

WSR 23-05-010

EXPEDITED RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed February 2, 2023, 1:17 p.m.]

Title of Rule and Other Identifying Information: Chapter 246-861 WAC and WAC 246-901-061 Continuing education requirements. The pharmacy quality assurance commission (commission) is seeking to repeal continuing education requirements established in chapter 246-861 WAC and WAC 246-901-061, as such requirements are also in practice in more current sections of rule, WAC 246-945-178 and 246-945-220.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission completed a major rules consolidation project in 2020 in which various sections and chapters in Title 246 WAC were either repealed or consolidated into new chapter 246-945 WAC. The new continuing education requirements in chapter 246-945 WAC require pharmacists whose licenses expire on or after December 1, 2021, to complete the equivalent of 3.0 continuing pharmacy education (CPE) administered by an accreditation council for pharmacy education (ACPE) accredited provider prior to renewing their license. Pharmacy technicians whose licenses expire on or after December 1, 2021, must complete the equivalent of 2.0 CPE administered by an ACPE accredited provider. Additionally, the license renewal cycle for both licensee groups is increased from one year to two years.

Transitioning all licensees onto the new renewal cycle took one year from December 1, 2021, because everyone had to have one renewal cycle to get onto the two-year cycle. In other words, updated continuing education requirements did not take effect for pharmacists and pharmacy technicians whose licenses expired before December 1, 2022, since the new CE rules correspond with a two-year license cycle and a change in license fees to match that cycle. This required the older sections of rule establishing continuing education standards, WAC 246-861-090 and 246-901-061, be maintained until the one-year license cycle for those pharmacists and pharmacy technicians ended on December 1, 2022. The commission issued a guidance document (G001) that went into effect on July 1, 2020, and was updated on December 3, 2020, for the purpose of retaining the older sections of rule until the December 1, 2022, expiration date.

Reasons Supporting Proposal: The rules-rewrite process conducted by the commission resulted in the creation of chapter 246-945 WAC and had the intent of updating regulatory standards around the practice of pharmacy, including license renewal standards. After December 1, 2021, all pharmacists and pharmacy technicians licensed with the commission must renew their licenses solely under the standards described in WAC 246-945-178 and 246-945-220. Repealing the old sections of rule regulating continuing education standards for pharmacists and pharmacy technicians will eliminate any confusion regarding conflicting standards for renewing a license.

Statutory Authority for Adoption: RCW 18.64.005.

Statute Being Implemented: RCW 18.64.005.

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

Name of Proponent: Washington state pharmacy quality assurance commission, Governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Haleigh Mauldin, 111 Israel Road S.E., Tumwater, WA 98501, 360-890-0720.

This notice meets the following criteria to use the expedited repeal process for these rules:

Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The proposed rule will repeal chapter 246-861 WAC and WAC 246-901-061 which are redundant under WAC 246-945-178 and 246-945-220.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Haleigh Mauldin, Pharmacy Quality Assurance Commission, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-890-0720, fax 360-236-2901, email <https://fortress.wa.gov/doh/policyreview>, AND RECEIVED BY April 17, 2023.

February 1, 2023
Teri Ferreira, RPh
Chair

OTS-4229.1

REPEALER

The following chapter of the Washington Administrative Code is repealed:

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|-----------------|--|
| WAC 246-861-010 | Definitions. |
| WAC 246-861-020 | Renewal requirements. |
| WAC 246-861-040 | Applications for approval of continuing education program—Post-approval of continuing education program. |
| WAC 246-861-050 | Continuing education program approved providers. |
| WAC 246-861-055 | Continuing education program. |
| WAC 246-861-060 | Instructors' credit toward continuing education unit. |
| WAC 246-861-090 | Amount of continuing education. |
| WAC 246-861-095 | Pharmacists licensed in other health professions. |
| WAC 246-861-105 | Suicide prevention education. |

OTS-4230.1

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-901-061 Pharmacy technician—Continuing
education requirements.

WSR 23-05-039
EXPEDITED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-06—Filed February 9, 2023, 7:54 a.m.]

Title of Rule and Other Identifying Information: Hydraulic project approval rule making implementing RCW 77.55.480 regarding streamlining of fish habitat enhancement projects.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule amendments are proposed as necessary to align chapter 220-660 WAC with RCW 77.55.181. Amendments to RCW 77.55.181 were passed into law as SSB 5381 (chapter 289, Laws of 2021) during the 2021 legislative session. The proposed rule adds elements from RCW 77.55.181 so that chapter 220-660 WAC is consistent with the law. Chapter 220-660 WAC establishes regulations for the administration of the hydraulic project approval permitting program. The rules regarding fish habitat enhancement project (FHEP) streamlined permitting are amended as follows:

1. The Washington state department of transportation (WSDOT) may apply for FHEP streamlining using the online application system without also submitting a joint aquatic resources permit application.

2. The FHEP streamlined permit review period for WSDOT fish barrier removal project is reduced from 45 days to 30 days.

These changes amend WAC 220-660-050 Procedures; other aspects of chapter 220-660 WAC are unchanged. There are no anticipated effects on the regulated community as a result of this rule proposal because SSB 5381 was fully implemented on July 25, 2021.

Reasons Supporting Proposal: This proposal brings the hydraulic code rules of chapter 220-660 WAC into alignment with existing state law. Expedited rule making allows this procedural change to be made efficiently and quickly.

Statutory Authority for Adoption: RCW 77.04.012, 77.12.047, 77.55.021, 77.55.181, and 34.05.328.

Statute Being Implemented: RCW 77.55.181.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Theresa Nation, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2562; Implementation: Matthew Curtis, 1111 Washington Street S.E., Olympia, WA 98501, 360-972-0190; and Enforcement: Kelly Still, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2605.

This notice meets the following criteria to use the expedited adoption process for these rules:

Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: Expedited rule making is appropriate because the proposed rule incorporates elements of SSB 5381 without substantive change. The rule amendment is being conducted solely to achieve consistency with statute.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Chris Fredley, Acting Agency Rules Coordinator, Washington Department of Fish and Wildlife, P.O. Box 43200, Olympia, WA 98501-3200, phone 360-918-4917, fax 360-902-2155, email rules.coordinator@dfw.wa.gov, AND RECEIVED BY April 18, 2023.

February 9, 2023

Chris Fredley

Acting Agency Rules Coordinator

OTS-4334.1

AMENDATORY SECTION (Amending WSR 21-09-066, filed 4/19/21, effective 5/20/21)

WAC 220-660-050 Procedures—Hydraulic project approvals. (1)**Description:**

(a) There are six categories of HPAs: Standard, emergency, imminent danger, chronic danger, expedited, and pamphlet. These categories are discussed in more detail throughout this section. Most HPAs issued by the department are standard HPAs. Guidance for applying for an HPA is provided on the department's website.

(b) HPAs do not exempt a person from obtaining other necessary permits and following the rules and regulations of local, federal, and other Washington state agencies.

(2) **Fish life concerns:** Construction and other work activities in or near water bodies can kill or injure fish life directly and can damage or destroy habitat that supports fish life. Damaged or destroyed habitat can continue to cause lost fish life production for as long as the habitat remains altered. HPAs help ensure construction and other work is done in a manner that protects fish life.

(3) Standard HPA:

(a) The department issues a standard HPA when a hydraulic project does not qualify for an emergency, imminent danger, chronic danger, expedited or pamphlet HPA. An individual standard HPA is limited to a single project site. Some special types of standard HPAs may cover multiple project sites.

(b) Special types of standard HPAs:

(i) Fish habitat enhancement project (FHEP) HPA.

(A) Projects must satisfy the requirements in RCW 77.55.181(1) to be processed as a fish habitat enhancement project.

(B) Projects that are compensatory mitigation for a development or other impacting project are not eligible. This includes proposals for mitigation banks or in-lieu fee mitigation proposals. The sole purpose of the project must be for fish habitat enhancement.

