

WSR 24-12-002
PERMANENT RULES
GAMBLING COMMISSION

[Filed May 22, 2024, 1:59 p.m., effective June 22, 2024]

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

Purpose: This new rule provides clear language to ensure that adjacent card rooms operate as separate and distinct licensed business premises. Additionally, this rule will be located in chapter 230-03 WAC, which relates to prelicensing procedures, rather than in chapter 230-06 WAC, which details rules for all licenses.

Citation of Rules Affected by this Order: New WAC 230-03-182; and repealing WAC 230-06-046.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 24-06-015 and 24-07-074 on February 26, 2024, and March 18, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: May 22, 2024.

Adam Amorine
Legal Manager and Rules Coordinator

OTS-5132.3

NEW SECTION

WAC 230-03-182 Additional requirements for nonhouse-banked, Class F, and house-banked card rooms. (1) The licensed business premises of nonhouse-banked, Class F, and house-banked card rooms may not be adjacent to each other unless:

(a) Each is a fully separate and distinct licensed business premises; and

(b) There is a solid wall, with no internal access, between the two premises; and

(c) Each licensed business premises must operate as an independent commercial stimulant as defined in RCW 9.46.0217.

(2) Subsection (1) of this section does not apply to nonhouse-banked, Class F, and house-banked card room physical locations that have any of the features listed in subsection (1) of this section and were licensed as of July 1, 2018.

(3) Adjacent card rooms must post signs at each entrance that is accessible by the public to clearly notify customers of the licensed business premises' identity.

WSR 24-12-003
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-05—Filed May 22, 2024, 2:25 p.m., effective June 22, 2024]

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

Purpose: This rule amendment aligns the hydraulic code rules (chapter 220-660 WAC) with SHB 1085 (chapter 135, Laws of 2023).

SHB 1085 was passed during the 2023 legislature and went into effect January 1, 2024. The topic of the bill is plastic pollution reduction and the section that is relevant to the hydraulic code rules is section 3. It establishes legal standards for the sale, distribution, and installation of flotation materials in overwater structures (e.g., docks and swim floats).

The hydraulic code rules govern the administration of hydraulic project approval (HPA) permits, under authority granted in chapter 77.55 RCW. HPA permitting program already regulates the installation and use of flotation materials. The Washington department of fish and wildlife is amending the hydraulic code rules sections that address overwater structures in freshwater and in saltwater. The amendments incorporate the language from SHB 1085, section 3 that contains standards for the containment of foam flotation. The existing rules already require flotation materials to be contained, but with less detail. The amended language adds detail to mirror the new statute. Additionally, erroneous language regarding plastic "wrap" has been eliminated in WAC 220-660-140. Amending the rules improves clarity for the regulated community.

Citation of Rules Affected by this Order: Amending WAC 220-660-140 and 220-660-380.

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

Adopted under notice filed as WSR 24-03-152 on January 23, 2024.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 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: April 19, 2024.

B. Baker, Chair
Washington Fish and Wildlife Commission

OTS-5137.3

AMENDATORY SECTION (Amending WSR 15-02-029, filed 12/30/14, effective 7/1/15)

WAC 220-660-140 Residential and public recreational docks, piers, ramps, floats, watercraft lifts, and buoys in freshwater areas. The requirements in this section apply to location, design, and construction of permanent and seasonal docks, piers, ramps (gangways), floats, watercraft lifts, and mooring buoys.

(1) **Description:** Docks are structures that are fixed to the shoreline but floating upon the water. Piers are fixed, piling-supported structures. Floats (rafts) are floating structures that are moored, anchored, or otherwise secured in the water that are not directly connected to the shoreline. A ramp is a structure that connects a pier or shoreline to a float and provides access between the two. Pilings usually associated with these structures are timber, steel, reinforced concrete, or composite posts that are driven, jacked, or cast vertically into the bed. A watercraft lift is a structure that lifts boats and personal watercraft out of the water. A mooring buoy is a structure floating on the surface of the water that is used for private and commercial vessel moorage.

