, and admissions of the genuineness of documents, which will avoid unnecessary proof;
- (iii) Limitations on the number and consolidation of the examination of witnesses;
- (iv) Procedural matters;
- (v) Distribution of written testimony and exhibits to the parties prior to the hearing; and
- (vi) ~~((Such))~~ Any other matters ~~((as))~~ that may aid in the disposition or settlement of the case.

(b) Prehearing conferences may be held by telephone conference call or other electronic means at a time and ~~((place))~~ location specified by the neutral chairperson.

(c) Following a prehearing conference, the neutral chairperson shall issue an order reciting the action taken at the conference ~~((r))~~ and the agreements made by the parties concerning all of the matters considered. If no objection is filed within ~~((ten))~~ 10 days after the date that the order is ~~((mailed))~~ issued, ~~((it shall))~~ the order controls the subsequent course of the case unless modified for good cause by subsequent order.

(2) The arbitration panel shall promptly establish a date, time, and place for a hearing and ~~((shall))~~ provide reasonable notice to the parties. For good cause shown, the neutral chairperson may adjourn the hearing upon the request of a party or upon ~~((his or her))~~ the chair-

person's own initiative. The parties may waive oral hearing by written agreement.

(a) A (~~tape~~) recording of the hearing (~~shall~~) must be taken and (~~shall be~~) is the official record of the hearing, unless the parties agree to take a transcript. If the parties do not agree to take a transcript and share in its cost, a party may take a transcript at its own expense. If a copy of the transcript is provided to the neutral chairperson, all parties (~~shall~~) must have access to a copy.

(b) The statutory prohibition against a partisan arbitrator presenting the case for a party (~~shall~~) does not preclude another member of the same organization or firm from presenting the case at the hearing.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-225, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-225, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-225, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-230 Interest arbitration—Order of proceedings and evidence. The order of presentation at the hearing (~~shall~~) must be as agreed by the parties or as determined by the neutral chairperson. The neutral chairperson (~~shall be~~) is the judge of the relevancy of the evidence. All evidence (~~shall~~) must be taken in the presence of all parties, unless a party is absent in default or has waived its right to be present. Each documentary exhibit (~~shall~~) must be submitted to the neutral chairperson and copies (~~shall~~) must be provided to the partisan arbitrators and to the other parties. The exhibits (~~shall~~) must be retained by the neutral chairperson until an agreement has been signed or until any judicial review proceedings have (~~been~~) concluded, after which they may be disposed of as agreed by the parties or as ordered by the neutral chairperson. The neutral chairperson has authority to administer oaths, to require the attendance of witnesses, and to require the production of documents that (~~he or she~~) the chairperson may deem to be material.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-230, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-230, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-230, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-235 Interest arbitration—Arbitration in the absence of a party. The neutral chairperson may proceed in the absence of any

party who, after due notice, fails to be present or fails to obtain an adjournment. Findings of fact and the determination of the issues in dispute (~~shall~~) may not be made solely on the default of a party, and the neutral chairperson (~~shall~~) may require the participating party to submit evidence as may be required for making of the findings of fact and determining the issues.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-235, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-235, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-235, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-240 Interest arbitration—Closing of arbitration hearings. The neutral chairperson (~~shall~~) will declare the hearing closed after the parties have completed presenting (~~their~~) any testimony (~~and/or~~) or exhibits and submission of briefs or closing arguments within (~~agreed~~) the time limits as mutually agreed upon.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-240, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-240, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-240, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-245 Interest arbitration—Award. The rulings and determination of the neutral chairperson (~~shall be~~) are controlling(~~τ~~) and (~~shall~~) do not require concurrence(~~τ~~) but may be accompanied by (~~the~~) any concurring (~~and/or~~) or dissenting opinions of the partisan arbitrators. The rulings and determinations (~~shall not be~~) are not subject to appeal to the commission, but the neutral chairperson shall submit a copy of the award to the executive director.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-245, filed 7/1/99, effective 8/1/99; WSR 98-14-112, § 391-55-245, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-55-245, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-245, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-255 Interest arbitration—Expenses of arbitration.

Each party shall pay the expenses of presenting its own case and the expenses and fees of its arbitration panel member (~~(of the arbitration panel)~~), if any. The expenses of witnesses (~~(shall)~~) must be paid by the party producing them. The fees and traveling expenses of a neutral chairperson appointed under WAC 391-55-210 (1) or (3), along with any costs for lists of arbitrators and for a recording or transcription of the proceedings, (~~(shall)~~) must be shared equally between the parties. The fees and traveling expenses of a neutral chairperson appointed under WAC 391-55-210(2), along with the costs of (~~(tapes for a tape)~~) a recording of the proceedings but not a transcription or the services of a court reporter, (~~(shall)~~) must be paid by the (~~(commission)~~) agency.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-255, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-255, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-255, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-255, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-265 Interest arbitration—Suspension of arbitration pending outcome of unfair labor practice proceedings. (1) The executive director shall suspend the certification of some or all issues under WAC 391-55-200, as follows:

(a) A party which claims that a proposal being advanced to interest arbitration is not a mandatory subject of collective bargaining must communicate its concerns to the other party during bilateral negotiations (~~(and/or)~~) or mediation or both. If the party advancing the proposal does not withdraw the proposal or modify it to eliminate the claimed (~~(illegality)~~) nonmandatory subject of bargaining, the objecting party must file (~~(and process)~~) a complaint charging unfair labor practices under chapter 391-45 WAC (~~(prior to)~~) before the conclusion of the interest arbitration proceedings.

(b) A party which claims that the other party to negotiations subject to interest arbitration has violated the (~~(the)~~) collective bargaining (~~(the)~~) obligations imposed by RCW 41.56.030(4) must file (~~(and process)~~) a complaint charging unfair labor practices under chapter 391-45 WAC (~~(prior to)~~) before the conclusion of the interest arbitration proceedings.

(c) If a (~~(preliminary ruling)~~) cause of action statement is issued under WAC 391-45-110 (~~(that an unfair practice violation could be found on)~~) for a complaint filed under (a) or (b) of this subsection, a final ruling on the unfair labor practice complaint (~~(shall)~~) must be made before any determination is made in interest arbitration on the disputed issue or issues.

(2) Issues suspended under subsection (1) of this section ~~((shall))~~ must be acted upon after the conclusion of the unfair labor practice proceedings, as follows:

(a) If it is concluded that ~~((the))~~ any suspended issue ~~((or issues was/were))~~ was unlawfully advanced or affected by unlawful conduct, the ~~((issue or issues shall))~~ issue(s) must be stricken from the certification issued under WAC 391-55-200, and the party advancing the proposal ~~((shall))~~ is only ~~((be))~~ permitted to advance ~~((such))~~ modified proposals ~~((as))~~ that are in compliance with the remedial order in the unfair labor practice proceedings.

(b) If it is concluded that ~~((the))~~ any suspended issue ~~((or issues was/were))~~ was lawfully advanced, the suspension under this section ~~((shall))~~ must be terminated and the ~~((issue or issues shall))~~ issue(s) must be remanded to the interest arbitration panel for ruling on the merits.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-265, filed 7/1/99, effective 8/1/99.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-300 Fact-finding. If a dispute has not been settled after bilateral negotiations and mediation, ~~((either))~~ fact-finding may be initiated. A party may request the appointment of a fact finder by giving written notice to the ~~((commission))~~ agency, the mediator, and the opposite party.

(1) For disputes involving educational employees under chapter 41.59 RCW who have made a request for the appointment of a fact finder, a period of ~~((ten))~~ 10 days of mediation must have elapsed. The parties may, by agreement made at any time ~~((prior to))~~ before the appointment of a fact finder, extend the period for mediation or ~~((place in the hands of))~~ authorize the mediator ~~((the determination of))~~ to determine when mediation has been exhausted so as to warrant the initiation of fact-finding.

(2) For disputes involving state civil service employees under chapter 41.80 RCW, fact-finding ~~((shall))~~ must be initiated if resolution is not reached through mediation by ~~((one hundred))~~ 100 days beyond the expiration date of a contract previously negotiated under that chapter or ~~((one hundred))~~ 100 days from the initiation of mediation if no such contract exists.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-300, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-300, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-310 Selection of fact finder. (1) Upon the submission of a timely request for fact-finding, ~~((the executive director shall furnish a list of members of the dispute resolution panel, and))~~ the parties shall meet within seven days ~~((following receipt of the list,))~~ to attempt to select a fact finder. ~~((Names shall be referred and any fact finder shall be selected under WAC 391-55-120.))~~

(a) The parties may agree to designate the mediator as fact finder.

(b) If the parties agree on a fact finder, they shall obtain a commitment to serve and ~~((shall))~~ notify the executive director of the identity of the fact finder.

(c) If the parties are unable to agree on a fact finder within seven days, they shall immediately notify the executive director.

~~((d) For disputes under chapter 41.59 RCW, the process described in this subsection implements the right of the parties under RCW 41.59.120(5).))~~

(2) In the absence of an agreement of the parties under subsection (1) of this section, the executive director shall designate a fact finder.

(a) For disputes under chapter 41.59 RCW, the fact finder ~~((shall))~~ must be a member of the ~~((commission))~~ agency staff other than the person who was the mediator in the dispute. The parties are not entitled to influence the designation of a fact finder and ~~((shall))~~ may not, either in writing or by other communication, attempt to indicate any preference for or against any person as the fact finder to be appointed by the ~~((commission))~~ agency.

(b) For disputes under chapter 41.80 RCW, the fact finder may be a member of the ~~((commission))~~ agency staff or ~~((may be))~~ a member of the agency's dispute resolution panel ~~((established in WAC 391-55-120))~~.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-310, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 99-14-060, § 391-55-310, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-035 (Order 83-05), § 391-55-310, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-310, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-315 Conduct of fact-finding proceedings—Waiver of objections. Proceedings ~~((shall))~~ must be conducted as provided in WAC 391-55-300 through 391-55-355. The fact finder shall interpret and apply all rules relating to the powers and duties of the fact finder. Any party ~~((who))~~ that proceeds with fact-finding after knowledge that any provision or requirement of these rules has not been complied with

and (~~who~~) that fails to state its objection in writing (~~(, shall be)~~) is deemed to have waived its right to object.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-315, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 99-14-060, § 391-55-315, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-315, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-315, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-320 Submission of proposals for fact-finding. At least seven days before the date of the fact-finding hearing, each party shall submit to the fact finder and to the other party written proposals on all of the issues it intends to submit to fact-finding. Parties (~~(shall not be)~~) are not entitled to submit issues (~~(which)~~) that were not among the issues mediated under WAC 391-55-070.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-320, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 99-14-060, § 391-55-320, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-320, filed 9/30/80, effective 11/1/80.]

NEW SECTION

WAC 391-55-321 Fact-finding prehearing conference. The fact finder may, upon the fact finder's own motion or upon request of a party, convene a prehearing conference.

(1) The purpose of a prehearing conference is to consider any one or more of the following:

- (a) Simplification of issues;
- (b) Identification of evidence or supporting documentation that either one party or both may be required to bring to the hearing;
- (c) Limitations on the number and consolidation of the examination of witnesses;
- (d) Procedural matters; and
- (e) Any other matters that may aid in the disposition or settlement of the case.

(2) Prehearing conferences may be held by telephone conference call or other electronic means at a time and location specified by the fact finder.

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AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-325 Fact-finding hearing. The fact finder shall establish a date, time, and place for a hearing. The fact-finding hearing (~~(shall be)~~) is open to the public unless otherwise agreed by the parties. For good cause shown, the fact finder may adjourn the hearing upon the request of a party or upon (~~(his or her)~~) the fact finder's own initiative. The parties may waive oral hearing by written agreement.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-325, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-325, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-330 Order of proceedings and evidence. The order of presentation at the fact-finding hearing (~~(shall)~~) must be as agreed by the parties or as determined by the fact finder. The fact finder (~~(shall be)~~) is the judge of the relevancy of the evidence. All evidence (~~(shall)~~) must be taken in the presence of all parties, unless a party is absent in default or has waived its right to be present. Each documentary exhibit (~~(shall)~~) must be submitted to the fact finder and copies (~~(shall)~~) must be provided to the other parties. The exhibits (~~(shall)~~) must be retained by the fact finder until an agreement has been signed, after which they may be disposed of as agreed by the parties or as ordered by the fact finder.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-330, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 99-14-060, § 391-55-330, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-330, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-335 Fact-finding in the absence of a party. The fact finder may proceed in the absence of any party (~~(who)~~) that, after due notice, fails to be present or fails to obtain an adjournment. Fact finders shall treat any subject on which one party has taken a position that it is not a mandatory subject for bargaining in accordance with this rule. Findings of fact and recommendations (~~(shall)~~) may not be made solely on the default of a party, and the fact finder (~~(shall)~~) may require the participating party to submit evidence as may be required for making of the findings of fact and recommendations.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-335, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 99-14-060, § 391-55-335, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 81-02-034 (Order 81-01), § 391-55-335, filed 1/6/81.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-340 Closing of fact-finding hearings. The fact finder (~~shall~~) will declare the hearing closed after the parties have completed presenting (~~their~~) any testimony (~~and/or~~) or exhibits and submission of briefs or closing arguments within (~~agreed~~) the time limits as mutually agreed upon.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-340, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 99-14-060, § 391-55-340, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-340, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-345 Findings of fact and recommendations. Within (~~thirty~~) 30 days after (~~his or her~~) appointment, the fact finder shall provide the parties and the executive director with written findings of fact and recommendations. The findings and recommendations of the fact finder (~~shall not be~~) are not subject to appeal to the commission. Fact finders (~~shall~~) may rule only on the reasonability of the proposals advanced in the context of the whole of the negotiations between the parties(~~r~~) and (~~shall~~) may not rule on whether a subject or proposal in dispute is a mandatory subject for collective bargaining.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-345, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 98-14-112, § 391-55-345, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-55-345, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 81-02-034 (Order 81-01), § 391-55-345, filed 1/6/81.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-350 Responsibility of parties after fact-finding.

The parties are entitled to consider the fact finder's recommendations privately(~~(r)~~) before they are made public.

(1) For cases under chapter 41.59 RCW, within five days after the findings of fact and recommendations have been issued, the parties shall notify the (~~(commission)~~) agency and each other whether they accept the recommendations of the fact finder.

(2) For cases under chapter 41.80 RCW, within (~~(ten-working)~~) 10 days after the findings of fact and recommendations have been issued, the parties shall notify the (~~(commission)~~) agency and each other whether they accept the recommendations of the fact finder.

(3) If the recommendations of the fact finder are rejected by one or both parties and their further efforts do not result in an agreement, either party may ask the agency to provide further mediation and, upon the concurrence of the other party, the agency shall assign a mediator.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-350, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 00-14-048, § 391-55-350, filed 6/30/00, effective 8/1/00; WSR 99-14-060, § 391-55-350, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-350, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-55-355 Expenses of fact-finding. Each party shall pay the expenses of presenting its own case. The expenses of witnesses (~~(shall)~~) must be paid by the party producing them. The fees and expenses of a fact finder (~~(shall)~~) must be paid as follows:

(1) A fact finder appointed by the (~~(commission)~~) agency from the (~~(commission)~~) agency staff under WAC 391-55-310 (2)(a) (~~(shall)~~) must be paid by the (~~(commission)~~) agency.

(2) A fact finder selected from the dispute resolution panel or some other source (~~(shall)~~) must be paid by the parties, in equal shares.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-355, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-035 (Order 83-05), § 391-55-355, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-355, filed 9/30/80, effective 11/1/80.]

NEW SECTION

WAC 391-55-365 Advisory opinion. For bargaining units eligible for interest arbitration under RCW 41.56.028, 41.56.029, 41.56.030(14), 41.56.475, 41.56.492, 41.56.496, 41.56.510, 41.56.516, 41.80.200, 41.80.310, 47.64.300, or 74.39A.270 (2)(c), during negotiations for a successor agreement if a dispute arises concerning the scope of what is eligible to be bargained (i.e., mandatory or nonmandatory subjects of bargaining), either party may request an advisory opinion from the executive director through the following process:

(1) During the course of negotiations or mediation, upon receipt of any proposal that one party believes may constitute a nonmandatory subject of bargaining, the receiving party must put the other party on notice of the belief that the proposal submitted is nonmandatory.

(2) A cooling-off period must be invoked during which both parties must discuss the alleged nonmandatory proposal(s) in at least one subsequent bargaining or mediation session.

(3) If, after the cooling-off period, the offering party does not withdraw or modify the proposal(s) to eliminate any nonmandatory elements, either party may request an advisory opinion from the executive director. The request must be filed with the agency and served on all parties as required by WAC 391-08-120.

(4) With any request for an advisory opinion, the requesting party shall include only the following documentation and written materials:

(a) A copy of the proposal(s) alleged to be nonmandatory;

(b) A certification from the party's chief negotiator that objections to the alleged nonmandatory proposal(s) were raised during bilateral negotiations or mediation and that the cooling-off period was invoked;

(c) A brief statement (not exceeding five pages, double-spaced, 12-point type) detailing the reasons why the party believes the proposal(s) to be mandatory or nonmandatory;

(d) A copy of any legal material supporting the alleged nonmandatory nature of the proposal(s), including statutory or regulatory provisions, case decisions, or related legal materials.

(5) Within five business days of receipt of service of the request for an advisory opinion, the other party may file a response, which may include only the following documentation and written materials:

(a) A response from the party's chief negotiator that objections to the alleged nonmandatory proposal(s) were raised during bilateral negotiations or mediation and that the cooling off period was invoked;

(b) A brief statement (not exceeding five pages, double-spaced, 12-point type) detailing the reasons why the party believes the proposal(s) to be mandatory or nonmandatory;

(c) A copy of any legal material supporting the alleged mandatory nature of the proposal(s), including statutory or regulatory provisions, case decisions, or related legal materials.

(6) Upon filing of the materials outlined in subsections (4) and (5) of this section, the executive director shall review all materials and notify the parties if an advisory opinion will be issued. If the executive director determines it appropriate to issue an advisory opinion, it must be issued within 30 days of the filing of all materials outlined above. If the executive director determines it is not appropriate to issue an advisory opinion, the executive director shall notify the parties in writing.

(7) An advisory opinion is not a final agency decision and is not subject to appeal under WAC 391-45-350. Advisory opinions are not binding upon the agency and do not constitute evidence of an unfair labor practice in proceedings before the agency.

[]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 391-55-002	Sequence and numbering of rules—Special provisions.
WAC 391-55-071	Special provision—State patrol personnel.
WAC 391-55-0715	Special provision—Public employees.
WAC 391-55-072	Special provision—Educational employees.
WAC 391-55-110	Dispute resolution panel—Membership.
WAC 391-55-120	Dispute resolution panel—Referral and selection procedures.
WAC 391-55-130	Disclosure.
WAC 391-55-150	Vacancies.
WAC 391-55-201	Special provision—Certification of issues—Public employees.
WAC 391-55-202	Special provision—Certification of issues—Educational employees.

OTS-3729.1

AMENDATORY SECTION (Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

WAC 391-65-001 Scope—Contents—Other rules. This chapter governs proceedings ((before the public employment relations commission)) relating to arbitration of grievance disputes arising out of the interpretation or application of a collective bargaining agreement under all chapters of the Revised Code of Washington (RCW) administered by the ((commission. The provisions of this chapter should be read in conjunction with the provisions of:

(1) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission, and which also replaces some provisions of chapter 10-08 WAC.

(2) Chapter 391-25 WAC, which regulates representation proceedings.

~~(3) Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.~~

~~(4) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.~~

~~(5) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.~~

~~(6) Chapter 391-95 WAC, which regulates union security nonassociation proceedings)) agency. To the extent these rules of practice and procedure differ from the model rules in chapter 10-08 WAC or this agency's general rules of practice and procedure in chapter 391-08 WAC, these special rules prevail.~~

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-65-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-65-001, filed 6/22/01, effective 8/1/01; WSR 99-14-060, § 391-65-001, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-001, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-65-010 Grievance arbitration request—Who may ~~((submit))~~ file. ~~((Where there is an agreement))~~ If the parties agree to arbitrate, a request for appointment of an arbitrator to hear and determine issues arising out of the interpretation or application of a collective bargaining agreement may be ~~((submitted))~~ filed by the employer, the exclusive representative ~~((or))~~, their agents, or by the parties jointly.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. WSR 99-14-060, § 391-65-010, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-010, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-65-030 ~~((Grievance arbitration))~~ Request for grievance arbitration—Filing and service. A request for appointment of a grievance arbitrator may be ~~((made))~~ filed through the agency's online e-filing system, by email, or in writing ~~((or by electronic telefaesimile transmission. The request shall be on a form furnished by the commission or prepared by the party or parties submitting the request in conformance with WAC 391-65-050. The original request shall be submitted to the commission's Olympia office, as required by WAC 391-08-120(2))~~ to the agency's Olympia office, as required by WAC 391-08-120 (1) and (2). If the request is not ~~((submitted))~~ filed

jointly, the party (~~(submitting)~~) filing the request shall serve a copy (~~(, as required by WAC 391-08-120 (3) and (4),)~~) on the other party to the collective bargaining agreement under which the dispute arises, as required by WAC 391-08-120 (3) and (4).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. WSR 99-14-060, § 391-65-030, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.50.413 and 41.56.125. WSR 96-07-105, § 391-65-030, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-030, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-65-050 (~~(Grievance arbitration)~~) Contents of request filing forms. Each (~~(request for appointment of a grievance arbitrator shall contain)~~) completed grievance arbitrator request filing form, whether obtained from the agency's website or through the agency's e-filing system, must include all of the following:

- (1) Information identifying the parties to the dispute, including:
 - (a) The name, email address, mailing address, and telephone number of the employer and (~~(the name, address and telephone number of its principal)~~) of the employer's representative;
 - (b) The name, email address, mailing address, and telephone number of the employee organization and (~~(the name, address and telephone number of its principal)~~) of the employee organization's representative;
 - (c) (~~(The employer's principal business;~~
 - (~~d~~)) A copy of the current or most recent applicable collective bargaining agreement; and
 - (~~(e))~~ (d) A general description of the employee job classification(s) in the bargaining unit (~~(involved, specifying inclusions and exclusions;~~
 - (~~f~~) The number of employees in the bargaining unit;
 - (~~g~~) The agreement of the party or parties making the request to accept the decision of the arbitrator as final and binding; and
 - (~~h~~) The agreement of the party or parties making the request that there shall be no strike or lockout on the matters submitted to arbitration).
- (2) Identification of the grievance to be resolved in arbitration.
- (3) Designation of the request as:
 - (a) A request for appointment of a member of the agency staff as arbitrator; or
 - (b) A request for (~~(the submission of)~~) a list containing a specified number of names from the dispute resolution panel (~~(created by WAC 391-55-110)~~) maintained by the agency under WAC 391-75-010.
- (4) The name(s), signature(s), and (~~(, if any,)~~) title(s), if any, of the (~~(representative(s) of the requesting party (parties), and)~~) person(s) filing the request as well as the date(s) of the signature(s).

(5) Any other information requested in the grievance arbitrator request filing form found on the agency's website at www.perc.wa.gov or as required through the agency's e-filing system.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. WSR 99-14-060, § 391-65-050, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.413 and 41.56.125. WSR 96-07-105, § 391-65-050, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-057 (Order 88-09), § 391-65-050, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-050, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-65-070 (~~(Grievance arbitration)~~) Appointment of staff arbitrator. Upon concurrence of the parties or upon the submission of a joint request, a member of the agency staff (~~(shall)~~) will be assigned as grievance arbitrator. The parties (~~(shall)~~) are not (~~(be)~~) permitted to select a grievance arbitrator from a list of agency staff members(~~(7)~~) or to exercise a right of rejection on appointments made under this section(~~(; but)~~). However, the parties may jointly express a preference for appointment of one or more staff members as their arbitrator, and their request (~~(shall)~~) will be considered in making the assignment. Upon the submission of a request by one party for the appointment of a member of the agency staff as grievance arbitrator, the agency (~~(shall)~~) will determine whether the other party to the collective bargaining agreement concurs in the appointment of a staff arbitrator. In the absence of concurrence, the agency (~~(shall)~~) will notify the requesting party of the lack of concurrence and (~~(shall)~~) close the case if concurrence is not provided within a reasonable time.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. WSR 00-14-048, § 391-65-070, filed 6/30/00, effective 8/1/00; WSR 99-14-060, § 391-65-070, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-070, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-65-090 (~~(Grievance arbitration)~~) Designation of panel of arbitrators. Upon the request of a party, the agency shall (~~(furnish)~~) provide a list of (~~(members of)~~) arbitrators from the dispute resolution panel in accordance with WAC 391-75-020(1). (~~(Names shall be referred and an arbitrator shall be selected under WAC 391-55-120)~~) The parties must select an arbitrator under the procedures specified in WAC 391-75-020(2).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. WSR 99-14-060, § 391-65-090, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-090, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 12-05-066, filed 2/15/12, effective 3/17/12)

WAC 391-65-110 ((Grievance arbitration)) Conduct of proceedings. The arbitrator assigned or selected shall conduct the arbitration proceedings in the manner provided in the collective bargaining agreement under which the dispute arises, subject to the following:

(1) Arbitration cases handled by members of the agency staff ~~((shall))~~ must be kept in the public files ~~((of))~~ maintained by the agency.

(2) Except as provided in subsection ~~((s))~~ (1) ~~((and (2)))~~ of this section, all arbitrators shall maintain compliance with the "Code of Professional Responsibility for Arbitrators of Labor-Management Disputes" as last amended with approval of the Federal Mediation and Conciliation Service.

(3) Rulings, actions, and decisions issued by staff arbitrators under this chapter ~~((shall))~~ are not ~~((be))~~ subject to appeal to the commission ~~((or the marine employees' commission))~~.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, 41.80.130, and 49.39.060. WSR 12-05-066, § 391-65-110, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-65-110, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.56.125. WSR 03-03-064, § 391-65-110, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. WSR 99-14-060, § 391-65-110, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-65-110, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-110, filed 9/30/80, effective 11/1/80.]

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-65-150 ((Grievance arbitration)) Expenses of arbitration. Each party shall pay the expenses of presenting its own case and the expenses and fees of its arbitration panel member, if any ~~((of an arbitration panel))~~. The expenses of witnesses ~~((shall))~~ must be paid by the party producing them. The ~~((commission))~~ agency shall pay the salary and expenses of a staff member assigned under WAC 391-65-070, but the ~~((commission))~~ agency shall not pay any costs for recording ~~((and/or))~~ or transcription of proceedings ~~((or))~~ or any other expenses of the proceedings. The parties shall pay the fees and expen-

ses of a dispute resolution panel member selected under WAC 391-65-090, as provided in WAC ((~~391-55-120~~)) 391-75-020.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-65-150, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. WSR 99-14-060, § 391-65-150, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-150, filed 9/30/80, effective 11/1/80.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 391-65-002	Sequence and numbering of rules—Special provisions.
WAC 391-65-075	Special provision—Marine employees.
WAC 391-65-130	Grievance arbitration—Award.

OTS-3730.3

Chapter 391-75 WAC DISPUTE RESOLUTION PANEL AND LAW ENFORCEMENT ARBITRATOR ROSTER

NEW SECTION

WAC 391-75-001 Scope—Contents—Other rules. This chapter governs the maintenance of the dispute resolution panel and law enforcement arbitrator roster.

[]

NEW SECTION

WAC 391-75-010 Dispute resolution panel—Membership. The agency shall maintain a panel of individuals qualified to serve in an impartial capacity in the resolution of labor disputes.

(1) Applicants for membership on the dispute resolution panel shall demonstrate minimum background and experience equal to the minimum qualifications for the working level positions on the agency staff:

(a) A master's degree in labor relations, personnel management, industrial relations, or closely allied field, or a law degree;

(b) At least three years of experience in collective bargaining with major work assignments in negotiations, contract administration, or related work as a union or management representative, mediator, arbitrator, or educator in the above areas; and

(c) Additional qualifying experience may substitute, year for year, for education.

(2) Applicants for membership on the dispute resolution panel shall provide at least five letters of recommendation supporting their acceptability as an impartial from:

(a) At least two management representatives;

(b) At least two union representatives; and

(c) At least one impartial arbitrator, mediator, or labor relations administrative agency official.

(3) All letters of recommendation submitted under subsection (2) of this section must be signed and dated within two years of the date of the application for membership. Additionally, any letter of recommendation submitted in support of an applicant should be on official letterhead or contain recent contact information for the author of the letter.

(4) Applicants for membership on the dispute resolution panel who desire to be referred for interest arbitration proceedings shall demonstrate their experience as an impartial in at least five grievance arbitration, fact-finding, or interest arbitration cases by submitting copies of arbitration awards which can be provided, upon request, to parties selecting an interest arbitrator.

(5) Applicants for membership on the dispute resolution panel shall submit, in the form specified by the executive director, information on their background, qualifications, professional certifications, and affiliations. All information submitted may be subject to administrative verification.

(6) Applications of persons appearing to be qualified for membership on the panel are forwarded to the commission for consideration and action. The commission shall review each application submitted to it, together with the supporting letters of recommendation, and notify the applicant of the determination made.

(7) No member of the commission appointed under RCW 41.58.010 may be an active member of the dispute resolution panel.

(8) Upon appointment to the dispute resolution panel by the commission, the panel member may be placed under contract pursuant to statute. Only persons listed on the panel may be compensated by the agency under a personal service contract.

[]

NEW SECTION

WAC 391-75-020 Dispute resolution panel—Referral and selection procedures. (1) All referrals from the dispute resolution panel are made by random selection from among the panel members eligible for the type of proceeding involved, subject to the following:

(a) If the parties do not specify the number of names requested, the agency will supply seven names.

(b) Where the parties request a specific number of names, the agency will supply the number requested.

(c) The agency will post on its website at www.perc.wa.gov biographical information, including background, qualifications, and experience, for each of the arbitrators on the list supplied to the parties.

(d) The agency will supply the parties with a second list or additional name(s) upon submission of their joint written request.

(2) The parties may use any method agreed upon for selecting an impartial from the list provided by the agency. In the absence of agreement on any other method, they shall alternately strike names from the list, with the order of striking determined by lot.

(3) All contacts and arrangements between the parties and a selected dispute resolution panel member are the responsibility of the parties. The fees and travel expenses of the dispute resolution panel member must be paid by the parties under applicable rules or as agreed by the parties.

[]

NEW SECTION

WAC 391-75-040 Law enforcement arbitrator roster—Membership.

The agency shall maintain a roster of nine to 18 individuals qualified to serve in an impartial capacity for disputes involving law enforcement personnel disciplinary actions that are submitted to binding grievance arbitration under an existing collective bargaining agreement.

(1) In addition to the qualifications set forth in RCW 41.58.070(4), applicants for membership on the law enforcement arbitrator roster shall provide at least five letters of recommendation supporting their acceptability as an impartial from:

(a) At least two management representatives;

(b) At least two union representatives; and

(c) At least one impartial arbitrator, mediator, or labor relations administrative agency official.

(2) All letters of recommendation submitted under subsection (1) of this section must be signed and dated within two years of the date of the application for membership. Additionally, any letter of recommendation submitted in support of an applicant should be on official letterhead or contain recent contact information for the author of the letter.

(3) Applicants for membership on the law enforcement arbitrator roster shall submit, in the form specified by the executive director, information on their background, qualifications, professional certifications, and affiliations. All information submitted may be subject to administrative verification.

(4) Applications of persons appearing to be qualified for membership on the roster are forwarded to the commission for consideration and action. The commission shall review each application submitted together with the supporting letters of recommendation. Individuals selected by the commission for appointment to the law enforcement arbitrator roster will be provided with a letter of appointment designating the expiration date of the appointee's term. Except as provided in RCW 41.58.070(6), a person appointed to the law enforcement arbitrator roster serves a three year term.

(a) If an appointee desires to be reappointed to the roster for an additional term, the appointee must notify the executive director of this desire in writing within 60 days before the expiration date of the appointee's current term. Any notice for reappointment will be transmitted to the commission for its consideration consistent with this section.

(b) If the appointee declines to seek reappointment or fails to request reappointment, the commission may then fill the vacancy on the roster consistent with RCW 41.58.070 and this section.

(5) No member of the commission appointed under RCW 41.58.010 may be an active member of the law enforcement arbitrator roster.

[]

NEW SECTION

WAC 391-75-050 Awards. Any arbitrator assigned or selected under this chapter for a dispute involving public employees shall, after sending the arbitration award to the parties, submit a copy to the executive director.

[]

NEW SECTION

WAC 391-75-060 Ethical standards. Whenever it appears to the commission that an applicant or member of the dispute resolution panel or law enforcement arbitrator roster has failed or refused to comply with applicable statutes, rules, and ethical standards, the application must be rejected or the member must be removed from the dispute resolution panel or law enforcement arbitrator roster. A member must also be removed from the dispute resolution panel or law enforcement arbitrator roster if the member has:

(1) Ceased accepting appointments as an impartial in the resolution of labor disputes;

(2) Failed to keep the agency informed of the member's current email address, mailing address, and telephone number; or

(3) Failed to follow ethical standards and procedures as set forth in the "Code of Professional Responsibility for Arbitrators of Labor Management Disputes" as approved by the National Academy of Arbitrators, the Federal Mediation and Conciliation Service, and the American Arbitration Association.

[]

NEW SECTION

WAC 391-75-070 Impartiality. Persons referred from the dispute resolution panel or law enforcement arbitrator roster shall be impartial. No active member of the dispute resolution panel or law enforcement arbitrator roster may serve in any capacity as an advocate or

representative for either labor or management in labor relations matters. Any member of the panel or roster who intends to engage in advocacy work shall notify the executive director and will be placed on inactive status while their advocacy work continues.