(C) The department may reject an FHEP proposed under RCW 77.55.181 if the local government raises concerns during the comment period that impacts from the project cannot be mitigated by conditioning the HPA. The department will reject an FHEP if the department determines that the size and the scale of the project raises public health or safety concerns. If the department rejects a project for streamlined processing, the department must provide written notice to the applicant and local government within forty-five days of receiving the application.

(D) An applicant whose fish habitat enhancement project is rejected may submit a new complete written application with project modifications or additional information required for streamlined processing. An applicant may request that the department consider the project under standard HPA processing procedures by submitting a new complete written application for standard processing.

(ii) Multisite HPA.

(A) A standard HPA may authorize work at multiple project sites if:

(I) All project sites are within the same water resource inventory area (WRIA) or tidal reference area;

(II) The primary hydraulic project is the same at each site so there is little variability in HPA provisions across all sites; and

(III) Work will be conducted at no more than five project sites to ensure department staff has sufficient time to conduct site reviews.

(B) The department may make an exception for projects the department has scoped prior to application submittal or when no prepermit issuance site visits are needed.

(iii) General HPA.

(A) The department may issue general HPAs to government agencies, organizations, or companies to perform the same work in multiple water bodies across a large geographic area.

(B) To qualify for a general HPA, projects must protect fish life:

(I) Technical provisions in the HPA must fully mitigate impacts to fish life;

(II) The projects must be relatively simple so that the HPA provisions are the same across all sites, and can therefore be permitted without site-specific provisions; and

(III) The projects must have little or no variability over time in site conditions or work performed.

(C) The general HPA will include a requirement that notice be given to the department when activities utilizing heavy equipment begin. The department may waive this requirement if the permittee and department meet annually to review scheduled activities for the upcoming year.

(D) The department and the applicant may negotiate the scope and scale of the project types covered. The department and the applicant must agree on the fish protection provisions required before the application is submitted.

(E) The department may reject applications for a general HPA if:

(I) The proposed project does not meet the eligibility requirements described in subsection (3)(b)(iii)(B) of this section; or

(II) The department and the applicant cannot agree on the fish protection provisions.

(F) The department must provide written notice of rejection of a general HPA application to the applicant. The applicant may submit a new complete written application with project modifications or additional information required for department consideration under standard HPA processing procedures.

(iv) "Model" HPA.

(A) The department will establish a "model" HPA application and permitting process for qualifying hydraulic projects. To qualify, an individual project must comply with the technical provisions established in the application. Hydraulic projects that qualify for the model process must:

(I) Fully mitigate impacts to fish life in the technical provisions of the HPA;

(II) Be a low complexity project that minimizes misinterpretation of the HPA provisions allowing the HPA to be permitted without site-specific provisions; and

(III) Meet all of the eligibility requirements described in the model application.

(B) If needed to confirm project eligibility, the department may conduct a site visit before approving or rejecting a model application.

(C) The department may reject applications for model HPAs if:

(I) The plans and specifications for the project are insufficient to show that fish life will be protected; or

(II) The applicant or authorized agent does not fill out the application completely or correctly.

(D) The department must provide written notice of rejection of an application to the applicant. The applicant may submit a new complete written application with project modifications or additional information required for department consideration under standard HPA processing procedures under this section, or may submit a new model application if the department rejected the application because the person did not fill out the original application correctly.

(4) **Emergency HPA:**

(a) Declaring an emergency.

(i) Authority to declare an emergency, or continue an existing declaration of emergency, is conveyed to the governor, the department, or to a county legislative authority by statute. An emergency declaration may be made when there is an immediate threat to life, the public, property, or of environmental degradation;

(ii) The county legislative authority must notify the department, in writing, if it declares an emergency;

(iii) Emergency declarations made by the department must be documented in writing;

(iv) When an emergency is declared, the department must immediately grant verbal approval upon request for work to protect life or property threatened by waters of the state because of the emergency, including repairing or replacing a stream crossing, removing obstructions, or protecting stream banks. The department may also grant written approval if the applicant agrees.

(b) If the department issues a verbal HPA, the department must follow up with a written HPA documenting the exact provisions of the verbal HPA within thirty days of issuing the verbal HPA.

(c) Compliance with the provisions of chapter 43.21C RCW (State Environmental Policy Act) is not required for emergency HPAs.

(d) The department may require a person to submit an as-built drawing within thirty days after the hydraulic project authorized in the emergency HPA is completed.

(e) Within ninety days after a hydraulic project authorized in an emergency HPA is completed, any remaining impacts must be mitigated or a mitigation plan must be submitted to the department for approval.

(5) Imminent danger HPA:

(a) Authority to declare imminent danger is conveyed to the department or county legislative authority by statute. The county legislative authority must notify the department in writing if it determines that an imminent danger exists.

(b) Imminent danger declarations made by the department must be documented in writing.

(c) When imminent danger exists, the department must issue an expedited HPA upon request for work to remove obstructions, repair existing structures, restore banks, and to protect fish life or property.

(d) When imminent danger exists, and before starting work, a person must submit a complete written application to the department to obtain an imminent danger HPA. Compliance with the provisions of chapter 43.21C RCW (State Environmental Policy Act) is not required for imminent danger HPAs.

(e) Imminent danger HPAs must be issued by the department within fifteen calendar days after receiving a complete written application. Work under an imminent danger HPA must be completed within sixty calendar days of the date the HPA is issued.

(f) Within ninety days after a hydraulic project authorized in an imminent danger HPA is completed, any remaining impacts must be mitigated or a mitigation plan must be submitted to the department for approval.

(6) Chronic danger HPA:

(a) The department must issue a chronic danger HPA upon request for work required to abate the chronic danger. This work may include removing obstructions, repairing existing structures, restoring banks, restoring road or highway access, protecting fish life, or protecting property.

(b) Authority to declare when a chronic danger exists is conveyed to a county legislative authority by statute. A chronic danger is a condition in which any property, except for property located on a marine shoreline, has experienced at least two consecutive years of flooding or erosion that has damaged or has threatened to damage a major structure, water supply system, septic system, or access to any road or highway.

(c) The county legislative authority must notify the department in writing when it determines a chronic danger exists.

(d) When chronic danger is declared, and before starting work, a person must submit a complete written application to the department to obtain a chronic danger HPA. Unless the project also satisfies the requirements for fish habitat enhancement projects identified in RCW 77.55.181 (1)(a)(ii), compliance with the provisions of chapter 43.21C RCW (State Environmental Policy Act) is required. Projects that meet the requirements in RCW 77.55.181 (1)(a)(ii), will be processed under RCW 77.55.181(3), and the provisions of chapter 43.21C RCW will not be required.

(7) Expedited HPA:

(a) The department may issue an expedited HPA when normal processing would result in significant hardship for the applicant or unacceptable environmental damage would occur.

(b) Before starting work, a person must submit a complete written application to the department to obtain an HPA.

(c) Compliance with the provisions of chapter 43.21C RCW (State Environmental Policy Act) is not required for expedited HPAs. The department must issue expedited HPAs within fifteen calendar days after receipt of a complete written application. Work under an expedited HPA must be completed within sixty calendar days of the date the HPA is issued.

(d) Within ninety days after a hydraulic project authorized in an expedited HPA is completed, any remaining impacts must be mitigated or a mitigation plan must be submitted to the department for approval.

(8) Pamphlet HPA:

(a) There are two pamphlet HPAs, *Gold and Fish* and *Aquatic Plants and Fish*, that cover the most common types of small scale mineral prospecting and removing or controlling aquatic plants, respectively. A person must follow the provisions in the pamphlet. If a person cannot follow the provisions, or disagrees with any provision, the permittee must apply for a standard HPA before starting the hydraulic project.

(b) A person must review a pamphlet HPA before conducting the authorized hydraulic project.

(c) When a pamphlet HPA is used, the permittee must have the pamphlet HPA on the job site when conducting work and the pamphlet must be immediately available for inspection by the department upon request.

(d) All persons conducting the project must follow all provisions of the pamphlet HPA.

(e) The department may grant exceptions to a pamphlet HPA only if a person applies for a standard individual HPA for the project.