(2) **Fish life concerns:**

(a) Over-water and in-water structures can alter physical processes that create or maintain habitat that supports fish life. These processes include light regime, hydrology, substrate conditions, and water quality. However, light reduction is a main impact to fish life at critical life stages. Light reduction, or shading, by over-water or in-water structures reduces survival of aquatic plants. Aquatic plants provide food, breeding areas, and protective nurseries for fish life.

(b) Shallow water provides juvenile fish a refuge from predators like larger fish. Over-water and in-water structures can alter movement of juvenile salmon, steelhead, and other fish species. Structures grounding on the bed can physically block migration and cause other impacts. The light/dark contrast of shading/no shading of over-water and in-water structures can affect migration behavior. Fish respond by moving into deeper water which increases the risk of predation. These structures may increase the exposure of juvenile salmon, steelhead, and other small fish to predators by providing predator habitat.

(3) **Residential and public recreational dock, pier, ramp, float, watercraft lift and buoy design - General:**

(a) The design and location of structures must follow the mitigation sequence to protect freshwater habitats of special concern.

(b) Design and locate structures to protect fish spawning areas.

(c) Design and locate structures to protect juvenile salmonid migration, feeding, and rearing areas where shading impacts are a concern.

(i) Limit the width of residential piers and docks to six feet for the first (~~thirty~~) 30 feet from the shoreline (measured from mean low water). Limit the width of recreational piers to the minimum width needed to accommodate the intended use.

(A) In certain river systems alternative residential pier and dock criteria may apply.

(B) For the Columbia River, limit the width of residential piers and docks to six feet for the first (~~fifty~~) 50 feet from the shoreline. Docks must have (~~twenty~~) 20 feet of water depth below them (both criteria measured at mean low water).

(ii) Piers must extend far enough from the shoreline so floats do not impact juvenile salmonid migration, feeding, and rearing areas.

Grounding of floats is approved in reservoirs and impoundments only at times of the year when the water level is dropped.

(iii) The underside of pier must be at least one and one-half feet above the OHWL elevation unless prohibited by local land use regulations.

(iv) The department will require residential pier, dock, ramp and float designs to include grating. The department may require public recreational pier, dock, ramp and float designs to include grating.

(A) North/south oriented piers (338 to 22 degrees, or 158 to 202 degrees) greater than four feet in width must have at least ~~((thirty))~~ 30 percent of the entire deck surface covered in functional grating. The grating must be installed parallel to the length of the pier for the entire length of the pier.

(B) Northeast/southwest, northwest/southeast and east/west oriented piers (23 to 157 degrees, 203 to 337 degrees) must have at least ~~((fifty))~~ 50 percent of the entire deck surface covered in functional grating regardless of width. The grating must be installed parallel to the width of the pier, evenly spaced along the entire length of the pier.

(C) In water bodies with a high density of piers and docks, the department may require that grating cover entire deck surface of the pier or dock.

(D) Limit the width of residential ramps to four feet wide. Limit the width of public recreational ramps to the minimum width needed to accommodate the intended use. Cover the entire ramp surface with grating.

(E) A dock or float six feet wide or narrower must have at least ~~((thirty))~~ 30 percent of the deck surface covered in functional grating. A dock or float wider than six feet (up to eight feet wide) must have at least ~~((fifty))~~ 50 percent of the deck surface covered in functional grating. The grating material's open area must be at least ~~((sixty))~~ 60 percent. In some water bodies the department may require a higher proportion of grating. Locate flotation under the solid decked area only. Orient grating so the lengthwise opening maximizes the amount of light penetration. Any objects that are not part of the structure on, above, or below the grating should not block light penetration.

(F) If only the minimum deck surface area described in (c)(iv) of this subsection is grated, the grating material's open area must be at least ~~((sixty))~~ 60 percent unless the grating covers more than the minimum deck area. If the grating covers more than the minimum deck surface area, the grating material's open area can be reduced to at least ~~((forty))~~ 40 percent open area.