[]

NEW SECTION

WAC 391-75-080 Disclosure. Before accepting an appointment as an arbitrator from either the dispute resolution panel or the law enforcement arbitrator roster, or as soon as information giving rise to a problem of appearance of fairness becomes known, a person serving in an impartial capacity shall disclose to the parties and to the executive director any circumstances likely to create an appearance of bias or which might disqualify that person from serving in the impartial capacity. Employment of the person or any member of their immediate family by any party is disqualifying. Each party to the proceeding shall immediately notify the executive director and the appointee or selectee whether it is willing to waive disqualification. If either party declines to waive the disqualification, the appointment must be vacated.

[]

WSR 22-23-113

PERMANENT RULES

LOWER COLUMBIA COLLEGE

[Filed November 17, 2022, 11:17 a.m., effective December 18, 2022]

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

Purpose: Sam's Law requires Lower Columbia College to amend its student conduct code to prohibit hazing both on and off campus, and revise the definition of "hazing." To this end, Lower Columbia College must amend its student conduct code, WAC 132M-126-015, 132M-126-020 and 132M-126-030; and adopt WAC 132M-126-036 in order to meet its obligations under "Sam's Law" 2SHB 1751 (2022) regarding hazing prevention. Sam's Law amends RCW 28B.10.900 and adds new RCW 28B.10.904.

Citation of Rules Affected by this Order: New WAC 132M-126-036; and amending WAC 132M-126-015, 132M-126-020, 132M-126-030.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13); 2SHB 1751 (2022), amending RCW 28B.10.900 and adding RCW 28B.10.904.

Adopted under notice filed as WSR 22-19-072 on September 19, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 3.

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: November 16, 2022.

Kendra Sprague
Vice President of Foundation
Human Resources and Legal Affairs

OTS-3965.2

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

WAC 132M-126-015 Definitions. The following definitions shall apply for purposes of this student conduct code:

(1) "ASLCC" means the associated students of Lower Columbia College as defined in the constitution of that body.

(2) "Assembly" means any overt activity engaged in by one or more persons, the object of which is to gain publicity, advocate a view, petition for a cause, or disseminate information to any person, persons, or group of persons.

(3) "Business day" means a weekday, excluding weekends, college holidays, and college closure days.

(4) "College" means Lower Columbia College and any other college centers or premises established within Washington State Community College District No. 13.

(5) "College community" means trustees, students, staff, faculty, and visitors in college facilities and college premises.

(6) "College official" includes any person employed by the college performing assigned duties.

(7) "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.

(8) A "complainant" is an alleged victim of sexual misconduct.

(9) "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.

(10) "Controlled substance" means and includes any drug or substance as defined in chapter 69.50 RCW as now law or hereafter amended.

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

(12) "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 committee. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(13) "Faculty member" and "instructor" mean any employee of Washington State Community College District No. 13 who is employed on a full-time or part-time basis as a teacher, instructor, counselor or librarian.

(14) "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.

(15) "The 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.

(16) "RCW" means Revised Code of Washington which can be accessed at <http://apps.leg.wa.gov/rcw/>.

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

(18) "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.

(19) "Sexual misconduct" has the meaning ascribed to this term in WAC 132M-126-030(13).

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

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

(22) "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.

(23) "Student organization" means any number of students who have met the formal requirements of clubs and organizations.

[Statutory Authority: RCW 28B.50.140. WSR 21-01-145, § 132M-126-015, filed 12/17/20, effective 1/17/21.]

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

WAC 132M-126-020 Statement of jurisdiction. (1) The student conduct code shall apply to student conduct that occurs:

(a) On college premises;

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

(c) 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 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.

(3) Students are responsible for their conduct from notification of (~~acceptance at~~) 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 will be applied to conduct by students or student groups that occurs off campus.

[Statutory Authority: RCW 28B.50.140. WSR 21-01-145, § 132M-126-020, filed 12/17/20, effective 1/17/21.]

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

WAC 132M-126-030 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 and program handbook. Further academic consequences may follow consistent with the provisions in any program handbook including, but not limited to, dismissal from an academic program. 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 disruptive conduct.** Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders:

(a) Instruction, research, administration, disciplinary proceeding(s), 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 directive of a college officer or employee who is acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

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

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

(d) This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.

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

cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.)

(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, 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. 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. This includes all college sidewalks, parking lots, landscaped areas, sports fields and college buildings. Use of tobacco is also prohibited at events on college premises, or in college-owned, rented or leased vehicles. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, 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 their race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; re-

ligion; 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 in this code. See WAC 132M-126-115 through 132M-126-155.

(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 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 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.

(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 ages 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 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.

(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 interactions 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.

(d) 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 word 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 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, that changes the terms or conditions of employment for a college employee, 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; 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 proceedings.

(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.

(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.** 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: RCW 28B.50.140. WSR 21-01-145, § 132M-126-030, filed 12/17/20, effective 1/17/21.]

NEW SECTION

WAC 132M-126-036 Hazing prohibited—Sanctions. (1) Hazing by a student or a student group is prohibited pursuant to WAC 132M-126-030(9).

(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.

(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 corpo-

ration, whether for-profit or nonprofit, the individual directors of the corporation may be held individually liable for damages.

(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.

(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.

(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 22-23-115
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed November 17, 2022, 3:39 p.m., effective December 18, 2022]

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

Purpose: The purpose of these adopted rules is to amend WAC 388-101-3130 Certification evaluation, and add new WAC 388-101-31301 Certification evaluation timelines, as necessary to prioritize and resume certification evaluations of service providers which were suspended during the declared emergency relating to the COVID-19 pandemic.

Upon the effective date, this CR-103P supersedes the CR-103E filed as WSR 22-22-060.

Citation of Rules Affected by this Order: New WAC 388-101-31301; and amending WAC 388-101-3130.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 71A.12.080.

Adopted under notice filed as WSR 22-17-072 on August 16, 2022.

A final cost-benefit analysis is available by contacting Debbie Hoeman, P.O. Box 45600, Olympia, WA 98504, phone 360-725-3210, fax 360-438-7903, email DebbieHoeman@dshs.wa.gov.

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

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 1, Repealed 0.

Date Adopted: November 17, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4821.3

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

WAC 388-101-3130 Certification evaluation. (1) The department may conduct an on-site certification evaluation of each service provider at any time(~~(, but at least once every two years)~~).

(2) During certification evaluations the service provider's administrator or designee must:

(a) Cooperate with department representatives during the on-site visit;

(b) Provide all contractor records, client records, and other relevant information requested by the department representatives;

(c) Ensure the service provider's administrator or designee is available during any visit to respond to questions or issues identified by department representatives; and

(d) Ensure the service provider's administrator or designee is present at the exit conference.

[Statutory Authority: Chapter 71A.12 RCW. WSR 08-02-022, § 388-101-3130, filed 12/21/07, effective 2/1/08.]

NEW SECTION

WAC 388-101-31301 Certification evaluation timelines. (1) In response to the COVID-19 pandemic, the department filed an emergency rule suspending the requirement for the department to conduct on-site certification evaluations of each service provider at least once every two years as authorized by RCW 71A.12.080 and required by WAC 388-101-3130.

(2) During the suspension of the certification evaluation requirements, the department continued to conduct complaint investigations in CCRSS settings (group homes, group training homes, and supported living client households) when it became aware of information indicating an immediate threat to client health and safety.

(3) The department must prioritize and resume certification evaluations of service providers affected by the suspension of the certification evaluation requirements by applying the following criteria collectively:

(a) The department has identified an ongoing threat to the health and safety of clients through one or more reported complaints, previous certification evaluations, or previous investigations;

(b) Whether the service provider has had an enforcement remedy imposed in the last 24 months; and

(c) The length of time since the service provider's last certification evaluation.

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WSR 22-23-120
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed November 18, 2022, 8:40 a.m., effective December 19, 2022]

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

Purpose: Amendments to these rules align with changes to the developmental disabilities administration assessment in CARE, remove content about prevocational services, correct inaccurate cross-references, and reformat sections about qualified providers.

Citation of Rules Affected by this Order: Amending WAC 388-828-9235, 388-828-9340, 388-828-9360, 388-845-1035, and 388-845-2105.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 71A.12.040.

Adopted under notice filed as WSR 22-18-011 on August 25, 2022.

A final cost-benefit analysis is available by contacting Chantelle Diaz, P.O Box 45310, Olympia, WA 98504-5310, phone 360-407-1500, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, 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 5, Repealed 0.

Date Adopted: November 17, 2022.

Lisa N.H. Yanagida
Chief of Staff

SHS-4940.2

AMENDATORY SECTION (Amending WSR 21-19-093, filed 9/17/21, effective 10/18/21)

WAC 388-828-9235 How does DDA determine your environmental support score? DDA determines your environmental support score by adding the sum of your assessment responses to employment support limitations in the following table:

Table with 3 columns: Response, Employment Support/Limitations, Score. Row 1: 1, Behavior((s impact workplace)) support, 1

Response	Employment Support/ Limitations	Score
2	((Employment goals too specific)) <u>Adaptive equipment</u>	1
3	Fearful(/) or scared of new situations	0
4	((Frequent job changes)) <u>Communication tools</u>	1
5	((High turnover of natural supports)) <u>Coordination with residential provider</u>	1
6	((Hygiene issues unresolved)) <u>Technical assistance</u>	1
7	((Lacks social skills)) <u>Unable to read</u>	1
8	((Little work history)) <u>Personal care needs</u>	1
((9))	Narrow scope of job requirements	1
10	Needs support arranging childcare	1
11	Others not supportive of employment goals	1
12	Others unable to support employment goals	1
((13)) 9	Transportation	1
((14))	Unable to regularly get to work on time	1
((15)) 10	Uncertain about work	0
((16)) 11	Uncooperative(/) or lacks motivation	0
12	<u>None of these</u>	<u>0</u>
Maximum employment support limitation score is:		((13)) 8

Example: If you have selected responses 1, 3, 8, ~~((13))~~ and ~~((15))~~ 9, the sum of your scores for employment support limitations would be 3, resulting in an environmental support score of 3 for WAC 388-828-9230.

[Statutory Authority: RCW 71A.12.030 and 71A.16.050. WSR 21-19-093, § 388-828-9235, filed 9/17/21, effective 10/18/21. Statutory Authority: RCW 71A.12.030, 71A.12.020(3), 71A.12.040(4), and 2009 c 564 §§ 103(7) and 205(c). WSR 11-13-039, § 388-828-9235, filed 6/8/11, effective 7/9/11.]

AMENDATORY SECTION (Amending WSR 13-01-076, filed 12/18/12, effective 1/18/13)

WAC 388-828-9340 How does your employment service type affect how your employment service hours are used? Your employment service type determines where and how your service hours are provided.

(1) Individual supported employment:

- (a) Your employment services are provided in typical community-based settings;
- (b) The focus of employment services is on obtaining ~~((and/))~~ or maintaining integrated employment at or above the state's minimum wage in the general workforce; and
- (c) Your employment services are not shared with others.
- (2) Group supported employment:
- (a) Your employment services are provided in typical community-based settings;
- (b) The focus of employment services is on providing ongoing supervised employment that will lead to greater opportunities for competitive and integrated employment and career advancement at or above minimum wage; and
- (c) Your employment service provider works with you and others in a group setting.
- ~~((3) Prevocational services:~~
- ~~(a) Your employment services are:~~
- ~~(i) Provided in specialized or segregated settings for individuals with developmental disabilities; and~~
- ~~(ii) Include monthly employment related activities in the community.~~
- ~~(b) Service and supports are designed to further habilitation goals that will lead to greater opportunities for competitive and integrated employment and career advancement at or above the state's minimum wage; and~~
- ~~(c) Your employment service provider works with you and others in a group setting.))~~

[Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-01-076, § 388-828-9340, filed 12/18/12, effective 1/18/13.]

AMENDATORY SECTION (Amending WSR 19-15-008, filed 7/8/19, effective 8/8/19)

WAC 388-828-9360 What is short-term employment support? (1)

Short-term employment support is a service that allows DDA to approve service hours in addition to the amount of your employment service base hours under WAC 388-828-9335 and add-on hours under WAC

~~((388-828-9345))~~ 388-828-9350 and 388-828-9355 when:

- (a) You are beginning a new job;
- (b) There is a planned or unexpected change in your job or job duties;
- (c) Your current employment is at risk and short-term supports are needed to assist you in maintaining your current job; or
- (d) You are stuck on your pathway to employment and need individualized technical assistance.
- (2) Short-term employment support may be authorized for a maximum of six months at a time and may be reauthorized when:
- (a) The circumstances identified in subsection (1) of this section continue as evidenced by receipt of a current employment work plan or review describing the need; and
- (b) Both your employment provider and county recommend continuing the use of short-term employment support.

[Statutory Authority: RCW 71A.12.030 and 71A.12.040. WSR 19-15-008, § 388-828-9360, filed 7/8/19, effective 8/8/19. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-01-076, § 388-828-9360, filed 12/18/12, effective 1/18/13.]

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

WAC 388-845-1035 Who are qualified providers of individualized technical assistance services? (~~Providers of individualized technical assistance service must be a county or an individual or agency contracted with a county or DDA.~~) To be a qualified provider of individualized technical assistance services, an entity must be:

(1) A county contracted with DDA to provide individualized technical assistance services; or

(2) An individual or agency contracted with a county that is contracted with DDA to provide individualized technical assistance services.

[Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1035, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 74.08.090, 74.09.520, and 2012 c 49. WSR 12-16-095, § 388-845-1035, filed 8/1/12, effective 9/1/12.]

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

WAC 388-845-2105 Who are qualified providers of supported employment services? (~~Providers of supported employment services must be a county, or agency or an individual contracted with a county or DDA.~~) To be a qualified provider of supported employment services, an entity must be:

(1) A county contracted with DDA to provide supported employment services; or

(2) An individual or agency contracted with a county that is contracted with DDA to provide supported employment services.

[Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-2105, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 08-20-033, § 388-845-2105, filed 9/22/08, effective 10/23/08. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-2105, filed 12/13/05, effective 1/13/06.]

WSR 22-23-130

PERMANENT RULES

DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)

[Filed November 21, 2022, 9:50 a.m., effective December 22, 2022]

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

Purpose: WAC 246-840-300 Advanced registered nurse practitioner (ARNP) scope of practice, 246-840-700 Standards of nursing conduct or practice, and 246-840-710 Violations of standards of nursing conduct or practice. The nursing care quality assurance commission (commission) is adopting amendments to WAC 246-840-300, 246-840-700, and 246-840-710, which introduce new and revised language that clarify the ARNP scope of practice and update gender pronouns.

Amendments to WAC 246-840-300 strengthen the ARNP scope of practice rules by listing the four ARNP designations recognized by the commission, providing examples of the wide range of health care services ARNPs provide, as well as modern language that more fully supports the ARNP's role in health care. The amendments allow the commission to remain consistent with current ARNP national standards and eliminate the need to list specific topics or procedures, such as medical acupuncture, within the ARNP scope of practice rules by incorporating language that more accurately represents the evolving role of the ARNP.

Amendments to WAC 246-840-700 and 246-840-710 include gender pronoun changes that replace "he/she" with "they," as well as "his/her" with "their" and "him or herself" with "themselves."

Citation of Rules Affected by this Order: Amending WAC 246-840-300, 246-840-700, and 246-840-710.

Statutory Authority for Adoption: RCW 18.79.010, 18.79.110, and 18.79.250.

Adopted under notice filed as WSR 22-15-078 on July 18, 2022.

A final cost-benefit analysis is available by contacting Jessilyn Dagum, P.O. Box 47864, Olympia, WA 98504-7864, phone 360-236-3538, fax 360-236-4738, TTY 711, email ncqac.rules@doh.wa.gov, website www.nursing.wa.gov.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, 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 3, Repealed 0.

Date Adopted: September 9, 2022.

Paula R. Meyer, RN, MSN, FRE
Executive Director
Nursing Care Quality Assurance Commission

OTS-3671.2

AMENDATORY SECTION (Amending WSR 16-08-042, filed 3/30/16, effective 4/30/16)

WAC 246-840-300 ARNP scope of practice. The scope of practice of a licensed ARNP is as provided in RCW 18.79.250 and this section.

(1) The ARNP is prepared and qualified to assume primary responsibility and accountability for the care of patients within their roles of ARNP licensure: Certified nurse practitioner (CNP), certified registered nurse anesthetist (CRNA), certified nurse midwife (CNM), and clinical nurse specialist (CNS).

~~(2) ((ARNP practice is grounded in nursing process and incorporates the use of independent judgment. Practice includes collaborative interaction with other health care professionals in the assessment and management of wellness and health conditions.~~

~~(3) The ARNP functions within his or her)) As a licensed independent practitioner, an ARNP provides a wide range of health care services including the diagnosis and management of acute, chronic, and complex health conditions, health promotion, disease prevention, health education, and counseling to individuals, families, groups, and communities. Performing within the scope of the ARNP's education, training, and experience, the licensed ARNP may perform the following:~~

~~(a) Examine patients and establish diagnoses by patient history, physical examination, and other methods of assessment;~~

~~(b) Admit, manage, and discharge patients to and from health care facilities;~~

~~(c) Order, collect, perform, and interpret diagnostic tests;~~

~~(d) Manage health care by identifying, developing, implementing, and evaluating a plan of care and treatment for patients;~~

~~(e) Prescribe therapies and medical equipment;~~

~~(f) Prescribe medications when granted prescriptive authority under this chapter;~~

~~(g) Refer patients to other health care practitioners, services, or facilities; and~~

~~(h) Perform procedures or provide care services that are within the ARNP's scope of practice according to a commission approved certifying body as defined in WAC 246-840-302.~~

~~(3) As leaders in health care, an ARNP may serve in a variety of capacities including, but not limited to, mentors, educators, coaches, advocates, researchers, interprofessional consultants, and administrators.~~

~~(4) ARNP practice is grounded in nursing process and incorporates the use of independent judgment. Practice includes interprofessional interaction with other health care professionals in the assessment and management of wellness and health conditions.~~

~~(5) Health care is a dynamic field requiring the scope of the ARNP to continually evolve. The ARNP is responsible for possessing a clear understanding of, and functioning within, the scope of practice of the role for which a license has been issued following the standards of care defined by the applicable certifying body as defined in WAC 246-840-302. ((An ARNP may choose to limit the area of practice within the commission approved certifying body's practice.~~

~~(4) An ARNP shall obtain instruction, supervision, and consultation as necessary before implementing new or unfamiliar techniques or practices.~~

- ~~(5) Performing within the scope of the ARNP's knowledge, experience and practice, the licensed ARNP may perform the following:~~
- ~~(a) Examine patients and establish diagnoses by patient history, physical examination, and other methods of assessment;~~
 - ~~(b) Admit, manage, and discharge patients to and from health care facilities;~~
 - ~~(c) Order, collect, perform, and interpret diagnostic tests;~~
 - ~~(d) Manage health care by identifying, developing, implementing, and evaluating a plan of care and treatment for patients;~~
 - ~~(e) Prescribe therapies and medical equipment;~~
 - ~~(f) Prescribe medications when granted prescriptive authority under this chapter;~~
 - ~~(g) Refer patients to other health care practitioners, services, or facilities; and~~
 - ~~(h) Perform procedures or provide care services that are within the ARNP's scope of practice according to the commission approved certifying body as defined in WAC 246-840-302.)~~
- (6) An ARNP may choose to specialize and perform those acts for which the individual is qualified and has appropriate education and competence.

[Statutory Authority: RCW 18.79.050, 18.79.110, and 18.79.160. WSR 16-08-042, § 246-840-300, filed 3/30/16, effective 4/30/16. Statutory Authority: RCW 18.79.010, [18.79.]050, [18.79.]110, and [18.79.]210. WSR 09-01-060, § 246-840-300, filed 12/11/08, effective 1/11/09. Statutory Authority: RCW 18.79.110 and 18.79.050. WSR 00-21-119, § 246-840-300, filed 10/18/00, effective 11/18/00. Statutory Authority: Chapter 18.79 RCW. WSR 97-13-100, § 246-840-300, filed 6/18/97, effective 7/19/97.]

AMENDATORY SECTION (Amending WSR 04-14-065, filed 7/2/04, effective 7/2/04)

WAC 246-840-700 Standards of nursing conduct or practice. (1)

The purpose of defining standards of nursing conduct or practice through WAC 246-840-700 and 246-840-710 is to identify responsibilities of the professional registered nurse and the licensed practical nurse in health care settings and as provided in the Nursing Practice Act, chapter 18.79 RCW. Violation of these standards may be grounds for disciplinary action under chapter 18.130 RCW. Each individual, upon entering the practice of nursing, assumes a measure of responsibility and public trust and the corresponding obligation to adhere to the professional and ethical standards of nursing practice. The nurse shall be responsible and accountable for the quality of nursing care given to clients. This responsibility cannot be avoided by accepting the orders or directions of another person. The standards of nursing conduct or practice include, but are not limited to the following;

(2) The nursing process is defined as a systematic problem solving approach to nursing care which has the goal of facilitating an optimal level of functioning and health for the client, recognizing diversity. It consists of a series of phases: Assessment and planning, intervention and evaluation with each phase building upon the preceding phases.

(a) Registered Nurse:

Minimum standards for registered nurses include the following:

(i) Standard I Initiating the Nursing Process:

(A) Assessment and Analysis: The registered nurse initiates data collection and analysis that includes pertinent objective and subjective data regarding the health status of the clients. The registered nurse is responsible for ongoing client assessment, including assimilation of data gathered from licensed practical nurses and other members of the health care team;

(B) Nursing Diagnosis/ Problem Identification: The registered nurse uses client data and nursing scientific principles to develop nursing diagnosis and to identify client problems in order to deliver effective nursing care;

(C) Planning: The registered nurse shall plan nursing care which will assist clients and families with maintaining or restoring health and wellness or supporting a dignified death;

(D) Implementation: The registered nurse implements the plan of care by initiating nursing interventions through giving direct care and supervising other members of the care team; and

(b) Licensed Practical Nurse:

Minimum standards for licensed practical nurses include the following:

(i) Standard I - Implementing the Nursing Process: The practical nurse assists in implementing the nursing process;

(A) Assessment: The licensed practical nurse makes basic observations, gathers data and assists in identification of needs and problems relevant to the clients, collects specific data as directed, and, communicates outcomes of the data collection process in a timely fashion to the appropriate supervising person;

(B) Nursing Diagnosis/ Problem Identification: The licensed practical nurse provides data to assist in the development of nursing diagnoses which are central to the plan of care;

(C) Planning: The licensed practical nurse contributes to the development of approaches to meet the needs of clients and families, and, develops client care plans utilizing a standardized nursing care plan and assists in setting priorities for care;

(D) Implementation: The licensed practical nurse carries out planned approaches to client care and performs common therapeutic nursing techniques; and

(E) **Evaluation:** The registered nurse evaluates the responses of individuals to nursing interventions and is responsible for the analysis and modification of the nursing care plan consistent with intended outcomes;

(ii) **Standard II Delegation and Supervision:** The registered nurse is accountable for the safety of clients receiving nursing service by:

(A) Delegating selected nursing functions to others in accordance with their education, credentials, and demonstrated competence as defined in WAC 246-840-010(10);

(B) Supervising others to whom ~~((he/she has))~~ they have delegated nursing functions as defined in WAC 246-840-010(10);

(C) Evaluating the outcomes of care provided by licensed and other paraprofessional staff;

(D) The registered nurse may delegate certain additional acts to certain individuals in community-based long-term care and in-home settings as provided by WAC 246-840-910 through 246-840-970 and WAC 246-841-405; and

(E) In a home health or hospice agency regulated under chapter 70.127 RCW, a registered nurse may delegate the application, instillation, or insertion of medications to a registered or certified nursing assistant under a plan of care pursuant to chapter 246-335 WAC;

(E) **Evaluation:** The licensed practical nurse, in collaboration with the registered nurse, assists with making adjustments in the care plan. The licensed practical nurse reports outcomes of care to the registered nurse or supervising health care provider;

(ii) **Standard II Delegation and Supervision:** Under direction, the practical nurse is accountable for the safety of clients receiving nursing care:

(A) The practical nurse may delegate selected nursing tasks to competent individuals in selected situations, in accordance with their education, credentials and competence as defined in WAC 246-840-010(10);

(B) The licensed practical nurse in delegating functions shall supervise the persons to whom the functions have been delegated;

(C) The licensed practical nurse reports outcomes of delegated nursing care tasks to the RN or supervising health care provider; and

(D) In community based long-term care and in-home settings as provided by WAC 246-840-910 through 246-840-970 and WAC 246-841-405, the practical nurse may delegate only personal care tasks to qualified care givers;

(iii) Standard III Health Teaching. The registered nurse assesses learning needs including learning readiness for patients and families, develops plans to meet those learning needs, implements the teaching plan and evaluates the outcome.

(iii) Standard III Health Teaching. The practical nurse assists in health teaching of clients and provides routine health information and instruction recognizing individual differences.

(3) The following standards apply to registered nurses and licensed practical nurses:

(a) The registered nurse and licensed practical nurse shall communicate significant changes in the client's status to appropriate members of the health care team. This communication shall take place in a time period consistent with the client's need for care. Communication is defined as a process by which information is exchanged between individuals through a common system of speech, symbols, signs, and written communication or behaviors that serves as both a means of gathering information and of influencing the behavior, actions, attitudes, and feelings of others; and

(b) The registered nurse and licensed practical nurse shall document, on essential client records, the nursing care given and the client's response to that care; and

(c) The registered nurse and licensed practical nurse act as client advocates in health maintenance and clinical care.

(4) Other responsibilities:

(a) The registered nurse and the licensed practical nurse shall have knowledge and understanding of the laws and rules regulating nursing and shall function within the legal scope of nursing practice;

(b) The registered nurse and the licensed practical nurse shall be responsible and accountable for his or her practice based upon and limited to the scope of (~~his/her~~) their education, demonstrated competence, and nursing experience consistent with the scope of practice set forth in this document; and

(c) The registered nurse and the licensed practical nurse shall obtain instruction, supervision, and consultation as necessary before implementing new or unfamiliar techniques or procedures which are in (~~his/her~~) their scope of practice.

(d) The registered nurse and the licensed practical nurse shall be responsible for maintaining current knowledge in (~~his/her~~) their field of practice; and

(e) The registered nurse and the licensed practical nurse shall respect the client's right to privacy by protecting confidential information and shall not use confidential health care information for other than legitimate patient care purposes or as otherwise provided in the Health Care Information Act, chapter 70.02 RCW.

[Statutory Authority: RCW 18.79.110, 18.79.260 (3) (f), 18.88A.210, 2003 c 140. WSR 04-14-065, § 246-840-700, filed 7/2/04, effective 7/2/04. Statutory Authority: RCW 18.79.110. WSR 02-06-117, § 246-840-700, filed 3/6/02, effective 4/6/02. Statutory Authority: Chapter 18.79 RCW. WSR 97-13-100, § 246-840-700, filed 6/18/97, effective 7/19/97.]

AMENDATORY SECTION (Amending WSR 02-06-117, filed 3/6/02, effective 4/6/02)

WAC 246-840-710 Violations of standards of nursing conduct or practice. The following conduct may subject a nurse to disciplinary action under the Uniform Disciplinary Act, chapter 18.130 RCW:

- (1) Engaging in conduct described in RCW 18.130.180;
- (2) Failure to adhere to the standards (~~(enumerated)~~) in WAC 246-840-700 which may include, but are not limited to:
 - (a) Failing to assess and evaluate a client's status or failing to institute nursing intervention as required by the client's condition;
 - (b) Willfully or repeatedly failing to report or document a client's symptoms, responses, progress, medication, or other nursing care accurately (~~(and/or)~~) and legibly;
 - (c) Willfully or repeatedly failing to make entries, altering entries, destroying entries, making incorrect or illegible entries (~~(and/or)~~) and making false entries in employer or employee records or client records pertaining to the giving of medication, treatments, or other nursing care;
 - (d) Willfully or repeatedly failing to administer medications (~~(and/or)~~) and treatments in accordance with nursing standards;
 - (e) Willfully or repeatedly failing to follow the policy and procedure for the wastage of medications where the nurse is employed or working;
 - (f) Nurses shall not sign any record attesting to the wastage of controlled substances unless the wastage was personally witnessed;
 - (g) Willfully causing or contributing to physical or emotional abuse to the client;
 - (h) Engaging in sexual misconduct with a client as defined in WAC 246-840-740; or
 - (i) Failure to protect clients from unsafe practices or conditions, abusive acts, and neglect;
- (3) Failure to adhere to the standards (~~(enumerated)~~) in WAC 246-840-700(2) which may include:
 - (a) Delegating nursing care function or responsibilities to a person the nurse knows or has reason to know lacks the ability or knowledge to perform the function or responsibility, or delegating to unlicensed persons those functions or responsibilities the nurse knows or has reason to know are to be performed only by licensed persons. This section should not be construed as prohibiting delegation to family members and other caregivers exempted by RCW 18.79.040(3), 18.79.050, 18.79.060 or 18.79.240; or
 - (b) Failure to supervise those to whom nursing activities have been delegated. Such supervision shall be adequate to prevent an unreasonable risk of harm to clients;
- (4)
 - (a) Performing or attempting to perform nursing techniques (~~(and/or)~~) and procedures for which the nurse lacks the appropriate knowledge, experience, and education (~~(and/or)~~) and failing to obtain instruction, supervision (~~(and/or)~~) and consultation for client safety;
 - (b) Violating the confidentiality of information or knowledge concerning the client, except where required by law or for the protection of the client; or
 - (c) Writing prescriptions for drugs unless authorized to do so by the commission;
- (5) Other violations:

- (a) Appropriating for personal use medication, supplies, equipment, or personal items of the client, agency, or institution. The nurse shall not solicit or borrow money, materials or property from clients;
- (b) Practicing nursing while affected by alcohol or drugs, or by a mental, physical or emotional condition to the extent that there is an undue risk that ~~((he or she))~~ they, as a nurse, would cause harm to ~~((him or herself))~~ themselves or other persons; or
- (c) Willfully abandoning clients by leaving a nursing assignment, when continued nursing care is required by the condition of the client(s), without transferring responsibilities to appropriate personnel or caregiver;
- (d) Conviction of a crime involving physical abuse or sexual abuse including convictions of any crime or plea of guilty, including crimes against persons as defined in (~~chapter 43.830 RCW [RCW 43.43.830]~~) RCW 43.43.830 and crimes involving the personal property of a patient, whether or not the crime relates to the practice of nursing; or
- (e) Failure to make mandatory reports to the Nursing Care Quality Assurance Commission concerning unsafe or unprofessional conduct as required in WAC 246-840-730;
- ~~((Other:))~~
- (6) The nurse shall only practice nursing in the state of Washington with a current Washington license;
- (7) The licensed nurse shall not permit ~~((his or her))~~ their license to be used by another person;
- (8) The nurse shall have knowledge of the statutes and rules governing nursing practice and shall function within the legal scope of nursing practice;
- (9) The nurse shall not aid, abet or assist any other person in violating or circumventing the laws or rules pertaining to the conduct and practice of professional registered nursing and licensed practical nursing; or
- (10) The nurse shall not disclose the contents of any licensing examination or solicit, accept or compile information regarding the contents of any examination before, during or after its administration.

[Statutory Authority: RCW 18.79.110. WSR 02-06-117, § 246-840-710, filed 3/6/02, effective 4/6/02. Statutory Authority: Chapter 18.79 RCW. WSR 97-13-100, § 246-840-710, filed 6/18/97, effective 7/19/97.]

WSR 22-23-134

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed November 21, 2022, 11:01 a.m., effective December 22, 2022]

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

Purpose: The department is updating this rule to ensure consistency with the statutory definition of "selling price" in RCW 82.08.010. The department is also updating this rule to accurately reflect current practices of drydocking, vessel haul-out, vessel repair, and dry stack storage.

For example, WAC 458-20-181 is being updated to be consistent with RCW 82.08.010 and to clarify that services for vessel repair are subject to retail sales tax. The rule revisions also clarify that the sale of services for drydocking and vessel haul-out are retail sales and subject to retail sales tax if they are performed with respect to the sale of retail sales, such as repair or maintenance of the vessel for consumers, and that vessel haul-out services are subject to public utility tax under the motor transportation or urban classification if they are performed in conjunction with hauling or transporting the vessel on public roads.

The rule revisions include the clarification that the sales of sightseeing or scenic cruises lasting fewer than 24 hours are subject to retail sales tax, including sales of sightseeing cruises that are combined with other goods and sold for one nonitemized price.

Citation of Rules Affected by this Order: Amending WAC 458-20-181 Vessels, including log patrols, tugs and barges, operating upon waters in the state of Washington.

Statutory Authority for Adoption: RCW 82.01.060(2), 82.32.300.

Adopted under notice filed as WSR 22-15-059 on July 15, 2022.

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

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

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

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

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

Date Adopted: November 21, 2022.

Atif Aziz
Rule Coordinator

OTS-3967.2

AMENDATORY SECTION (Amending WSR 83-07-033, filed 3/15/83)

WAC 458-20-181 Vessels, including log patrols, tugs and barges, operating upon waters in the state of Washington.