(f) Pamphlet HPAs do not exempt a person from obtaining other appropriate permits and following the rules and regulations of local, federal, and other Washington state agencies.

(9) How to get an HPA:

(a) How to get a pamphlet HPA: A person can download and save or print a pamphlet HPA from the department's website. A person may also request a pamphlet HPA from the department either verbally or in writing.

(b) How to get an emergency HPA: Upon an emergency declaration, and before starting emergency work, a person must obtain a verbal or written HPA from the department. A complete written application is not required. However, a person must provide adequate information describing the proposed action. Compliance with the provisions of chapter 43.21C RCW (State Environmental Policy Act), is not required for emergency HPAs. A person may request a verbal or written emergency HPA from the biologist who issues HPAs for the geographic area where the emergency is located Monday through Friday from 8:00 a.m. to 5:00 p.m. If the biologist cannot be contacted or it is after business hours, a person must contact the emergency hotline at 360-902-2537 to request an emergency HPA.

(c) How to get a standard, expedited, or chronic danger HPA:

(i) A person must submit a complete written application to the department to obtain an HPA unless the project qualifies for one of the following:

(A) A pamphlet HPA, subsection (3) of this section; or

(B) An emergency HPA, subsection (5) of this section.

(ii) When applying for an HPA, a person must submit one of the following application forms to the department:

(A) The electronic online application developed by the department;

(B) The current version of the JARPA;

(C) The current version of the JARPA including the most recent version of the application for streamlined processing of fish habitat enhancement projects when applying for streamlined processing under RCW 77.55.181. These may be submitted to the department as attachments to the online application form;

The Washington department of transportation may omit the JARPA when applying for streamlined processing of fish habitat enhancement projects using the online application system;

(D) The most recent version of the model HPA application or other department-approved alternative applications available from the department's public website; or

(E) The current version of the JARPA if applying for approval of a watershed restoration project under RCW 77.55.171. This may be submitted to the department as an attachment to the online application form.

(iii) A complete application package for an HPA must contain:

(A) A completed application form signed and dated by the applicant, landowner(s) or landowner representative(s) of any project site or off-site mitigation location, and the authorized agent, if any. Completing and submitting the application forms through the department's online permitting system is the same as providing signature and date, if all documents required during the online application process are submitted to the department. The property owner, if different than the applicant, or easement holder must consent to the department staff entering the property where the project is located to inspect the project site or any work;

(B) Plans for the overall project;

(C) Complete plans and specifications for all aspects of the proposed construction or work waterward of the mean higher high water line in salt water, or waterward of the ordinary high water line in fresh water;

(D) A description of the measures that will be implemented for the protection of fish life, including any reports assessing impacts from the hydraulic project to fish life and their habitat, and plans to mitigate those impacts to ensure the project results in no net loss;

(E) For a standard or chronic danger HPA application, a copy of the written notice from the lead agency demonstrating compliance with any applicable requirements of the State Environmental Policy Act under chapter 43.21C RCW, unless otherwise provided for in chapter 77.55 RCW; or the project qualifies for a specific categorical exemption under chapter 197-11 WAC;

(F) Written approval by one of the entities specified in RCW 77.55.181 if the applicant is proposing a fish enhancement project;

(G) For an expedited HPA application, an explanation of why normal processing would result in significant hardship for the applicant or unacceptable environmental damage.

(H) For a standard HPA application for mineral prospecting involving motorized or gravity siphon equipment, a copy of a permit issued under the federal Clean Water Act by Washington department of ecology that authorizes the use of that equipment at the location pro-

posed, or written notice from Washington department of ecology declaring that a federal Clean Water Act permit is not required.

(I) When applying for a standard written HPA for mineral prospecting work within the wetted perimeter outside of the allowable work times authorized in WAC 220-660-300 and 220-660-305, a person must identify the upstream and downstream extent of each project location within a stream. The location of each site can be no greater than the length contained within a registered mining claim, if the project occurs on a claim, or one thousand three hundred linear feet of stream, if the project does not occur on a claim.

(iv) HPA application submission:

(A) A person must submit the complete application package by:

(I) Using the department's online permitting system;

(II) Sending the package via mail to:

Department of Fish and Wildlife

P.O. Box 43234

Olympia, WA 98504-3234;

(III) Sending the package via email to:

HPAapplications@dfw.wa.gov;

(IV) Sending the package via fax to: 360-902-2946;

(V) Uploading the package to a file transfer protocol site acceptable to the department; or

(VI) Hand delivering the package to the department at 1111 Washington Street S.E., Olympia, WA 98504, Habitat Program, Fifth Floor. The department will not accept applications submitted elsewhere or by other than the applicant or authorized agent.

(B) Dimensions of printed documents submitted with the application package may not be larger than eleven inches by seventeen inches. Pages of documents submitted may not be bound except by paper clips or other temporary fastening.

(C) A person must submit applications and supporting documents with a combined total of thirty or more pages as digital files rather than printed documents. All digital files must be in formats compatible with Microsoft Word, Microsoft Excel, or Microsoft Access programs, or in PDF, TIFF, JPEG, or GIF formats.

(D) Applications submitted to the habitat program during normal business hours (8:00 a.m. to 5:00 p.m. Pacific Standard Time) are deemed received on the date the habitat program receives the application. The department may declare applications received by the habitat program after normal business hours as received on the next business day.

(10) **Incomplete applications:**

(a) Within ten days of receipt of the application, the department must determine whether an application meets the requirements of this section. If the department determines the application does not meet the requirements, the department will provide written or emailed notification of an incomplete application to the applicant or authorized agent. This written or emailed notification must include a description of information needed to make the application complete. The department may return the incomplete application to the applicant or authorized agent or hold the application on file until it receives the missing information. The department will not begin to process the application until it receives all information needed to complete the application.

(b) The applicant or authorized agent must submit additional information in response to a written notification of incomplete application through the department's online permitting system or to the de-

partment's habitat program, Olympia headquarters office. The department will not accept additional information submitted elsewhere or by other than the applicant or authorized agent.

(c) The department may close any application that has been incomplete for more than twelve months. The department must provide the applicant or authorized agent with written notification at least one week before closing the application and must provide the option for the applicant or authorized agent to postpone the closure for up to one year. The department must provide the applicant with written notification at the time it closes the application. After an application is closed, the applicant or authorized agent must submit a new complete application to receive further consideration of the project.

(d) The department may reject a standard HPA application for mineral prospecting involving motorized or gravity siphon equipment if the proposed project location or locations are in an area in which Washington department of ecology is prohibited under RCW 90.48.615 from issuing a permit under the federal Clean Water Act.

(11) Application review period:

(a) Once the department determines an application is complete, the department will provide to tribes and local, state, and federal permitting or authorizing agencies a seven-calendar-day review and comment period. The department will not issue the HPA before the end of the review period to allow all interested tribes and agencies to provide comments to the department. The department may consider all written comments received when issuing or provisioning the HPA. The review period is concurrent with the department's overall review period. Emergency, imminent danger, expedited, and modified HPAs are exempt from the review period requirement.

(b) Except for emergency, imminent danger, and expedited HPAs, the department will grant or deny approval within forty-five calendar days of the receipt of a complete written application. The department will grant approval of imminent danger and expedited HPAs within fifteen days of the receipt of a complete written application. The department will grant approval of emergency HPAs immediately upon request if an emergency declaration has been made.

For streamlined processing of Washington department of transportation fish passage barrier correction projects, the department will, within 30 days, either grant or deny approval, or make a determination that the streamlined review and approval process created by RCW 77.55.181 is not appropriate for the proposed project.

(c) If the department declares an imminent danger, applicant hardship, or immediate threat regarding an application for expedited or emergency HPA, the department must place written documentation of that declaration and justification for it in the application record within three days of issuing the written HPA.

(12) Suspending the review period:

(a) An applicant or authorized agent may request a delay in processing a standard HPA. The applicant or authorized agent must submit a written request for the delay through the department's online permitting system or to the habitat program's Olympia headquarters office. The department may not accept delay requests submitted elsewhere or by a person other than the applicant or authorized agent.