(d) If artificial nighttime lighting is used in the design, use low-intensity lights that are located and shielded to prevent light from attracting fish, unless there are safety constraints.

(e) ~~((Fully enclose and contain))~~ Flotation for the structure must be fully enclosed and contained in a shell ((~~tub~~) or 20-25 mm polyethylene or polyurethane wrap)). Flotation containing expanded or extruded plastic foam must be enclosed in a shell made of plastic with a minimum thickness of 0.15 inches, concrete, aluminum, or steel. The shell ~~((or wrap))~~ must prevent breakup or loss of the flotation material into the water. The shell ~~((or wrap))~~ must not be readily subject to damage by ultraviolet radiation and abrasion.

(f) The design must not include skirting including batter fencing constructed around piers, docks, or floats unless approved by the department.

(g) Embedded anchor(s) or other approved anchor(s) or piling may hold floats in place.

(h) The design should not use treated wood for the decking of the structure. The design may use treated wood for structural elements. Treated wood structural elements subject to abrasion by vessels, floats, or other objects must incorporate design features to minimize abrasion of the wood.

(i) The structure must have been usable at the site within the (~~twelve~~) 12 months immediately before the time of application submittal to be considered a replacement structure. Usable means no major deterioration or section loss in critical structural components is present.

(j) Replacement of more than (~~thirty-three~~) 33 percent or (~~two hundred fifty~~) 250 square feet of decking or replacement of decking substructure requires installation of functional grating in the replaced portion only. The grating must conform to the requirements in this section.

(4) Piling design:

(a) Use the smallest diameter and number of pilings required to construct a safe structure.

(b) Steel piling used to construct residential docks should not exceed six inches in diameter. Limit the diameter of steel piling used to construct public recreational docks to the minimum width needed to accommodate the intended use.

(c) The use of creosote or pentachlorophenol piling is prohibited. New and replacement piling can be steel, concrete, recycled plastic, and/or untreated or department-approved treated wood.

(d) Treated wood piling must incorporate design features to minimize abrasion of the piling from contact with vessels, floats, or other objects.

(e) All pilings must be fitted with devices to prevent perching by fish-eating birds.

(5) Watercraft lift design:

(a) The design of the watercraft lift/grid must follow the mitigation sequence to protect juvenile salmonid migration, feeding, and rearing areas where shading impacts are a concern.

(b) The bottom of the watercraft lift/grid must be at least one foot above the bed.

(c) Use the minimum number of pilings needed to support the watercraft lift/grid.

(6) Mooring buoy design:

(a) In water bodies where mooring buoy systems might damage the bed and native submerged aquatic vegetation, locate and design the buoy system to minimize damage.

(i) Locate the buoy deep enough to prevent vessel grounding.

(ii) Design and install the buoy system with mid-water floats so that anchor lines do not drag.

(iii) In areas with native submerged aquatic vegetation, use an embedment-style mooring anchor instead of a surface-style mooring anchor.

(iv) Adequately size the mooring to prevent the anchor from shifting or dragging along the bed.

(b) If the department authorizes the use of a concrete anchor, use a precast concrete anchor.

(c) The mooring buoy must have a shell that is not readily subject to damage by ultraviolet radiation and abrasion caused by rubbing against vessels, the bed, and/or waterborne debris.

(7) **Residential and public recreational docks, pier, ramp, float, watercraft lift, and buoy construction:**