(~~Business and Occupation Tax~~)

~~**Retailing.** Persons engaged in the business of operating such vessels and tugs are taxable under the retailing classification upon the gross sales of meals (including meals to employees) and other tangible personal property taxable under the retail sales tax.~~

~~**Service and other business activities.** The business of operating lighters is a service business taxable under the service and other business activities classification upon the gross income from such service. Also taxable under this classification is gross income from operation of vessels to provide scenic cruises.~~

~~Retail Sales Tax~~

~~Sales of meals and other tangible personal property by persons operating such vessels and tugs are sales at retail and the retail sales tax must be collected thereon. For applicability of retail sales tax where meals are furnished to members of the crew or to other employees as a part of their compensation for services rendered, see WAC 458-20-119.~~

~~Sales of foodstuff and other articles to such operators for resale aboard ship are not subject to retail sales tax.~~

~~Sales to all such operators of fuel, lubricants, machinery, equipment and supplies which are not resold are sales at retail and the retail sales tax must be paid thereon, unless exempt by law.~~

~~Charges made by others for the repair of any boat or barge are also sales at retail and the retail sales tax must be paid upon the total charge made for both labor and materials.~~

~~Charges made for drydocking are not subject to the retail sales tax provided such charges are shown as an item separate from charges made for repairing.~~

~~Use Tax~~

~~The use tax applies upon the use within this state of all articles of tangible personal property purchased at retail and upon which the retail sales tax has not been paid, unless exempt by law.~~

~~Public Utility Tax~~

~~The business of operating upon waters wholly within the state of Washington vessels which are common carriers regulated by the utilities and transportation commission is taxable under the public utility tax as follows:~~

~~(1) Vessels under sixty-five feet in length, taxable under the classification vessels under sixty-five feet upon gross income.~~

~~(2) Vessels sixty-five feet or more in length, taxable under the classification other public service business upon gross income.~~

~~The other public service classification of the public utility tax applies to the business of operating tugs, barges, and log patrols.))~~

~~(1) **Introduction.** This rule explains the business and occupation (B&O) tax, sales tax, use tax, and public utility tax responsibilities of those operating vessels upon waters in Washington.~~

~~(2) **Other rules that may apply.** Readers may want to refer to other rules for additional information, including the following:~~

~~(a) WAC 458-20-119 Sales by caterers and food service contractors;~~

~~(b) WAC 458-20-135 Extracting natural products;~~

(c) WAC 458-20-145 Sourcing retail sales for business and occupation tax and state and local retail sales tax—Sourcing of use tax for purchasers;

(d) WAC 458-20-175 Persons engaged in the business of operating as a private or common carrier by air, rail or water in interstate or foreign commerce;

(e) WAC 458-20-176 Commercial deep sea fishing—Commercial passenger fishing—Diesel fuel;

(f) WAC 458-20-178 Use tax and the use of tangible personal property;

(g) WAC 458-20-179 Public utility tax;

(h) WAC 458-20-183 Recreational services and activities;

(i) WAC 458-20-193 Interstate sales of tangible personal property;

(j) WAC 458-20-238 Sales of watercraft to nonresidents—Use of watercraft in Washington by nonresidents;

(k) WAC 458-20-244 Food and food ingredients.

(3) **Definitions.** The following terms apply to this rule.

(a) Lighter. A lighter is a large boat or barge used in loading and unloading vessels to transfer goods and passengers to and from moored vessels that cannot reach the place of shipment or delivery.

(b) Dry-docking. The act of placing a vessel on a dock that can be kept dry for use during the construction or repairing of the vessel, or the act of bringing a vessel to dry land so that the submerged portions of the hull can be cleaned or inspected.

(c) Vessel haul-out. The act of removing a vessel from the water. Vessel haul-out is generally accomplished with a large mobile hoist or crane.

(d) Dry stack storage. Land-based vessel storage in the form of stacking berths.

(4) **Business and occupation tax.** Retailing B&O tax applies to retail sales and is measured by the gross proceeds of sale unless the sale is for resale, in which case the wholesaling B&O tax applies. RCW 82.04.050, 82.04.060, 82.04.070, 82.04.250 and 82.04.270. Warehousing B&O tax applies to persons engaging in warehousing activities. RCW 82.04.080 and 82.04.280. The gross income of the business from activities that fall into no other B&O tax classification are subject to the service and other activities B&O tax. RCW 82.04.080 and 82.04.290. Subsection (4) of this rule illustrates how the B&O tax applies in a number of common situations.

(a) Retailing.

(i) Tangible personal property. Persons engaged in the business of operating vessels and tugs are taxable under the retailing B&O tax classification upon the gross sales to consumers of tangible personal property that are retail sales, including meals (including meals to employees).

(ii) Services. Charges to consumers made by others for the repair of any boat or barge are retail sales and subject to retailing B&O tax. Also, sales of sightseeing or scenic cruises lasting fewer than 24 hours are retail sales and subject to retailing B&O tax, including sales of sightseeing cruises that are combined with other goods and services when sold for one nonitemized price.

(iii) Dry-docking and haul-out. Sales of dry-docking and vessel haul-out services are retail sales if the services are performed with respect to the sale of retail services, such as repair or maintenance of the vessel for consumers. The gross income from sales of dry-dock-

ing and haul-out services in these instances is taxable under the re-tailing B&O tax classification. The tax treatment described in this subsection applies regardless of whether the charges are separately itemized.

(b) Service and other business activities.

(i) Operation of lighters. The business of operating lighters is a service taxable under the service and other business activities B&O tax classification upon the gross income from such service.

(ii) Dry-docking and haul-out. Charges for dry-docking and vessel haul-out services are taxable under the service and other activities B&O tax classification if sold alone or performed only in conjunction with other services taxable under the service and other activities B&O tax classification. RCW 82.04.290.

(c) Warehousing.

(i) Dry stack storage. Gross income from operating a dry stack storage warehouse is taxable under the warehousing B&O tax classification.

(ii) Haul-out. Vessel haul-out services are taxable under the warehousing B&O tax classification if performed with respect to the sale of dry stack or warehouse storage of the vessel. RCW 82.04.080 and 82.04.280.

(5) **Retail sales tax.** Retail sales tax is imposed on retail sales unless an exemption applies. RCW 82.04.050 and 82.08.020. The retail sales tax is imposed on the selling price of the product sold in the retail sale. RCW 82.08.010. While not exhaustive, (a) through (c) of this subsection list a number of common situations where retail sales tax will or will not apply.

(a) Tangible personal property.

(i) Sales of tangible personal property to consumers, including prepared food, soft drinks, bottled water, or dietary supplements by persons operating vessels and tugs are sales at retail and retail sales tax must be collected. RCW 82.04.050, 82.08.020, and 82.08.0293.

(ii) For applicability of retail sales tax where prepared food, including meals, are furnished to members of the crew or to other employees as a part of their compensation for services rendered, see WAC 458-20-119.

(iii) Sales of tangible personal property, including food products, to operators for resale aboard ship are not subject to retail sales tax. RCW 82.04.050, 82.04.190, 82.08.0293. Operators claiming a resale exemption should obtain a reseller permit. For more information on reseller permits see WAC 458-20-102.

(iv) Sales to all such operators of fuel, lubricants, machinery, equipment, and supplies, which are not resold, are sales at retail and retail sales tax must be paid.

(b) Services.

(i) Charges to consumers made by others for the repair of any boat or barge are sales at retail and retail sales tax must be paid upon the total charge made for both labor and materials.

(ii) Sales of sightseeing or scenic cruises lasting fewer than 24 hours are subject to retail sales tax, including sales of sightseeing cruises that are combined with other goods and services when sold for one nonitemized price.

(c) Dry-docking and haul-out. Sales of dry-docking and vessel haul-out services are retail sales, and subject to retail sales tax, if the services are performed with respect to the sale of retail services, such as repair or maintenance of the vessel for consumers.

(6) Use tax. The use tax applies for the privilege of using within this state as a consumer, among other things, any articles of tangible personal property or services defined as a retail sale in RCW 82.04.050 and identified in RCW 82.12.020, upon which the retail sales tax has not been paid, unless an exemption applies.

(7) Public utility tax. Persons operating vessels upon waters wholly within the state of Washington as common carriers regulated by the utilities and transportation commission are taxable under the public utility tax as follows:

(a) Persons operating vessels under 65 feet in length, other than tugboats, are subject to the public utility tax under the rate applicable to vessels under 65 feet in length on gross income.

(b) Persons operating vessels 65 feet or more in length, are taxable under the "other public service business" classification on gross income.

(c) The "other public service business" classification of the public utility tax applies to the business of operating tugs, barges, and log patrols.

(d) Vessel haul-out services are subject to public utility tax under the motor transportation or urban transportation classification if they are performed in conjunction with hauling or transporting the vessel on public roads.

[Statutory Authority: RCW 82.32.300. WSR 83-07-033 (Order ET 83-16), § 458-20-181, filed 3/15/83; Order ET 70-3, § 458-20-181 (Rule 181), filed 5/29/70, effective 7/1/70.]

WSR 22-23-137

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed November 21, 2022, 11:56 a.m., effective December 22, 2022]

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

Purpose: To clarify the eligibility requirements and program administration standards, including application submission procedures and how the refund is calculated, for the new working families tax credit program.

Citation of Rules Affected by this Order: New WAC 458-20-285.

Statutory Authority for Adoption: RCW 82.08.0206.

Other Authority: RCW 84.32.300.

Adopted under notice filed as WSR 22-19-085 on September 20, 2022.

Changes Other than Editing from Proposed to Adopted Version:

- In the preamble to the rule, we added a sentence providing the department's contact number and website address. We also included the department's contact information and website throughout the rule when specified.
- To reflect the changes made to the Form 1040 for the 2022 tax year, the department changed the filing status name "qualifying widow/widower" to "qualifying surviving spouse." The rules for who may use the filing status have not changed at either the federal or state level.
- We removed the modifier "primary" from applicant in subsection (1)(d) and in Answer 5D as this term was not defined and was not reflected in the working families tax credit (WFTC) application.
- We restructured Answer 2B to better clarify the procedure for applicants with pending individual taxpayer identification numbers (ITINs). Bullets and headings were added to better illustrate the process and some information was moved for clarity. We included some additional language for grammatical purposes and sentence clarity. No substantive information was added or removed from this section.
- We rephrased subsection (4) so that it was clearer that applicants must be eligible for the federal earned income tax credit (EITC) except for the fact that they are not required to have a valid social security number (SSN). We also removed the term "Earned Income Tax Credit" and only used the acronym "EITC" for consistency.
- We updated the rule so that the term "adjusted gross income" is referred to as AGI (with the exception of the first instance of the term in which the acronym is introduced).
- In Answer 4D, we replaced the term "may" in the final sentence with "must" to better clarify that applicants have a mandatory requirement to have either a valid SSN or a valid ITIN to be eligible to receive the WFTC refund.
- We restructured and rephrased Answer 5E to better reflect the requirements of the residency letter for those experiencing homelessness.
- To clarify the requirement in RCW 82.08.0206 (3)(b) to round all calculated WFTC refund amounts to the nearest dollar, we made a change to Answer 10E. Specifically, the department clarified in the example that the refund would be rounded, adding the underlined language "John and Mary's WFTC refund amount is \$590.64, which will be rounded to \$591."

- We clarified the age limitations for qualifying children in Answer 10G. Specifically, the department added clarifying language to subsection (d)(ii) to read that a student may be a qualifying child if they are "not yet 24 years old" rather than the previous language of "no older than 24 years old" which seemed to imply that they could be 24 years old and still qualify. The revised language follows the statutory definition for qualifying child.
- In Answer 11B, we added language clarifying that those who amend their WFTC application will either receive an additional payment or they will be required to pay back some of their refund. The previous language only provided that individuals who amend would be required to pay back some of their refund.
- In Answer 13C, we included a link to the department's website which provides additional information regarding further appeal rights. Additionally, we added clarification that the mainstream review was "more in-depth" to better address why someone may request this type of review.
- We also made several small grammatical changes and replaced some words throughout the rule to improve clarity and to simplify the language used for better accessibility.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 0, Repealed 0.

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

Date Adopted: November 21, 2022.

Atif Aziz
Rules Coordinator

OTS-3829.6

NEW SECTION

WAC 458-20-285 Working families tax credit. This rule provides information on the working families tax credit (WFTC). The WFTC is a credit in the form of a refund of retail sales and use tax provided to eligible low-income persons (referred to as "refund" in this rule). Starting February 1, 2023, applicants may apply to the department to receive a refund of sales or use tax paid during the period for which they are claiming the refund. The refund amount is based upon the applicant's income (including the applicant spouse's income, if the applicant is filing married filing jointly on their federal income tax return) and the number of qualifying children the applicant (and the applicant's spouse, if applicable) have.

To qualify for a refund, applicants must meet the eligibility requirements provided in RCW 82.08.0206 and complete a WFTC application in the form and manner provided by the department.

This rule is organized into four parts. Each part addresses a question or topic relevant to the application for and administration of the WFTC program as follows:

1. Part 1: Eligibility Requirements
2. Part 2: Application Process
3. Part 3: Refund Amount
4. Part 4: General Administration and Review

Examples included in this rule identify a number of facts and then state a general conclusion; they should be used only as a general guide. The tax consequences of all situations must be determined after a review of all the facts and circumstances.

References in this rule to "I," "my," "you," "your," "we," or "our" are intended to refer to the individual applying for the WFTC (i.e., the applicant). For additional information, please visit the department's website at WorkingFamiliesCredit.wa.gov or call the department at 360-763-7300.

Part 1: Eligibility Requirements

(1) **Am I eligible to receive a WFTC refund?** To be eligible for a refund under the WFTC, you must be an "eligible low-income person." An "eligible low-income person" is an "individual" who meets all of the requirements in (a) through (e) of this subsection. An "individual" means any natural person who files a federal income tax return under the single, head of household, qualifying surviving spouse, or married filing separately (but only if they meet the "unmarried" requirements per answer 1A of this rule) filing statuses. The term "individual" **also** means an individual natural person and that individual's spouse if they file a federal joint income tax return with the married filing jointly status. Accordingly, if you file a federal income tax return with your spouse under the married filing jointly filing status, you and your spouse are each considered to be a single "individual" for the purposes of WFTC eligibility with the exception of determining residency.

(a) **Valid SSN or ITIN:** You (and your spouse if you are filing married filing jointly on your federal income tax return) must have a valid Social Security number (SSN) or individual taxpayer identification number (ITIN);

(b) **Properly file a federal income tax return:** You (and your spouse if you are filing married filing jointly) must properly file a federal income tax return for the tax year for which the refund is being claimed;

(c) **EITC eligible:** You must generally be eligible for the federal Earned Income Tax Credit (EITC), including meeting the federal income thresholds; however, the one exception is that you, your spouse (if you are filing married filing jointly on your federal income tax return), and/or your qualifying children may have a valid ITIN instead of a SSN, which is not permitted under federal EITC eligibility requirements;

(d) **Residency:** The applicant on the WFTC application (which may be either you or your spouse, if you are filing married filing jointly on your federal income tax return) must be a resident of Washington for at least 183 days during the tax year for which the refund is being claimed; and

(e) **Sales or use tax paid:** You (and/or your spouse if you are filing married filing jointly on your federal income tax return) paid Washington sales or use tax on taxable purchases you made during the tax year for which the refund is being claimed.

Question 1A: What if I am still married to my spouse, but we are separated, and I file a separate federal income tax return. Am I still eligible for the WFTC?

Answer 1A: Yes, you are eligible if certain conditions are met. If you are still married to your spouse, but you do not file a federal income tax return under the married filing jointly status and you are considered "unmarried" per Internal Revenue Code section 32(d), then you may still be eligible for the federal EITC, and this in turn would make you an individual eligible for a WFTC refund.

If you are filing "married filing separately" on your federal income tax return, then the department will require you to provide additional information to confirm your "unmarried" status. "Unmarried," as used in Internal Revenue Code section 32(d) requires the following:

(a) You are married, but you did not file a federal income tax return under the married filing jointly status.

(b) You lived with your qualifying child for more than half of the year. You may demonstrate this by providing:

(i) School records that match your place of residence;

(ii) Rental application or lease with child/children listed;

(iii) Landlord statement regarding child/children;

(iv) Public benefits verification letters or statements;

(v) Community-based organization letters of recommendation, or vouchers; or

(vi) Any other records that establish that your qualifying child lived with you for more than half of the year.

(c) You must be able to show either:

(i) You did not have the same principal place of abode as your spouse during the last six months of the tax year; or

(ii) You have a decree, instrument, or agreement (other than a divorce decree) described in IRC 121 (d) (3) (C) (e.g., a written separation agreement, alimony, or spousal maintenance decree, etc.) with your spouse concerning marital separation and you and your spouse are not members of the same household by the end of the tax year.

Question 1B: I am still legally married and I meet the "unmarried" requirements in Answer 1A. If my spouse is not eligible for a WFTC refund, does that disqualify me from receiving the WFTC refund?

Answer 1B: No. If you are filing a separate federal income tax return from your spouse, you will not be disqualified from receiving the WFTC refund solely because your spouse does not meet the WFTC requirements as you are considered to be a separate individual from your spouse in this situation. If you are filing your federal income tax return under the married filing separately status, the department will require additional documentation to establish your "unmarried" status as indicated in Answer 1A.

The following subsections (2) through (6) of this rule describe these eligibility requirements in subsection (1)(a) through (e) of this rule.

(2) **Valid SSN or ITIN** - To be eligible for the WFTC, you must have a valid Social Security number (SSN) or a valid individual taxpayer identification number (ITIN).

Question 2A: What is a valid SSN?

Answer 2A: An SSN is a number issued by the Social Security Administration to identify and record an individual's wages or self-em-

ployment earnings. Your SSN must be valid for employment and issued before the due date of the federal income tax return you plan to claim the federal EITC (including extensions). A Social Security number on a Social Security card that provides, "Valid for work with DHS authorization," will be accepted as a valid SSN.

However, if your Social Security card has the words, "Not valid for employment," your SSN is not valid.

Question 2B: What is a valid ITIN?

Answer 2B: An ITIN is a tax processing number issued by the Internal Revenue Service (IRS). A valid ITIN for WFTC eligibility purposes is one that is not expired or revoked.

(a) Generally. An ITIN must be applied for and renewed periodically pursuant to federal requirements.

(b) WFTC application requirements - Notify department. If you, your spouse, or any of your qualifying children do not have a valid ITIN and are waiting for an ITIN or an ITIN renewal from the IRS, you must notify the department that you have applied for and are waiting to receive an ITIN or an ITIN renewal from the IRS when you submit your WFTC application.

(c) WFTC application requirements - Application submission. If the department does not receive documentation confirming that you, your spouse, or your qualifying children have received a valid ITIN by or before the December 31st application deadline, then your application may be denied. The department will consider a new or renewed ITIN to be valid as of its issuance date, even if the department receives notification of issuance after the December 31st application deadline.

(d) ITIN issuance date. The department will use the IRS issuance date for processing the WFTC application, but the department will not complete processing of the WFTC application until the ITIN application has been fully processed and is either issued or renewed by the IRS. If your ITIN status is pending, you must still provide your complete WFTC application to the department before the December 31st application deadline. A valid ITIN must have an issuance date prior to the December 31st application deadline.

(i) For new ITINs, the IRS back-dates the issuance date of the ITIN to the date the Form W-7 application was received by the IRS.

(ii) For renewed ITINs, the IRS back-dates the issuance date of the ITIN to the original issuance date of that ITIN.

(3) **Properly file a federal income tax return** - To be eligible for the WFTC, you (and your spouse, if filing married filing jointly on your federal income tax return) must properly file a federal income tax return for the tax year for which you are claiming the refund.

Question 3A: What does it mean to "properly file" a federal income tax return?

Answer 3A: The federal income tax return you and your spouse (if you are filing married filing jointly on your federal income tax return) file must fulfill the statutory and regulatory requirements for the federal government to process your return. For example, if you wish to claim the WFTC refund for the 2022 tax period, you must properly file your 2022 federal tax return and include all information required on the return for the federal government to be able to process it.

Question 3B: Do I have to claim the EITC to be eligible for the WFTC refund?

Answer 3B: No. You are not required to claim or to actually receive the federal EITC to be eligible to receive the WFTC refund. So long as you and your spouse (if you are filing married filing jointly

on your federal income tax return) and your qualifying children have valid SSNs or ITINs, and otherwise meet all other requirements to be eligible for the federal EITC, you may be eligible to receive the WFTC refund.

(4) **Federal Earned Income Tax Credit eligible** - You must first be eligible for the federal EITC, except for the requirement to have a valid SSN, in order to be eligible for the WFTC refund. This includes meeting the federal income thresholds for your federal adjusted gross income (AGI). If your AGI is at or above the federal income threshold, you are not eligible for the EITC. The department will calculate the WFTC refund based on the earned income you reported on your properly filed federal income tax return. For more information on how the WFTC refund is determined, see Part 3 of this rule.

Question 4A: What does earned income mean?

Answer 4A: "Earned income" means earned income as defined by the Internal Revenue Code (IRC or Title 26 U.S.C.) section 32. RCW 82.08.0206 (2) (b).

Question 4B: Is "combat pay" considered earned income for purposes of the WFTC refund?

Answer 4B: IRC section 32 allows those who have combat pay to elect whether to include their combat pay as earned income for the purposes of calculating their federal EITC amount. Regardless of whether you elect to include your combat pay as earned income for federal purposes, you can make a separate election of whether to include your combat pay as earned income for WFTC refund calculation purposes.

Question 4C: What are the federal income thresholds?

Answer 4C: The federal income thresholds are income limits the federal government applies to determine eligibility for the EITC. The federal income thresholds for the federal EITC generally change on an annual basis. These thresholds vary depending on your filing status and how many qualifying children you have. Eligibility for the federal EITC is based on your AGI. If your AGI is equal to or more than the federal income threshold, then you are not eligible for the federal EITC and, as such, you are not eligible for the WFTC. The department will use the federal income thresholds applicable for the tax period for which the refund is being claimed. For more information about these federal income thresholds, please see Part 3 of this rule.

Question 4D: Not all members of my family have a valid SSN, but I am otherwise eligible for the federal EITC. Am I still eligible for the WFTC?

Answer 4D: Yes, unlike the federal EITC, the WFTC does not require that all claimed individuals must have a valid SSN to be eligible. To be eligible for the WFTC, you, your spouse (if you are married and filing married filing jointly on your federal income tax return), and your qualifying children (if applicable), must have either a valid SSN or a valid ITIN.

Question 4E: Are there any other federal EITC requirements that could potentially disqualify me from receiving the WFTC?

Answer 4E: Yes. To be eligible for the federal EITC, you cannot file Form 2555, Foreign Earned Income and your investment income (income you receive from interest, dividends, capital gains, royalties, rental income, or other passive activities) cannot exceed \$10,300 (based on 2022 figures, adjusted by the federal government for inflation in later years). Additionally, nonresident aliens are ineligible to receive the federal EITC, even if they have a valid SSN. If you are not eligible to receive the federal EITC for these reasons, then you are not eligible to receive the WFTC.

Question 4F: What if I am prohibited from claiming the federal EITC? Can I still qualify to receive the WFTC refund?

Answer 4F: If the federal government has prohibited you from claiming the EITC due to reckless or intentional disregard or due to fraud and you are currently within the disallowance period during which you are not allowed to claim the federal EITC, then you are not eligible to receive the WFTC refund.

(5) **Residency** - To be eligible for the WFTC, you must be a resident of Washington. The term resident means that you were physically present and resided in Washington for at least 183 days during the year for which you are claiming the refund.

Question 5A: What does it mean to be "physically present" and "reside" in Washington?

Answer 5A: To be "physically present" means that you are in or located within the state of Washington. To "reside" in Washington means that you have your home or residence in the state. Individuals who commute to Washington (e.g., for work) do not "reside" in Washington.

Example 1:

Facts: Doug lives in an apartment in Tacoma, Washington. Doug is located in Washington for 300 days during calendar year 2022. Doug is placed on a job assignment in Utah for the remaining 65 days of the same year.

Conclusion: Doug was "physically present" and "resided" in Washington for at least 183 days in 2022. Doug meets the definition of a resident of Washington for the 2022 calendar year and would be eligible for a WFTC refund during the year if all other statutory requirements are met.

Example 2:

Facts: Sally lives in Oregon but works in Washington. Sally drives to her work in Washington every morning and drives back to her home in Oregon every evening. She does this for 300 days during the 2022 calendar year.

Conclusion: While Sally might be "physically present" in Washington for at least 183 days, she did not "reside" in Washington because she resided in Oregon and simply commuted to Washington. Sally does not meet the definition of a resident of Washington for the 2022 calendar year and, accordingly, would not be eligible for a WFTC refund.

Question 5B: What if I am in Washington for at least 183 days for work or for school without commuting back to my state of residence, do I meet the WFTC residency requirement?

Answer 5B: Yes. An individual who is physically present in Washington for at least 183 days and does not commute back to their state of residence will generally be considered to "reside" in Washington and is a Washington resident for WFTC residency purposes.

Question 5C: What if I work or attend school out-of-state and was not physically present in Washington for at least 183 days, can I still qualify if I consider Washington to be my home?

Answer 5C: No. Even if you consider Washington to be your home and your state of residence, you must still be physically present in Washington for at least 183 days to meet the WFTC residency requirement.

Question 5D: What if my spouse is not a Washington resident but I am and we file under the married filing jointly status on our federal income tax return, are we eligible for the WFTC refund?

Answer 5D: Yes. If you and your spouse are filing married filing jointly on your federal income tax return and your spouse does not

meet the definition of a Washington resident, you may both still qualify to receive a joint refund so long as the applicant on the WFTC application meets the definition of a Washington resident.

Question 5E: What if I am experiencing homelessness, can I still qualify for the WFTC refund?

Answer 5E: Yes. The term "reside" does not require that an individual have a physical dwelling in Washington, just that Washington is the place they reside for at least 183 days. Individuals or their families who are experiencing homelessness may demonstrate that they "reside" in Washington by providing proof of their residency via a letter from a community-based organization, shelter, public benefits case-worker, or from any other organizations or programs that interact with the individual or their family that states the following:

- (a) They know and can identify the individual;
- (b) The individual has resided in a particular area in Washington (which the organization or shelter must describe); and
- (c) (i) The individual has resided in this area at least 183 days during the period for which the credit is being claimed; or
 - (ii) Alternatively, if the individual or their family are experiencing homelessness and move frequently as a result, the individual has resided within a general geographic area or areas (i.e., town, city, county, etc.) within the state of Washington for at least 183 days during the period for which the refund is being claimed.

Question 5F: What if I am not a United States citizen or what if I am in the United States on a visa, can I still qualify as a Washington resident for WFTC purposes?

Answer 5F: Yes, if you can demonstrate you resided in Washington and were physically present in Washington for at least 183 days during the year for which you are claiming the credit. Generally, an individual's citizenship or visa status is not considered for WFTC residency purposes.

Question 5G: What if the department has questions and needs additional documentation?

Answer 5G: If you are asked to confirm your status as a Washington resident, you must provide the department with documentation that demonstrates that you were physically present and resided in Washington for at least 183 days during the year for which you are claiming the refund.

- (a) Documents that may help you to demonstrate you are a Washington resident include, but are not limited to, the following:
 - (i) Washington driver's license;
 - (ii) Washington ID card;
 - (iii) Utility bills;
 - (iv) Landlord statements;
 - (v) Rental agreement or lease;
 - (vi) Mortgage statements;
 - (vii) Public benefits verification letters from state or federal agencies or case worker statements;
 - (viii) Community-based organization letters or statements; or
 - (ix) School records.

(b) If you are unable to provide documentation that demonstrates your Washington resident status, you will need to contact the department to determine if there are other methods by which you can demonstrate you meet the residency requirement, which the department may allow at its discretion.

(6) **Sales or use tax paid** - The department will generally presume that if you and/or your spouse (if you are filing married filing

jointly on your federal income tax return) lived in the state of Washington for at least 183 days, that you paid Washington sales or use tax on the taxable purchases you made during that period. You will need to attest to this fact on the WFTC application under penalty of perjury.

Part 2: Application Process

(7) **How do I file a WFTC application with the department?** To receive a refund, you must file an application with the department. The department will accept either a paper or electronic application. The department will begin accepting WFTC applications on February 1st of each year or, if the 1st falls on a Saturday, Sunday, or legal holiday, the next business day. RCW 1.12.070(3).

The WFTC application, along with the required attachments, must be received by the department no later than December 31st in the calendar year following the tax year for which you file your federal income tax return. If December 31st falls on a Saturday or Sunday, then the application will be due the next business day. For example, if you are requesting a WFTC refund based on your 2022 tax year information, the WFTC application, along with all required attachments, are due on or before January 2, 2024. This is because December 31, 2023 falls on a Sunday and January 1, 2024 is a holiday, so the WFTC application deadline would fall on the next business day which is January 2, 2024. RCW 1.16.050.

(a) If you are submitting your application electronically: To be considered timely, your WFTC application, along with all required attachments, must be received by the department on or before December 31st.

(b) If you are submitting your application by mail: To be considered timely, your WFTC application, along with all required attachments, must be sent by United States mail and postmarked on or before the December 31st deadline.

(c) For more information on how to file an application, refer to the department's website at WorkingFamiliesCredit.wa.gov.

(8) **What additional items do I need to include for the department to process my WFTC application?** In addition to the WFTC application, you must also attach a copy of your filed federal income tax return to your WFTC application. The attached copy of your federal income tax return must be complete, meaning that it must include all applicable schedules filed with the federal government for the period for which you are claiming the WFTC refund. For example, if you are claiming a WFTC refund for the 2022 tax year, you must submit a full and complete copy of your 2022 federal income tax return that you filed with the federal government.

Question 8A: What happens if I do not provide my complete federal income tax return with my WFTC application?

Answer 8A: Your application will not be considered "complete" and the department will not be able to process your WFTC refund.

Question 8B: What does it mean to have a "complete" WFTC application?

Answer 8B: To process your WFTC refund, you must provide a "complete" WFTC application to the department on or before the filing deadline, which includes the following items:

(a) A filled-out and signed WFTC application (your spouse must also sign the WFTC application if you are filing married filing jointly on your federal income tax return); and

(b) A copy of your complete federal income tax return that was filed with the federal government.

(9) **What if I did not file my WFTC application by December 31st, is it too late to file?** If you do not apply to receive the refund before the December 31st deadline, then you cannot apply for it later. For example, if you wish to request a WFTC refund based on your 2022 tax year information, the department will not accept WFTC applications that were filed or postmarked after January 2, 2024 (December 31, 2023 falls on a Sunday and January 1, 2024 is a holiday, so the deadline would fall on the next business day which is January 2, 2024).

However, the department, for good cause, may extend the due date for filing your WFTC application.

Part 3: Refund amount

(10) **How much of a refund can I receive?** WFTC refunds will be paid to individuals who file a timely completed application and who meet the eligibility requirements. The refund amount you can receive is based on your income, your spouse's income (if you are filing married filing jointly on your federal income tax return), and how many qualifying children you have.

Question 10A: What is the maximum refund amount that I can receive?

Answer 10A: The maximum refund amount depends on how many qualifying children you have, but only your first three qualifying children are considered for payment purposes.

(a) If you have no qualifying children, your maximum refund amount is \$300;

(b) If you have one qualifying child, your maximum refund amount is \$600;

(c) If you have two qualifying children, your maximum refund amount is \$900; and

(d) If you have three or more qualifying children, your maximum refund amount is \$1,200.

The maximum refund amount will be reduced in cases where your income is greater than what is referred to in this rule as the "reduced federal income threshold." See answer 10D for more information on this reduction.

Question 10B: What is the minimum refund amount that I can receive?

Answer 10B: So long as you meet all eligibility requirements and you are entitled to receive one cent or more under the WFTC, you will receive a minimum refund of \$50. RCW 82.08.0206 (3)(c).

Question 10C: What information does the department use to calculate my WFTC refund?

Answer 10C: The department calculates your WFTC refund based on your properly filed federal income tax return for the period for which you are claiming the refund.

Question 10D: What is the reduced federal income threshold and how does it affect my WFTC refund amount?

Answer 10D: To be eligible for the WFTC refund, you must generally be eligible for the federal EITC, including satisfying the federal income thresholds for that program. In determining the amount of the WFTC refund, however the department must first calculate the reduced federal income threshold. The department determines the reduced federal income thresholds as provided in RCW 82.08.0206 (3)(b). If your income exceeds the reduced federal income threshold, but is still below the federal income thresholds, your maximum refund will be decreased,

but not below \$50, as follows (the below figures reflect the 2022 tax year adjustments to the original statutory amounts):

(a) If you have no qualifying children, then the department will reduce the federal income threshold by \$2,500 for the prior federal tax year. Then, for every additional dollar of income you have over the reduced federal income threshold, the department will reduce the amount of refund received by \$0.12 (i.e., the WFTC remittance reduction).

(b) If you have one qualifying child, then the department will reduce the federal income threshold by \$5,000 for the prior federal tax year. Then, for every additional dollar of income you have over the reduced federal income threshold, the department will reduce the amount of refund by \$0.12.

(c) If you have two qualifying children, then the department will reduce the federal income threshold by \$5,000 for the prior federal tax year. Then, for every additional dollar of income you have over the reduced federal income threshold, the department will reduce the amount of refund by \$0.18.

(d) If you have three or more qualifying children, then the department will reduce the federal income threshold by \$5,000 for the prior federal tax year. Then, for every additional dollar of income you have over the reduced federal income threshold, the department will reduce the amount of refund by \$0.24.

The department will adjust the WFTC refund reduction amounts on an annual basis beginning in 2023 to align the WFTC program with the federal EITC program.

Question 10E: How does the department calculate my WFTC refund?

Answer 10E: Below is an example of how the WFTC refund is calculated based on the federal income threshold amounts for the 2022 tax year.

Table A
For Those Filing as Single, Head of Household, Surviving Spouse, or Married Filing Separately*

Number of Qualifying Children	Federal Income Thresholds	Federal Income Threshold Reduction Amount	Reduced Federal Income Threshold
0	\$16,480	\$2,500	\$13,980
1	\$43,492	\$5,000	\$38,492
2	\$49,399	\$5,000	\$44,399
3 or more	\$53,057	\$5,000	\$48,057

*Those filing married filing separately must meet the "unmarried" requirement to qualify.