(b) If the department suspends the review period, the department must immediately notify the applicant in writing of the reasons for the delay. The department may suspend the review period (with or without the applicant's concurrence) if:

- (i) The site is physically inaccessible for inspection or not in a condition to be evaluated (i.e., snow cover, frozen);
 - (ii) The applicant or authorized agent remains unavailable or unable to arrange for a field evaluation of the proposed project within ten working days of the department's receipt of the application;
 - (iii) The applicant or authorized agent submits a written request for a delay;
 - (iv) The department is issuing an HPA for a stormwater discharge and is complying with the requirements of RCW 77.55.161 (3)(b); or
 - (v) The department is reviewing the application as part of a multi-agency permit streamlining effort, and all participating permitting and authorizing agencies and the permit applicant agree to an extended timeline longer than forty-five calendar days.
- (c) The department may close any application if the application has been delayed for processing more than twelve months for any of the reasons identified in subsection (12)(a) or (b) of this section. The department must provide the applicant or authorized agent with written notification at least one week before closing the application and must provide the option for the applicant or authorized agent to postpone the closure for up to one year. The department must provide the applicant with written notification at the time it closes the application. After an application is closed, the applicant or authorized agent must submit a new complete application to receive further consideration of the project.

(13) Issuing or denying a hydraulic project approval:

- (a) Protection of fish life is the only grounds upon which the department may deny or provision an HPA, as provided in RCW 77.55.021. The department may not unreasonably withhold or condition approval of an HPA. The HPA provisions must reasonably relate to the project and must ensure that the project provides proper protection for fish life. The department may not impose provisions that attempt to optimize conditions for fish life that are out of proportion to the impact of the proposed project.
- (b) The department may not deny an emergency, imminent danger, chronic danger, or an expedited HPA, as provided in RCW 77.55.021. However, these projects must comply with the provisions in this chapter that are included in an HPA. The department will deny any other type of HPA or request to change an existing HPA when the project will not protect fish life, unless enough mitigation can be assured by provisioning the HPA or modifying the proposal. If the department denies approval, the department must provide the applicant with a written statement of the specific reasons why and how the proposed project would adversely affect fish life, as provided in RCW 77.55.021.
- (c) The department may place specific time limitations on project activities in an HPA to protect fish life.
- (d) The department may require a person to notify the department before hydraulic project construction or other hydraulic project work starts, upon project completion, or at other times that the department deems necessary while the HPA is in effect. The department may also require a person to provide periodic written reports to assess HPA compliance.
- (e) The HPA must contain provisions that allow for minor modifications to the work timing, plans, and specifications of the project without requiring the reissuance of the HPA, as long as the modifications do not adversely affect fish life or the habitat that supports fish life. The permittee should contact the habitat program's Olympia

headquarters office through email or the department's online permit application system to request a minor modification.

(f) A person may propose or conduct a hydraulic project under an environmental excellence program agreement authorized under chapter 43.21K RCW. These projects must be applied for and permitted under the requirements of chapter 43.21K RCW.

(14) Hydraulic project approval expiration time periods:

(a) Except for emergency, imminent danger, expedited, and pamphlet HPAs, the department may grant standard HPAs that are valid for up to five years. The permittee must demonstrate substantial progress on construction of the portion of the project authorized in the HPA within two years of the date of issuance.

(b) Imminent danger and expedited HPAs are valid for up to sixty days, and emergency HPAs are valid for the expected duration of the emergency hydraulic project.

(c) Pamphlet HPAs remain in effect indefinitely until modified or rescinded by the department.

(d) The following types of agricultural hydraulic project HPAs remain in effect without the need for periodic renewal; however, a person must notify the department before starting work each year:

(i) Seasonal work that diverts water for irrigation or stock watering; and

(ii) Stream bank stabilization projects to protect farm and agricultural land if the applicant can show that the problem causing the erosion occurs annually or more frequently. Evidence of erosion may include history of permit application, approval, or photographs. Periodic floodwaters alone do not constitute a problem that requires an HPA.

(15) Requesting a time extension, renewal, modification, or transfer of a hydraulic project approval:

(a) The permittee may request a time extension, renewal, modification, or transfer of an active HPA. Before the HPA expires, the permittee or authorized agent must submit a written request through the department's online permitting system or to the habitat program's Olympia headquarters office. The department may not accept requests for delay, renewal, modification, or transfer of an HPA submitted elsewhere or by a person other than the permittee or authorized agent. Written requests must include the name of the applicant, the name of the authorized agent if one is acting for the applicant, the permit number or application identification number of the HPA, the date issued, the permitting biologist, the requested changes to the HPA if requesting a time extension, renewal, or modification, the reason for the requested change, the date of the request, and the requestor's signature. Requests for transfer of an HPA to a new permittee or authorized agent must additionally include a signed, written statement that the new permittee or authorized agent agrees to the conditions of the HPA, that they agree to allow the department access to the project location to inspect the project site, mitigation site, or any work related to the project, and that they will not conduct any project activities until the department has issued approval.

(b) Requests for time extensions, renewals, or modifications of HPAs are deemed received on the date received by the department. The department may declare applications submitted to habitat program after normal business hours as received on the next business day.

(c) Within forty-five days of the requested change, the department must approve or deny the request for a time extension, renewal, modification, or transfer of an approved HPA.

(d) Unless the new permittee or authorized agent requests a time extension, renewal, or modification of an approved HPA, the department may change only the name and contact information of the permittee or authorized agent and must not alter any provisions of the HPA except the project or location start dates when granting a transfer.

(e) A permittee may request a modification or renewal of an emergency HPA until the emergency declaration expires or is rescinded. Requests for changes to emergency HPAs may be verbal, but must contain all of the information in (a) of this subsection.

(f) The department must not modify or renew an HPA beyond the applicable five-year or sixty-day periods. A person must submit a new complete application for a project needing further authorization beyond these time periods.

(g) The department will issue a letter documenting an approved minor modification(s) and a written HPA documenting an approved major modification(s) or transfer.

(16) Modifications of a hydraulic project approval initiated by the department:

(a) After consulting with the permittee, the department may modify an HPA because of changed conditions. The modification becomes effective immediately upon issuance of a new HPA.

(b) For hydraulic projects that divert water for agricultural irrigation or stock watering, or when the hydraulic project or other work is associated with stream bank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the department must show that changed conditions warrant the modification in order to protect fish life.

(17) Revoking an HPA.

(a) The department may revoke an HPA under the following conditions:

(i) At the written request of the permittee or authorized agent;

(ii) As the result of an informal or formal appeal decision;

(iii) As the result of a court ruling finding that the department issued the HPA in error;

(iv) Following change of a determination of nonsignificance or mitigated determination of nonsignificance to a determination of significance by a lead agency under chapter 43.21C RCW that applies to the hydraulic project approved by the HPA;

(v) The applicant did not correctly identify compliance with the requirements of chapter 43.21C RCW in the HPA application and the department was unaware of the error until after the HPA was issued;

(vi) Changed physical or biological conditions at the site of the hydraulic project have occurred before project initiation such that fish life cannot be protected if the project proceeds under the requirements of the existing HPA;

(vii) The permittee has not demonstrated substantial progress on construction of the hydraulic project within two years of the date of issuance as required in RCW 77.55.021 (9) (a). Substantial progress means initiation of work at any of the project locations identified in the HPA;

(viii) Duplicate HPAs have been issued for the same hydraulic project.

(b) The department must provide the permittee or authorized agent with written notification before revoking the HPA.

(c) The department must notify the permittee or authorized agent in writing immediately upon revoking the HPA.

(18) Requesting a preapplication determination:

(a) A person may request information or a technical assistance site visit from the department prior to submitting an HPA application or at any other time. The department will provide the requested information either verbally or in writing.

(b) If a person is unsure about whether proposed construction or other work landward of (above) the ordinary high water line requires an HPA, they may request a preapplication determination from the department under RCW 77.55.400. The department must evaluate the proposed project and determine if it is a hydraulic project and, if so, whether an HPA from the department is required to ensure proper protection of fish life.