- (a) Operate and anchor vessels and barges during construction in a manner that protects native aquatic vegetation.
- (b) Reestablish the pier or dock centerline during the construction phase using the same methodology used to establish the centerline on the construction drawings.
- (c) When installing steel piling, a vibratory hammer or water jet to drive piling is preferred.
- (d) If impact pile driving is needed, set the drop height to the minimum needed to drive the piling.
- (e) Use appropriate sound attenuation to minimize harm to fish from impact pile-driving noise.
- (f) To avoid attracting fish to lights at night, limit impact pile driving to daylight hours whenever feasible.
- (g) The department may require the following when removing piling:
 - (i) Use a vibratory or water jet system to dislodge piling whenever feasible.
 - (ii) After removal, place the piling on a construction barge or other dry storage site. Piling removed from the substrate must be moved immediately from the water into a barge or other dry storage site. The piling must not be shaken, hosed off, left hanging to dry or any other action intended to clean or remove adhering material from the piling.
 - (iii) If a treated wood piling breaks during extraction, remove the stump from the water column by fully extracting the stump or cut it three feet below the substrate and cap all buried stumps with clean sediment that matches the native material.
 - (iv) Fill holes left by piling extraction with clean sediment that matches the native material whenever feasible.
- (h) Securely anchor docks, floats, and mooring buoys.
- (i) If the department authorizes the use of a concrete anchor, use a precast concrete anchor.
- (j) Dispose of removed docks, piers, ramps, floats, lines, chains, cables, and mooring anchors in an upland disposal site.
- (k) Place floats and buoys removed seasonally in an upland area. Do not store on the beach.

AMENDATORY SECTION (Amending WSR 15-02-029, filed 12/30/14, effective 7/1/15)

WAC 220-660-380 Residential and public recreational docks, piers, ramps, floats, watercraft lifts, and buoys in saltwater areas. This section applies to the design and construction of permanent, seasonal or temporary docks, piers, ramps (gangways), floats, watercraft lifts, and mooring.

(1) **Description:** Docks are structures that are fixed to the shoreline but floating upon the water. Piers are fixed, piling-supported structures. Floats (rafts) are floating structures that are moored, anchored, or otherwise secured in the water that are not directly connected to the shoreline. A ramp is a gangway that connects a pier or shoreline to a float and provides access between the two. Piling usually associated with these structures are timber, steel, reinforced concrete, or composite posts that are driven or jacked into the bed. A

watercraft lift is a structure that lifts boats and personal watercraft out of the water. A mooring buoy is a structure floating on the surface of the water that is used for private and commercial vessel moorage.

(2) **Fish life concerns:**

(a) Over-water and in-water structures can alter physical processes that create or maintain habitat that supports fish life. These processes include light regime, hydrology, substrate conditions, and water quality. Light reduction is the main impact to fish life at critical life stages. Light reduction or shading by over-water or in-water structures reduces survival of aquatic plants. Aquatic plants provide food, breeding areas, and protective nurseries for fish life.

(b) Shallow water provides juvenile fish a refuge from predators like larger fish. Over-water and in-water structures can alter movement of juvenile salmon, steelhead and other fish species. Structures grounding on the bed can physically block migration and damage forage fish spawning beds. The light/dark contrast of shading/no shading caused by over-water and in-water structures can affect migration behavior. Fish respond by moving into deeper water which increases the risk of predation.

(3) **Residential and public recreational pier, ramp, float, watercraft lift and buoy design - Generally:**

(a) The department requires that new structures are designed with a pier and ramp to span the intertidal beach, whenever feasible.

(b) The design and location of structures must follow the mitigation sequence to protect salt water habitats of special concern.

(i) Design and locate structures to protect juvenile salmonid migration, feeding, and rearing areas.

(ii) Design and locate structures to protect documented Pacific herring, Pacific sand lance, and surf smelt spawning beds; and rockfish and lingcod settlement and nursery areas.

(iii) The department will require a seagrass/macroalgae habitat survey for all new construction unless the department can determine the project will not impact seagrass and kelp beds, and in herring spawning beds other macroalgae used as spawning substrate. A survey is not required for replacement of an existing structure within its original footprint.

(A) Structures must be located at least (~~twenty-five~~) 25 feet (measured horizontally from the nearest edge of the structure) and four vertical feet away from seagrass and kelp beds (measured at extreme low water).

(B) In documented herring spawning areas, structures must be located at least (~~twenty-five~~) 25 feet (measured horizontally from the nearest edge of the structure) and four vertical feet from macroalgae beds on which herring spawn (measured at extreme low water).