Table B
For Those Filing as Married Filing Jointly

Number of Qualifying Children	Federal Income Thresholds	Federal Income Threshold Reduction Amount	Reduced Federal Income Threshold
0	\$22,610	\$2,500	\$20,100
1	\$49,622	\$5,000	\$44,622
2	\$55,529	\$5,000	\$50,529
3 or more	\$59,187	\$5,000	\$54,187

Example 3:

Facts: John and Mary are married and filed their 2022 federal income tax return as married filing jointly. John and Mary have one qualifying child. On their federal income tax return, John and Mary's

combined earned income was \$44,700 and they meet all of the requirements in subsection (1)(a) through (e) of this rule to qualify for the WFTC refund.

Conclusion: The applicable federal income threshold for a couple that is married filing jointly with one qualifying child is \$49,622. See Table B. This amount must be reduced by \$5,000 (the federal income threshold reduction amount), which results in a reduced federal income threshold amount of \$44,622. See Table B. John and Mary's earned income for WFTC purposes is \$78 higher than the reduced federal income threshold (\$44,700 - \$44,622 = \$78). The department must reduce the couple's maximum refund by \$0.12 for every dollar above the \$44,622 reduced federal income threshold (or 12 percent for each dollar).

Because they have one qualifying child, the maximum refund amount that John and Mary could receive is \$600. Because their earned income is \$78 above the reduced federal income threshold, their refund will be reduced by \$9.36 ($\$78 \times \$0.12 = \9.36). John and Mary's WFTC refund amount is \$590.64, which will be rounded to \$591.

Question 10F: What is a "qualifying child" for WFTC purposes?

Answer 10F: To be eligible under the WFTC, a "qualifying child" must meet the federal tax requirements under Internal Revenue Code section 32. The only exception to this is that children who do not meet the valid SSN requirements for federal EITC purposes will still be considered "qualifying children" for WFTC purposes so long as they have a valid ITIN and meet all other federal requirements.

Question 10G: How do I determine whether a person is a "qualifying child"?

Answer 10G: A qualifying child must meet the following requirements per IRC section 32:

- (a) The child must be:
 - (i) Your child or grandchild; or
 - (ii) Your brother, sister, stepbrother, stepsister, or any descendant of such relative;
- (b) The child must have shared the same principal place of abode with you in the United States for more than one-half of the tax year;
- (c) The child has not filed a joint tax return with their spouse;
- (d) The child must be younger than you (and your spouse, if you are filing married filing jointly on your federal income tax return) and:

- (i) Is not yet 19 years old at the end of the year for which you are claiming the refund; or
- (ii) Is a student who is not yet 24 years old at the end of the year for which you are claiming the refund; or
- (iii) Permanently and totally disabled during the tax year, regardless of age.

Question 10H: For circumstances where several people could potentially claim the same qualifying child, how does the department decide who can claim the qualifying child for WFTC purposes?

Answer 10H: If there is a question of who may claim the child, the department will determine who can claim based on the following hierarchy of rules:

- (a) If only one person is the child's legal parent ("parent"): The parent may claim the child;
- (b) If both parents file a joint tax return with each other: They may claim the child;
- (c) If both parents claim the child on separate tax returns: The parent with whom the child lived with the longest during the year may claim the child;

(d) If the child lived with each parent for the same amount of time: The parent with the higher AGI for the year may claim the child;

(e) If neither parent can claim the child: The person who had the highest AGI for the year may claim the child; and

(f) If a parent can claim the child but does not: The person who had the highest AGI for the year may claim the child, but only if that person's AGI is greater than the AGI of any of the child's parents who can claim the child.

Example 4:

Facts: Tina and her five-year-old son, Anthony, live with Tina's parents (Anthony's grandparents), Jordan and Alex. Both Tina and Jordan and Alex provide more than half of their own support and cannot be claimed as dependents by anyone else. Tina's federal AGI is \$16,000 while Jordan and Alex's federal AGI is \$15,000. Tina and Jordan and Alex otherwise qualify for the federal EITC and fulfill all other WFTC eligibility requirements. Anthony meets the requirements of a qualifying child with respect to Tina, and Jordan and Alex and no one else is able to claim Anthony as a qualifying child.

Conclusion: In this situation, there is a question of whether Tina or Jordan and Alex may claim Anthony as a qualifying child for WFTC purposes. In applying the rules above, Tina would be the one eligible to claim Anthony as a qualifying child for WFTC purposes for 2022 as she is Anthony's legal parent and her federal AGI is greater than Jordan and Alex's.

Example 5:

Facts: Lucas is 25 years old and lives in the same home with his mother, Betty, and his eight-year-old niece, Tabatha, for all of 2022. Tabatha's parents do not live in the same principal place of abode as Lucas, Betty, and Tabatha. Lucas and Betty each provide more than half of their own support and cannot be claimed as dependents by anyone else. In completing their 2022 federal income tax returns, Lucas's federal AGI is \$15,000 and Betty's federal AGI is \$9,300. Tabatha's parents file married filing jointly on their federal income tax return and their federal AGI is \$9,000. Lucas and his mother otherwise qualify for the federal EITC and fulfill all other WFTC eligibility requirements. There are no other persons who would be able to claim Tabatha as a qualifying child.

Conclusion: Lucas is eligible to claim the WFTC with his niece as his qualifying child. Tabatha's parents are not eligible to claim Tabatha as a qualifying child as she did not share the same principal place of abode with them for at least 183 days during 2022. Lucas and Betty both otherwise meet the relationship, age, residency, and joint return requirements to treat Tabatha as a qualifying child, but because Lucas's federal AGI is higher, he would be able to claim Tabatha as a qualifying child for WFTC purposes.

Question 10I: What if I am the noncustodial parent of my child? Can I still receive the WFTC refund if my spouse does not claim our child?

Answer 10I: You may still qualify to receive the WFTC if you meet the requirements for an individual without children, but you cannot claim the child as a qualifying child on your WFTC application. A custodial parent is the parent with whom the child lived for the greater number of nights during the year. The other parent is the noncustodial parent. While it may be possible for you to claim the child as your qualifying child for other federal tax benefits, the child must still live with you for more than half the year to be considered a qualifying child for federal EITC purposes. As you are the noncustodial pa-

rent, and therefore the child did not live with you for the required period of time during the year, you cannot claim this child for federal EITC purposes and, as such, you cannot claim this child for WFTC purposes.

Question 10J: What if my qualifying child lives with my spouse outside of Washington? If I am a Washington resident, can I claim my qualifying child for WFTC purposes?

Answer 10J: Yes, but only if you and your spouse are filing married filing jointly on your federal income tax return and you or your spouse are considered to be a Washington resident for the year for which you are claiming the refund. The child claimed must also meet all WFTC requirements for a qualifying child. The department may request additional information from you and your spouse to confirm that these requirements have been met.

Question 10K: Will the WFTC refunds be adjusted for inflation?

Answer 10K: Yes, the refund amounts will be adjusted for inflation each year beginning January 1, 2024, based on changes to the consumer price index that are published by November 15th of the previous year for the most recent 12-month period. "Consumer price index" means, for any 12-month period, the average consumer price index for the Seattle, Washington area for urban wage earners and clerical workers, all items, compiled by the Bureau of Labor Statistics, United States Department of Labor. RCW 82.08.0206 (3)(d) and (e).

Refund amounts that are adjusted due to inflation must be rounded to the nearest \$5.

(11) **What if I made a mistake?** If you realize that you have made a mistake on your WFTC application, then you must correct the mistake by updating or amending your WFTC application.

Question 11A: When do I need to amend my WFTC application?

Answer 11A: You must amend your WFTC application when you realize the information submitted on your application is not accurate. This allows the department to make sure that it has accurate records and that it can process your refund without additional delay. If you have questions about amending your application, please contact the department for additional information by calling 360-763-7300 or go to the department's website at WorkingFamiliesCredit.wa.gov.

Question 11B: What if the Internal Revenue Service (IRS) makes changes to my federal income tax return? Do I need to amend my WFTC application?

Answer 11B: Yes, if the IRS makes changes to your federal income tax return, then the amount of refund that you are eligible to receive may be different than what the department provided to you. Accordingly, you will need to amend your WFTC application. If the department finds that the IRS has made changes to the federal income tax return that would increase or decrease the amount of the WFTC refund you are entitled to receive, then the department may make changes to your WFTC refund amount. This may mean that you will receive an additional payment or you will be required to pay back some of the refund that you received. If you know that the IRS has made changes to your federal tax return, you should alert the department of these changes as soon as possible by amending your WFTC application.

Question 11C: How long do I have to amend my WFTC application?

Answer 11C: If you timely filed your WFTC application, along with all required attachments, you may amend your application at any point within the statutory nonclaim period provided in RCW 82.32.060. The statutory nonclaim period is four years beginning with the calendar year for which the refund is being claimed. For example, if an appli-

cant wishes to amend their 2022 WFTC application, they may do so at any point during the indicated years below:

Year 1	Year 2	Year 3	Year 4	Year 5
2022 - Sales/use tax paid	2023 - Applicant files WFTC application for 2022			2026 - Final year to submit amended application
<div style="border: 1px solid black; width: 100%; height: 100%;"></div>				

Period you may amend your WFTC application

Question 11D: If I should have received a larger WFTC refund than I got, can I still receive the additional amount?

Answer 11D: Yes, if you notify the department that you should have been paid a larger refund than you received, or if the department finds that you should have been paid a larger refund than you received, then the department will pay the additional amount; however, the department may only do so if it discovers or is notified of the error before the end of the four-year statutory nonclaim period. The department encourages you to submit an amended application as soon as possible before the time limit runs out. Interest is not paid on any additional WFTC amounts that you are entitled to receive. See RCW 82.08.0206(10).

Part 4: General Administration and Review

(12) **How is the WFTC program administered?** The department is responsible for administering the WFTC program. The department administers the application process described in Part 2 of this rule, by providing refunds to applicants who meet the eligibility requirements in Part 1 of this rule. As part of this administration, the department has the authority to review all WFTC applications and determine the amount the applicant is legally entitled to receive. If the department determines that a refund was overpaid, it may issue an assessment within four years after the close of the calendar year for which the WFTC refund is being claimed. For example, if you file your 2022 WFTC application on December 1, 2023, the department has until the end of 2026 to issue an assessment for the overpaid refund amount. If the department finds that you have received less than you were legally entitled to receive, then the department must adjust your WFTC refund amount and pay you the additional refund owed to you.

(13) **What if I disagree with the department's decision?** If you disagree with the department's decision concerning your WFTC refund amount or assessment of WFTC overpayment, you may seek administrative review of that decision. To have this decision reviewed, you must seek an informal review under WAC 458-20-100. Additional information and details regarding the process in WAC 458-20-100 is available on the department's website at <https://dor.wa.gov/file-pay-taxes/reviews-and-appeals>.

Question 13A: For what types of issues may I seek informal review?

Answer 13A: You may seek administrative review of the following actions taken by the department regarding the WFTC:

- (a) You received an assessment for overpayment of the WFTC refund amounts;
- (b) The department denied all or part of your request for a WFTC refund;
- (c) You received a letter ruling from the department.

You may find additional details regarding letter rulings on the department's website at WorkingFamiliesCredit.wa.gov.

Question 13B: How do I request an informal review?

Answer 13B: All informal review requests must be submitted in writing to the department within 30 days of the date the department issues a decision on one of the actions listed under Answer 13A. Information about how to seek review, including filing your petition, is available on the department's website.

Question 13C: What is the informal review process?

Answer 13C: WFTC reviews are subject to small claims review as described in WAC 458-20-100 as the amount at issue is below \$25,000. This process provides petitioners with a simplified review that includes an abbreviated written determination, which becomes the final action of the department. If you do not want your case heard as a small claims review, you may request a longer, more in-depth main-stream review with the department. Once the petition for informal review is received, the department will acknowledge receipt with a letter. You will have the opportunity to provide additional records and explain your position in an informal hearing. After the department has reviewed your claim, a tax review officer assigned to your case will issue a final agency determination. A determination concerning the review of an assessment or refund denial may be appealed to the board of tax appeals. A determination concerning the review of a letter ruling is not subject to further appeal beyond the department. Additional information on further appeal rights may be found at <https://dor.wa.gov/file-pay-taxes/reviews-and-appeals/rule-100-further-appeal-rights>.

(14) **What if I owe money to the department?** If you receive a WFTC refund amount that is larger than you were entitled to receive, the department may issue an assessment for the overpaid amount.

Question 14A: Do the WFTC overpayments accrue interest?

Answer 14A: Yes. However, interest will not begin to accrue on the amount assessed for the first six months from the date the department issued the assessment. After this initial six-month period, interest will accrue on the amount due and owing at the rates specified under RCW 82.32.050 until the total amount due has been paid in full.

Question 14B: Can the department assess penalties on WFTC overpayments?

Answer 14B: Yes. If overpayment due is not paid in full by the date due, or the department issues a warrant for the collection of amounts due under this subsection, the department may assess applicable penalties under RCW 82.32.090; however, these penalties are not due until six months after the date the assessment has been issued. The department will take appropriate steps to work with you to establish a payment plan or other means to resolve the liability.

If the department finds, by clear, cogent, and convincing evidence, that an individual knowingly submitted, caused to be submitted, or consented to the submission of, a fraudulent WFTC claim for refund, the department must assess a penalty of 50 percent of the overpaid amount in addition to any other applicable penalties.

Below is an example of how interest and penalties may be assessed if you received a larger WFTC refund than you were entitled to receive and are required to pay the overpayment back. This example is to only demonstrate when interest and penalties may be first assessed and is not reflective of all potential assessment situations or circumstances:

January 1st	WFTC overpayment amount is assessed and issued. The issued notice requires full payment of the WFTC overpayment amount that is due and owing on or before June 30th.
January 1st through June 30th	Six-month period in which no penalties are assessed and interest does not accrue.
June 30th	Due date of WFTC overpayment amount per notice issued January 1st.
July 1st	If the WFTC overpayment amount is not fully paid, the department assesses a 15 percent penalty on the WFTC overpayment amount that is still due and owing. Interest begins to accrue on the WFTC overpayment amount that is still due and owing.
July 15th	If the WFTC overpayment amount is not fully paid, the department may issue a warrant for any WFTC overpayment amount that is still due and owing. If a warrant is issued, the department will also assess an additional 10 percent warrant penalty to the WFTC overpayment amount that is still due and owing. Interest continues to accrue until the WFTC overpayment amount is fully paid.
July 31st	If the WFTC overpayment amount is not fully paid, the department may assess an additional 10 percent penalty on the WFTC overpayment amount that is still due and owing for a total of 25 percent penalty (excluding warrant penalty if warrant is issued). Interest continues to accrue until the WFTC overpayment amount is fully paid.

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WSR 22-23-141

PERMANENT RULES

WASHINGTON STATE UNIVERSITY

[Filed November 21, 2022, 1:23 p.m., effective January 1, 2023]

Effective Date of Rule: January 1, 2023.

Purpose: Washington State University (WSU) is updating the policies and regulations applying to all student organizations, specifically WAC 504-28-010 Student organizations.

WSU is updating the policies and regulations regarding registration of, membership in, and requirements for student organizations.

Citation of Rules Affected by this Order: Amending WAC 504-28-010.

Statutory Authority for Adoption: RCW 28B.30.150.

Adopted under notice filed as WSR 22-18-095 on September 7, 2022.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: November 18, 2022.

Deborah L. Bartlett, Director
Procedures, Records, and Forms
and University Rules Coordinator

OTS-4061.1

AMENDATORY SECTION (Amending WSR 09-11-070, filed 5/14/09, effective 6/14/09)

WAC 504-28-010 Student organizations. (1) Registration.

(a) The university registers a wide variety of student organizations to facilitate the diverse interests of the student body. Attendant to registration, organizations are granted certain privileges and assume certain responsibilities as set forth in these rules. Registration in no way implies that the university plans, organizes, or sanctions any particular activity or policy of a student organization. The term registration as it applies to student organizations in this chapter has the same meaning as the terms (~~recognition~~) recognized or registered as used with respect to student organizations in chapter 504-26 WAC.

(b) Pursuant to established policies, the university department responsible for student affairs makes student organization registration determinations.

(2) Membership in organizations.

(a) Full membership in student organizations is restricted to enrolled graduate and undergraduate students at Washington State University.

(b) Faculty and others may participate as honorary or associate members at the option of the organization, as specified in the organization's constitution.

(c) Only a full member may be eligible to vote on matters of business or hold an elective office in the organization.

(d) To serve as an elected officer of a registered student organization, a student must not be on academic or behavioral probation with the university.

(e) Washington State University does not register any student organization which directly or indirectly denies membership to any student because of race, religion, sex, color, national or ethnic origin, age, marital status, sexual orientation, gender identity/gender expression, veteran status or disability except that the permissibility of a single-sex organization is evaluated in accordance with Title IX guidelines. Registered student organizations must ensure that additional policies and procedures do not create de facto differentiation. Student organizations that select their members based on commitment to a creed or a set of beliefs (e.g., political or religious beliefs) may limit full membership and participation privileges to eligible individuals who, upon individual inquisition, affirm that they agree with the organization's beliefs and support the organization's goals; so long as no eligible individual is excluded from membership and participation on the basis of race, religion, sex, color, national or ethnic origin, age, marital status, sexual orientation, gender identity/gender expression, veteran status, or disability except that the permissibility of a single-sex organization is evaluated in accordance with Title IX guidelines.

~~((e))~~ (f) Students who believe they have been denied membership in violation of subsection (2) ~~((d))~~ (e) of this section may appeal to the director of the university department responsible for student affairs.

~~((f))~~ (g) Washington State University does not register a student organization if registration would violate local, state, or federal law.

(3) Requirements and responsibilities of registered student organizations.

(a) Officers of each organization are responsible for seeing that their organization abides by university rules and regulations concerning scheduling, financial projects, advertising, and other policies applicable to their respective campus as established by the department responsible for student affairs.

(b) Registered student organizations must have an advisor (see WAC 504-28-020 Advisors).

(c) Registered student organization funds must be deposited into a registered student organization account with the university. The university financial services office assists registered student organizations in establishing accounts and processing transactions.

(d) Each registered student organization must keep the following records current with the university department responsible for student affairs:

(i) Constitution and bylaws.

(ii) Officer roster card.

(iii) ~~((Student organization report including activities, accomplishments, and financial status.~~

~~(iv))~~) Student event registration forms.

(4) Privileges of registered student organizations.

(a) Registered student organizations have the right to sponsor on-campus activities that comply with university rules, policies, and guidelines.

(b) The university department responsible for student affairs assists registered student organizations in understanding and complying with all relevant legal statutes and university rules and policies.

[Statutory Authority: RCW 28B.30.150. WSR 09-11-070, § 504-28-010, filed 5/14/09, effective 6/14/09. Statutory Authority: RCW 28B.30.150, 28B.30.095 and 28B.30.125. WSR 95-07-046, § 504-28-010, filed 3/8/95, effective 4/8/95. Statutory Authority: RCW 28B.30.095, 28B.30.125, 28B.30.150 and chapter 28B.19 RCW. WSR 87-12-013 (Order 87-1), § 504-28-010, filed 5/26/87. Statutory Authority: RCW 28B.30.125 and 28B.30.150. WSR 80-07-015 (Order 80-2, Resolution No. 6/80-15), § 504-28-010, filed 6/11/80; Order 77-2, § 504-28-010, filed 8/3/77; Order 75-1, § 504-28-010, filed 7/7/75, effective 9/1/75; Order 73-5, § 504-28-010, filed 8/1/73; Order 5, § 504-28-010, filed 9/26/72; Order 3, § 504-28-010, filed 8/5/71.]

WSR 22-23-142

PERMANENT RULES

WASHINGTON STATE UNIVERSITY

[Filed November 21, 2022, 1:23 p.m., effective January 1, 2023]

Effective Date of Rule: January 1, 2023.

Purpose: Washington State University (WSU) is updating the rules regarding the standards of conduct for students.

WSU is proposing changes to the standards of conduct for students (chapter 504-26 WAC) to maintain the spirit of the chapter while simplifying processes and consolidating definitions for clarity. The university remains committed to supporting students and recognized/registered student organizations and upholding their rights, while also holding them accountable for behavior that does not meet our community expectations. The proposed changes allow us to continue serving our community to meet these goals.

Citation of Rules Affected by this Order: Repealing WAC 504-26-214, 504-26-215, 504-26-216 and 504-26-226; and amending WAC 504-26-001, 504-26-010, 504-26-015, 504-26-020, 504-26-030, 504-26-040, 504-26-045, 504-26-050, 504-26-100, 504-26-105, 504-26-110, 504-26-115, 504-26-120, 504-26-125, 504-26-201, 504-26-202, 504-26-203, 504-26-204, 504-26-205, 504-26-206, 504-26-209, 504-26-211, 504-26-212, 504-26-213, 504-26-217, 504-26-218, 504-26-219, 504-26-220, 504-26-224, 504-26-227, 504-26-401, 504-26-402, 504-26-403, 504-26-409, 504-26-415, 504-26-420, 504-26-425, 504-26-504, 504-26-510, 504-26-515, 504-26-520, and 504-26-530.

Statutory Authority for Adoption: RCW 28B.30.150.

Adopted under notice filed as WSR 22-18-094 on September 7, 2022.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 36, Repealed 4.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 36, Repealed 4.

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 36, Repealed 4.

Date Adopted: November 18, 2022.

Deborah L. Bartlett, Director
Procedures, Records, and Forms
and University Rules Coordinator

OTS-4054.2

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-001 Preamble. Students have the responsibility to read and be familiar with the standards of conduct, to abide by them, and to understand that violations of these standards, if the student is found responsible, will result in educational sanctions. The dean of students or designee is the person designated by the university president to be responsible for the administration of the standards of conduct.

Washington State ((University's)) University has a long-standing commitment to providing students with a ((transformational)) holistic learning experience ((continues with a focus on enhancing the quality and relevance of the learning experience, providing more personalized student services, expanding learning opportunities outside the classroom, and developing a more cohesive student community. To this end,)) both in and out of the classroom. Students are expected to uphold and be accountable to ((high)) our standards of conduct ((that)) to foster a safe, healthy, and inclusive campus community. The basic philosophy behind the standards of conduct and processes is one of education, centered on student learning through personal development and accountability. Therefore, the student conduct process is designed to support students, guide and correct behaviors, challenge students to make better choices, ((and)) protect the rights ((and safety)) of all students, and support a safe environment for students, the university, and the community at large.

The university strives to provide a fair process for every student without bias or favor regardless of socioeconomic status, personal or social connections, race, ((color, creed, religion, national or ethnic origin, sex/gender)) sex and/or gender, sexual orientation, gender ((identity/expression)) identity or expression, religion, age, color, creed, national or ethnic origin, marital status, ((disability,)) genetic information, ((or)) status as an honorably discharged veteran or member of the military, physical, mental, or sensory disability, including the use of a trained service animal, or immigration or citizenship status, except as authorized by federal or state law, regulation, or government contract. It also has responsibility to inform and educate the university community, parents, and the public at large on these standards, uphold them, and exercise the authority to take educational and/or disciplinary action accordingly.

~~((Correspondingly, students have the responsibility to read and be familiar with the standards of conduct, to abide by them, and to understand that violation of these standards, if the student is found responsible, will result in disciplinary and/or educational sanctions. The vice president for student affairs is the person designated by the university president to be responsible for the administration of the standards of conduct.))~~

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-001, filed 11/19/18, effective 12/20/18; WSR 17-13-049, § 504-26-001, filed 6/15/17, effective 7/16/17; WSR 15-11-041, § 504-26-001, filed 5/14/15, effective 6/14/15; WSR 15-01-080, § 504-26-001, filed 12/15/14, effective 1/15/15; WSR 11-11-031, § 504-26-001, filed 5/11/11, effective 6/11/11; WSR 06-23-159, § 504-26-001, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-010 Definitions. Words and phrases used in the standards of conduct regardless of their associated gender identity include all genders. Words and phrases used in the standards of conduct in the singular or plural encompass both the singular and the plural, unless the context clearly indicates otherwise. For purposes of the standards of conduct, the following definitions apply:

(1) Academic integrity hearing board. Teaching faculty and student representatives who, collectively, are authorized by the university (~~or college~~) to review an instructor's determination that a student violated university academic integrity policies and whether or not the outcome proposed by the instructor is in keeping with the instructor's published policies.

(2) Academic integrity violation. A violation of the university's academic integrity expectations, which is defined as:

(a) Use of unauthorized materials in taking quizzes, tests, or examinations, or giving or receiving unauthorized assistance by any means, including talking, copying information from another student, using electronic devices, or taking an examination for another student.

(b) Use of sources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments.

(c) Acquisition or possession of tests or other academic material belonging to a member of the university faculty or staff when acquired without the permission of the university faculty or staff member.

(d) Fabrication, which is the intentional invention or counterfeiting of information in the course of an academic activity. Fabrication includes, but is not limited to:

(i) Counterfeiting data, research results, information, or procedures with inadequate foundation in fact. The office of research must be consulted in matters involving alleged research misconduct as that term is defined in the university's executive policy 33.

(ii) Counterfeiting a record of internship or practicum experiences.

(iii) Submitting a false excuse for absence or tardiness or a false explanation for failing to complete a class requirement or scheduled examination at the appointed date and time.

(e) Engaging in any behavior for the purpose of gaining an unfair advantage specifically prohibited by a faculty member in the course syllabus or class discussion.

(f) Scientific misconduct. Falsification, fabrication, plagiarism, or other forms of dishonesty in scientific and scholarly research are prohibited. Complaints and inquiries involving cases of scientific misconduct are managed according to the university's policy for responding to allegations of scientific misconduct. A finding of scientific misconduct is subject to sanctions by CCS. The policy for responding to allegations of scientific misconduct (executive policy 33) may be reviewed by contacting the office of research.

(g) Unauthorized collaboration on assignments.

(h) Intentionally obtaining unauthorized knowledge of examination materials.

(i) Plagiarism. Presenting the information, ideas, or phrasing of another person as the student's own work without proper acknowledgment of the source. This includes submitting a commercially prepared paper

or research project or submitting for academic credit any work done by someone else. The term "plagiarism" includes, but is not limited to, the use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.

(j) Unauthorized multiple submission of the same work.

(k) Sabotage of others' work.

(l) Tampering with or falsifying records.

(m) Violating any other academic rule or standards specified in published course policies.

(3) Appeals board. The group of students, faculty, and staff, collectively, authorized in accordance with WAC 504-26-115 to consider appeals from a university conduct board's or conduct officer's determination as to whether a student has violated the standards of conduct and any sanctions assigned.

~~((3))~~ (4) Brief adjudication. The process by which a conduct officer may adjudicate student conduct matters that are not resolving allegations that would constitute Title IX sexual harassment within the university's Title IX jurisdiction, and where possible sanctions do not include suspension for more than ~~((ten))~~ 10 instructional days, expulsion, loss of recognition, or revocation of degree. Also referred to as a "conduct officer hearing" or "brief adjudicative proceeding."

~~((4))~~ (5) CCR. The university's office of compliance and civil rights.

~~((5) Cheating. Includes, but is not limited to:~~

~~(a) Use of unauthorized materials in taking quizzes, tests, or examinations, or giving or receiving unauthorized assistance by any means, including talking, copying information from another student, using electronic devices, or taking an examination for another student.~~

~~(b) Use of sources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments.~~

~~(c) Acquisition or possession of tests or other academic material belonging to a member of the university faculty or staff when acquired without the permission of the university faculty or staff member.~~

~~(d) Fabrication, which is the intentional invention or counterfeiting of information in the course of an academic activity. Fabrication includes, but is not limited to:~~

~~(i) Counterfeiting data, research results, information, or procedures with inadequate foundation in fact. The office of research must be consulted in matters involving alleged research misconduct as that term is defined in the university's executive policy 33.~~

~~(ii) Counterfeiting a record of internship or practicum experiences.~~

~~(iii) Submitting a false excuse for absence or tardiness or a false explanation for failing to complete a class requirement or scheduled examination at the appointed date and time.~~

~~(e) Engaging in any behavior for the purpose of gaining an unfair advantage specifically prohibited by a faculty member in the course syllabus or class discussion.~~

~~(f) Scientific misconduct. Falsification, fabrication, plagiarism, or other forms of dishonesty in scientific and scholarly research are prohibited. Complaints and inquiries involving cases of scientific misconduct are managed according to the university's policy~~

for responding to allegations of scientific misconduct. A finding of scientific misconduct is subject to sanctions by the center for community standards. The policy for responding to allegations of scientific misconduct (executive policy 33) may be reviewed by contacting the office of research.

~~(g) Unauthorized collaboration on assignments.~~

~~(h) Intentionally obtaining unauthorized knowledge of examination materials.~~

~~(i) Plagiarism. Presenting the information, ideas, or phrasing of another person as the student's own work without proper acknowledgment of the source. This includes submitting a commercially prepared paper or research project or submitting for academic credit any work done by someone else. The term "plagiarism" includes, but is not limited to, the use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.~~

~~(j) Unauthorized multiple submission of the same work.~~

~~(k) Sabotage of others' work.~~

~~(l) Tampering with or falsifying records.))~~

~~(6) CCS. The university's center for community standards.~~

~~(7) Complainant. Any person who is the alleged victim of prohibited student conduct, whether or not such person has made an actual complaint. ((Any individual, group, or entity, including the university, who submits a complaint alleging that a student or a registered or recognized student organization violated the standards of conduct.~~

~~(7-))~~ ~~(8) Conduct board. The group of students, faculty, and staff, collectively authorized in accordance with WAC 504-26-110 to adjudicate certain student conduct matters.~~

~~((8-))~~ ~~(9) Conduct officer. A university official authorized by the ((vice president for student affairs)) dean of students or their designee to initiate, manage, and/or adjudicate certain student conduct matters in accordance with WAC 504-26-401 and 504-26-402.~~

~~((9-))~~ ~~(10) Faculty member. For purposes of this chapter, any person hired by the university to conduct classroom or teaching activities or who is otherwise considered by the university to be a member of its faculty.~~

~~((10-))~~ ~~(11) Full adjudication. The process by which a conduct board adjudicates matters involving possible suspension of greater than ((ten)) 10 instructional days, expulsion, loss of recognition, revocation of degree, or other matters as determined by the university. Also referred to as "formal adjudication," "formal (or full) adjudicative proceeding," or "conduct board hearing."~~

~~((11-))~~ ~~(12) Gender identity. Having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to the person at birth.~~

~~((12-))~~ ~~(13) Member of the university community. Includes any person who is a student, faculty member, university official, any person employed by the university, or any person with a relationship with the university, including guests of and visitors to the university. A person's status in a particular situation is determined by the ((vice president for student affairs)) dean of students or designee.~~

~~((13-))~~ ~~(14) Parties. The parties to a student conduct proceeding must include the university and the respondent. The parties in a~~

student conduct matter where the allegations, if true, would constitute Title IX sexual harassment within the university's Title IX jurisdiction must also include the complainant(s). The university may designate other complainants (~~(, individuals, or recognized or registered student organizations)~~) as parties to conduct proceedings (~~(, or allow individuals or recognized or registered student organizations to intervene in conduct proceedings.~~

~~(14) Policies. The written rules and regulations of the university as found in, but not limited to, the standards of conduct, university policy manuals, housing and dining policies, academic regulations, and the university's graduate, undergraduate, and professional catalogs and other publications, including electronic publications) including, but not limited to, harmed parties. The dean of students or their designee determines party status for complainants.~~

(15) Recognized or registered student organization. A group of students, collectively, that has complied with the formal requirements for university recognition or registration.

(16) Respondent. A student or recognized or registered student organization alleged to have violated these standards of conduct.

(17) Standards of conduct. The standards of conduct for students outlined in this chapter.

(18) Student. For the purposes of this chapter, any person ((taking)) who:

(a) Is enrolled in at least one undergraduate, graduate, or professional studies course((s)) at the university((, either full-time or part-time, pursuing undergraduate, graduate, or professional studies. Persons who withdraw after allegedly violating the standards of conduct, who are not officially enrolled for a particular term but who have a continuing relationship with the university (including suspended students) or who have));

(b) Has been notified of their acceptance for admission ((are considered "students" as are persons who are living in university residence halls, even if not enrolled.

~~(18))~~ but has not yet registered for their course(s);

(c) Is eligible to reenroll in classes without reapplying.

(19) Title IX. Title IX of the Education Amendments Act of 1972, 20 U.S.C. 1681 and its implementing 34 C.F.R. Part 106.

~~((19))~~ (20) University. ~~((includes all locations, premises, programs, and operations of))~~ Washington State University.

~~((20))~~ (21) University official. Any person employed by the university, performing assigned administrative or professional responsibilities.

~~((21))~~ (22) University premises. All land, buildings, facilities, vehicles, websites, and other property in the possession of or owned, used, or controlled by the university (including adjacent streets and sidewalks), including its study abroad program sites, as well as university-sponsored or hosted online platforms.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-010, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-010, filed 11/19/18, effective 12/20/18; WSR 17-13-049, § 504-26-010, filed 6/15/17, effective 7/16/17; WSR 16-08-014, § 504-26-010, filed 3/28/16, effective 4/28/16; WSR 15-01-080, § 504-26-010, filed 12/15/14, effective 1/15/15; WSR 11-11-031, § 504-26-010, filed 5/11/11, effective 6/11/11; WSR 07-11-030, § 504-26-010, filed 5/8/07, effective 6/8/07; WSR 06-23-159, § 504-26-010, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-015 Jurisdiction and applicability—Relationship to other proceedings. (1) General. The standards of conduct apply to conduct that occurs on university premises or in connection with university sponsored activities, including transit to or from the activity.