(c) The preapplication determination request must be submitted through the department's online permitting system and must contain:

(i) A description of the proposed project, which must include the location of the ordinary high water line;

(ii) A map showing the location of the project site, which must include the location of the ordinary high water line; and

(iii) Preliminary plans and specifications of the proposed project, if available, which include the location of the ordinary high water line.

(d) The department must provide tribes and local governments a seven calendar day review and comment period. The department must consider all applicable written comments that it receives before it issues a determination as described in this subsection.

(e) The department must issue a written determination, including its rationale for the decision, within twenty-one calendar days of receiving the request.

(f) Chapter 43.21C RCW (state environmental policy) does not apply to preapplication determinations issued under this subsection.

(g) The department's preapplication determination decision may be appealed as provided in WAC 220-660-460 (Informal appeal of administrative action) or WAC 220-660-470 (Formal appeal of administrative action).

(19) Notice of intent to disapprove HPA applications:

(a) The department may disapprove HPA applications submitted by a project proponent who has failed to comply with a stop work order or notice to comply issued under WAC 220-660-480, or who has failed to pay civil penalties issued under WAC 220-660-480. The term "project proponent" has the same definition as in RCW 77.55.410.

(b) The department may disapprove HPA applications submitted by such project proponents for up to one year after the date on which the department issues a notice of intent to disapprove HPA applications, or until such project proponent pays all outstanding civil penalties and complies with all notices to comply and stop work orders issued under WAC 220-660-480, whichever is longer (disapproval period).

(c) The department must provide written notice of its intent to disapprove HPA applications to the project proponent and to any authorized agent or landowner identified in the application, in person or via United States mail, to the mailing address(es) listed on the project proponent's HPA application.

(d) The disapproval period begins on the date the department's notice of intent to disapprove HPA applications becomes final. The notice of intent to disapprove HPA applications becomes final thirty calendar days after the department issues it, or upon exhaustion of all applicable administrative and/or judicial remedies.

(e) Any project proponent issued a notice of intent to disapprove HPA applications may, within thirty days of the date of the notice,

initiate a formal appeal of the notice as provided in WAC 220-660-470 (Formal appeal of administrative actions).

(f) The department will provide notice and waiver of fines, civil penalties, and administrative sanctions consistent with RCW 34.05.110 and WAC 220-660-480(12).

[Statutory Authority: RCW 77.04.012, 77.12.047, 77.55.021, 77.55.091, 77.135.100, 77.135.110, and 34.05.328. WSR 21-09-066, § 220-660-050, filed 4/19/21, effective 5/20/21. Statutory Authority: RCW 77.04.012, 77.12.047, 77.55.021, 34.05.328, and 2019 c 290. WSR 20-11-019 (Order 20-75), § 220-660-050, filed 5/12/20, effective 6/12/20. Statutory Authority: RCW 77.04.012, 77.04.020, 77.12.047, 77.55.021, 77.55.091, 77.55.051, 77.55.081, 34.05.328, and 34.05.350. WSR 18-10-054, § 220-660-050, filed 4/27/18, effective 6/1/18. Statutory Authority: RCW 77.04.012, 77.04.020, and 77.12.047. WSR 15-02-029 (Order 14-353), § 220-660-050, filed 12/30/14, effective 7/1/15.]

WSR 23-05-043
EXPEDITED RULES
DEPARTMENT OF AGRICULTURE
[Filed February 9, 2023, 1:42 p.m.]

Title of Rule and Other Identifying Information: Chapter 16-157 WAC, Organic food standards and certification.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of agriculture (department) is proposing to adopt the current version of the United States Department of Agriculture (USDA) organic regulations (7 C.F.R. Part 205).

The current rule adopts the March 30, 2022, version of the USDA organic regulations. This proposal updates the language to adopt the December 14, 2022, version of the federal regulation to remain consistent with the National Organic Program.

Reasons Supporting Proposal: Updating this chapter will ensure the rule remains compliant with RCW 15.86.060(1), which directs the director to adopt rules "... appropriate for the adoption of the national organic program." Further, this change will ensure compliance with RCW 15.86.065(3), which states the program "shall not be inconsistent with the requirements of the national organic program."

The department adopts these national standards for organically produced agricultural products in order to remain uniform with the National Organic Program. These standards assure consumers that products with the USDA organic seal meet consistent, uniform standards that are in compliance with federal regulations.

Statutory Authority for Adoption: RCW 15.86.060(1), [15.86.]065(3).

Statute Being Implemented: Chapter 15.86 RCW.

Rule is necessary because of federal law, [no further information provided by agency].

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting: Scott Rice, P.O. Box 42560, Olympia, WA 98504-2560, 360-359-3021; Implementation and Enforcement: Brenda Book, P.O. Box 42560, Olympia, WA 98504-2560, 360-902-2090.

This notice meets the following criteria to use the expedited adoption process for these rules:

Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: Adopting the current version of 7 C.F.R. Part 205 meets the criteria for expedited adoption under RCW 34.05.353 (1)(b) by adopting federal regulations.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEAR-

INGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Gloriann Robinson, Agency Rules Coordinator, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560 or 1111 Washington Street S.E., Olympia, WA 98504, phone 360-902-1802, fax 360-902-2092, email WSDARulesComments@agr.wa.gov, AND RECEIVED BY April 17, 2023.

February 3, 2023
Luisa F. Castro
Assistant Director

OTS-4250.1

AMENDATORY SECTION (Amending WSR 22-15-010, filed 7/7/22, effective 8/7/22)

WAC 16-157-020 Adoption of the National Organic Program. The Washington state department of agriculture adopts the standards of the National Organic Program, 7 C.F.R. Part 205, effective (~~March 30~~) December 14, 2022, for the production and handling of organic crops, livestock, and processed agricultural products. The National Organic Program rules may be obtained from the department by emailing the organic program at organic@agr.wa.gov, by phone at 360-902-1805 or accessing the National Organic Program's website at <https://www.ams.usda.gov/rules-regulations/organic>.

[Statutory Authority: RCW 15.86.060(1), [15.86.]065(3), and [15.86.]065(4). WSR 22-15-010, § 16-157-020, filed 7/7/22, effective 8/7/22; WSR 21-21-027, § 16-157-020, filed 10/11/21, effective 11/11/21. Statutory Authority: RCW 15.86.060(1) and [15.86.]065(3). WSR 19-14-129, § 16-157-020, filed 7/3/19, effective 8/3/19. Statutory Authority: RCW 15.86.060 and 15.86.070. WSR 19-01-062, § 16-157-020, filed 12/14/18, effective 1/14/19. Statutory Authority: RCW 15.86.060(1), [15.86.]065(3) and chapter 34.05 RCW. WSR 18-03-154, § 16-157-020, filed 1/23/18, effective 2/23/18. Statutory Authority: Chapter 15.86 and 34.05 RCW. WSR 09-15-152, § 16-157-020, filed 7/21/09, effective 8/21/09. Statutory Authority: RCW 15.86.060 and 15.86.070. WSR 06-23-108, § 16-157-020, filed 11/17/06, effective 12/18/06. Statutory Authority: Chapters 15.86 and 34.05 RCW. WSR 04-24-015, § 16-157-020, filed 11/22/04, effective 12/23/04. Statutory Authority: Chapter 15.86 RCW. WSR 03-03-044, § 16-157-020, filed 1/10/03, effective 2/10/03; WSR 02-10-090, § 16-157-020, filed 4/29/02, effective 5/30/02.]

WSR 23-05-076
EXPEDITED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed February 14, 2023, 8:39 a.m.]

Title of Rule and Other Identifying Information: Apprenticeship rule and statute alignment under chapter 296-05 WAC, Apprenticeship rules. WAC 296-05-015 Apprenticeship program standards.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to update WAC 296-05-015 (11)(a), which specifies that apprenticeship "programs are not required to use all hours granted by the regulatory section of the department." The proposed amendment clarifies that this is only the case "except when required by statute." This update is necessary because of a recent legislative change that mandates that specific hours must be granted for electrical licensing general journey level certification (EL01).