(iv) If artificial nighttime lighting is used in the project, use low-intensity lights that are located and shielded to prevent light from attracting fish or disrupting fish migration behavior, unless there are safety constraints.

(v) The design must not include skirting including batter fencing constructed around piers, docks, or floats unless approved by the department. The design should not use treated wood for the decking of the structure. The design may use treated wood for structural elements. Treated wood structural elements subject to abrasion by vessels, floats, or other objects must incorporate design features such as rub strips to minimize abrasion of the wood.

(c) The structure must have been usable at the site within the past (~~twelve~~) 12 months of the time of application submittal to be considered a replacement structure. Usable means no major deterioration or section loss in critical structural components is present.

(d) Replacement of more than (~~thirty-three~~) 33 percent or (~~two hundred fifty~~) 250 square feet of decking or replacement of decking substructure requires installation of functional grating in the replaced section only. The grating must conform to the requirements in this section.

(4) Pier and ramp design:

(a) Design piers to maximize height over the bed to improve light transmission. The bottom of the pier must be at least six feet above the bed at the landward end.

(b) Limit the width of residential piers to no more than six feet wide. Limit the width of recreational piers to the minimum width needed to accommodate the intended use.

(c) North/south oriented piers (338 to 22 degrees, or 158 to 202 degrees) greater than four feet in width must have at least (~~thirty~~) 30 percent of the entire deck surface covered in functional grating. The grating must be installed parallel to the length of the pier for the entire length of the pier.

(d) Northeast/southwest, northwest/southeast, and east/west oriented piers (23 to 157 degrees, 203 to 337 degrees) must have at least (~~fifty~~) 50 percent of the entire deck surface covered in functional grating regardless of width. The grating must be installed parallel to the width of the pier, evenly spaced along the entire length of the pier.

(e) If only the minimum pier deck surface described in (c) or (d) of this subsection is covered, the grating material's open area must be at least (~~sixty~~) 60 percent open area unless grating covers more than the minimum pier deck area of the pier. If the grating covers more than the minimum deck surface area, the grating material's open area can be reduced down to at least (~~forty~~) 40 percent open area.

(f) Limit the width of residential ramps to four feet wide. Limit the width of public recreational ramps to the minimum width needed to accommodate the intended use. Cover the entire ramp surface with grating.

(5) Float design (floats connected to a pier):

(a) Whenever feasible, place float so that the largest dimension is oriented north/south.

(b) Limit the width of residential floats to eight feet. Limit the width of public recreational floats to the minimum width needed to accommodate the intended use.

(c) Whenever feasible, limit the length of single-family dock floats to (~~thirty~~) 30 feet and joint-use dock floats to (~~sixty~~) 60 feet.

(d) If the design has a float positioned perpendicular to the ramp to serve as a ramp landing, this float must not be more than six feet wide and (~~ten~~) 10 feet long.

(e) Design floats in intertidal areas with stoppers or support pilings that keep the bottom of the floats at least one foot above the substrate so that the structure will not rest on the bottom.

(f) A float six feet wide or less must have at least (~~thirty~~) 30 percent of the entire deck surface covered in functional grating. A float between six and eight feet wide must have at least (~~fifty~~) 50 percent of the entire deck surface covered in functional grating. Orient grating so the lengthwise opening maximizes the amount of light

penetration. Any objects that are not part of the structure on, above, or below the grating should not block light penetration. Flotation must be located under the solid decked area only.

(g) The grating material's open area must be at least ~~((sixty))~~ 60 percent.

(h) Flotation for the structure must be fully enclosed and contained in a shell ~~((~~tub~~))~~. Flotation containing expanded or extruded plastic foam must be enclosed in a shell made of plastic with a minimum thickness of 0.15 inches, concrete, aluminum, or steel. The shell ~~((~~or wrap~~))~~ must prevent breakup or loss of the flotation material into the water. The shell ~~((~~or wrap~~))~~ must not be readily subject to damage by ultraviolet radiation and abrasion.