(2) Off-campus conduct. In addition to subsection (1) of this section, the standards of conduct may apply to conduct that occurs off university premises and not in connection with university-sponsored activities, if the conduct adversely affects the health and/or safety of the university community or the pursuit of the university's vision, mission, or values.

~~((a))~~ The university has sole discretion to make this determination. In making this determination, the conduct officer considers whether the alleged conduct:

~~((i))~~ (a) Requires the university to exercise jurisdiction under law or as required by federal or state agencies;

~~((ii))~~ (b) Negatively impacted the reputation of the university or its students;

~~((iii))~~ (c) Occurred on the property of recognized or registered student organizations;

~~((iv))~~ (d) Caused physical, mental, or emotional harm to another; or

~~((v))~~ (e) Was recognized by onlookers, complainants, or witnesses as being carried out by a student or recognized or registered student organization.

~~((b) When the university chooses to exercise jurisdiction for off-campus conduct not in connection with a university-sponsored activity, the parties must be notified in writing of the decision and the reasons for the decision, and their right to challenge the decision to the vice president for student affairs or designee. Challenges to jurisdiction must be in writing and filed within five calendar days from the date the notice is sent. In cases implicating Washington State University's executive policy 15, the vice president for student affairs or designee must consult with the university's Title IX coordinator.)~~

(3) Online conduct - Electronic communications. These standards of conduct may be applied to behavior conducted online, via electronic mail, text message, or other electronic means.

(4) Time frame for applicability. Each student is responsible and accountable for their conduct from the time of application for admission through the actual ~~((awarding))~~ conferral 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 apply to a student's conduct during that time frame, even if the student withdraws from school, takes a leave of absence, or graduates.

(5) Group accountability. Recognized or registered student organizations that violate university policies and the standards of conduct are subject to sanctions. A recognized or registered student organization may be held accountable for the behavior of its officers, members, or guests when the university demonstrates that:

(a) The organization or its officers should have foreseen that behavior constituting a violation was likely to occur, yet failed to take reasonable precautions against such behavior;

(b) A policy or practice of the organization was responsible for a violation; or

(c) The behavior constituting a violation was committed by, condoned by, or involved a ((significant)) number of organization officers, members, or guests.

(6) International and national study programs. Students who participate in any university-sponsored or sanctioned international or national study program must observe the following rules and regulations:

(a) The laws of the host country and/or state;

(b) The academic and disciplinary regulations of the educational institution or residential housing program where the student is studying;

(c) Any other agreements related to the student's study program; and

(d) These standards of conduct.

(7) Academic and professional standards. Nothing in these standards of conduct is to be construed as limiting academic action that may be taken by a program or other academic unit against a respondent who, based on an established violation of these standards or otherwise, demonstrates a failure to meet the academic and/or professional standards of the program.

(8) Relationship between student conduct process and other legal processes. The university is not required to stay a student conduct proceeding pending any criminal or civil proceeding, nor must the disposition of any such criminal or civil proceeding control the outcome of any student conduct proceeding. Respondents may choose to remain silent during conduct proceedings, in accordance with WAC 504-26-045.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-015, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-015, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-020 Advisors and representatives. (1) Advisors. Any party may have an advisor of their choice, provided that person agrees to serve as an advisor, to be present during all stages of a conduct process. ((Upon a party's request,)) A list of university employees who are trained advisors ((from outside the office of the dean of students (and those offices reporting to the dean of students) who)) is provided upon a party's request. Advisors can provide support at no cost to the ((student is provided)) party. Advisors may assist any party engaged in the conduct process and attend meetings and hearings. Advisors may not be witnesses to the alleged behavior. Advisors may not be employed in CCS.

(2) ~~((Communication with the center for community standards. Advisors and representatives may communicate directly with the center for community standards to receive information on dates and times of meetings, status of conduct processes, and outcomes. As a condition of participation in the conduct process, the center for community stand-~~

~~ards may require advisors and representatives to sign a statement agreeing to comply with legal requirements and university rules including, but not limited to, requirements related to confidentiality of student information.~~

~~(3))~~ Advisors in conduct meetings and conduct officer hearings. During any conduct meeting or conduct officer hearing, breaks may be taken, within reason, to allow a party to consult with their advisor. However, advisors are not permitted to speak on behalf of parties.

~~((4))~~ (3) Advisors in conduct board hearings. As with all other conduct meetings and conduct officer hearings, advisors are not permitted to speak on behalf of parties, except that in conduct board hearings, advisors are permitted to ask relevant cross-examination questions as instructed by a party.

~~((5))~~ (4) Representatives. A party may choose to be represented during a full adjudication, at their own expense. Only persons currently admitted to practice law, including licensed legal interns, are permitted to act as representatives. ~~((In conduct board hearings,))~~ Representatives are not permitted in conduct officer hearings; however, persons currently admitted to practice law may participate as advisors in conduct officer hearings.

(5) As a condition of participation in the conduct process, CCS may require advisors and representatives to sign a statement agreeing to comply with legal requirements and university rules including, but not limited to, requirements related to confidentiality of student information.

(6) Questions regarding logistical and administrative issues are to be directed to the presiding officer or conduct officer, who may impose reasonable conditions upon participation of advisors and representatives.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-020, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-020, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-030 Consolidation. In any student conduct matter in which there are common issues or parties, ~~((the parties may request, or))~~ the conduct officer or presiding officer may decide ~~((7))~~ to consolidate the proceedings. This decision is within the sole discretion of the conduct officer or presiding officer.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-030, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-040 Presumptions and standard of proof. ~~((All students and registered or recognized student organizations))~~ Respondents are presumed "not responsible" for alleged violations. Any violation must be proven by a preponderance of the evidence, meaning that it is

more likely than not that the violation occurred. (~~As part of the university's opening statement in any conduct board hearing, the university's representative must read a statement to this effect.~~)

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-040, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 22-07-043, filed 3/14/22, effective 4/14/22)

WAC 504-26-045 Evidence. (1) Evidence, including hearsay evidence, is admissible in student conduct proceedings if, in the judgment of the conduct officer or presiding officer, it is the kind of evidence that reasonably prudent persons are accustomed to rely on in the conduct of their affairs. The conduct officer or presiding officer determines the admissibility and relevance of all information and evidence.

(2) The sexual history of a complainant is not relevant and not admissible in a student conduct proceeding unless such evidence about the complainant's sexual predisposition or prior sexual behavior is offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

(3) (~~Students~~) Parties may choose to remain silent during conduct proceedings, recognizing that they give up the opportunity to explain their version of events and that the decision is made based on the information presented at the hearing. No (~~student~~) party must be compelled to give self-incriminating evidence, and no negative inference will be drawn from a (~~student's~~) party's refusal to participate in any stage of the conduct proceeding. If either party does not attend or participate in a hearing, the conduct officer or conduct board may resolve the matter based on the information available at the time of the hearing.

[Statutory Authority: RCW 28B.30.150. WSR 22-07-043, § 504-26-045, filed 3/14/22, effective 4/14/22; WSR 21-07-057, § 504-26-045, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-045, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-050 ((Interim)) Supportive measures. (1) While a student conduct matter is pending, the university may take a number of (~~interim actions or~~) supportive measures (~~in order~~) on an interim basis to ensure the preservation of the educational experience and the overall university environment of the parties.

(a) These actions may include, but are not limited to:

(~~(a)~~) (i) A no-contact (~~order~~) directive assigned to any party;

(~~(b)~~) (ii) University housing room change for one or more involved parties; and/or

~~((e))~~ (iii) Changes in academic schedules or assignments for (any party) one or more involved parties.

~~((2) As stated in the university's housing and dining policies, the university reserves the right to assign roommates, to change room or hall assignments, and/or to consolidate vacancies by requiring residents to move from one room to another in the event such reassignments are determined to be necessary by the university.~~

~~(3))~~ (b) These actions for registered or recognized student organizations may include, but are not limited to:

(i) Loss of recognition;

(ii) Restriction of specified operational activities.

(2) University departments ~~((taking interim or))~~ implementing supportive measures must coordinate with ~~((the center for community standards))~~ CCS, which advises the parties of the ~~((interim))~~ supportive measures and the process for challenging them. For matters involving the university's executive policy 15, the departments must also consult with CCR regarding ~~((interim or))~~ supportive measures. ~~((Interim and))~~ Supportive measures are not sanctions and do not imply or assume responsibility for a violation of the standards of conduct.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-050, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-050, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-100 Presiding officers. Full adjudicative proceedings are conducted by the conduct board and are presided over by an individual who is licensed to practice law in the state of Washington and has judicial training. The presiding officer's role is to ensure a fair and impartial process and is limited to making procedural and evidentiary rulings and handling logistical and other matters related to facilitating the proceedings to ensure compliance with legal requirements. The presiding officer must transmit a full and complete record of the proceedings to ~~((the center for community standards))~~ CCS and the conduct board, including such comments upon demeanor of witnesses as the presiding officer deems relevant, in accordance with RCW 34.05.461. The presiding officer does not vote and is not considered for purposes of creating a quorum of the conduct board.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-100, filed 11/19/18, effective 12/20/18; WSR 17-13-049, § 504-26-100, filed 6/15/17, effective 7/16/17; WSR 15-11-041, § 504-26-100, filed 5/14/15, effective 6/14/15; WSR 15-01-080, § 504-26-100, filed 12/15/14, effective 1/15/15; WSR 12-04-049, § 504-26-100, filed 1/30/12, effective 3/1/12; WSR 06-23-159, § 504-26-100, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-105 Recruitment, appointment, and term of conduct and appeals board members. A committee comprised of students, staff, ~~((and))~~ and/or faculty members and convened by the ~~((vice president for student affairs))~~ dean of students selects a pool of members of the university community to serve as conduct board members ~~((, as well as a separate pool for))~~ and appeals board members. ~~((Each pool must include representatives from all WSU campuses.))~~ Pool members are approved by the university president and must be in good standing with the university. Pool members serve a maximum term of four calendar years but may apply to serve another four-year term after a break of two years. Terms of pool members are staggered. ~~((Boards are convened by the vice president for student affairs or designee. The center for community standards))~~ CCS is not involved in the recruitment or application processes for board members.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-105, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 20-07-075, filed 3/16/20, effective 4/16/20)

WAC 504-26-110 Composition of conduct board. A conduct board must consist of at least three members. A quorum of three is needed to hear a matter. The presiding officer is not a member of the conduct board and therefore is not considered for purposes of determining whether there is a quorum. A minimum of one conduct board member hearing a matter must be ~~((an enrolled WSU))~~ a student ~~((undergraduate, graduate, or professional) and may be full-time or part-time))~~. The remaining members may be students, or full-time or part-time faculty or staff of any rank or classification. When the complainant or respondent is enrolled at a particular campus, at least one member of the conduct board must be from that campus. No conduct board member may serve on a case if the member previously served on a board in a case involving the same complainant or respondent.

[Statutory Authority: RCW 28B.30.150. WSR 20-07-075, § 504-26-110, filed 3/16/20, effective 4/16/20; WSR 18-23-083, § 504-26-110, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-115 Composition of appeals board. ~~((The))~~ An appeals board must consist of at least three members. A quorum of three is needed to review a matter. A ~~((majority of))~~ minimum of one appeals board member ~~((s))~~ hearing a matter must be ~~((enrolled WSU students (undergraduate, graduate, or professional) and may be full-time or part-time))~~ a student. The remaining members may be students, or full-time or part-time faculty or staff of any rank or classification. No appeals board member may serve on a case if the member previously

served on a board (~~(en)~~) in a case involving the same complainant or respondent. (~~The vice president for student affairs or designee is responsible for designating one of the three appeals board members as chair.~~) One member of the appeals board serves as the chair of the board. The chair is responsible for ensuring a fair and impartial process and is a voting member of the appeals board.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-115, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-120 Training. (1) Board members (~~and presiding officers~~). Conduct board members (~~(r)~~) and appeals board members (~~(r) and presiding officers~~) must not participate in any student conduct matter until, at a minimum, training in the following areas has been completed:

- (a) (~~Cultural competency~~) Diversity, equity, inclusion, and implicit bias;
- (b) Student development and student conduct philosophies, including the educational component of the student conduct process;
- (c) (~~Identifying bias against individuals and against groups;~~
- ~~(d) Conflict of interest;~~
- ~~(e)~~) Fair and equitable decision making, including:
 - (i) Due process;
 - (ii) Standards of proof;
 - (iii) Relevant and admissible evidence;
 - (iv) Conflict of interest; and
 - (v) Identifying bias;
 - (d) Sexual assault and gender-based violence;
 - (~~(f)~~) (e) Alcohol and drug prevention;
 - (~~(g) Due process and burden of proof in student conduct matters;~~
 - ~~(h)~~) (f) Sanctioning principles and guidelines; and
 - (~~(i)~~) (g) Title IX regulatory definitions, jurisdiction, and grievance processes (~~(j) and~~
 - ~~(j) Relevant and admissible evidence).~~

(2) Conduct officers. Conduct officers must not participate in any student conduct matter until, at a minimum, training in the following areas has been completed:

- (a) Alternative dispute resolution;
- (b) Restorative justice; and
- (c) All training required of board members (see subsection (1) of this section).

(3) Presiding officers. Presiding officers must not participate in any student conduct matter until, at a minimum, training in the following areas has been completed:

- (a) Diversity, equity, inclusion, and implicit bias;
- (b) Student development and student conduct philosophies, including the educational component of the student conduct process;
- (c) Title IX regulatory definitions, jurisdiction, and grievance processes.

(4) Renewal of training. Training must be renewed on (~~an annual~~) a biennial basis.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-120, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-120, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-125 Recusal. (1) Notification of names of conduct officers and board members. All parties must be notified of the names of conduct officers, conduct board members, and/or appeals board members assigned to their case no later than ~~((ten))~~ seven calendar days prior to the hearing or appeals board meeting date.

(2) Requesting recusal of conduct officers and board members. A party requesting recusal of a conduct officer or conduct/appeals board member must demonstrate good cause. ~~((The request must be made in writing no later than five calendar days prior to the date of the conduct hearing or appeals board meeting.))~~ For conduct board members, the presiding officer is responsible for granting or denying requests. For conduct officers and appeals board members, the ~~((vice president for student affairs))~~ dean of students or designee is responsible for granting or denying requests.

(3) Presiding officer. Requests for recusal of the presiding officer are governed by the model rules of procedure, WAC 10-08-050(2).

~~((4) Self-recusal in the event of conflict of interest. Conduct officers and board members must be trained in conflict of interest. For any matter in which they are participating, if they identify a potential conflict of interest, appeals board members and conduct officers must promptly notify and consult with the vice president for student affairs or designee, while conduct board members must promptly notify and consult with the presiding officer. Conduct officers and board members must recuse themselves if, after consultation, an actual conflict is determined to exist. If a potential conflict is identified but is determined by the vice president or designee or presiding officer, as applicable, to be insufficient to justify removal of the person, the parties must be notified of the potential conflict and reasons for determining that it does not pose an actual conflict. For purposes of this subsection, a conflict of interest is defined as a personal interest, financial, familial, or otherwise, that might impair, or reasonably appear to an objective, outside observer to impair, a person's independent unbiased judgment in the discharge of their official responsibilities.))~~

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-125, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-201 Misconduct—Rules and regulations. Any student or recognized or registered student organization found to have committed, assisted, conspired, or attempted to commit the following miscon-

duct (WAC 504-26-202 through 504-26-230) is subject to the disciplinary sanctions outlined in WAC (~~(504-26-405)~~) 504-26-425.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-201, filed 11/19/18, effective 12/20/18; WSR 15-01-080, § 504-26-201, filed 12/15/14, effective 1/15/15; WSR 08-05-001, § 504-26-201, filed 2/6/08, effective 3/8/08; WSR 07-11-030, § 504-26-201, filed 5/8/07, effective 6/8/07; WSR 06-23-159, § 504-26-201, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 15-01-080, filed 12/15/14, effective 1/15/15)

WAC 504-26-202 Acts of dishonesty. Acts of dishonesty (~~(include, but are not limited to, those listed in this chapter)~~) are defined as:

(1) Academic integrity violations (~~(including, but not limited to, cheating as defined in WAC 504-26-010)~~).

(2) Knowingly furnishing false information, knowingly omitting relevant information, or knowingly misrepresenting information to any person, including university officials, faculty members, or administrators. It is not a violation of this section to refuse to give self-incriminating evidence to a university official, faculty member, or administrator. (See WAC 504-26-045.)

(3) Forgery, alteration, or misuse of any university document or record, or instrument of identification whether issued by the university or other state or federal agency.

(4) Fraud (~~(or misrepresentation)~~).

[Statutory Authority: RCW 28B.30.150. WSR 15-01-080, § 504-26-202, filed 12/15/14, effective 1/15/15; WSR 08-05-001, § 504-26-202, filed 2/6/08, effective 3/8/08; WSR 07-11-030, § 504-26-202, filed 5/8/07, effective 6/8/07; WSR 06-23-159, § 504-26-202, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-203 Disruption or obstruction. Students have the right to freedom of speech, including the right to dissent (~~(or)~~) and protest, but this expression may not interfere with the rights of others or substantially disrupt or materially interfere with the university's activities. Time, place, and manner restrictions apply. (See chapter 504-33 WAC.) Behavior prohibited ((behavior includes)) by this section is:

(1) Substantial disruption or ((obstruction of)) material interference with the university's activities by any means including use of telephone, computer, or some other medium. University activities include, but are not limited to, teaching, research, administration, or disciplinary proceedings ((, other university activities, including its public service functions on or off campus, or of other authorized non-university activities when the conduct occurs on university premises or is directed toward any member of the university community by any

~~means including use of telephone, computer, or some other medium)).~~
University activities may also include activities of other entities that are authorized to be conducted on the university premises.

(2) Obstruction of the free flow of persons, including pedestrian or vehicular traffic on university premises or at university-sponsored or supervised functions.

(3) Conduct that substantially prevents any member of the university community from completing their duties.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-203, filed 11/19/18, effective 12/20/18; WSR 07-11-030, § 504-26-203, filed 5/8/07, effective 6/8/07; WSR 06-23-159, § 504-26-203, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-204 ~~((Abuse of others or disruption or interference with the university community.))~~ **Physical harm or direct threat.**

~~((Abuse of others or disruption or interference with the university community is defined as:~~

~~(1))~~ Physical ~~((abuse))~~ harm, direct threats, ~~((intimidation,))~~ and/or other conduct that ~~((threatens, endangers, harms, or))~~ undermines the ~~((health,))~~ safety~~((, or welfare))~~ of the university community or any person.

~~((2) Conduct that disrupts the university community or prevents any member of the university community from completing their duties.~~

~~(3) Conduct that interferes with or disrupts the university's mission, operations, or activities.))~~

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-204, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-204, filed 11/19/18, effective 12/20/18; WSR 15-01-080, § 504-26-204, filed 12/15/14, effective 1/15/15; WSR 14-11-025, § 504-26-204, filed 5/12/14, effective 6/12/14; WSR 06-23-159, § 504-26-204, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-205 **Theft or damage to property.** Theft of, and/or the intentional or reckless damage to, the property of another.

[Statutory Authority: RCW 28B.30.150. WSR 06-23-159, § 504-26-205, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-206 Hazing. (1) ~~((No student or recognized or registered student organization at Washington State University may conspire to engage in hazing or participate in hazing of another.~~

~~(a)) Hazing includes any ((activity expected of someone joining a group (or maintaining full status in a group) that causes or is likely to cause a risk of mental, emotional and/or physical)) act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a recognized or registered student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or psychological or emotional harm, regardless of the person's willingness to participate.~~

~~((b))~~ (2) Hazing activities may include, but are not limited to ~~((, the following))~~:

~~((Abuse))~~ (a) Use of alcohol during ((new member)) activities targeted towards new members;

(b) Striking another person whether by use of any object or one's body;

(c) Creation of excessive fatigue;

(d) Physical and/or psychological shock;

~~(e) Morally degrading or humiliating games or activities ((that create a risk of bodily, emotional, or mental harm.~~

~~(e))~~;

(f) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance regardless of the person's willingness to participate;

(g) Unreasonable or unnatural physical activity.

(3) Hazing does not include practice, training, conditioning and eligibility requirements for customary athletic events such as intramural or club sports and NCAA athletics, or other similar contests or competitions ~~((, but gratuitous hazing activities occurring as part of such customary athletic event or contest are prohibited))~~.

~~((2) Washington state law also prohibits hazing which may subject violators to criminal prosecution. As used in RCW 28B.10.901 and 28B.10.902, "hazing" includes any method of initiation into a recognized or registered student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending a public or private institution of higher education or other postsecondary education institution in this state.~~

~~(3) Washington state law (RCW 28B.10.901) also provides sanctions for hazing:~~

~~(a) Any person who violates this rule, in addition to other sanctions that may be assigned, forfeits any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the university.~~

~~(b) Any recognized or registered student organization that knowingly permits hazing by its members or others subject to its direction or control must be deprived of any official recognition or approval granted by the university.)~~

(4) Hazing is prohibited both on and off campus.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-206, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-206, filed 11/19/18, effective 12/20/18; WSR 06-23-159, § 504-26-206, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-209 Violation of university policy, rule, or regulation. Violation of any university policy, rule, or regulation published electronically on the university website or in hard copy including, but not limited to, (~~Washington State~~) the university's alcohol and drug policy, executive policy 15, and housing and residence life policy.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-209, filed 3/15/21, effective 4/15/21; WSR 15-01-080, § 504-26-209, filed 12/15/14, effective 1/15/15; WSR 11-11-031, § 504-26-209, filed 5/11/11, effective 6/11/11; WSR 06-23-159, § 504-26-209, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-211 Drugs and drug paraphernalia. Use, possession, manufacture, or distribution of (~~marijuana~~) cannabis, narcotics, or other controlled substances, (~~and~~) or drug paraphernalia except as permitted by federal, state, and local law.

[Statutory Authority: RCW 28B.30.150. WSR 06-23-159, § 504-26-211, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 15-11-041, filed 5/14/15, effective 6/14/15)

WAC 504-26-212 Alcohol. Use, possession, manufacture, or distribution of alcoholic beverages to any person under 21 years old or by any person under 21 years old (except as expressly permitted by university regulations, and federal, state, and local laws), or public intoxication (~~(. Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person not of legal)~~) at any age.

[Statutory Authority: RCW 28B.30.150. WSR 15-11-041, § 504-26-212, filed 5/14/15, effective 6/14/15; WSR 15-01-080, § 504-26-212, filed 12/15/14, effective 1/15/15; WSR 06-23-159, § 504-26-212, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 20-07-075, filed 3/16/20, effective 4/16/20)

WAC 504-26-213 Firearms and dangerous weapons. No student may ~~((carry,))~~ possess ~~((,))~~ or use any firearm (including airsoft guns), explosive (including fireworks), dangerous chemicals (excluding pepper spray), or ~~((any))~~ other dangerous weapons or instrumentalities (including tasers) on university premises ~~((or in university-approved housing. Airsoft guns and other items that shoot projectiles are not permitted in university-approved housing))~~. This prohibition does not apply to possession of such items for authorized university purposes; possession of such items by authorized law enforcement officers; or individuals who have obtained prior written approval from the university chief of police, president, or designee.

[Statutory Authority: RCW 28B.30.150. WSR 20-07-075, § 504-26-213, filed 3/16/20, effective 4/16/20; WSR 18-23-083, § 504-26-213, filed 11/19/18, effective 12/20/18; WSR 08-05-001, § 504-26-213, filed 2/6/08, effective 3/8/08; WSR 06-23-159, § 504-26-213, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-217 Unauthorized use of electronic or other devices. ~~((Unauthorized use of electronic or other devices:))~~ Making an audio, digital, or video record of any person ~~((while on university premises))~~ without their prior knowledge, or without their effective consent when such a recording is of a private conversation or of images taken of a person(s) at a time and place where they would reasonably expect privacy and where such images are likely to cause injury or distress. ~~((This includes, but is not limited to, surreptitiously taking pictures of another person in a gym, locker room, or restroom, but does not include taking pictures of persons in areas which are considered by the reasonable person to be open to public view, such as Martin Stadium or the Glenn Terrell Mall.))~~

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-217, filed 3/15/21, effective 4/15/21; WSR 06-23-159, § 504-26-217, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 15-01-080, filed 12/15/14, effective 1/15/15)

WAC 504-26-218 Computer abuses or theft. Theft or other abuse of computer facilities and resources, including but not limited to:

- (1) Unauthorized entry into a file, to use, read, or change the contents, or for any other purpose.
- (2) Unauthorized transfer of a file.
- (3) Unauthorized use of computer hardware.
- (4) Unauthorized use of another individual's identification ~~((and/or))~~, password, or multifactor authentication credentials.

- (5) ~~((Use of computing facilities and resources to interfere with the work of another student, faculty member, or university official.~~
- ~~(6) Use of computing facilities and resources to send obscene, harassing, or threatening messages.~~
- ~~(7) Use of computing facilities and resources to interfere with normal operation of the university computing system.~~
- ~~(8)) Use of computing facilities and resources in violation of any law, including copyright laws.~~
- ~~((9)) (6) Any violation of the university computer use policy found in the university's executive policy 4 (electronic communication policy).~~

[Statutory Authority: RCW 28B.30.150. WSR 15-01-080, § 504-26-218, filed 12/15/14, effective 1/15/15; WSR 12-04-049, § 504-26-218, filed 1/30/12, effective 3/1/12; WSR 08-05-001, § 504-26-218, filed 2/6/08, effective 3/8/08; WSR 06-23-159, § 504-26-218, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-219 Abuse of the student conduct system. Abuse of the student conduct system is defined as:

- (1) ~~((Failure to obey any notice from a university conduct board or other university official to appear for a meeting or hearing as part of the student conduct system.~~
- ~~(2) Willful falsification, distortion, or misrepresentation of information before a university conduct proceeding.~~
- ~~(3) Disruption or interference with the orderly conduct of a university conduct board proceeding.~~
- ~~(4)) Filing fraudulent charges or initiating a university conduct proceeding in bad faith.~~
- ~~((5)) (2) Attempting to discourage an individual's proper participation in, or use of, the student conduct system.~~
- ~~((6)) (3) Attempting to influence the impartiality of a member of the university conduct system prior to, and/or during the course of, any university conduct board proceeding.~~
- ~~((7)) (4) Harassment (verbal, written, or physical) and/or intimidation of a member of a university conduct board, any individual involved in the conduct process, or any conduct officer before, during, and/or after any university conduct proceeding.~~
- ~~((8)) (5) Failure to comply with or failure to complete any ((term or condition of any disciplinary)) sanction(s) assigned under the standards of conduct.~~
- ~~((9) Influencing or attempting to influence another person to commit an abuse of the university conduct system.~~
- ~~(10)) (6) Violation of probation or any probationary conditions.~~

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-219, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-219, filed 11/19/18, effective 12/20/18; WSR 15-01-080, § 504-26-219, filed 12/15/14, effective 1/15/15; WSR 08-05-001, § 504-26-219, filed 2/6/08, effective 3/8/08; WSR 06-23-159, § 504-26-219, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-220 Discriminatory harassment. (1) Unwelcome, intentional conduct on the basis of race; sex and/or gender; sexual orientation; gender identity or expression; religion; age; color; creed; national or ethnic origin; marital status; genetic information; status as an honorably discharged veteran or member of the military; physical, mental, or sensory disability (including disability requiring the use of a trained service animal); or immigration or citizenship status, except as authorized by federal or state law, regulation, or government practice, which is so severe or pervasive, and objectively offensive, that it substantially and unreasonably:

- (a) Interferes with, or has the potential to interfere with, an individual's ability to participate in ((WSU)) university employment, education, programs, or activities;
- (b) Adversely alters the condition of an individual's ((WSU)) university employment, education, or participation status;
- (c) Creates an objectively abusive employment, program, or educational environment; or
- (d) Results in a material or substantial disruption of ((WSU's)) the university's operations or the rights of students, staff, faculty, visitors, or program participants.

(2) In determining if conduct is harassing, the totality of the circumstances are assessed including, but not limited to, the following factors:

- (a) Severity;
- (b) Frequency of the discrimination;
- (c) Status of the reporting and responding parties and their relationship to each other;
- (d) Physicality, threats, or endangerment; and
- (e) Whether or not the conduct could be reasonably considered protected speech or serving some other lawful purpose.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-220, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-220, filed 11/19/18, effective 12/20/18; WSR 14-11-025, § 504-26-220, filed 5/12/14, effective 6/12/14; WSR 06-23-159, § 504-26-220, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-224 Reckless endangerment. Engaging in conduct that creates an unreasonable risk of harm to another person or property. Reckless endangerment includes, but is not limited to, operating a motor vehicle while intoxicated.

[Statutory Authority: RCW 28B.30.150. WSR 06-23-159, § 504-26-224, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-227 Sexual harassment. Unwelcome, intentional conduct, on the basis of sex and/or gender, which is so severe or pervasive, and objectively offensive, that it substantially and unreasonably:

- (1) Interferes with, or has the potential to interfere with, an individual's ability to participate in ((WSU)) university employment, education, programs, or activities;
- (2) Adversely alters the condition of an individual's ((WSU)) university employment, education, or participation status;
- (3) Creates an objectively abusive employment, program, or educational environment; or
- (4) Results in a material or substantial disruption of ((WSU's)) the university's operations or the rights of students, staff, faculty, visitors, or program participants.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-227, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-227, filed 11/19/18, effective 12/20/18; WSR 14-11-025, § 504-26-227, filed 5/12/14, effective 6/12/14.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-401 Initiating conduct proceedings. (1) Complaints. Any member of the university community may submit a complaint that a student or recognized or registered student organization violated the standards of conduct. In matters that would constitute a violation of executive policy 15, the complaint must be initiated through CCR. In addition, ((the university)) CCS may initiate conduct proceedings when it receives any direct or indirect report of conduct that may violate the standards of conduct.

(2) Decision not to ((refer the matter for hearing)) initiate the community standards process. Except as provided below, after reviewing the initial information, if the conduct officer determines that ((further conduct proceedings are)) additional action from CCS is not warranted, the conduct officer dismisses the matter. If the conduct officer decides not to initiate a conduct proceeding ((when requested by a complainant)), the conduct officer must notify the ((complainant)) reporting party in writing of the decision, the reasons for the decision, and how to seek review of the decision. Conduct matters may be reopened if new relevant information becomes known. A conduct officer cannot dismiss a matter received from CCR where CCR completed a formal investigation implicating Title IX sexual harassment within the university's Title IX jurisdiction, as defined by university executive policy 15, regardless of the investigation's outcome. In such cases, the conduct officer must refer the matter to a conduct board hearing, which must be held within ((sixty)) 60 days of the date the CCR formal investigation report was received, unless good cause exists to extend the date of the hearing or the matter is resolved through agreement or alternative dispute resolution.

(3) ((Notice of informational meeting. After reviewing initial information regarding a possible student conduct violation, if the

~~student conduct officer decides conduct proceedings are warranted, the student conduct officer sends the respondent, or parties as appropriate, written notice of an informational meeting. The notice must, at a minimum, briefly describe the factual allegations or issues involved, the specific standard of conduct provision(s) the respondent is alleged to have violated, the range of possible sanctions for such violations, and the time, date, and place of the meeting. In addition, information regarding the student conduct process and student rights, as required by WAC 504-26-504 (Interpretation Policies, procedures, and guidelines) must be provided. Any request to change or extend the time or date of the informational meeting should be addressed to the conduct officer.~~

~~(4) Purpose of informational meeting. The purpose of the informational meeting is to provide the respondent with information on the conduct process and their rights and responsibilities, and to determine next steps, if any, in resolving the matter. During the informational meeting, the respondent may provide names of witnesses to the conduct officer to potentially contact. In cases involving Title IX, an informational meeting is also offered to a complainant.~~

~~(5)) Agreement and alternative dispute resolution. A conduct officer may resolve a matter by agreement. Agreements may be reached directly or through alternative dispute resolution (. In cases where agreement is not reached directly, before referring the matter to a hearing, the conduct officer must consider, and make a written determination, whether alternative dispute resolution is appropriate to resolve the matter. Alternative dispute resolution must not be used in matters involving sexual misconduct or sexual harassment) including, but not limited to, shuttle diplomacy or mediation. When resolution of a matter is reached by agreement or alternative dispute resolution, the agreement must be in writing and signed by the parties and the conduct officer. In the agreement, the parties must be advised in writing that:~~

~~(a) The disposition is final and they are waiving any right to a hearing on the matter, including any right to appeal; and~~

~~(b) If any party decides not to sign the agreement, and the matter proceeds to a hearing, neither the agreement nor a party's refusal to sign will be used against either party at the hearing.~~

~~((6)) (4) Referral for adjudication. Except as provided in subsection (2) of this section, ((after the informational meeting,)) if ((the conduct officer)) CCS determines that a conduct hearing is warranted, and the matter is not resolved through agreement or alternative dispute resolution, the matter is handled through either a conduct officer hearing (brief adjudication) in accordance with WAC 504-26-402, or conduct board hearing (full adjudication) in accordance with WAC 504-26-403. In determining which process is appropriate, ((the conduct officer)) CCS considers factors including, but not limited to, the nature and severity of the allegations, the respondent's past contacts with ((the center for community standards)) CCS, and the range of possible sanctions that could be assigned. A student may request that a conduct board hear the case, but the final decision regarding whether to refer the matter to the conduct board for hearing is made by ((the conduct officer)) CCS and is not subject to appeal.~~

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-401, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-401, filed 11/19/18, effective 12/20/18; WSR 17-13-049, § 504-26-401, filed

6/15/17, effective 7/16/17; WSR 15-11-041, § 504-26-401, filed
 5/14/15, effective 6/14/15; WSR 15-01-080, § 504-26-401, filed
 12/15/14, effective 1/15/15; WSR 11-11-031, § 504-26-401, filed
 5/11/11, effective 6/11/11; WSR 08-05-001, § 504-26-401, filed 2/6/08,
 effective 3/8/08; WSR 06-23-159, § 504-26-401, filed 11/22/06, effec-
 tive 12/23/06.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-402 Conduct officer hearings (brief adjudications).