In 2018, the Washington state legislature passed SSB 6126 related to qualifying to sit for the EL01 examination. SSB 6126 changed how persons will receive the on-the-job training experience required to become an EL01 in the state of Washington. One of these changes was specifically found in RCW 19.28.191 (1)(c) which requires registered apprenticeship programs to grant credit for hours of experience to specialty certificate holders of a 4,000-hour certificate.

Reasons Supporting Proposal: The department of labor and industries (L&I) must update WAC 296-05-015 (11)(a) to align with the new requirements found in RCW 19.28.191 (1)(c) to ensure consistency in the implementation of SSB 6126.

Statutory Authority for Adoption: Chapter 49.04 RCW.

Statute Being Implemented: RCW 19.28.191.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Brittany Craighead, Tumwater, Washington, 360-770-9016; Implementation and Enforcement: Peter Guzman, Tumwater, Washington, 360-584-3706.

This notice meets the following criteria to use the expedited adoption process for these rules:

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: Expedited rule making is appropriate as SSB 6126 will be effective July 1, 2023. Without this update, WAC 296-05-015 and RCW 19.28.191 will be in direct conflict with each other.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Brittany Craighead, L&I, Fraud Prevention and Labor Standards, Apprenticeship, P.O. Box 44530, Olympia, WA 98504-4530, phone 360-770-9016, email ApprenticeshipRules@Lni.wa.gov, AND RECEIVED BY April 17, 2023.

February 14, 2023

Joel Sacks
Director

OTS-4289.1

AMENDATORY SECTION (Amending WSR 18-17-149, filed 8/21/18, effective 10/10/18)

WAC 296-05-015 Apprenticeship program standards. Apprenticeship program standards govern apprenticeship agreements between a program sponsor and an individual apprentice and define the term of the apprenticeship. The WSATC develops, administers, and enforces apprenticeship program standards, which are incorporated into apprenticeship agreements. Proposed standards must be reasonably consistent with existing standards in the trade or occupation. Proposed standards are reasonably consistent with existing standards when standards meet or exceed the minimum number of hours approved by the United States Department of Labor in the trade or occupation, if approval has been made. If not, the WSATC may use its discretion to determine whether standards are reasonably consistent with existing standards.

All apprenticeship agreements must comply with the approved program standards, chapter 49.04 RCW, and these rules. The standards of apprenticeship agreements must include the following:

(1) A statement of the occupation to be taught and the required hours for completion of apprenticeship which must not be less than (~~two thousand~~) 2,000 hours of reasonably continuous employment.

(2) A statement identifying the program sponsor, establishing the apprenticeship committee and enumerating the sponsor's and committee's duties and responsibilities. This statement must include provisions to:

(a) Elect a chair and a secretary from employer and employee representatives of the committee;

Exception: This provision is not necessary for a plant program.

(b) Convene at least three annual regular meetings of the program sponsor and apprenticeship committee. The meetings shall be attended by a quorum of committee members (as defined in the approved program standards), be documented with minutes which must be periodically submitted to the department and made available to the WSATC upon request. Disciplinary action may only be taken at a face-to-face meeting;

(c) Explain the program sponsor's request for apprentices in the area covered by the apprenticeship standards established under these rules and a plan to include reasonable continuous employment;

(d) Establish minimum standards of education and skilled occupational experience required of apprentices;

(e) Rotate apprentices in the various processes of the skilled occupation to assure a well-rounded, competent worker;

(f) Determine the adequacy of an employer to furnish proper on-the-job training in accordance with the provisions of the approved standards;

Exception: This does not apply to plant programs.

(g) Recommend competent instructors as defined in WAC 296-05-003 and related/supplemental instruction in accordance with state board for community and technical college requirements;

(h) Coordinate related/supplemental instruction with on-the-job work experience;

(i) Hear and adjust all complaints of violations of apprenticeship agreements;

(j) Adopt, as necessary, program rules to administer the apprenticeship program in compliance with its standards, chapter 49.04 RCW, and these rules;

(k) Periodically review and evaluate apprentices before advancement to the apprentice's next wage progression period;

(l) Maintain apprenticeship records and records of the administrative program as may be required by the WSATC, chapter 49.04 RCW, and these rules (see WAC 296-05-100).

(3) The following Equal Employment Opportunity Pledge:

"The recruitment, selection, employment and training of apprentices during their apprenticeship shall be without discrimination because of race, sex (including pregnancy and gender identity), sexual orientation, color, religion, national origin, age, genetic information, disability or as otherwise specified by law. The sponsor shall take positive action to provide equal opportunity in apprenticeship and will operate the apprenticeship program as required by the rules of the Washington State Apprenticeship and Training Council and Title 29, Part 30 of the Code of Federal Regulations."

(4) When applicable, an equal employment opportunity plan and selection procedures.

(5) A numeric ratio of apprentices to journey-level workers may not exceed one apprentice per journey-level worker. It must be consistent with proper supervision, training, safety, continuity of employment, and applicable provisions in a collective bargaining agreement, if any. The ratio must be described in the program standards and shall be specific and clear as to application in terms of job site, work group, department, or plant. An exception to this requirement may be granted by the WSATC.

(6) A statement of the related/supplemental instruction including content, format, and hours of study per year. Related/supplemental instruction shall not be less than (~~one hundred forty-four~~) 144 hours per year and shall be defined in the standards per:

(a) Twelve-month period from date of registration; or

(b) Defined (~~twelve-month~~) 12-month school year; or

(c) Two thousand hours of on-the-job training.

If a sponsor does not prescribe hours of study, the WSATC shall adopt (a) of this subsection for compliance purposes.

(7) An attendance policy which includes the following provisions:

(a) If the apprentice fails to fulfill the related/supplemental instruction obligations, the sponsor may withhold the apprentice's periodic wage advancement, suspend or cancel the apprenticeship agreement.

(b) That time spent in related/supplemental instruction classes shall not be considered as hours of work and the apprentice is not required to be paid for the classroom time.

(c) That all hours of actual attendance by the apprentice in related/supplemental instruction classes must be reported to the department on a quarterly basis.

(d) That the hours reported to the department will clearly identify unpaid, supervised related/supplemental instruction time versus paid or unsupervised time for industrial insurance purposes.

(8) A provision to ensure that the sponsor provides for instruction of the apprentice during the apprentice's related/supplemental instruction in safe and healthful work practices in compliance with the Washington Industrial Safety and Health Act, and applicable federal and state regulations.

(9) A provision for a formal agreement between the apprentice and the sponsor and for registering that agreement with the supervisor.

(10) A provision for the timely notice to the department of all requests for disposition or modification of apprenticeship agreements including: Certificate of completion; additional credit; suspension; military service; reinstatement; cancellation; and corrections.

(11) A provision for granting of advanced standing or credit for demonstrated competency, acquired experience, training, education, or skills in or related to the occupation and:

(a) In licensed trades regulated by electrical, plumbing, and elevator programs at the department, apprenticeship sponsors may give advanced credit or grant hours to apprentices only up to the hours that have been approved by the appropriate licensing entity prior to the sponsor granting credit to the registered apprentice. Except when required by statute, programs are not required to use all hours granted by the regulatory section of the department.

(b) All apprenticeship programs need to ensure that a fair and equitable process is applied to apprentices seeking advanced standing or credit.

(12) A provision for the transfer of an apprentice from one training agent to another training agent of the sponsor in order to provide to the extent possible, continuous employment and diversity of training experiences for apprentices.

(13) A provision for the amendment of the standards or deregistration of the program. This provision must comply with chapter 49.04 RCW, these rules, and WSATC policies and procedures.

(14) An apprenticeship appeal procedure in compliance with chapters 49.04 and 34.05 RCW, and these rules.

(15) A statement of the processes within the occupation in which the apprentice is to be taught and the approximate amount of time to be spent at each process.

(16) A statement of the number of hours to be spent by the apprentice in work and the number of hours to be spent in related/supplemental instruction. For competency based and hybrid models, the program standards must address how on-the-job learning will be integrated into the program, describe competencies, and identify an appropriate means of testing and evaluation for such competencies.