(i) Embedded anchor(s), pilings (with stops), and float support/stub pilings may be used to hold floats in place.

(j) If a project uses anchors to hold the float in place, the anchor lines must not rest on the substrate at any time.

(6) Piling design:

(a) Use the smallest diameter and number of pilings required to construct a safe structure.

(b) Steel piling used to construct residential docks should not exceed ~~((~~twelve~~))~~ 12 inches in diameter. Limit the diameter of steel piling used to construct public recreational docks to the minimum diameter needed to accommodate the intended use.

(c) The use of creosote or pentachlorophenol piling is prohibited. New and replacement piling can be steel, concrete, recycled plastic, or untreated or treated wood approved by the department.

(d) Treated wood piling must incorporate design features to minimize abrasion of the piling from contact with vessels, floats, or other objects.

(e) Fit all pilings with devices to prevent perching by fish-eating birds.

(7) Watercraft lift/grid design:

(a) Design the watercraft lift/grid to minimize shading caused by the structure.

(b) The bottom of the watercraft lift/grid must be at least one foot above the bed.

(c) Use the minimum number of piling needed to support the watercraft lift/grid.

(8) Buoy design: ~~((~~a~~))~~ In water bodies where buoy systems might damage submerged aquatic vegetation, locate and design the buoy system to minimize damage.

~~((~~i~~))~~ (a) Whenever feasible, use an embedded anchor.

~~((~~A~~))~~ (i) A seagrass/macroalgae habitat survey is not required if an embedment-style mooring anchor is installed. The department will require the diver/installer to locate the anchor so the mooring buoy system will not damage seagrass and kelp beds, and in herring spawning beds other macroalgae used as spawning substrate.

~~((~~B~~))~~ (ii) A seagrass/macroalgae habitat survey is required if a surface style mooring anchor is installed. The survey is needed to ensure the mooring buoy system is installed at a location where seagrass, kelp, and in herring spawning beds other macroalgae used as spawning substrate will not be damaged.

~~((~~ii~~))~~ (b) Place the buoy deep enough to prevent vessel grounding.

~~((~~iii~~))~~ (c) Locate the buoy to avoid damage from vessel propellers to submerged aquatic vegetation.

~~((iv))~~ (d) Design the buoy system with a mid-water float so that anchor lines do not drag.

~~((v))~~ (e) Adequately size the mooring to prevent the anchor from shifting or dragging along the bed.

~~((vi))~~ (f) If the department authorizes the use of a concrete anchor, use a precast concrete anchor.

~~((vii))~~ (g) The buoy must have a shell that is resistant to ultraviolet radiation (sunlight) and abrasion caused by rubbing against vessels, the bed, and/or waterborne debris.

(9) **Replacement floating docks:** The department will authorize replacement floating docks, if:

(a) The area of replaced floating dock structure is not expanded;

(b) The replaced floating dock is not relocated within waters of the state without written authorization from the department. The replaced structure must be removed and disposed of upland so it will not reenter state waters;

(c) Floats are designed with stoppers or support pilings that keep the bottom of the floats at least one foot above the substrate so that the structure will not rest on the bottom;

(d) A float six feet wide or less must have at least ~~((thirty))~~ 30 percent of the entire deck surface covered in functional grating. A float between six and eight feet wide must have at least ~~((fifty))~~ 50 percent of the entire deck surface covered in functional grating. Orient grating so the lengthwise opening maximizes the amount of light penetration. Any objects that are not part of the structure on, above, or below the grating should not block light penetration. Flotation must be located under the solid decked area only;

(e) The grating material's open area must be at least ~~((sixty))~~ 60 percent;

(f) Flotation for the structure must be fully enclosed and contained in a shell ~~((tub))~~. Flotation containing expanded or extruded plastic foam must be enclosed in a shell made of plastic with a minimum thickness of 0.15 inches, concrete, aluminum, or steel. The shell ~~((or wrap))~~ must prevent breakup or loss of the flotation material into the water. The shell ~~((or wrap))~~ must not be readily subject to damage by ultraviolet radiation and abrasion.