(1) The majority of student conduct matters are adjudicated through conduct officer hearings. However, conduct officer hearings are not used to adjudicate matters in which the respondent faces possible sanctions of suspension for more than ~~((ten))~~ 10 instructional days, expulsion, or revocation of degree or when a recognized or registered student organization faces possible loss of recognition. In addition, conduct officer hearings generally are not used to adjudicate matters in which the respondent faces allegations of sexual misconduct, as that term is defined in WAC 504-26-221.

(2) Notice of hearing. The conduct officer must provide the parties with written notice no later than ~~((ten))~~ seven calendar days prior to the conduct officer hearing. The notice must ~~((, at a minimum, briefly describe))~~ include:

(a) A brief description of the factual allegations or issues involved((,));

(b) The specific standard of conduct provision(s) the respondent is alleged to have violated((, the range of possible sanctions for such violations, and));

(c) The time, date, and place of the hearing((. In addition,)) or process by which a respondent may schedule the hearing;

(d) Information regarding what to expect during the student conduct process and student rights((, as required by WAC 504-26-504 must be provided. The notice must also include:

(a) A jurisdiction statement if the alleged behavior occurred off campus and information regarding the right to challenge jurisdiction in accordance with WAC 504-26-015;

(b) Information regarding the right to request recusal of a conduct officer under WAC 504-26-125; and

(c)) including, but not limited to:

(i) A statement that the parties have the right to have an advisor present at the hearing;

(ii) A statement regarding the right not to self-incriminate in accordance with WAC 504-26-045;

(iii) Information regarding the right to request recusal of a conduct officer under WAC 504-26-125;

(e) Available resources, including how to access an information session and legal resources in the community;

(f) A statement that any request to ~~((extend))~~ modify the time or date of the conduct officer ~~((conference/hearing))~~ hearing should be addressed to ~~((the conduct officer))~~ CCS;

(g) A statement that indicates that respondents are presumed "not responsible" for the pending allegations;

(h) A statement that violations are determined by a preponderance of the evidence, meaning that it is more likely than not that the violation occurred.

(3) Hearing and possible outcomes. Conduct officer hearings are brief adjudications conducted in accordance with RCW 34.05.482 through 34.05.494. The hearing allows the conduct officer to review available information, hear the parties' view of the matter, render a decision regarding responsibility, and assign sanctions, as appropriate.

~~(a) ((Before the hearing begins, the conduct officer must inform the respondent that:~~

~~(i) All respondents are presumed "not responsible" for pending charges;~~

~~(ii) The university must prove all violations by a preponderance of the evidence, meaning that it is more likely than not that the violation occurred; and~~

~~(iii) The parties have the right to have an advisor present at the hearing.~~

~~(b-)) Upon conclusion of the hearing, the conduct officer may take any of the following actions:~~

~~(i) ((Terminate the proceeding and enter a finding that)) Find the respondent ((is not)) responsible for any or all of the alleged ((conduct)) violations and assign sanctions as provided in WAC 504-26-425 within the limitations described in subsection (1) of this section;~~

~~(ii) Find the respondent not responsible for any or all of the alleged violations;~~

~~(iii) Dismiss the matter with no finding regarding responsibility, in which case the matter may be reopened at a later date if relevant new information becomes known((;~~

~~(iii) Find the respondent responsible for any violations and impose sanctions within the limitations described in subsection (1) of this section)); or~~

~~(iv) Refer the matter to the conduct board.~~

(4) Notice of decision and right to appeal. The conduct officer notifies the parties in writing of the decision within ~~((ten))~~ 10 calendar days of the conduct officer hearing. This is the initial order of the university and ~~((includes information regarding the parties' right to appeal under WAC 504-26-420))~~ must include:

(a) Description of the allegations that initiated the community standards process;

(b) Description of procedural steps taken from the receipt of the formal complaint up to and including the university conduct board hearing;

(c) Appropriately numbered findings of fact and conclusions;

(d) The sanction(s) and/or remedy(ies) to be assigned, if any, and the rationale for the sanction(s) and/or remedy(ies);

(e) Information regarding the parties' right to appeal according to WAC 504-26-420, including the time frame for seeking review; and

(f) Notice that the initial order becomes final unless an appeal is filed within 20 calendar days of the date the initial order is sent to the parties.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-402, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-402, filed 11/19/18, effective 12/20/18; WSR 17-13-049, § 504-26-402, filed 6/15/17, effective 7/16/17; WSR 16-08-014, § 504-26-402, filed 3/28/16, effective 4/28/16; WSR 15-01-080, § 504-26-402, filed

12/15/14, effective 1/15/15; WSR 12-04-049, § 504-26-402, filed 1/30/12, effective 3/1/12; WSR 11-11-031, § 504-26-402, filed 5/11/11, effective 6/11/11; WSR 08-05-001, § 504-26-402, filed 2/6/08, effective 3/8/08; WSR 06-23-159, § 504-26-402, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-403 Conduct board hearings (full adjudications). (1)

Conduct board hearings are used in matters in which the respondent faces possible sanctions of suspension for more than (~~ten~~) 10 instructional days, expulsion, or revocation of degree and matters in which a recognized or registered student organization faces possible loss of recognition. In addition, conduct board hearings are generally used to adjudicate matters in which the respondent faces allegations of sexual misconduct, as that term is defined in WAC 504-26-221. Other matters may be referred to a conduct board (~~in~~) at the discretion of (~~the conduct officer~~) CCS.

(2) Adoption of model rules of procedure. Conduct board hearings are full adjudications governed by the Administrative Procedure Act, RCW 34.05.413 through 34.05.476, and chapter 10-08 WAC, Model rules of procedure, except as otherwise provided in this chapter. In the event of a conflict between the rules in this chapter and the model rules, this chapter governs.

(3) Notice of hearing. Notice to the parties of a conduct board hearing must comply with model rule WAC 10-08-040 and standards of conduct rule WAC 504-26-035. In addition, information regarding the student conduct process and student rights, as required by WAC (~~504-26-504~~) 504-26-401 must be provided.

(4) Time for conduct board hearings. The conduct board hearing is scheduled not less than (~~ten~~) seven calendar days after the parties have been sent notice of the hearing.

In accordance with WAC 10-08-090, requests to extend the time and/or date for hearing must be addressed to the presiding officer. A request for extension of time is granted only upon a showing of good cause.

(5) Subpoenas. Subpoenas may be issued and enforced in accordance with model rule WAC 10-08-120. In determining whether to issue, quash, or modify a subpoena, the presiding officer must give due consideration to state and federal legal requirements including, but not limited to, Title IX, its implementing regulations, and guidance issued by the federal Office for Civil Rights. The party requesting the subpoena has the burden of showing that a subpoena is necessary for full disclosure of all the relevant facts and issues.

(6) Discovery. Depositions, interrogatories, and physical or medical examinations of parties are not permitted in adjudications of student conduct matters. Other forms of discovery may be permitted at the discretion of the presiding officer; however, discovery should be limited to help ensure the prompt completion of the adjudication process.

(7) Cross-examination. As required by RCW 34.05.449, cross-examination of witnesses is permitted to the extent necessary for full disclosure of all relevant facts and issues. Cross-examination is conducted orally through the party's advisor or representative. If a party

does not have an advisor or representative, an advisor is provided by the university free of charge to conduct cross-examination on that party's behalf. Advisors and representatives are required to engage in cross-examination questioning in a respectful manner. In no circumstance may the complainant or respondent be permitted to cross-examine each other directly. Before any witness or party may answer a cross-examination question, the presiding officer must first determine whether the question is relevant. The presiding officer must instruct parties or witnesses not to answer cross-examination questions that are irrelevant, immaterial, or unduly repetitious.

(8) Decision requirements. Decisions regarding responsibility and sanctions are made by a majority of the conduct board hearing the matter (~~(, except that any sanction of expulsion, revocation of degree, or loss of recognition of a recognized or registered student organization requires a supermajority consisting of no more than one "no" vote)~~).

(9) Notice of decision and right to appeal. Within (~~(ten)~~) 10 calendar days of the completion of the hearing, the conduct board must issue a decision simultaneously to all parties, which is the initial order of the university and must contain the following:

- (a) Description of the allegations that initiated the community standards process;
- (b) Description of procedural steps taken from the receipt of the formal complaint up to and including the university conduct board hearing;
- (c) Appropriately numbered findings of fact and conclusions;
- (d) The sanction(s) and/or remedy(ies) to be assigned, if any, and the rationale for the sanction(s) and/or remedy(ies);
- (e) Information regarding the parties' right to appeal according to WAC 504-26-420, including the time frame for seeking review; and
- (f) Notice that the initial order becomes final unless an appeal is filed within (~~(twenty)~~) 20 calendar days of the date the initial order is sent to the parties.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-403, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-403, filed 11/19/18, effective 12/20/18; WSR 16-08-014, § 504-26-403, filed 3/28/16, effective 4/28/16; WSR 15-11-041, § 504-26-403, filed 5/14/15, effective 6/14/15; WSR 15-01-080, § 504-26-403, filed 12/15/14, effective 1/15/15; WSR 11-11-031, § 504-26-403, filed 5/11/11, effective 6/11/11; WSR 08-05-001, § 504-26-403, filed 2/6/08, effective 3/8/08; WSR 06-23-159, § 504-26-403, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-409 Emergency suspension. (1) Definition. An emergency suspension is a temporary exclusion of a student from all or specified portions of university premises, programs, or activities pending an investigation or student conduct proceeding relating to alleged standards of conduct violations. An emergency suspension may be assigned at any time prior to the issuance of the university's final order in the matter.

(2) Circumstances warranting emergency suspension.

(a) For matters which would not constitute Title IX sexual harassment within the university's Title IX jurisdiction, as defined by university executive policy 15, emergency suspension may be assigned only in situations when the dean of students or ~~((campus))~~ a vice chancellor for student affairs (in consultation with ~~((the center for community standards))~~ CCS), or their designee, has cause to believe that the student:

(i) Has violated any provision of the standards of conduct; and

(ii) Presents an immediate danger to the health, safety, or welfare of any part of the university community or the public at large. Conduct that creates an ongoing disruption of, or interference with, the operations of the university and that prevents other students, employees, or invitees from completing their duties or accessing their education or the educational environment, is conduct harmful to the welfare of members of the university community.

(b) For matters which would constitute Title IX sexual harassment within the university's Title IX jurisdiction, as defined by university executive policy 15, emergency suspension may be assigned only in a situation where the dean of students or ~~((campus))~~ a vice chancellor for student affairs (in consultation with ~~((the center for community standards))~~ CCS), or their designee, has engaged in an individualized safety and risk analysis, and determines that removal is justified because the student:

(i) Has violated any provision of the standards of conduct; and

(ii) Is an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Title IX sexual harassment.

(3) Procedure. The dean of students or ~~((campus))~~ a vice chancellor for student affairs, or their designee, ordering an emergency suspension must send the student a written notice of emergency suspension. The notice must contain the reasons for the decision (both the factual basis and the conclusions as to why those facts constitute a violation of the standards of conduct), the policy reasons for the emergency suspension, and the process to challenge the decision. The emergency suspension does not replace the regular hearing process, which must proceed to a conduct officer hearing or conduct board hearing, as applicable, as quickly as feasible. Once a final order is entered, any emergency suspension is lifted and the sanction, if any, set forth in the final order is assigned.

(4) Challenge of the decision. The student can challenge the emergency suspension decision within ~~((ten))~~ 10 calendar days of the date of notice. Challenges are reviewed by the vice president ~~((of))~~ for student affairs or their designee, provided the designee is not the same person who made the original emergency suspension decision. The vice president ~~((of))~~ for student affairs or designee has ~~((ten))~~ 10 calendar days to respond to the review and can uphold, reverse, or modify the emergency suspension. The submission of a challenge does not stay the emergency suspension decision.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-409, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-409, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-415 Procedure for academic integrity violations. (1) Initial hearing.

(a) When a responsible instructor (~~(finds)~~) believes that (~~(a violation of)~~) an academic integrity violation has occurred, the instructor must assemble the evidence and, upon reasonable notice to the (~~(student)~~) respondent of the date, time, and nature of the allegations, make reasonable attempts to meet with the (~~(student)~~) respondent suspected of (~~(violating)~~) committing an academic integrity (~~(policies)~~) violation.

(b) If the (~~(student)~~) respondent admits (~~(violating)~~) that they committed an academic integrity (~~(policies)~~) violation, the instructor assigns an outcome in keeping with published course policies and notifies (~~(the center for community standards)~~) CCS in writing, including the allegations, the (~~(student's)~~) respondent's admission, and the sanctions assigned.

(~~(b)~~) (c) If the instructor is unable to meet with the (~~(student)~~) respondent or if the respondent disputes the allegation(s) and/or the outcome proposed by the instructor, the instructor must make a determination as to whether the (~~(student)~~) respondent did or did not (~~(violate the)~~) commit an academic integrity (~~(policies)~~) violation based on a preponderance of the evidence standard, meaning that it is more likely than not that the violation occurred. If the instructor finds that the (~~(student)~~) respondent was in violation, the instructor must provide the (~~(student)~~) respondent and (~~(the center for community standards)~~) CCS with a written determination, the evidence relied upon, and the sanctions assigned.

(~~(e)~~) (d) The (~~(student)~~) respondent has (~~(twenty-one)~~) 21 calendar days from the date of the decision letter to request review of the instructor's determination and/or sanction(s) assigned to the academic integrity hearing board.

(2) Review.

(a) Upon timely request for review by a (~~(student)~~) respondent who has been found by their instructor to have (~~(violated the)~~) committed an academic integrity (~~(policies)~~) violation, the academic integrity hearing board must make a separate and independent determination of whether or not the (~~(student)~~) respondent is responsible for (~~(violating the)~~) committing an academic integrity (~~(policies)~~) violation and/or whether the outcome proposed by the instructor is in keeping with the instructor's published course policies.

(b) The academic integrity hearing board must consist of a minimum of three members. A quorum of three is needed to review a matter. A minimum of one academic integrity hearing board member must be an enrolled student. The remaining members may be students, or full-time or part-time faculty of any rank or classification. No academic integrity hearing board member may serve on a case if the member previously served on a board in a case involving the same student.

(c) The academic integrity hearing board is empowered to provide an appropriate remedy for a (~~(student)~~) respondent including arranging a withdrawal from the course, having the (~~(student's)~~) respondent's work evaluated, or changing a grade where it finds that:

(i) The (~~(student)~~) respondent is not responsible for violating academic integrity policies; or

(ii) The outcome assigned by the instructor violates the instructor's published policies.

~~((e))~~ (d) Academic integrity hearing board proceedings.

(i) Any ~~((student))~~ respondent appealing a responsible instructor's finding of an academic integrity violation is provided written notice of an academic integrity hearing board hearing in accordance with WAC 504-26-035. The written notice must include:

(A) The specific complaint, including the university or instructor academic integrity policy or regulation allegedly violated;

(B) The approximate time and place of the alleged act that forms the factual basis for the violation;

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

(D) A list of the witnesses who may be called to testify, to the extent known; and

(E) A description of all documentary and real evidence to be used at the hearing, to the extent known, including a statement that the ~~((student))~~ respondent must have the right to inspect the documentation.

(ii) Time for hearings.

(A) Academic integrity hearing board hearings are scheduled not less than seven calendar days after the ~~((student))~~ respondent has been sent notice of the hearing.

(B) Requests to extend the time and/or date for hearing must be addressed to the chair of the academic integrity hearing board, and must be copied to ~~((the center for community standards))~~ CCS. A request for extension of time is granted only upon a showing of good cause.

(iii) Academic integrity hearing board hearings are conducted according to the following procedures, except as provided by ~~((e))~~ (d)

(iv) of this subsection:

(A) Academic integrity hearing board hearings are conducted in private.

(B) The instructor, respondent, and their advisor, if any, are allowed to attend the entire portion of the hearing at which information is received (excluding deliberations). Admission of any other person to the hearing is at the discretion of the academic integrity hearing board chair.

(C) In academic integrity hearings involving more than one respondent, the academic integrity hearing board chair may permit joint or separate hearings at the chair's discretion.

(D) In hearings involving graduate ~~((students))~~ respondents, board memberships are comprised to include graduate students and graduate teaching faculty to the extent possible.

(E) The responsible instructor and the respondent may arrange for witnesses to present relevant information to the academic integrity hearing board. Witnesses must provide written statements to the conduct officer at least two weekdays before the hearing. The respondent is responsible for informing their witnesses of the time and place of the hearing. Witnesses provide information to and answer questions from the academic integrity hearing board, the responsible instructor, and the respondent, as appropriate. The respondent and/or responsible instructor may ~~((suggest))~~ submit written questions to be answered by each other or by other witnesses. Written questions are submitted to, and asked by, the academic integrity hearing board chair. This method is used to preserve the educational tone of the hearing and to avoid creation of an unduly adversarial environment, and to allow the board chair to determine the relevancy of questions. Questions concerning whether potential information may be received are resolved at the dis-

cretion of the academic integrity hearing board chair, who has the discretion to determine admissibility of information.

(F) Pertinent records, exhibits, and written statements may be accepted as information for consideration by an academic integrity hearing board at the discretion of the chair.

(G) Questions related to the order of the proceedings are subject to the final decision of the chair of the academic integrity hearing board.

(H) After the portion of the hearing concludes in which all pertinent information is received, the academic integrity hearing board determines (by majority vote) whether or not the respondent is more likely than not responsible for violating the academic integrity policy and/or whether the outcome proposed by the instructor is in keeping with the instructor's published course policies.

(I) The respondent is notified of the academic integrity hearing board's decision within (~~twenty~~) 20 calendar days from the date the matter is heard. The respondent must receive written notice of the decision, the reasons for the decision (both the factual basis therefore and the conclusions as to how those facts apply to the academic integrity policies), and the sanction.

(iv) If a respondent to whom notice of the hearing has been sent (in the manner provided above) does not appear at the hearing, the information in support of the complaint is presented and considered in the respondent's absence, and the board may issue a decision based upon that information.

(v) The academic integrity hearing board may for convenience, or to accommodate concerns for the personal safety, well-being, and/or fears of confrontation of any person, provide separate facilities, and/or permit participation by telephone, audio tape, written statement, or other means, as determined in the sole judgment of the chair of the academic integrity hearing board to be appropriate.

(vi) The written decision of the academic integrity hearing board is the university's final order. There is no appeal from findings of responsibility or outcomes assigned by (~~university or college~~) academic integrity hearing board(~~s~~).

(3) If the reported violation is the respondent's first offense, (~~the center for community standards~~) CCS ordinarily requires the respondent to attend a workshop separate from, and in addition to, any academic outcomes assigned by the instructor. (~~A hold is placed on the respondent's record preventing registration or graduation until completion of the workshop.~~)

(4) If the reported violation is the respondent's second offense, the respondent is ordinarily referred for a full adjudicative hearing in accordance with WAC 504-26-403, (~~with a recommendation that the respondent be dismissed~~) to determine appropriate sanctions, which may include expulsion from the university.

(5) If the instructor or academic integrity hearing board determines that the act of academic dishonesty for which the respondent is found responsible is particularly egregious in light of all attendant circumstances, the instructor or academic integrity hearing board may direct that the respondent's case be referred (~~for a full adjudicative hearing,~~) to the conduct board with a recommendation for (~~dismissal~~) expulsion from the university even if it is the respondent's first offense.

(6) Because instructors and departments have a legitimate educational interest in the outcomes, reports of academic integrity hearing

board and/or conduct board hearings must be reported to the responsible instructor and the chair or dean.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-415, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-415, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-420 Appeals. (1) Time for appeals. Decisions made by a conduct officer or conduct board become final on the (~~twenty-first~~) 21st calendar day after the date the decision is sent to the parties, unless an appeal is submitted within (~~twenty~~) 20 calendar days of the date the decision is sent to the parties.

(2) Effect of appeal - Stay. Except in extraordinary circumstances, which must be explained in writing in the conduct officer's or conduct board's initial order, the implementation of an initial order assigning sanctions must be stayed pending the time for filing an appeal and the issuance of the university's final order.

(3) Appeals of conduct officer decisions. Upon receipt of a timely appeal, (~~the appeals board~~) CCS provides the other parties, if applicable, with a copy of the appeal and an opportunity to respond (~~and~~) within 10 calendar days. The appeals board then conducts a limited review as described below.

(a) Scope of review. Except as required to explain the basis of new information, appeal of a conduct officer decision is limited to a review of the record for one or more of the following purposes:

(i) To determine whether the conduct (~~officer~~) hearing was conducted fairly in light of the charges and information presented, and in conformity with prescribed procedures; deviations from designated procedures are not a basis for sustaining an appeal unless (~~significant prejudice results~~) procedural error affected the outcome of the matter;

(ii) To determine whether the decision reached was based on substantial information, that is, whether there were facts in the case that, if believed by the fact finder, were sufficient to establish that a violation of the standards of conduct occurred;

(iii) To determine whether the sanction(s) assigned were appropriate for the violation of the standards of conduct that the respondent was found to have committed; (~~or~~)

(iv) To consider new information, sufficient to alter a decision, or other relevant facts not brought out in the original conduct officer hearing, because such information and/or facts were not known to the person appealing at the time of the original conduct officer hearing;

(v) To consider whether or not the university had jurisdiction per WAC 504-26-015 to address the situation through the community standards process. In cases implicating the university's executive policy 15, the appeals board must consult with the university's Title IX coordinator; or

(vi) To consider whether the Title IX coordinator, investigator(s), or decision maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

(b) Conversion to conduct board hearing. The appeals board makes any inquiries necessary to ascertain whether the proceeding must be converted to a conduct board hearing in accordance with WAC 504-26-403.

(4) Appeals of conduct board decisions. Upon receipt of a timely appeal, ~~((the appeals board))~~ CCS provides the other parties, if applicable, with a copy of the appeal and an opportunity to respond within 10 calendar days.

~~((a))~~ The appeals board must have and exercise all the decision-making power that the conduct board had, except that the appeals board must give due regard to the conduct board's opportunity to observe the witnesses, if applicable. The appeals board members must personally consider the whole record or such portions of it as may be cited by the parties.

~~((b) Scope of review. The appeals board conducts a full review in accordance with RCW 34.05.464.)~~

(5) University's right to initiate appeal. The university president or designee, at their own initiative, may request that the appeals board review any initial order. Prior to taking action, the appeals board must notify the parties and allow them an opportunity to explain the matter.

(6) Appeals board decisions.

(a) Actions. After reviewing the record and any information provided by the parties, the appeals board may take the following actions:

(i) Affirm, reverse, or modify the conduct board's or conduct officer's decision, or any part of the decision;

(ii) Affirm, reverse, or modify the sanctions assigned by the conduct board or conduct officer, or any part of the sanctions; or

(iii) Set aside the findings or sanctions, or any part of the findings or sanctions, and remand the matter back to the conduct board or conduct officer with instructions for further proceedings.

(b) Content of decision. The decision includes the outcome, any sanction, and a brief statement of the reasons for the decision. The letter must advise the parties that judicial review may be available. For appeals of conduct board hearings, the decision includes, or incorporates by reference to the conduct board's decision, all matters as set forth in WAC 504-26-403.

(c) Service and effective date of decision. For appeals of conduct officer decisions, the appeals board's decision must be sent simultaneously to the parties within ~~((twenty))~~ 20 calendar days of receipt of the appeal. For appeals of conduct board decisions, the appeals board's decision must be sent simultaneously to the parties within ~~((thirty))~~ 30 calendar days of receipt of the appeal, unless the appeals board notifies the parties in writing that additional time (up to ~~((ninety))~~ 90 calendar days) is needed. The appeals board's decision is the final order of the university, except in the case of remand, and is effective when sent.

(7) Reconsideration of final orders. Within ~~((ten))~~ 10 calendar days of service of a final order, any party may submit a request for reconsideration. The request must be in writing, directed to the appeals board, and must state the reasons for the request. The request for reconsideration does not stay the effective date of the final order. However, the time for filing a petition for judicial review does not commence until the date the appeals board responds to the request for reconsideration or ~~((twenty-one))~~ 21 calendar days after the request has been submitted, whichever is sooner. If the appeals board

does not respond to the request for reconsideration within (~~twenty-one~~) 21 calendar days, the request is deemed to have been denied.

(8) Stay. A party may request that the university delay the date that the final order becomes effective by requesting a stay in writing to the appeals board within (~~ten~~) 10 calendar days of the date the order was served.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-420, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-420, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-425 Sanctions. (1) Publication of guidelines for sanctioning. Sanctioning guidelines and other information regarding sanctioning must be published on the (~~center for community standards~~) university website. Guidelines must explain in plain language the types of sanctions that a respondent may face for a particular violation and the factors that are used to determine the sanction(s) assigned for a particular violation.

(2) Factors for sanctioning must include, but not be limited to, the following:

(a) Conduct record. Any record of past violations of the standards of conduct, and the nature and severity of such past violations;

(b) Malicious intent. If a respondent is found to have intentionally selected a victim based upon the respondent's perception of the victim's race, color, religion, national or ethnic origin, age, sex/gender, marital status, status as an honorably discharged veteran or member of the military, sexual orientation, genetic information, gender identity/expression, or mental, physical, or sensory disability (including disability requiring the use of a trained service animal), such finding is considered an aggravating factor in determining a sanction for such conduct; (~~and~~)

(c) Impact on victim and/or university community;

(d) Applicable local, state, or federal laws that define sanctioning.

(~~2~~) (3) Effective date of sanctions. Except as provided in WAC 504-26-420(2), sanctions are implemented when a final order becomes effective. If no appeal is filed, an initial order becomes a final order on the day after the period for requesting review has expired. (See WAC 504-26-420.)

(~~3~~) (4) Types of sanctions. The following sanctions may be assigned to any respondent found to have violated the standards of conduct. More than one of the sanctions listed below may be assigned for any single violation:

(a) Warning. A notice in writing to the respondent that the respondent is violating or has violated (~~institutional regulations~~) the standards of conduct.

(b) Probation. Formal action placing conditions upon the respondent's continued attendance, recognition, or registration at the university. Probation is for a designated period of time and warns the (~~student or recognized or registered student organization~~) respondent that suspension, expulsion, loss of recognition, or any other sanction outlined in this section may be assigned if the (~~student or~~

~~recognized or registered student organization~~) respondent is found to have violated the standards of conduct or any institutional regulation(s) or fails to complete any conditions of probation during the probationary period. A ~~((student))~~ respondent on probation is not eligible to run for or hold an office in any recognized or registered student group or organization; they are not eligible for certain jobs on campus including, but not limited to, resident advisor or orientation counselor; and they are not eligible to serve on the university conduct or appeals board.

(c) Loss of privileges. Denial of specified privileges for a designated period of time.

(d) Restitution. Compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement.

(e) Education. ~~((The university may require the respondent))~~ Requirement to successfully complete an educational project designed to create an awareness of the respondent's misconduct.

(f) Community service. Assignment of service hours (not to exceed ~~((eighty))~~ 80 hours per ~~((student))~~ respondent or per member of a recognized or registered student organization).

(g) University housing suspension. Separation of the ~~((student))~~ respondent from a residence hall or halls for a definite period of time, after which the ~~((student))~~ respondent may be eligible to return. Conditions for readmission may be specified.

(h) University housing expulsion. Permanent separation of the ~~((student))~~ respondent from a residence hall or halls.

(i) University suspension. Separation of the ~~((student))~~ respondent from the university for a definite period of time ~~((, after which the student is eligible))~~. The respondent may be required to request readmission after completing a suspension per other university policy. ~~((Conditions for readmission may be specified.))~~

(j) University expulsion. Permanent separation of the ~~((student))~~ respondent from the university. Also referred to as university dismissal. The terms are used interchangeably throughout this chapter.

(k) Revocation of admission and/or degree. Admission to or a degree awarded from the university may be revoked for fraud, misrepresentation, or other violation of law or standard of conduct in obtaining the degree or admission, or for other serious violations committed by a ~~((student))~~ respondent before awarding of the degree.

(l) Withholding degree. The university may withhold awarding a degree otherwise earned until the completion of the process set forth in these standards of conduct, including the completion of all sanctions assigned, if any.

(m) Trespass. A ~~((student))~~ respondent may be restricted from any or all university premises based on their misconduct.

(n) Loss of recognition. A recognized or registered student organization's recognition (or ability to register) may be withheld permanently or for a specific period of time. ~~((A fraternity or sorority may be prohibited from housing first year students.))~~ Loss of recognition is defined as withholding university services, privileges, or administrative approval from a recognized or registered student organization. Services, privileges, and approval to be withdrawn include, but are not limited to, intramural sports (although individual members may participate), information technology services, university facility use and rental, student involvement office organizational activities, and their liaison relationship with the center for fraternity and sorority life ~~((advising))~~.

(o) Hold on transcript and/or registration. A hold restricts release of a ~~((student's))~~ respondent's transcript or access to registration until satisfactory completion of conditions or sanctions assigned by a conduct officer or university conduct board. Upon proof of satisfactory completion of the conditions or sanctions, the hold is released.

(p) No contact ~~((order))~~ directive. A prohibition of direct or indirect physical, verbal, and/or written contact with another individual or group.

(q) Fines. Previously established and published fines may be assigned. Fines are established each year prior to the beginning of the academic year and are approved by the vice president for student affairs.

(r) Additional sanctions for hazing. In addition to other sanctions, a ~~((student))~~ respondent who is found responsible for hazing forfeits any entitlement to state-funded grants, scholarships, or awards for a specified period of time, in accordance with RCW 28B.10.902. Any recognized or registered student organization that is found responsible for hazing must lose recognition for a specified period of time.

(s) Remedies. Sanctions designed to restore or preserve a ~~((victim's))~~ complainant's equal access to the university's educational programs or activities.

~~((4) Academic integrity violations. No credit need be given for work that is not a student's own. Thus, in academic integrity violations, the responsible instructor has the authority to assign a grade and/or educational sanction in accordance with the expectations set forth in the relevant course syllabus. The instructor's choices may include, but are not limited to, assigning a grade of "F" for the assignment and/or assigning an educational sanction such as extra or replacement assignments, quizzes, or tests, or assigning a grade of "F" for the course.))~~

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-425, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-425, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-504 Interpretation—Policies, procedures, and guidelines. (1) The ~~((vice president for student affairs))~~ dean of students or designee has authority to interpret these rules and develops policies, procedures, and guidelines for the administration of the university's student conduct system that are consistent with the provisions in this chapter. These must be published, at a minimum, on the ~~((center for community standards))~~ university website ~~((and in the university's student handbook))~~. A link to the ~~((student handbook or center for community standards))~~ website must be provided to parties ~~((prior to any informational meeting or student conduct hearing and must provide the following information:~~

~~((a) Rights in the student conduct process;~~

~~((b) A clear explanation of what to expect during the process;~~

~~(c) Information regarding legal resources available in the community;~~

~~(d) A statement that respondents are presumed "not responsible";~~
and

~~(e) A statement regarding the right not to self-incriminate in accordance with WAC 504-26-045)) during their initial contact from CCS.~~

(2) Definitions from these standards are incorporated into ((Washington State)) the university's executive policy 15.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-504, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-504, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-510 Good Samaritan policy. ((A conduct officer)) CCS may elect not to initiate a conduct proceeding regarding alcohol or other drug violations against a student or recognized or registered student organization who, while in the course of helping another person seek medical assistance, admits to the unlawful possession or use of alcohol or drugs, provided that the possession was for personal consumption and the use did not place the health or safety of any other person at risk. In addition, ((a conduct officer)) CCS may elect not to initiate a conduct proceeding against a complainant who admits to the possession or use of alcohol or drugs in connection with a report under this policy.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-510, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-515 Periodic review and assessment. At the end of each academic year, ((the center for community standards)) CCS provides a report to the ((vice president for student affairs)) dean of students which must include, at a minimum, a numerical breakdown of the types of matters handled and the sanctions assigned. The ((vice president for student affairs)) dean of students must make the report publicly available, provided all personally identifiable or readily ascertainable student information is removed.

The standards of conduct and the student conduct system as a whole are reviewed every three years under the direction of the ((vice president for student affairs)) dean of students or designee. The student government council is asked to provide recommendations and input on proposed changes. After completion of any adjudication or other resolution of a student conduct matter, ((the center for community standards)) CCS must send a survey to all parties requesting feedback on the process. Feedback results must be reviewed, at a minimum, every three years in connection with the periodic review and assessment.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-515, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-515, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-520 Conduct hold on student record. When a student leaves the university or completes course work required for a degree after an incident occurs that could result in violations of the standards of conduct, (~~(the center for community standards)~~) CCS may place a conduct hold on the student's record. A conduct hold may also be placed on the student's account if the student has failed to adequately complete sanctions by the proscribed timeline. A conduct hold may restrict the student from adding or dropping classes, requesting an official transcript, or receiving a degree from the university until the hold is removed. (~~(The center for community standards)~~) CCS must advise the student of the hold and the process for challenging the hold. A conduct hold under these circumstances is not a sanction and does not imply or assume responsibility for a violation of the standards of conduct.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-520, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-530 Recordkeeping and confidentiality. (1) Removal of conduct record. A student may request removal (~~(from their record)~~) of a single disciplinary violation ((relating to the possession or use of alcohol and/or marijuana, and/or other violation of the university's policies relating to alcohol and drugs)) from their record. Granting such a request is discretionary, and the student must make such a request in accordance with university policies and procedures.