(17) A statement of the minimum qualifications for persons entering the apprenticeship program including the age of the apprentice which may not be less than (~~sixteen~~) 16 years of age.

Note: Seventeen years is the minimum age allowed for applicants registering in building and construction trade occupations. All exceptions to minimum qualifications, if any, must be clearly stated and applied in a nondiscriminatory manner.

(18) Provision that the services of the supervisor and the WSATC may be utilized for consultation regarding the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or as required by the established apprenticeship standards procedure.

(19) Provision that if an individual training agent is unable to fulfill its obligation under the apprenticeship agreement, it will transfer the obligation to the program sponsor.

(20) Such additional standards as may be prescribed in accordance with the provisions of this chapter.

(21) Disciplinary procedures and criteria for apprentices. The procedures may include a committee-imposed disciplinary probation during which the committee may according to expressed criteria:

(a) Withhold periodic wage advancements;

(b) Suspend or cancel the apprenticeship agreement;

(c) Take further disciplinary action; or

(d) The disciplinary procedures must include a notice to the apprentice that the apprentice has the right to file an appeal of the committee's action to the WSATC.

(22) A provision for an initial probation period. The initial probationary period must be expressed in hours of employment. During the initial probationary period, the apprenticeship agreement may be terminated by the sponsor or the apprentice without a hearing or stated cause.

(23) Provisions prohibiting discrimination on the race, sex (including pregnancy and gender identity), sexual orientation, color, religion, national origin, age, genetic information, disability or as otherwise specified by law during all phases of apprenticeship.

(24) Provisions to ensure that local committee rules and regulations be consistent with these rules and the applicable apprenticeship agreement.

(25) Provisions to ensure any proposed standards for apprenticeship are reasonably consistent with any standards for apprenticeship already approved by the WSATC for the industry occupation in question. The goal is to achieve general statewide uniformity of standards in each industry occupation. Proposed standards for a new program shall be considered consistent if they are equal to or exceed the minimum number of hours approved by the United States Department of Labor, Employment and Training Administration, Office of Apprenticeship for a given occupation. If the United States Department of Labor has not established a minimum number of hours for an occupation, the WSATC may utilize its discretion to determine the minimum number of hours that must be achieved. In addition, the course content and delivery method must be designed to achieve reasonably consistent skills as existing standards within the state for that industry occupation.

(26) A provision to ensure progressively increasing wage scales based on specified percentages of journey-level wage. Sponsors must submit the journey-level wage at least annually or whenever changed to the department. Wage reports may be submitted on a form provided by the department.

(27) A sample apprenticeship agreement and a standard form for program standards are available from the supervisor.

(28) An apprenticeship term may be:

(a) Time-based: Measured by skill acquisition. The apprentice must complete at least (~~two thousand~~) 2,000 hours of on-the-job learning as described in a work process schedule; or

(b) Competency-based: The apprentice successfully demonstrates acquired skills and knowledge, as verified by the program sponsor. Programs utilizing this approach must still require apprentices to complete an on-the-job learning component of registered apprenticeship. The program standards must address how on-the-job learning will

be integrated into the program, describe competencies, and identify an appropriate means of testing and evaluation for such competencies; or

(c) Hybrid: The apprentice acquires skills through a combination of specified minimum number of hours of on-the-job learning and the successful demonstration of competency as described in a work process schedule.

[Statutory Authority: RCW 49.04.010 and 19.285.040. WSR 18-17-149, § 296-05-015, filed 8/21/18, effective 10/10/18. Statutory Authority: Chapter 49.04 RCW, RCW 19.285.040, and 2009 c 197. WSR 11-23-138, § 296-05-015, filed 11/22/11, effective 12/31/11.]

WSR 23-05-077
EXPEDITED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed February 14, 2023, 8:44 a.m.]

Title of Rule and Other Identifying Information: Washington state apprenticeship and training council (WSATC) meetings under chapter 296-05 WAC, Apprenticeship rules.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to update existing rules to allow for flexibility in scheduling of WSATC regular meetings and to allow business to be conducted without interruption when there are circumstances which require the meetings be rescheduled.

Due to scheduling conflicts, the department of labor and industries (L&I) recently had to cancel a WSATC meeting, delaying the conduct of business. To prevent such cancellations in the future, L&I is proposing changes to WAC 296-05-008 and 296-05-200 to allow for the rescheduling of regularly scheduled WSATC meetings.

With the proposed changes, meetings could be rescheduled within 28 calendar days following the original scheduled date. This accommodates Open Public Meetings Act notification requirements.

Reasons Supporting Proposal: These amendments further L&I's mission and operations by providing predictable and consistent service to its customers.

These amendments benefit stakeholders by ensuring that WSATC business can be conducted quarterly. Without the proposed rule amendments, apprenticeship programs' revisions and approval of new programs would be delayed by at least three months every time WSATC cannot assemble a quorum of councilmembers.

Statutory Authority for Adoption: Chapter 49.04 RCW.

Statute Being Implemented: Not applicable.

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

Name of Proponent: L&I, governmental.

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

This notice meets the following criteria to use the expedited adoption process for these rules:

Relates only to internal governmental operations that are not subject to violation by a person.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The proposed amendments meet the criteria under RCW 34.05.353 (1)(a) for expedited rule making as the rules solely relate to internal governmental operations because it pertains only to the ability to reschedule meetings of WSATC.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Erik Sackstein, L&I, Fraud Prevention and Labor Standards, Apprenticeship, P.O.

Box 44530, Olympia, WA 98504-4530, phone 360-485-3313, email
ApprenticeshipRules@Lni.wa.gov, AND RECEIVED BY April 17, 2023.

February 14, 2023
Joel Sacks
Director

OTS-4325.3

AMENDATORY SECTION (Amending WSR 22-01-096, filed 12/13/21, effective 1/13/22)

WAC 296-05-008 Meetings and adjudicative proceedings. (1) Regular meetings: Convened on the third Thursday of January, April, July, and October, held at locations within Washington, and open to the general public. Members of the public cannot be required to register their name, give any information, or fulfill any condition prior to attending council meetings. All council meetings must be conducted according to the provisions of chapter 42.30 RCW, Open Public Meetings Act and chapter 34.05 RCW, Administrative Procedure Act.

(a) Notice of regular meetings: The supervisor must distribute notice not later than 30 calendar days prior to the meeting date to anyone who has requested notice of the regular meetings.

(b) The supervisor must send notices to all WSATC members, including ex officio members, and approved program sponsors.

(c) The following WSATC activities must take place in open public meetings:

- (i) All transactions of official business;
- (ii) All commitments or promises;
- (iii) All collective discussions;
- (iv) All collective decisions; and
- (v) All council actions.

(d) The approval or disapproval of committee programs, plant programs, or amendments to those programs can only occur at regular quarterly meetings unless the council is responding to a court mandate, which can occur at a special meeting. The approval or disapproval of committee programs, plant programs, or amendments to those programs can also occur at a special meeting when the council considers the record and enters a final order following an adjudication conducted under subsection (6) of this section.

(e) Rescheduling regular meetings: Called at the request of the chair or by a majority of the WSATC members.

(i) When a regular meeting is rescheduled, the rescheduled meeting must occur on a date that is after the original scheduled date of the meeting (and not before the original scheduled date), and no more than 28 calendar days after the original scheduled date.

(ii) Notice of the rescheduled meeting: The supervisor must distribute notice to all WSATC members, including ex officio members, and approved program sponsors. Rescheduling must comply with the provisions of chapter 42.30 RCW, Open Public Meetings Act and chapter 34.05 RCW, Administrative Procedure Act.

(iii) The rescheduling of a regular meeting does not affect other deadlines in these rules. All deadlines and time frames will remain

based on the original scheduled date of the regular meeting; only the date of the regular meeting will be affected by the change.

(2) Special meetings: Called at the request of the chair or by a majority of the WSATC members, and open to the general public.