(10) **Residential and public recreational dock, pier, ramp, float, floating dock, watercraft lift, and buoy construction:**

(a) The dock or pier centerline must be reestablished during construction using the same methodology used to establish the centerline during the seagrass/macroalgae habitat survey.

(b) When installing steel piling, a vibratory hammer is preferred.

(c) If impact pile driving is used, set the drop height to the minimum needed to drive the piling.

(d) Use appropriate sound attenuation to minimize harm to fish from impact pile-driving noise.

(e) To avoid attracting fish to light at night, limit impact pile driving to daylight hours whenever feasible.

(f) The department may require the following during piling removal:

(i) Use of a vibratory system to dislodge piling whenever feasible;

(ii) Place the piling on a construction barge or other dry storage site after the piling is removed. The piling must not be shaken, hosed off, left hanging to dry or any other action intended to clean or remove adhering material from the piling;

(iii) If a treated wood piling breaks during extraction, remove the stump from the water column by fully extracting the stump or cutting it three feet below the substrate and cap all buried stumps with clean sediment that matches the native material;

(iv) Fill holes left by piling extraction with clean sediment that matches the native material whenever feasible;

(v) When removing creosote piling:

(A) Containment booms and absorbent booms (or other oil absorbent fabric) must be placed around the perimeter of the work area to capture wood debris, oil, and other materials released into marine waters as a result of construction activities to remove creosote pilings. All accumulated debris must be collected and disposed upland at an approved disposal site; and

(B) Creosote logs and timbers must be fully suspended during removal so no portion of the log drags through the water or onto the beach.

(g) Securely anchor dock, floats, and mooring buoys.

(h) Dispose of replaced piers, ramps, floats, docks, lines, chains, cables, or mooring anchors in an upland disposal site; and

(i) Place floats and buoys removed seasonally in an upland area. Do not store on the beach.

WSR 24-12-008

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed May 23, 2024, 11:01 a.m., effective June 23, 2024]

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

Purpose: The department of revenue is amending WAC 458-20-144 to incorporate 2023 legislation, E2SSB 5199, which provides a business and occupation tax exemption for amounts received by any person engaged in printing and/or publishing newspapers, or publishing eligible digital content. See RCW 82.04.759.

Citation of Rules Affected by this Order: Amending WAC 458-20-144 Printing industry.

Statutory Authority for Adoption: RCW 82.01.060, 82.32.300.

Adopted under notice filed as WSR 24-06-058 on March 4, 2024.

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.

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Date Adopted: May 23, 2024.

Brenton Madison
Rules Coordinator

OTS-5257.1

AMENDATORY SECTION (Amending WSR 18-13-094, filed 6/19/18, effective 7/20/18)

WAC 458-20-144 Printing industry. (1) **Introduction.** This ((~~section~~)) rule discusses the taxability of the printing industry. ((~~For information on the taxability of mailing bureau services and a discussion of direct mail, refer to WAC 458-20-141. For information on the taxability of printers and publishers of newspapers, magazines, and periodicals, refer to WAC 458-20-143~~)) Readers may want to refer to other rules for additional information, including:

(a) WAC 458-20-141 Duplicating activities and mailing bureaus;

(b) WAC 458-20-143 Printers and publishers of newspapers, magazines, and periodicals;

(c) WAC 458-20-102 Reseller permits;

(d) WAC 458-20-13601 Manufacturers and processors for hire—Sales and use tax exemptions for machinery and equipment.

(2) **Definition.** The phrase "printing industry" includes letterpress, offset-lithography, and gravure processes as well as multi-

graph, mimeograph, autotyping, addressographing and similar activities.

(3) **Business and occupation (B&O) tax.**

(a) Printers are subject to the (~~business and occupation~~) B&O tax under the printing and publishing classification upon the gross income of the business.