(2) Conduct records are maintained in accordance with the university's records retention schedule.

(3) The conduct record is confidential and is released only as authorized under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99) and chapter 504-21 WAC, University policy on student education records. Situations where CCS may release records include, but are not limited to, releases:

(a) To another educational institution, upon request, where the student seeks or intends to enroll;

(b) To a parent or legal guardian, if a student under the age of 21 is found responsible for a drug or alcohol violation;

(c) To comply with legally served search warrants and subpoenas;

(d) To other university employees, if there is an educational need for the employee to know the information;

(e) To inform the complainant of the outcome of any conduct proceeding involving a crime of violence as defined by FERPA;

(f) To inform the complainant of the outcome of any conduct proceeding alleging dating violence, domestic violence, sexual assault, or stalking as defined by the Clery Act (34 C.F.R. 668.46(k)(2)(v)(A)).

(4) A student may request a copy of their own conduct record at their own reasonable expense by making a written request to ~~((the center for community standards))~~ CCS.

(5) Personally identifiable student information is redacted to protect other students' privacy, except as otherwise required by law.

(6) A student may authorize release of their own conduct record to a third party in compliance with FERPA by making a written request to ~~((the center for community standards))~~ CCS.

~~((7) The university may inform the complainant of the outcome of any conduct proceeding involving a crime of violence as defined by FERPA.~~

~~(8) The university informs the complainant of the outcome of any conduct proceeding alleging sexual misconduct. (34 C.F.R. 668.46 (b)(11)(vi)(B).)~~

~~(9) The university may not communicate a student's conduct record to any person or agency outside the university without the prior written consent of the student, except as required or permitted by law. Exceptions include, but are not limited to:~~

~~(a) The student's parents or legal guardians may review these conduct records if the student is a dependent for tax purposes as defined by FERPA.~~

~~(b) The university may release conduct records to another educational institution, upon request, where the student seeks or intends to enroll, as allowed by FERPA.)~~

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-530, filed 11/19/18, effective 12/20/18.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 504-26-214	Disruptive activity.
WAC 504-26-215	Obstruction.
WAC 504-26-216	Disorderly conduct.
WAC 504-26-226	Violation of a disciplinary sanction.

WSR 22-23-144
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed November 22, 2022, 8:51 a.m., effective December 26, 2022]

Effective Date of Rule: December 26, 2022.

Purpose: The department of labor and industries (L&I) conducted rule making to better align chapter 296-304 WAC, Safety standards for ship repairing, shipbuilding and shipbreaking, with the United States Occupational Safety and Health Administration (OSHA) personal protective equipment requirements for eye and face protection for Shipyard Employment found at 29 C.F.R. 1915, Subpart I.

OSHA updated personal protective equipment requirements for eye and face protection for Shipyard Employment found at 29 C.F.R. 1915, Subpart I. This required L&I to update chapter 296-304 WAC, Safety standards for ship repairing, shipbuilding and shipbreaking, to be at-least-as-effective-as OSHA requirements, as statutorily required per chapter 49.17 RCW, the Washington Industrial Safety and Health Act.

Additionally, this rule making incorporated housekeeping and formatting changes.

WAC 296-304-010 Scope and application:

Chapter 296-880 WAC, Unified safety standards for fall protection, applies to ship repairing, shipbuilding and shipbreaking industries. Adopted language added reference to ensure stakeholders in these industries are aware of this.

WAC 296-304-01001 Definitions:

- Added definition of "auto-darkening helmet." Definition developed by L&I staff and information from welding headquarters. Use of "auto-darkening helmet" is industry standard. Employer not required to provide. Recognizes employees may purchase and prefer to use.
- Added numbers to defined words.
- Updated formatting of numbers throughout the section.

WAC 296-304-03005 Mechanical paint removers:

- Updated subsection (3)(c)(i), added an exception to include additional piece of personal protective equipment (PPE) during abrasive blasting.
- Moved text in subsection (3)(c)(ii) to be part of the exception and renumbered subsequent subsections.
- Updated subsection (3)(c)(iv), added reference to chapter 296-880 WAC, Unified safety standards for fall protection.

WAC 296-304-04001 Ventilation and protection in welding, cutting and heating:

- Updated table I-1A and table I-1B to align with OSHA personal protective equipment requirements for eye and face protection for shipyard employment found in 29 C.F.R. 1915, Subpart I (29 C.F.R. 1915.153).
- Added note below table to include use of auto-darkening helmets.
- Reformatted to address formatting error.
- Updated formatting of numbers throughout the section.

WAC 296-304-05001 Scaffolds or staging:

- Subsection (9)(c), removed erroneous reference to WAC 296-304-09021(2). WAC 296-304-09021(2) was removed as part of unified fall protection rule making (WSR 20-12-091). As part of this rule making, the adopted amendments removed the erroneous reference, and added a reference to chapter 296-880 WAC, Unified safety standards for fall protection.
- Updated formatting of numbers throughout the section.

Citation of Rules Affected by this Order: Amending WAC 296-304-010, 296-304-01001, 296-304-03005, 296-304-04001, and 296-304-05001.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

Adopted under notice filed as WSR 22-17-125 on August 23, 2022.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, Repealed 0.

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

Date Adopted: November 22, 2022.

Joel Sacks
Director

OTS-3417.3

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-304-010 Scope and application. (1) The provisions and standards of the general safety and health standards, chapters 296-24, 296-62 (~~and~~), 296-800, and 296-880 WAC, and such other codes and standards as are promulgated by the department of labor and industries which are applicable to all industries, shall be applicable in the ship repairing, shipbuilding, or shipbreaking industries whenever the employees are covered under the Washington State Industrial Safety and Health Act, chapter 49.17 RCW. The rules of this chapter and the rules of the aforementioned chapters 296-24, 296-62, (~~and~~) 296-800, and 296-880 WAC are applicable to all ship repairing, shipbuilding, and shipbreaking industries and operations, provided that such rules shall not be applicable to those operations under the exclusive safety jurisdiction of the federal government.

(2) The responsibility for compliance with these regulations is placed upon "employers" as defined in WAC 296-304-01001.

(3) It is not the intent of these regulations to place additional responsibilities or duties on owners, operators, agents or masters of vessels unless such persons are acting as employers, nor is it the intent of these regulations to relieve such owners, operators, agents or masters of vessels from responsibilities or duties now placed upon them by law, regulation or custom.

(4) The responsibilities placed upon the competent person herein shall be deemed to be the responsibilities of the employer.

[Statutory Authority: RCW 49.17.010, [49.17].040, and [49.17].050. WSR 01-11-038, § 296-304-010, filed 5/9/01, effective 9/1/01. Statutory Authority: RCW 49.17.040, [49.17].050 and [49.17].060. WSR 98-02-006, § 296-304-010, filed 12/26/97, effective 3/1/98. Statutory Authority: RCW 49.17.010, [49.17].050 and [49.17].060. WSR 95-22-015, § 296-304-010, filed 10/20/95, effective 1/16/96. Statutory Authority: Chapter 49.17 RCW. WSR 95-04-006, § 296-304-010, filed 1/18/95, effective 3/10/95; WSR 89-11-035 (Order 89-03), § 296-304-010, filed 5/15/89, effective 6/30/89; Order 75-6, § 296-304-010, filed 3/10/75; Order 74-25, § 296-304-010, filed 5/7/74.]

AMENDATORY SECTION (Amending WSR 20-12-091, filed 6/2/20, effective 10/1/20)

WAC 296-304-01001 Definitions. (1) Additional safety measure. A component of the tags-plus system that provides an impediment (in addition to the energy-isolating device) to the release of energy or the generalization or start-up of the machinery, equipment, or system being serviced. Examples of additional safety measures include, but are not limited to, removing an isolating circuit element; blocking a controlling switch; blocking, blanking, or bleeding lines; removing a valve handle or wiring it in place; opening an extra disconnecting device.

(2) Affected employee. An employee who normally operates or uses the machinery, equipment, or system that is going to be serviced under lockout/tags-plus or who is working in the area where servicing is being performed under lockout/tags-plus. An affected employee becomes an authorized employee when the employer assigns the employee to service any machine, equipment, or system under a lockout/tags-plus application.

(3) Alarm. A signal or message from a person or device that indicates that there is a fire, medical emergency, or other situation that requires emergency response or evacuation. At some shipyards, this may be called an "incident" or a "call for service."

(4) Alarm system. A system that warns employees at the worksite of danger.

(5) Anchorage. A secure point of attachment for lifelines, lanyards, or deceleration devices which is capable of withstanding the forces specified in this chapter.

(6) Authorized employee:

(a) An employee who performs one or more of the following lockout/tags-plus responsibilities:

(i) Executes the lockout/tags-plus procedures;

(ii) Installs a lock or tags-plus system on machinery, equipment, or systems; or

(iii) Services any machine, equipment, or system under lockout/tags-plus application.

(b) An affected employee becomes an authorized employee when the employer assigns the employee to service any machine, equipment, or system under a lockout/tags-plus application.

(7) **Auto-darkening helmet.** A welding helmet which is equipped with a light sensor, ultra-violet filter/infra-red filter and a series of liquid crystal and aluminized or silver layers; which is capable of adjusting the lens to an appropriate shade automatically upon initiating welding arc, without input from the wearer.

(8) **Body belt.** A strap with means to both secure it around the waist and to attach it to a lanyard, lifeline, or deceleration device. Body belts may be used only in fall restraint or positioning device systems and may not be used for fall arrest. Body belts must be at least one and five-eighths inches (4.13 cm) wide.

(9) **Body harness.** Straps to secure around an employee so that fall arrest forces are distributed over at least the thighs, shoulders, chest and pelvis with means to attach it to other components of a personal fall arrest system.

(10) **Capable of being locked out.** An energy-isolating device is capable of being locked out if it has a locking mechanism built into it, or it has a hasp or other means of attachment to which, or through which, a lock can be affixed. Other energy-isolating devices are capable of being locked out if lockout can be achieved without the need to dismantle, rebuild, or replace the energy-isolating device or permanently alter its energy-control capability.

(11) **Class II standpipe system.** A one and one-half inch (3.8 cm) hose system which provides a means for the control or extinguishment of incipient stage fires.

(12) **Cold work.** Work that does not involve riveting, welding, burning, or other fire-producing or spark-producing operations.

(13) **Contract employer.** An employer, such as a painter, joiner, carpenter, or scaffolding subcontractor, who performs work under contract to the host employer or to another employer under contract to the host employer at the host employer's worksite. This excludes employers who provide incidental services that are not directly related to shipyard employment (such as mail delivery or office supply and food vending services).

(14) **Competent person.** A person who can recognize and evaluate employee exposure to hazardous substances or to other unsafe conditions and can specify the necessary protection and precautions necessary to ensure the safety of employees as required by these standards.

(15) **Confined space.** A small compartment with limited access such as a double bottom tank, cofferdam, or other small, confined space that can readily create or aggravate a hazardous exposure.

(16) **Connector.** A device used to connect parts of a personal fall arrest system or parts of a positioning device system together. It may be:

(a) An independent component of the system (such as a carabiner);
or

(b) An integral component of part of the system (such as a buckle or D-ring sewn into a body belt or body harness or a snaphook spliced or sewn to a lanyard or self-retracting lanyard).

(17) **Dangerous atmosphere.** An atmosphere that may expose employees to the risk of death, incapacitation, injury, acute illness, or impairment of ability to self-rescue (i.e., escape unaided from a confined or enclosed space).

(18) Deceleration device. A mechanism, such as a rope grab, rip stitch lanyard, specially woven lanyard, tearing or deforming lanyard, or automatic self-retracting lifeline/lanyard, that serves to dissipate a substantial amount of energy during a fall arrest, or to limit the energy imposed on an employee during fall arrest.

(19) Deceleration distance. The additional vertical distance a falling employee travels, excluding lifeline elongation and free fall distance, before stopping, from the point at which the deceleration device begins to operate. It is measured from the location of an employee's body belt or body harness attachment point at the moment of activation (at the onset of fall arrest forces) of the deceleration device during a fall, to the location of that attachment point after the employee comes to a full stop.

(20) Designated area. An area established for hot work after an inspection that is free of fire hazards.

(21) Director. The director of the department of labor and industries or a designated representative.

(22) Drop test. A method utilizing gauges to ensure the integrity of an oxygen fuel gas burning system. The method requires that the burning torch is installed to one end of the oxygen and fuel gas lines and then the gauges are attached to the other end of the hoses. The manifold or cylinder supply valve is opened and the system is pressurized. The manifold or cylinder supply valve is then closed and the gauges are watched for at least ((sixty)) 60 seconds. Any drop in pressure indicates a leak.

(23) Dummy load. A device used in place of an antenna to aid in the testing of a radio transmitter that converts transmitted energy into heat to minimize energy radiating outward or reflecting back to its source during testing.

(24) Emergency operations. Activities performed by fire response organizations that are related to: Rescue, fire suppression, emergency medical care, and special operations or activities that include responding to the scene of an incident and all activities performed at that scene.

(25) Employee. Any person engaged in ship repairing, ship building, or ship breaking or related employment as defined in these standards.

(26) Employer. An employer with employees who are employed, in whole or in part, in ship repair, ship building and ship breaking, or related employment as defined in these standards.

(27) Enclosed space. A space, other than a confined space, that is enclosed by bulkheads and overhead. It includes cargo holds, tanks, quarters, and machinery and boiler spaces.

(28) Energy-isolating device. A mechanical device that, when utilized or activated, physically prevents the release or transmission of energy. Energy-isolating devices include, but are not limited to, manually operated electrical circuit breakers; disconnect switches; line valves; blocks; and any similar device used to block or isolate energy. Control-circuit devices (for example, push buttons, selector switches) are not considered energy isolating devices.

(29) Equivalent. Alternative designs, materials, or methods to protect against a hazard which the employer can demonstrate and will provide an equal or greater degree of safety for employees than the methods, materials, or designs specified in this standard.

(30) Fire hazard. A condition or material that may start or contribute to the spread of fire.

(31) Fire protection. Methods of providing fire prevention, response, detection, control, extinguishment, and engineering.

(32) Fire response. The activity taken by the employer at the time of an emergency incident involving a fire at the worksite, including fire suppression activities carried out by internal or external resources or a combination of both, or total or partial employee evacuation of the area exposed to the fire.

(33) Fire response employee. A shipyard employee who carries out the duties and responsibilities of shipyard firefighting in accordance with the fire safety plan.

(34) Fire response organization. An organized group knowledgeable, trained, and skilled in shipyard firefighting operations that responds to shipyard fire emergencies, including: Fire brigades, shipyard fire departments, private or contractual fire departments, and municipal fire departments.

(35) Fire suppression. The activities involved in controlling and extinguishing fires.

(36) Fire watch. The activity of observing and responding to the fire hazards associated with hot work in shipyard employment and the employees designated to do so.

(37) Fixed extinguishing system. A permanently installed fire protection system that either extinguishes or controls fire occurring in the space it protects.

(38) Flammable liquid. Means any liquid having a flashpoint at or below 199.4°F (93°C). Flammable liquids are divided into four categories as follows:

(a) Category 1 shall include liquids having flashpoints below 73.4°F (23°C) and having a boiling point at or below 95°F (35°C).

(b) Category 2 shall include liquids having flashpoints below 73.4°F (23°C) and having a boiling point above 95°F (35°C).

(c) Category 3 shall include liquids having flashpoints at or above 73.4°F (23°C) and at or below 140°F (60°C). When a Category 3 liquid with a flashpoint at or above 100°F (37.8°C) is heated for use to within 30°F (16.7°C) of its flashpoint, it shall be handled in accordance with the requirements for a Category 3 liquid with a flashpoint below 100°F (37.8°C).

(d) Category 4 shall include liquids having flashpoints above 140°F (60°C) and at or below 199.4°F (93°C). When a Category 4 flammable liquid is heated for use to within 30°F (16.7°C) of its flashpoint, it shall be handled in accordance with the requirements for a Category 3 liquid with a flashpoint at or above 100°F (37.8°C).

(e) When liquid with a flashpoint greater than 199.4°F (93°C) is heated for use to within 30°F (16.7°C) of its flashpoint, it shall be handled in accordance with the requirements for a Category 4 flammable liquid.

(39) Free fall. To fall before a personal fall arrest system begins to apply force to arrest the fall.

(40) Free fall distance. The vertical displacement of the fall arrest attachment point on the employee's body harness between onset of the fall and just before the system begins to apply force to arrest the fall. This distance excludes deceleration distance, and lifeline/lanyard elongation, but includes any deceleration device slide distance or self-retracting lifeline/lanyard extension before the device operates and fall arrest forces occur.

(41) Gangway. A ramp-like or stair-like means to board or leave a vessel including accommodation ladders, gangplanks and brows.

(42) Hazardous energy. Any energy source, including mechanical (for example, power transmission apparatus, counterbalances, springs, pressure, gravity), pneumatic, hydraulic, electrical, chemical, and thermal (for example, high or low temperature) energies, that could cause injury to employees.

(43) Hazardous substance. A substance likely to cause injury, illness or disease, or otherwise harm an employee because it is explosive, flammable, poisonous, corrosive, oxidizing, irritating, or otherwise harmful.

(44) Health care professional. A physician or any other health care professional whose legally permitted scope of practice allows the provider to independently provide, or be delegated the responsibility to provide, some or all of the advice or consultation this subpart requires.

(45) Hose systems. Fire protection systems consisting of a water supply, approved fire hose, and a means to control the flow of water at the output end of the hose.

(46) Host employer. An employer who is in charge of coordinating work or who hires other employers to perform work at a multiemployer workplace.

(47) Hot work. Riveting, welding, burning or other fire or spark producing operations.

(48) Incident management system. A system that defines the roles and responsibilities to be assumed by personnel and the operating procedures to be used in the management and direction of emergency operations; the system is also referred to as an "incident command system (ICS)."

(49) Incipient stage fire. A fire, in the initial or beginning stage, which can be controlled or extinguished by portable fire extinguishers, Class II standpipe or small hose systems without the need for protective clothing or breathing apparatus.

(50) Inerting. The displacement of the atmosphere in a permit space by noncombustible gas (such as nitrogen) to such an extent that the resulting atmosphere is noncombustible. This procedure produces an IDLH oxygen-deficient atmosphere.

(51) Interior structural firefighting operations. The physical activity of fire response, rescue, or both involving a fire beyond the incipient stage inside of buildings, enclosed structures, vessels, and vessel sections.

(52) Isolated location. An area in which employees are working alone or with little assistance from others due to the type, time, or location of their work. Such locations include remote locations or other work areas where employees are not in close proximity to others.

(53) Lanyard. A flexible line of webbing, rope, or cable used to secure a positioning harness or full body harness to a lifeline or an anchorage point usually two, four, or six feet long.

(54) Lifeline. A vertical line from a fixed anchorage or between two horizontal anchorages, independent of walking or working surfaces, to which a lanyard or device is secured. Lifeline as referred to in this text is one which is part of a fall protection system used as back-up safety for an elevated worker or as a restraint for workers on a flat or sloped surface.

(55) Lock. A device that utilizes a positive means, either a key or combination lock, to hold an energy isolating device in a "safe" position that prevents the release of energy and the start-up or energization of the machinery, equipment, or system to be serviced.

(56) **Lockout.** The placement of a lock on an energy-isolating device in accordance with an established procedure, thereby ensuring that the energy-isolating device and the equipment being controlled cannot be operated until the lock is removed.

(57) **Lockout/tags-plus coordinator.** An employee whom the employer designates to coordinate and oversee all lockout and tags-plus applications on vessels or vessel sections and at landside work areas when employees are performing multiple servicing operations on the same machinery, equipment, or systems at the same time, and when employees are servicing multiple machinery, equipment, or systems on the same vessel or vessel section at the same time. The lockout/tags-plus coordinator also maintains the lockout/tags-plus log.

(58) **Lockout/tags-plus materials and hardware.** Locks, chains, wedges, blanks, key blocks, adapter pins, self-locking fasteners, or other hardware used for isolating, blocking, or securing machinery, equipment, or systems to prevent the release of energy or the start-up or energization of machinery, equipment, or systems to be serviced.

(59) **Lower levels.** Those areas or surfaces to which an employee can fall. Such areas or surfaces include but are not limited to ground levels, floors, ramps, tanks, materials, water, excavations, pits, vessels, structures, or portions thereof.

(60) **Motor vehicle.** Any motor-driven vehicle operated by an employee that is used to transport employees, material, or property. For the purposes of this subpart, motor vehicles include passenger cars, light trucks, vans, motorcycles, all-terrain vehicles, small utility trucks, powered industrial trucks, and other similar vehicles. Motor vehicles do not include boats, or vehicles operated exclusively on a rail or rails.

(61) **Motor vehicle safety equipment.** Systems and devices integral to or installed on a motor vehicle for the purpose of effecting the safe operation of the vehicle, and consisting of such systems or devices as safety belts, airbags, headlights, tail lights, emergency/hazard lights, windshield wipers, defogging or defrosting devices, brakes, horns, mirrors, windshields and other windows, and locks.

(62) **Multiemployer workplace.** A workplace where there is a host employer and at least one contract employer.

(63) **Normal production operations.** The use of machinery or equipment, including, but not limited to, punch presses, bending presses, shears, lathes, keel press rollers, and automated burning machines, to perform a shipyard-employment production process.

(64) **Personal alert safety system (PASS).** A device that sounds a loud signal if the wearer becomes immobilized or is motionless for (~~thirty~~) 30 seconds or more.

(65) **Personal fall arrest system.** A system used to arrest an employee in a fall from a working level. It consists of an anchorage, connectors, body harness and may include a lanyard, a deceleration device, a lifeline, or a suitable combination.

(66) **Physical isolation.** The elimination of a fire hazard by removing the hazard from the work area (at least (~~thirty-five~~) 35 feet for combustibles), by covering or shielding the hazard with a fire-resistant material, or physically preventing the hazard from entering the work area.

(67) **Physically isolated.** Positive isolation of the supply from the distribution piping of a fixed extinguishing system. Examples of ways to physically isolate include: Removing a spool piece and installing a blank flange; providing a double block and bleed valve system;

or completely disconnecting valves and piping from all cylinders or other pressure vessels containing extinguishing agents.

(68) Portable toilet. A nonsewered portable facility for collecting and containing urine and feces. A portable toilet may be either flushable or nonflushable. For purposes of this section, portable toilets do not include privies.

(69) Portable unfired pressure vessel. A pressure container or vessel used aboard ship, other than the ship's equipment, containing liquids or gases under pressure. This does not include pressure vessels built to Department of Transportation regulations under 49 C.F.R. Part 178, Subparts C and H.

(70) Positioning device system. A full body harness or positioning harness that is worn by an employee, and is rigged to allow an employee to be supported on an elevated vertical or inclined surface, such as a wall, pole or column, and work with both hands free from the body support.

(71) Potable water. Water that meets the standards for drinking purposes of the state or local authority having jurisdiction, or water that meets the quality standards prescribed by the U.S. Environmental Protection Agency's National Primary Water Regulations (40 C.F.R. Part 141).

(72) Powder actuated fastening tool. A tool or machine that drives a stud, pin, or fastener by means of an explosive charge.

(73) Protected space. Any space into which a fixed extinguishing system can discharge.

(74) Proximity firefighting. Specialized firefighting operations that require specialized thermal protection and may include the activities of rescue, fire suppression, and property conservation at incidents involving fires producing very high levels of conductive, convective, and radiant heat such as aircraft fires, bulk flammable gas fires, and bulk flammable liquid fires. Proximity firefighting operations usually are exterior operations but may be combined with structural firefighting operations. Proximity firefighting is not entry firefighting.

(75) Qualified instructor. A person with specific knowledge, training, and experience in fire response or fire watch activities to cover the material found in WAC 296-304-01019 (2) or (3).

(76) Qualified person. One who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his/her ability to solve or resolve problems related to the subject matter, the work, or the project.

(77) Readily accessible/available. Capable of being reached quickly enough to ensure, for example, that emergency medical services and first-aid intervention are appropriate or that employees can reach sanitation facilities in time to meet their health and personal needs.

(78) Related employment. Any employment related to or performed in conjunction with ship repairing, ship building or ship breaking work, including, but not limited to, inspecting, testing, and serving as a watchman.

(79) Rescue. Locating endangered persons at an emergency incident, removing those persons from danger, treating the injured, and transporting the injured to an appropriate health care facility.

(80) Restraint line. A line from a fixed anchorage or between two anchorages to which an employee is secured in such a way as to prevent the employee from falling to a lower level.

Note: A restraint line is not necessarily designed to withstand forces resulting from a fall.

(81) Rope grab. A fall arrester that is designed to move up or down a lifeline suspended from a fixed overhead or horizontal anchor-age point, or lifeline, to which the full body harness is attached. In the event of a fall, the rope grab locks onto the lifeline rope through compression to arrest the fall. The use of a rope grab device is restricted for all restraint applications. See WAC 296-880-40025.

(82) Sanitation facilities. Facilities, including supplies, main-tained for employee personal and health needs such as potable drinking water, toilet facilities, hand-washing and hand-drying facilities, showers (including quick-drenching or flushing) and changing rooms, eating and drinking areas, first-aid stations, and on-site medical-service areas. Sanitation supplies include soap, waterless cleaning agents, single-use drinking cups, drinking water containers, toilet paper, and towels.

(83) Serviceable condition. The state or ability of supplies or goods, or of a tool, machine, vehicle, or other device, to be used or to operate in the manner prescribed by the manufacturer.

(84) Servicing. Workplace activities that involve the construc-tion, installation, adjustment, inspection, modification, testing, or repair of machinery, equipment, or systems. Servicing also includes maintaining machines, equipment, or systems when performing these ac-tivities would expose the employee to harm from the start-up or energ-ization of the system being serviced, or the release of hazardous en-ergy.

(85) Sewered toilet. A fixture maintained for the purpose of uri-nation and defecation that is connected to a sanitary sewer, septic tank, holding tank (bilge), or on-site sewage-disposal treatment fa-cility, and that is flushed with water.

(86) Shall or must. Mandatory.

(87) Shield. To install a covering, protective layer, or other effective measure on or around steam hoses or temporary steam-piping systems, including metal fittings and couplings, to protect employees from contacting hot surfaces or elements.

(88) Ship breaking. Breaking down a vessel's structure to scrap the vessel, including the removal of gear, equipment or any component part of a vessel.

(89) Ship building. Construction of a vessel, including the in-stallation of machinery and equipment.

(90) Ship repairing. Repair of a vessel including, but not limi-ted to, alterations, conversions, installations, cleaning, painting, and maintenance.

(91) Shipyard firefighting. The activity of rescue, fire suppres-sion, and property conservation involving buildings, enclosed struc-tures, vehicles, vessels, aircraft, or similar properties involved in a fire or emergency situation.

(92) Short bight. A loop created in a line or rope that is used to tie back or fasten objects such as hoses, wiring, and fittings.

(93) Small hose system. A system of hoses ranging in diameter from 5/8" (1.6 cm) up to 1 1/2" (3.8 cm) which is for the use of em-ployees and which provides a means for the control and extinguishment of incipient stage fires.

(94) Standpipe. A fixed fire protection system consisting of pip-ing and hose connections used to supply water to approved hose lines or sprinkler systems. The hose may or may not be connected to the sys-tem.

(95) Tag. A prominent warning device that includes a means of at-tachment that can be securely fastened to an energy-isolating device

in accordance with an established procedure to indicate that the energy-isolating device and the equipment being controlled must not be operated until the tag is removed by an authorized employee.

(96) Tags-plus system. A system to control hazardous energy that consists of an energy-isolating device with a tag affixed to it, and at least one additional safety measure.

(97) Verification of isolation. The means necessary to detect the presence of hazardous energy, which may involve the use of a test instrument (for example, a voltmeter), and, for other than electric shock protection, a visual inspection, or a deliberate attempt to start-up the machinery, equipment, or system.

(98) Vermin. Insects, birds, and other animals, such as rodents, that may create safety and health hazards for employees.

(99) Vessel. Every watercraft for use as a means of transportation on water, including special purpose floating structures not primarily designed for or used as a means of transportation on water.

(100) Vessel section. A subassembly, module, or other component of a vessel being built or repaired.

(101) Walkway. Any surface, whether vertical, slanted, or horizontal, on which employees walk, including areas that employees pass through, to perform their job tasks. Walkways include, but are not limited to, access ways, designated walkways, aisles, exits, gangways, ladders, ramps, stairs, steps, passageways, and scaffolding. If an area is, or could be, used to gain access to other locations, it is to be considered a walkway.

(102) Work area. A specific area, such as a machine shop, engineering space, or fabrication area, where one or more employees are performing job tasks.

(103) Working surface. Any surface where work is occurring, or areas where tools, materials, and equipment are being staged for performing work.

(104) Worksite. A general work location where one or more employees are performing work, such as a shipyard, pier, barge, vessel, or vessel section.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and chapter 49.17 RCW. WSR 20-12-091, § 296-304-01001, filed 6/2/20, effective 10/1/20. Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 17-18-075, § 296-304-01001, filed 9/5/17, effective 10/6/17. Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060 and 29 C.F.R. 1910 Subpart Z. WSR 14-07-086, § 296-304-01001, filed 3/18/14, effective 5/1/14. Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and chapter 49.17 RCW. WSR 12-12-060, § 296-304-01001, filed 6/5/12, effective 8/1/12. Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 07-03-163, § 296-304-01001, filed 1/24/07, effective 4/1/07; WSR 05-19-086, § 296-304-01001, filed 9/20/05, effective 12/1/05; WSR 03-04-099, § 296-304-01001, filed 2/4/03, effective 8/1/03. Statutory Authority: RCW 49.17.040, [49.17].050 and [49.17].060. WSR 98-02-006, § 296-304-01001, filed 12/26/97, effective 3/1/98. Statutory Authority: Chapter 49.17 RCW. WSR 95-04-006, § 296-304-01001, filed 1/18/95, effective 3/10/95; Order 76-7, § 296-304-01001, filed 3/1/76; Order 74-25, § 296-304-01001, filed 5/7/74.]

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-304-03005 Mechanical paint removers. (1) Power tools.

(a) You must ensure that employees engaged in the removal of paints, preservatives, rusts or other coatings by means of power tools are protected against eye injury by goggles or face shields that meets the requirements of WAC 296-304-09005 (1) and (2).

(b) All portable rotating tools used for the removal of paints, preservatives, rusts or other coatings must be adequately guarded to protect both the operator and nearby workers from flying missiles.

(c) Portable electric tools must be grounded in accordance with the requirements of WAC 296-304-08003 (1) and (2).

(d) In a confined space, you must provide mechanical exhaust ventilation sufficient to keep the dust concentration to a minimum, or must protect employees by respiratory protective equipment that meets the requirements of chapter 296-842 WAC.

(2) Flame removal.

(a) You must ensure that when hardened preservative coatings are removed by flame in enclosed spaces, the employees exposed to fumes are protected by air line respirators that meet the requirements of chapter 296-842 WAC. Employees performing this operation in the open air, and those exposed to the resulting fumes, must be protected by a fume filter respirator that meets the requirements of chapter 296-842 WAC.

(b) Flame or heat must not be used to remove soft and greasy preservative coatings.

(3) Abrasive blasting.

(a) Equipment. Hoses and fittings used for abrasive blasting must meet the following requirements:

(i) Hoses of a type to prevent shocks from static electricity must be used.

(ii) Hose couplings. Hose lengths must be joined by metal couplings secured to the outside of the hose to avoid erosion and weakening of the couplings.

(iii) Nozzles must be attached to the hose by fittings that will prevent the nozzle from unintentionally becoming disengaged. Nozzle attachments shall be of metal and must fit onto the hose externally.

(iv) Dead man control. A dead man control device must be provided at the nozzle end of the blasting hose either to provide direct cutoff or to signal the pot tender by means of a visual and audible signal to cut off the flow, in the event the blaster loses control of the hose. The pot tender must be available at all times to respond immediately to the signal.

(b) Replacement. Hoses and all fittings used for abrasive blasting must be inspected frequently to ensure timely replacement before an unsafe amount of wear has occurred.

(c) Personal protective equipment.

(i) You must ensure that abrasive blasters (~~working in enclosed spaces~~) are protected by abrasive blasting respirators that meet the requirements of chapter 296-818 WAC, Abrasive blasting and chapter 296-842 WAC.

EXCEPTION:

Filter type respirators that meet the requirements of chapters 296-842 and 296-840 WAC may be used when:

(1) The work is done in the open;

(2) Proper eye, face, hearing, and head protection is used; and

(3) Synthetic abrasives containing less than one percent free silica are used. "Free silica" includes amorphous silica and the crystalline forms that are not chemically combined with any other elements.

(ii) ~~((You must ensure that abrasive blasters working in the open are protected as required in subsection (1) of this section.~~

Exception: ~~When synthetic abrasives containing less than one percent free silica are used, the employer may substitute particulate or dust filter respirators that are approved by the National Institute of Safety and Health (NIOSH) and used according to chapter 296-842 WAC.~~

~~((iii))~~) You must ensure that employees, including machine tenders and abrasive recovery workers, working in areas where unsafe concentrations of abrasive materials and dusts are present are protected by eye and respiratory protective equipment that meets the requirements of WAC 296-304-09005 (1) and (2) and chapter 296-842 WAC.

Exception: This requirement does not apply to blasters.

~~((iv))~~) (iii) You must ensure that a blaster is protected against injury from exposure to the blast by appropriate protective clothing, including gloves that meet the requirements of WAC 296-304-09015(1).