(a) Procedure for special meetings: To call a special meeting, the calling members must:

(i) Mail a written notice with the date, time, and location of the meeting that specifies the business to be transacted at the meeting, either personally or by mail, at least seven calendar days before the specified date of the meeting, to each member of the WSATC, all approved program sponsors, and those who have requested prior notice of special meetings.

(ii) Waiver: The notice requirements to WSATC members may be waived in writing at or prior to the meeting, but all members must agree to waive notice and file the waiver with the supervisor.

(b) Content of special meetings: The subject matter of the special meeting must not exceed the scope of the written notice. If the WSATC takes action on a matter exceeding the scope of the written notice, the action is not final even if the members waive notice.

(c) Special meetings for rule changes: To call a special meeting to consider rule changes, the WSATC must:

(i) ~~((Mail-a))~~ Provide written notice with the date, time, and location of the meeting that specifies the rules to be changed at the meeting, either personally ~~((or))~~, by mail, or by electronic means at least 20 calendar days before the meeting.

(ii) Waiver: The notice requirements may not be waived for special meetings when rule changes are contemplated.

(3) Registered apprenticeship standards actions: When a party requests specific action from the WSATC related to apprenticeship standards, such request must:

(a) Be in writing; and

(b) Signed by the committee's elected chair and secretary, or by an authorized signer approved by the petitioning sponsor;

(c) Sent to the apprenticeship supervisor at least 45 days prior to the date of the regular quarterly meeting.

Requests that are untimely are deferred to the next quarterly meeting.

(4) Other actions: When a party requests specific action or consideration from the WSATC on other issues, such requests must:

(a) Be in writing; and

(b) Sent to the apprenticeship supervisor at least 15 business days prior to the date of the regular quarterly meeting.

Requests that are untimely are deferred to the next quarterly meeting unless waived by the supervisor.

(5) Voting: All council members, except ex officio members, appointed by the director of the department of labor and industries are voting members of the council.

(a) A quorum is two-thirds of the WSATC members entitled to vote.

(b) The chair shall establish a standing tie-breaker committee comprised of three WSATC members entitled to vote:

(i) An employer representative;

(ii) An employee representative; and

(iii) A public member.

(c) The apprenticeship supervisor or designee shall act as secretary to the tie-breaker committee and furnish all information necessary for a decision.

(d) In case of a tie vote on any proposed standards brought before the WSATC, the tie-breaker committee shall meet or confer, review the record, and render a decision within 30 calendar days.

(6) Adjudicative proceedings: All hearings and adjudication, under chapter 49.04 RCW and these rules, shall be conducted according to chapters 34.05 RCW and 10-08 WAC. The chair (or designee) is the presiding officer for adjudicative proceedings held before the WSATC. The WSATC may either adjudicate matter(s) itself, or refer matter(s) to the office of administrative hearings for initial adjudication.

If the initial adjudication is before the WSATC, the WSATC will enter a final order. If the initial adjudication is held at the office of administrative hearings, the administrative hearings judge shall issue an initial order. The WSATC, upon review of the initial order shall enter the final order. An initial order shall become final without further WSATC action five business days after the next regular or rescheduled quarterly meeting unless:

(a) The WSATC upon its own motion determines that the initial order should be reviewed; or

(b) A party to the proceedings files a petition for review of the initial order.

(7) Final WSATC orders or decisions affecting registration and oversight of apprenticeship programs and agreements for federal purposes may be appealed within 30 calendar days to the director of the department pursuant to the following:

(a) An appellant must file with the director an original and four copies of the notice of appeal.

(i) The notice of appeal must specify findings and conclusions at issue in the appeal;

(ii) The director or designee shall serve notice of receipt of the appeal, including copies of the appeal on all parties within five business days from date of receipt;

(iii) The respondent parties may file with the director or designee written arguments within 30 calendar days after the date the notice of receipt of appeal was served upon them.

(b) The director or designee shall review the record in accordance with the Administrative Procedure Act, chapter 34.05 RCW. The director or designee shall issue a final decision affirming, modifying, or reversing the WSATC final order or decision or may remand the matter to the WSATC for further proceedings.

(c) With respect to cancellation of programs only, any aggrieved party may appeal, for federal purposes, a final decision by the director (or director's designee) by following the procedures in 29 C.F.R. 29.8 (b) (5).

(d) Any aggrieved party may appeal the final decision to superior court pursuant to chapter 34.05 RCW. If no party appeals within the period set by RCW 34.05.542, the director's decision is final and binding on all parties.

(8) Limitations: Nothing in this part or in any apprenticeship agreement will operate to invalidate:

(a) Any apprenticeship provision in any collective bargaining agreement between employers and employees establishing higher apprenticeship standards; or

(b) Any special provision for veterans, minority person, or women in the standards, apprentice qualifications or operation of the program, or in the apprenticeship agreement, which is not otherwise prohibited by law, executive order, or authorized regulation.

(9) Retroactivity: The WSATC may make any action or decision which it takes retroactive to the date of the previous business session.

[Statutory Authority: Chapter 49.04 RCW and 2019 c 306. WSR 22-01-096, § 296-05-008, filed 12/13/21, effective 1/13/22. Statutory Authority: RCW 49.04.010 and 19.285.040. WSR 18-17-149, § 296-05-008, filed 8/21/18, effective 10/10/18. Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040. WSR 11-11-002, § 296-05-008, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010. WSR 04-10-032, § 296-05-008, filed 4/28/04, effective 6/1/04.]

AMENDATORY SECTION (Amending WSR 18-17-149, filed 8/21/18, effective 10/10/18)

WAC 296-05-200 Apprenticeship programs—Cancellation. (1) When the supervisor determines that a program is operating in violation of its program standards, these rules, or applicable laws, the supervisor may recommend a program's registration be canceled. Cancellation of a program also serves to cancel any apprenticeship agreements.

(2) The supervisor must:

(a) Provide notice of deficiencies to the program and (~~sixty~~) 60 calendar days to correct the identified deficiencies;

(b) Provide notice that the program's registration may be canceled if the deficiencies are not corrected within (~~sixty~~) 60 calendar days of receipt of the notice, and a notice of correction is sent to the supervisor within (~~sixty~~) 60 calendar days of receipt of the notice;

(3) If the program does not correct identified deficiencies in a timely manner, the supervisor may begin the following procedures to cancel the program's registration. The supervisor must:

(a) Make a written recommendation to the WSATC that the program be canceled;

(b) Provide a record to the WSATC detailing the notice given to the program to correct identified deficiencies;

(c) Provide notice of the recommendation to the program sponsor and the apprenticeship committee responsible for administering the program;

(d) Provide the required notice (~~thirty~~) 30 calendar days before the next regularly scheduled quarterly meeting for the WSATC to act on the supervisor's recommendation to cancel a program's registration. Absent an emergency, if notice is given fewer than (~~thirty~~) 30 calendar days, the supervisor's recommendation to cancel a program's registration is heard at the subsequent regularly scheduled quarterly meeting. A rescheduling of the regularly scheduled quarterly meeting does not affect the date to provide the required notice; the date for providing the required notice will remain based on the original scheduled date of the WSATC regular meeting.

(4) When the recommended program cancellation is heard before the WSATC, the supervisor or any interested party may present evidence or testimony to the WSATC regarding the recommended cancellation. The WSATC must vote on the supervisor's recommendation to cancel a program's registration. If a majority of the members approve the supervisor's recommendation, the WSATC provides written notice to all inter-

ested parties that the program's registration has been canceled. The program sponsor has (~~(thirty)~~) 30 days from the date the WSATC mails its notice to the program sponsor to file an appeal with the director.

(5) When the supervisor recommends a program be canceled because the program violates federal law, and the WSATC cancels the program's registration as required by federal law, the program may also file an appeal with the U.S. Department of Labor, pursuant to 29 C.F.R. Parts 29 and 30.

[Statutory Authority: RCW 49.04.010 and 19.285.040. WSR 18-17-149, § 296-05-200, filed 8/21/18, effective 10/10/18. Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040. WSR 11-11-002, § 296-05-200, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. WSR 01-22-055, § 296-05-200, filed 10/31/01, effective 1/17/02.]