~~((v))~~) (iv) A surge from a drop in pressure in the hose line can throw a blaster off the staging. To protect against this hazard, you must ensure that a blaster is protected by a personal fall arrest system, that meets the requirements of ~~((WAC 296-304-09021))~~ chapter 296-880 WAC, Unified safety standards for fall protection. The personal fall arrest system must be tied off to the ship or other structure during blasting from elevations where adequate fall protection cannot be provided by railings.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 17-18-075, § 296-304-03005, filed 9/5/17, effective 10/6/17; WSR 06-12-074, § 296-304-03005, filed 6/6/06, effective 9/1/06; WSR 05-03-093, § 296-304-03005, filed 1/18/05, effective 3/1/05. Statutory Authority: RCW 49.17.010, [49.17].040 and [49.17].050. WSR 99-10-071, § 296-304-03005, filed 5/4/99, effective 9/1/99. Statutory Authority: RCW 49.17.040, [49.17].050 and [49.17].060. WSR 98-02-006, § 296-304-03005, filed 12/26/97, effective 3/1/98. Statutory Authority: Chapter 49.17 RCW. WSR 95-04-006, § 296-304-03005, filed 1/18/95, effective 3/10/95; WSR 93-19-142 (Order 93-04), § 296-304-03005, filed 9/22/93, effective 11/1/93; Order 76-7, § 296-304-03005, filed 3/1/76; Order 74-25, § 296-304-03005, filed 5/7/74.]

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-304-04001 Ventilation and protection in welding, cutting and heating. (1) Mechanical ventilation requirements. ~~((a))~~) For the purposes of this section, mechanical ventilation must meet the following requirements:

~~((i))~~) (a) Mechanical ventilation must consist of either general mechanical ventilation systems or local exhaust systems.

~~((ii))~~) (b) General mechanical ventilation must be of sufficient capacity and so arranged as to produce the number of air changes necessary to maintain welding fumes and smoke within safe limits.

~~((iii))~~) (c) Local exhaust ventilation must consist of freely movable hoods intended to be placed by the welder or burner as close as practicable to the work. This system must be of sufficient capacity and so arranged as to remove fumes and smoke at the source and keep the concentration of them in the breathing zone within safe limits.

~~((iv))~~ (d) Contaminated air exhausted from a working space must be discharged into the open air or otherwise clear of the source of intake air.

~~((v))~~ (e) All air replacing that withdrawn must be clean and respirable.

~~((vi))~~ (f) Oxygen must not be used for ventilation purposes, comfort cooling, blowing dust or dirt from clothing, or for cleaning the work area.

(2) Welding, cutting and heating in confined spaces.

(a) Except as provided in (~~WAC 296-304-04001(2)~~) (c) of this subsection and subsection (3)(b) of this section, either general mechanical or local exhaust ventilation meeting the requirements of subsection (1) of this section must be provided whenever welding, cutting or heating is performed in a confined space.

(b) The means of access must be provided to a confined space and ventilation ducts to this space must be arranged in accordance with WAC 296-304-05011 (2)(a) and (b).

(c) When sufficient ventilation cannot be obtained without blocking the means of access, employees in the confined space must be protected by air line respirators in accordance with the requirements of chapter 296-842 WAC, and an employee on the outside of such a confined space must be assigned to maintain communication with those working within it and to aid them in an emergency.

(3) Welding, cutting or heating of metals of toxic significance.

(a) Welding, cutting or heating in any enclosed spaces aboard the vessel involving the metals specified in this subsection must be performed with either general mechanical or local exhaust ventilation meeting the requirements of subsection (1) of this section.

(i) Zinc-bearing base or filler metals or metals coated with zinc-bearing materials.

(ii) Lead base metals.

(iii) Cadmium-bearing filler materials.

(iv) Chromium-bearing metals or metals coated with chromium-bearing materials.

(b) Welding, cutting, or heating in any enclosed spaces aboard the vessel involving the metals specified in this subsection must be performed with local exhaust ventilation in accordance with the requirements of subsection (1) of this section or employees must be protected by air line respirators in accordance with the requirements of chapter 296-842 WAC.

(i) Metals containing lead, other than as an impurity, or metals coated with lead-bearing materials.

(ii) Cadmium-bearing or cadmium coated base metals.

(iii) Metals coated with mercury-bearing metals.

(iv) Beryllium-containing base or filler metals. Because of its high toxicity, work involving beryllium must be done with both local exhaust ventilation and air line respirators.

(c) Employees performing such operations in the open air must be protected by filter type respirators in accordance with the requirements of WAC 296-304-09003, except that employees performing such operations on beryllium-containing base or filler metals must be protected by air line respirators in accordance with the requirements of chapter 296-842 WAC.

(d) Other employees exposed to the same atmosphere as the welders or burners must be protected in the same manner as the welder or burner.

(4) Inert-gas metal-arc welding. ~~((a))~~ Since the inert-gas metal-arc welding process involves the production of ultraviolet radiation of intensities of ~~((5))~~ five to 30 times that produced during shielded metal-arc welding, the decomposition of chlorinated solvents by ultraviolet rays, and the liberation of toxic fumes and gases, employees must not be permitted to engage in, or be exposed to the process until the following special precautions have been taken:

~~((i))~~ (a) The use of chlorinated solvents must be kept at least ~~((two hundred))~~ 200 feet from the exposed arc, and surfaces prepared with chlorinated solvents must be thoroughly dry before welding is permitted on such surfaces.

~~((ii))~~ (b) Helpers and other employees in the area not protected from the arc by screening as provided in WAC 296-304-04011(5) must be protected by filter lenses meeting the requirements of Tables I-1A and B (see below). When two or more welders are exposed to each other's arc, filter lens goggles of a suitable type meeting the requirements of WAC 296-304-09001 (1) and (3) must be worn under welding helmets or hand shields to protect the welder against flashes and radiant energy when either the helmet is lifted or the shield is removed.

~~((iii))~~ (c) Welders and other employees who are exposed to radiation must be suitably protected so that the skin is covered completely to prevent burns and other damage by ultraviolet rays. Welding helmets and hand shields must be free of leaks and openings, and free of highly reflective surfaces.

~~((iv))~~ (d) When inert-gas metal-arc welding is being performed on stainless steel, the requirements of subsection (3)(b) of this section must be met to protect against dangerous concentrations of nitrogen dioxide.

(5) General welding, cutting and heating.

(a) Welding, cutting and heating not involving conditions or materials described in subsection (2), (3), or (4) of this section may normally be done without mechanical ventilation or respiratory protective equipment, but where, because of unusual physical or atmospheric conditions, an unsafe accumulation of contaminants exists, suitable mechanical ventilation or respiratory protective equipment must be provided.

(b) Employees performing any type of welding, cutting or heating must be protected by suitable eye protective equipment in accordance with the requirements of Tables I-1A and B (see below).

(6) Residues and cargos of metallic ores of toxic significance must be removed from the area or protected from the heat before welding, cutting or heating ~~((is))~~ has begun.

TABLE I-1A

FILTER LENSES FOR PROTECTION AGAINST
RADIANT ENERGY

OPERATIONS	ELECTRODE SIZE 1/32 IN	ARC CURRENT	MINIMUM PROTECTIVE SHADE
Shielded metal arc welding	Less than 3	Less than 60	7
	3-5	60-160	8
	5-8	160-250	10
	More than 8	250-550	11
Gas metal arc welding and flux cored arc welding		Less than 60	7
		60-160	10
		160-250	10
		((250-550)) <u>250-500</u>	10

OPERATIONS	ELECTRODE SIZE 1/32 IN	ARC CURRENT	MINIMUM PROTECTIVE SHADE
Gas Tungsten arc welding		Less than 50	8
		50-150	8
		150-500	10
Air carbon ((arc cutting))	(Light) ((Heavy))	Less than 500 ((500-1000))	10 ((11))
Arc cutting	(Heavy)	500-1000	11
Plasma arc welding		Less than 20	6
		20-100	8
		100-400	10
		400-800	11
Plasma arc cutting	(Light)**	Less than 300	8
	(Medium)**	300-400	9
	(Heavy)**	400-800	10
Torch brazing	—	—	3
Torch soldering	—	—	2
Carbon Arc welding	—	—	14

** These values apply where the actual arc is clearly seen. Lighter filters may be used when the arc is hidden by the workplace.

TABLE I-1B

FILTER LENSES FOR PROTECTION AGAINST RADIANT ENERGY

OPERATIONS	PLATE THICKNESS... INCHES	PLATE THICKNESS... MM	MINIMUM* PROTECTIVE SHADE
Gas welding:			
Light	Under 1/8	Under 3.2	4
Medium	1/8 ((-)) to 1/2	3.2 ((-)) to 12.7	5
Heavy	Over 1/2	Over 12.7	6
Oxygen cutting:			
Light	Under 1	Under 25	3
Medium	1 ((-)) to 6	((25-100))	4
Heavy	Over 6	25 to 150 Over 150	5

* As rule of thumb, start with a shade that is too dark to see the weld zone. Then go to a lighter shade which gives sufficient view of the weld zone without going below the minimum. In oxyfuel gas welding or cutting where the torch produces a high yellow light, it is desirable to use a filter lens that absorbs the yellow or sodium line in the viable light of the (spectrum) operation.

Note: A worker may use an auto-darkening helmet that allows for the selection of final filtration settings inside the appropriate range as described in the tables above. The auto-darkening helmet must be in good working order and maintained in accordance with the manufacturers recommendations and guidance.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 17-18-075, § 296-304-04001, filed 9/5/17, effective 10/6/17; WSR 05-03-093, § 296-304-04001, filed 1/18/05, effective 3/1/05; WSR 03-04-099, § 296-304-04001, filed 2/4/03, effective 8/1/03. Statutory Authority: Chapter 49.17 RCW. WSR 95-04-006, § 296-304-04001, filed 1/18/95, effective 3/10/95; WSR 93-19-142 (Order 93-04), § 296-304-04001, filed 9/22/93, effective 11/1/93; Order 74-25, § 296-304-04001, filed 5/7/74.]

AMENDATORY SECTION (Amending WSR 18-04-096, filed 2/6/18, effective 3/9/18)

WAC 296-304-05001 Scaffolds or staging. (1) General requirements.

(a) All scaffolds and their supports whether of lumber, steel or other material, must be capable of supporting the load they are designed to carry with a safety factor of not less than four.

(b) All lumber used in the construction of scaffolds must be spruce, fir, long leaf yellow pine, Oregon pine or wood of equal strength. The use of hemlock, short leaf yellow pine, or short fiber lumber is prohibited.

(c) Lumber dimensions as given are nominal except where given in fractions of an inch.

(d) All lumber used in the construction of scaffolds must be sound, straight-grained, free from cross grain, shakes and large, loose or dead knots. It must also be free from dry rot, large checks, worm holes or other defects which impair its strength or durability.

(e) Scaffolds must be maintained in a safe and secure condition. Any component of the scaffold which is broken, burned or otherwise defective must be replaced.

(f) Barrels, boxes, cans, loose bricks, or other unstable objects must not be used as working platforms or for the support of planking intended as scaffolds or working platforms.

(g) No scaffold must be erected, moved, dismantled or altered except under the supervision of competent persons.

(h) No welding, burning, riveting or open flame work must be performed on any staging suspended by means of fiber rope.

(i) Lifting bridles on working platforms suspended from cranes must consist of four legs so attached that the stability of the platform is assured.

(j) Unless the crane hook has a safety latch or is moused, the lifting bridles on working platforms suspended from cranes must be attached by shackles to the lower lifting block or other positive means must be taken to prevent them from becoming accidentally disengaged from the crane hook.

(2) Independent pole wood scaffolds.

(a) All pole uprights must be set plumb. Poles must rest on a foundation of sufficient size and strength to distribute the load and to prevent displacement.

(b) In light-duty scaffolds not more than 24 feet in height, poles may be spliced by overlapping the ends not less than ((4)) four feet and securely nailing them together. A substantial cleat must be nailed to the lower section to form a support for the upper section except when bolted connections are used.

(c) All other poles to be spliced must be squared at the ends of each splice, abutted, and rigidly fastened together by not less than two cleats securely nailed or bolted thereto. Each cleat must overlap each pole end by at least 24 inches and must have a width equal to the face of the pole to which it is attached. The combined cross sectional area of the cleats must be not less than the cross sectional area of the pole.

(d) Ledgers must extend over two consecutive pole spaces and must overlap the poles at each end by not less than ((4)) four inches. They must be left in position to brace the poles as the platform is raised with the progress of the work. Ledgers must be level and must be securely nailed or bolted to each pole and must be placed against the inside face of each pole.

(e) All bearers must be set with their greater dimension vertical and must extend beyond the ledgers upon which they rest.

(f) Diagonal bracing must be provided between the parallel poles, and cross bracing must be provided between the inner and outer poles or from the outer poles to the ground.

(g) Minimum dimensions and spacing of members must be in accordance with Table E-1 in WAC 296-304-07011.

(h) Platform planking must be in accordance with the requirements of subsection (8) of this section.

(i) Backrails and toeboards must be in accordance with the requirements of subsection (9) of this section.

(3) Independent pole metal scaffolds.

(a) Metal scaffold members must be maintained in good repair and free of corrosion.

(b) All vertical and horizontal members must be fastened together with a coupler or locking device which will form a positive connection. The locking device must be of a type which has no loose parts.

(c) Posts must be kept plumb during erection and the scaffold must be subsequently kept plumb and rigid by means of adequate bracing.

(d) Posts must be fitted with bases supported on a firm foundation to distribute the load. When wooden sills are used, the bases must be fastened thereto.

(e) Bearers must be located at each set of posts, at each level, and at each intermediate level where working platforms are installed.

(f) Tubular bracing must be applied both lengthwise and crosswise as required.

(g) Platform planking must be in accordance with the requirements of subsection (8) of this section.

(h) Backrails and toeboards must be in accordance with the requirements of subsection (9) of this section.

(4) Wood trestle and extension trestle ladders.

(a) The use of trestle ladders, or extension sections or base sections of extension trestle ladders longer than 20 feet is prohibited. The total height of base and extension may, however, be more than 20 feet.

(b) The minimum dimensions of the side rails of the trestle ladder, or the base sections of the extension trestle ladder, must be as follows:

(i) Ladders up to and including those 16 feet long must have side rails of not less than 1 5/16 x 2 3/4 inch lumber.

(ii) Ladders over 16 feet long and up to and including those 20 feet long must have side rails of not less than 1 5/16 x 3 inch lumber.

(c) The side rails of the extension section of the extension trestle ladder must be parallel and must have minimum dimensions as follows:

(i) Ladders up to and including 12 feet long must have side rails of not less than 1 5/16 x 2 1/4 inch lumber.

(ii) Ladders over 12 feet long and up to and including those 16 feet long must have side rails of not less than 1 5/16 x 2 1/2 inch lumber.

(iii) Ladders over 16 feet long and up to and including those 20 feet long must have side rails of not less than 1 5/16 x 3 inch lumber. (Rev. 2-17-76)

(d) Trestle ladders and base sections of extension trestle ladders must be so spread that when in an open position the spread of the trestle at the bottom, inside to inside, must not be less than 5 1/2 inches per foot of the length of the ladder.

(e) The width between the side rails at the bottom of the trestle ladder or of the base section of the extension trestle ladder must not be less than 21 inches for all ladders and sections ((6)) six feet or less in length. For longer lengths of ladder the width must be increased at least ((±)) one inch for each additional foot of length. The width between the side rails of the extension section of the trestle ladder must be not less than 12 inches.

(f) In order to limit spreading, the top ends of the side rails of both the trestle ladder and of the base section of the extension trestle ladder must be beveled, or of equivalent construction, and must be provided with a metal hinge.

(g) A metal spreader or locking device to hold the front and back sections in an open position, and to hold the extension section securely in the elevated position, must be a component of each trestle ladder or extension trestle ladder.

(h) Rungs must be parallel and level. On the trestle ladder, or on the base section of the extension trestle ladder, rungs must be spaced not less than ((8)) eight inches nor more than 18 inches apart; on the extension section of the extension trestle ladder, rungs must be spaced not less than ((6)) six inches nor more than 12 inches apart.

(i) Platform planking must be in accordance with the requirements of subsection (8) of this section, except that the width of the platform planking must not exceed the distance between the side rails.

(j) Backrails and toeboards must be in accordance with the requirements of subsection (9) of this section.

(5) Painters' suspended scaffolds.

(a) The supporting hooks of swinging scaffolds must be constructed to be equivalent in strength to mild steel or wrought iron, must be forged with care, must not be less than 7/8 inch in diameter, and must be secured to a safe anchorage at all times.

(b) The ropes supporting a swinging scaffold must be equivalent in strength to first-grade 3/4 inch diameter manila rope properly rigged into a set of standard ((6)) six inch blocks consisting of at least one double and one single block.

(c) Manila and wire ropes must be carefully examined before each operation and thereafter as frequently as may be necessary to ensure their safe condition.

(d) Each end of the scaffold platform must be supported by a wrought iron or mild steel stirrup or hanger, which in turn is supported by the suspension ropes.

(e) Stirrups must be constructed so as to be equivalent in strength to wrought iron 3/4 inch in diameter.

(f) The stirrups must be formed with a horizontal bottom member to support the platform, must be provided with means to support the guardrail and midrail and must have a loop or eye at the top for securing the supporting hook on the block.

(g) Two or more swinging scaffolds must not at any time be combined into one by bridging the distance between them with planks or any other form of platform.

(h) No more than two persons must be permitted to work at one time on a swinging scaffold built to the minimum specifications contained in this section. Where heavier construction is used, the number of persons permitted to work on the scaffold must be determined by the size and the safe working load of the scaffold.

(i) Backrails and toeboards must be in accordance with the requirements of subsection (9) of this section.

(j) The swinging scaffold platform must be one of the three types described in (k), (l), and (m) of this ~~(section)~~ subsection.

(k) The ladder-type platform consists of boards upon a horizontal ladder-like structure, referred to herein as the ladder, the side rails of which are parallel. If this type of platform is used the following requirements must be met:

(i) The width between the side rails must be no more than 20 inches.

(ii) The side rails of ladders in ladder-type platforms must be equivalent in strength to a beam of clear straight-grained spruce of the dimensions contained in Table E-2 in WAC 296-304-07011.

(iii) The side rails must be tied together with tie rods. The tie rods must not be less than 5/16 inch in diameter, located no more than ~~((5))~~ five feet apart, pass through the rails, and be riveted up tight against washers at both ends.

(iv) The rungs must be of straight-grained oak, ash, or hickory, not less than 1 1/8 inches diameter, with 7/8 inch tenons mortised into the side rails not less than 7/8 inch and must be spaced no more than 18 inches on centers.

(v) Flooring strips must be spaced no more than 5/8 inch apart except at the side rails, where ~~((±))~~ one inch spacing is permissible.

(vi) Flooring strips must be cleated on their undersides.

(l) The plank-type platform consists of planks supported on the stirrups or hangers. If this type of platform is used, the following requirements must be met:

(i) The planks of plank-type platforms must not be less than 2 x 10 inch lumber.

(ii) The platform must not be more than 24 inches in width.

(iii) The planks must be tied together by cleats of not less than 1 x 6 inch lumber, nailed on their undersides at intervals of not more than ~~((4))~~ four feet.

(iv) The planks must extend not less than ~~((6))~~ six inches nor more than 18 inches beyond the supporting stirrups.

(v) A cleat must be nailed across the platform on the underside at each end outside the stirrup to prevent the platform from slipping off the stirrup.

(vi) Stirrup supports must not be more than 10 feet apart.

(m) The beam-type platform consists of longitudinal side stringers with cross beams set on edge and spaced not more than ~~((4))~~ four feet apart on which longitudinal platform planks are laid. If this type platform is used the following requirements must be met:

(i) The side stringers must be of sound, straight-grained lumber, free from knots, and of not less than 2 x 6 inch lumber, set on edge.

(ii) The stringers must be supported on the stirrups with a clear span between stirrups of not more than 16 feet.

(iii) The stringers must be bolted to the stirrups by U-bolts passing around the stirrups and bolted through the stringers with nuts drawn up tight on the inside face.

(iv) The ends of the stringers must extend beyond the stirrups not less than ~~((6))~~ six inches nor more than 12 inches at each end of the platform.

(v) The platform must be supported on cross beams of 2 x 6 inch lumber between the side stringers securely nailed thereto and spaced not more than ~~((4))~~ four feet on centers.

(vi) The platform must not be more than 24 inches wide.

(vii) The platform must be formed of boards 7/8 inch in thickness by not less than ((6)) six inches in width, nailed tightly together, and extending to the outside face of the stringers.

(viii) The ends of all platform boards must rest on the top of the cross beams, must be securely nailed, and at no intermediate points in the length of the platform must there be any cantilever ends.

(6) Horse scaffolds.

(a) The minimum dimensions of lumber used in the construction of horses must be in accordance with Table E-3 in WAC 296-304-07011.

(b) Horses constructed of materials other than lumber must provide the strength, rigidity and security required of horses constructed of lumber.

(c) The lateral spread of the legs must be equal to not less than one-third of the height of the horse.

(d) All horses must be kept in good repair, and must be properly secured when used in staging or in locations where they may be insecure.

(e) Platform planking must be in accordance with the requirements of subsection (8) of this section.

(f) Backrails and toeboards must be in accordance with subsection (9) of this section.

(7) Other types of scaffolds. Scaffolds of a type for which specifications are not contained in this section must meet the general requirements of subsections (1), (8) and (9) of this section, must be in accordance with recognized principles of design and must be constructed in accordance with accepted standards covering such equipment.

(8) Scaffold or platform planking.

(a) Except as otherwise provided in subsection (5)(k) and (m) of this section, platform planking must not be less than 2 x 10 inch lumber. Platform planking must be straight-grained and free from large or loose knots and may be either rough or dressed.

(b) Platforms of staging must not be less than two 10 inch planks in width except in such cases as the structure of the vessel or the width of the trestle ladders make it impossible to provide such a width.

(c) Platform planking must project beyond the supporting members at either end by at least ((6)) six inches but in no case must it project more than 12 inches unless the planks are fastened to the supporting members.

(d) Table E-4 in WAC 296-304-07011 must be used as a guide in determining safe loads for scaffold planks.

(9) Backrails and toeboards.

(a) Scaffolding, staging, runways, or working platforms which are supported or suspended more than ((5)) five feet above a solid surface, or at any distance above the water, must be provided with a railing which has a top rail whose upper surface is from 42 to 45 inches above the upper surface of the staging, platform, or runway and a midrail located halfway between the upper rail and the staging, platform, or runway.

(b) Rails must be of 2 x 4 inch lumber, flat bar or pipe. When used with rigid supports, taut wire or fiber rope of adequate strength may be used. If the distance between supports is more than ((8)) eight feet, rails must be equivalent in strength to 2 x 4 inch lumber. Rails must be firmly secured. Where exposed to hot work or chemicals, fiber rope rails must not be used.

(c) Rails may be omitted where the structure of the vessel prevents their use. When rails are omitted employees working more than ((5)) five feet above solid surfaces must be protected by safety belts and life lines meeting the requirements of WAC ((296-304-09021(2))) chapter 296-880 WAC, Unified safety standards for fall protection, and employees working over water must be protected by personal flotation devices meeting the requirements of WAC 296-304-09017(1).

(d) Employees working from swinging scaffolds which are triced out of a vertical line below their supports or from scaffolds on paint floats subject to surging, must be protected against falling toward the vessel by a railing or a safety belt and line attached to the backrail.

(e) When necessary, to prevent tools and materials from falling on men below, toeboards of not less than 1 x 4 inch lumber must be provided.

(10) Access to staging.

(a) Access from below to staging more than ((5)) five feet above a floor, deck or the ground must consist of well secured stairways, cleated ramps, fixed or portable ladders meeting the applicable requirements of WAC 296-304-05003 or rigid type noncollapsible trestles with parallel and level rungs.

(b) Ramps and stairways must be provided with 36-inch handrails with midrails.

(c) Ladders must be so located or other means must be taken so that it is not necessary for employees to step more than one foot from the ladder to any intermediate landing or platform.

(d) Ladders forming integral parts of prefabricated staging are deemed to meet the requirements of these regulations.

(e) Access from above to staging more than ((3)) three feet below the point of access must consist of a straight, portable ladder meeting the applicable requirements of WAC 296-304-05003 or a Jacob's ladder properly secured, meeting the requirements of WAC 296-304-05007(4).

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 18-04-096, § 296-304-05001, filed 2/6/18, effective 3/9/18; WSR 17-18-075, § 296-304-05001, filed 9/5/17, effective 10/6/17; WSR 03-04-099, § 296-304-05001, filed 2/4/03, effective 8/1/03; Order 76-7, § 296-304-05001, filed 3/1/76; Order 74-25, § 296-304-05001, filed 5/7/74.]

WSR 22-23-162

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed November 23, 2022, 8:06 a.m., effective January 1, 2023]

Effective Date of Rule: January 1, 2023.

Purpose: The agency is amending WAC 182-550-4670(4) to include the federal portion of medicaid program supplemental payments received by hospitals.

Citation of Rules Affected by this Order: Amending WAC 182-550-4670.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: ESSB 5693, section 211(21), chapter 297, Laws of 2022.

Adopted under notice filed as WSR 22-21-134 on October 19, 2022.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: November 23, 2022.

Wendy Barcus
Rules Coordinator

OTS-4099.1

AMENDATORY SECTION (Amending WSR 15-11-009, filed 5/7/15, effective 6/7/15)

WAC 182-550-4670 CPE payment program—"Hold harmless" provision.

To meet legislative requirements, the medicaid agency includes a "hold harmless" provision for eligible hospitals participating in certified public expenditure (CPE) payment programs under WAC 182-550-4650 and 182-550-5400. Under the provision and subject to legislative directives and appropriations, hospitals eligible for payments under CPE payment programs will receive no less in combined state and federal payments than they would have received under the methodologies otherwise in effect as described in this section. All hospital submissions pertaining to CPE payment programs ((r)) including, but not limited to, cost report schedules, are subject to audit at any time by the agency or its designee.

(1) The agency:

(a) Uses historical cost and payment data trended forward to calculate prospective hold harmless grant payment amounts for the current state fiscal year (SFY); and

(b) Reconciles these hold harmless grant payment amounts when the actual claims data are available for the current fiscal year.

(2) For SFYs 2006 through 2009, the agency calculates what the hospital would have been paid under the methodologies otherwise in effect for the SFY as the sum of:

(a) The total payments for inpatient claims for patients admitted during the fiscal year, calculated by repricing the claims using:

(i) For SFYs 2006 and 2007, the inpatient payment method in effect during SFY 2005; or

(ii) For SFYs 2008 and 2009, the payment method that would otherwise be in effect during the CPE payment program year if the CPE payment program had not been enacted.

(b) The total net disproportionate share hospital and state grant payments paid for SFY 2005.

(3) For SFY 2010 and beyond, the agency calculates what the hospital would have been paid under the methodologies otherwise in effect for the SFY as the sum of:

(a) The total of the inpatient claim payment amounts that would have been paid during the SFY had the hospital not been in the CPE payment program;

(b) One-half of the indigent assistance disproportionate share hospital payment amounts paid to and retained by each hospital during SFY 2005; and

(c) All of the other disproportionate share hospital payment amounts paid to and retained by each hospital during SFY 2005 to the extent the same disproportionate share hospital programs exist in the 2009-2011 biennium.

(4) For each SFY, the agency determines total state and federal payments made under the programs, including:

(a) Inpatient claim payments;

(b) Disproportionate share hospital (DSH) payments; ~~(and)~~

(c) Supplemental upper payment limit payments, as applicable; and

(d) The federal portion of medicaid program supplemental payments received by the hospitals.

(5) A hospital may receive a hold harmless grant, subject to legislative directives and appropriations, when the following calculation results in a positive number:

(a) For SFY 2006 through SFY 2009, the amount derived in subsection (4) of this section is subtracted from the amount derived in subsection (2) of this section; or

(b) For SFY 2010 and beyond, the amount derived in subsection (4) of this section is subtracted from the amount derived in subsection (3) of this section.

(6) The agency calculates interim hold harmless and final hold harmless grant amounts as follows:

(a) An interim hold harmless grant amount is calculated approximately ten months after the end of the SFY to include the paid claims for the same SFY admissions. Claims are subject to utilization review prior to the interim hold harmless calculation. Prospective grant payments made under subsection (1) of this section are deducted from the calculated interim hold harmless grant amount to determine the net grant payment amount due to or due from the hospital.

(b) The final hold harmless grant amount is calculated at such time as the final allowable federal portions of program payments are determined. The procedure is the same as the interim grant calculation, but it includes all additional claims that have been paid or adjusted since the interim hold harmless calculation. Claims are subject

to utilization review and audit prior to the final calculation of the hold harmless amount. Interim grant payments determined under (a) of this subsection are deducted from this final calculation to determine the net final hold harmless amount due to or due from the hospital.

[Statutory Authority: RCW 41.05.021, 41.05.160, and 74.09.5225(3). WSR 15-11-009, § 182-550-4670, filed 5/7/15, effective 6/7/15. WSR 11-14-075, recodified as § 182-550-4670, filed 6/30/11, effective 7/1/11. Statutory Authority: 2009 c 564 §§ 201 and 209, RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.500. WSR 10-11-032, § 388-550-4670, filed 5/11/10, effective 6/11/10. Statutory Authority: RCW 74.08.090 and 74.09.500. WSR 08-20-032, § 388-550-4670, filed 9/22/08, effective 10/23/08; WSR 07-14-090, § 388-550-4670, filed 6/29/07, effective 8/1/07. Statutory Authority: RCW 74.08.090, 74.09.500, and 2005 c 518 § 209(9). WSR 06-11-100, § 388-550-4670, filed 5/17/06, effective 6/17/06.]

WSR 22-23-167

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed November 23, 2022, 9:46 a.m., effective December 24, 2022]

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

Purpose: Chapter 246-12 WAC, Administrative procedures and requirements for credentialed health care providers. The department of health (department) is adopting model rules establishing minimum standards for health equity continuing education (CE) for health professions credentialed under RCW 18.130.040 with a CE requirement.

ESSB 5229 (chapter 276, Laws of 2021), codified as RCW 43.70.613, directed the department to establish model rules creating minimum standards for health equity CE training programs. RCW 43.70.613 (3) (b) also directed the department to consult with patients and communities with lived experiences of health inequities or racism in the health care system when developing the model rules. The department held four listening sessions that invited individuals with lived experiences of health inequities or racism in the health care system to share their experiences, which the department used to develop rule language. The department also held four rules workshops where the model rule language was developed with the public, boards, and commissions.

The model rules create four new sections in chapter 246-12 WAC: Purpose, definitions, minimum health equity CE hours, and health equity CE training content. The model rules require completion of two hours of health equity CE every four years for all health professionals credentialed under RCW 18.130.040 with a CE requirement. The model rules also require that the two CE hours include implicit bias training to identify strategies to reduce bias during assessment and diagnosis.

Rule-making authorities for each profession may adopt the model rules or create standards that exceed the minimum standards in the model rules.

Citation of Rules Affected by this Order: New WAC 246-12-800, 246-12-810, 246-12-820, and 246-12-830.

Statutory Authority for Adoption: RCW 18.130.040 and 43.70.613.

Adopted under notice filed as WSR 22-17-141 on August 23, 2022.

A final cost-benefit analysis is available by contacting Ashley Bell, P.O. Box 47843, Olympia, WA 98504-7843, phone 360-236-2961, TTY 711, email healthequityimplementation@doh.wa.gov, website www.doh.wa.gov.

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

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

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

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

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

Date Adopted: November 23, 2022.

Kristin Peterson, JD
Chief of Policy

OTS-3964.2

PART 15
MINIMUM STANDARDS FOR HEALTH EQUITY CONTINUING EDUCATION TRAININGS FOR
HEALTH CARE PROFESSIONALS

NEW SECTION

WAC 246-12-800 Purpose. WAC 246-12-810 through 246-12-830 contain model rules establishing minimum standards for health equity continuing education trainings for health care professionals credentialed under RCW 18.130.040 with a continuing education requirement. The rule-making authority for each health profession credentialed under RCW 18.130.040 with a continuing education requirement may set standards that exceed the minimum standards in this chapter.

[]

NEW SECTION

WAC 246-12-810 Definitions. The definitions in this section and RCW 43.70.613 apply throughout WAC 246-12-800 through 246-12-830 unless the context clearly requires otherwise.

(1) "Department" means the Washington state department of health.

(2) "Health care professional" means an individual credentialed or holding a retired active credential in one of the health professions listed in RCW 18.130.040 with a continuing education requirement.

(3) "Health equity" means all people have the same opportunities and equal access in order to attain their full health potential regardless of the color of their skin, ancestry, ethnicity, level of education, gender identity, sexual orientation, age, religion, socioeconomic status, the job they have, the neighborhood they live in, or their ability status.

[]

NEW SECTION

WAC 246-12-820 Health equity continuing education training minimum hours. Health care professionals must complete a minimum of two hours in health equity continuing education training every four years, unless the relevant rule-making authority specifies a higher number of hours in rule.

[]

NEW SECTION

WAC 246-12-830 Health equity continuing education training content. An education program providing health equity continuing education training must:

(1) Include implicit bias training to identify strategies to reduce bias during assessment and diagnosis and may include, but is not limited to, at least one of the topics included in RCW 43.70.613

(3) (c).

(2) Have trainers with demonstrated knowledge and experience related to health equity. Research referenced in the training must be based on current empirical research and known best practices.

(3) Have courses that assess the health care professional's ability to apply health equity concepts into practice in accordance with profession specific rules, which may include, but are not limited to:

(a) An assessment at the end of an in-person or virtual continuing education training to determine knowledge gained during that training; or

(b) A document provided at the end of an in-person or virtual continuing education training that attests attendance at the training.

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