(b) (~~Effective~~) Printers of newspapers. From July 1, 2009, through December 31, 2023, printers of newspapers are taxable under the publication of newspapers classification of the B&O tax upon the gross income of the business.

Effective January 1, 2024, printers of newspapers are exempt from B&O tax under RCW 82.04.759 on the amounts received from engaging in printing a newspaper. The exemption amount is reduced by an amount equal to the value of any expenditure made by the person during the tax reporting period. For purpose of this section, "expenditure" has the meaning provided in RCW 42.17A.005.

Persons reporting income under the publication of newspapers classification of the B&O tax (~~must file a complete~~), or claiming the B&O tax exemption for income received from engaging in printing a newspaper on or after January 1, 2024, are required to electronically file an annual tax performance report with the department by May 31st of the following year. (~~In addition, such persons must electronically file with the department all reports, returns, and any other forms.~~) Refer to RCW (~~82.32.600~~) 82.32.534 and WAC 458-20-267 (Annual tax performance reports for certain tax preferences) for the specific guidelines and requirements.

(c) **Doing business inside and outside the state.** RCW 82.04.460 requires that advertising income earned by printers derived from business activities performed within Washington be apportioned to this state for tax purposes. Refer to chapter 23 (E2SSB 6143), Laws of 2010 1st sp. sess. Part I for information on apportioning advertising income.

(4) **Retail sales tax.**

(a) The printing or imprinting of advertising circulars, books, briefs, envelopes, folders, posters, racing forms, tickets, and other printed matter, whether upon special order or upon materials furnished either directly or indirectly by the customer is a retail sale and subject to the retail sales tax, (~~providing~~) provided the customer either consumes, or distributes such articles free of charge, and does not resell such articles in the regular course of business. The retail sales tax is computed upon the total charge for printing, and the printer may not deduct the cost of labor, author's alterations, or other service charges in performing the printing, even though such charges may be stated or shown separately on invoices.

(b) Sales of printed matter to advertising agencies who purchase for their own use or for the use of their clients, and not for resale in the regular course of business, are sales for consumption and subject to the retail sales tax.

(c) Sales of tickets to theater owners, amusement operators, transportation companies and others are sales for consumption and subject to the retail sales tax. Such tickets are not resold by (~~the~~) theater owners or amusement proprietors as tangible personal property but are used merely as a receipt to the patrons for payment and as evidence of the right to admission or transportation.

(d) Sales of school annuals and similar publications by printers to school districts, private schools or student organizations therein are subject to the retail sales tax.

(e) Sales by printers of books, envelopes, folders, posters, racing forms, stationery, tickets and other printed matter to dealers for resale in the regular course of business are wholesale sales. Such sales are not subject to retail sales tax when the seller obtains ~~((a resale certificate for sales made before January 1, 2010, or))~~ a reseller permit ~~((for sales made on or after January 1, 2010,))~~ from the buyer to document the wholesale nature of the sale as provided in ~~((WAC 458-20-102A (Resale certificates) and))~~ WAC 458-20-102 (Reseller permits). ~~((Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014.))~~

(f) Charges made by bookbinders or printers for imprinting, binding or rebinding of materials for consumers are subject to the retail sales tax.

(g) Sales to printers of equipment, supplies and materials which do not become a component part or ingredient of the finished printed matter sold or which are put to "intervening use" before being resold are subject to the retail sales tax unless specifically exempt (see subsection (5) of this section). This includes, among others, sales of fuel, furniture, and lubricants.

(h) Sales to printers of paper stock and ink which become a part of the printed matter sold are sales for resale and are not subject to retail sales tax when the buyer provides ~~((a resale certificate (WAC 458-20-102A) for sales made before January 1, 2010, or))~~ a reseller permit (WAC 458-20-102) ~~((for sales made on or after January 1, 2010,))~~ to the seller.

(5) **Exemption for sales of computer equipment to printers.** RCW 82.08.806 and 82.12.806 provide a retail sales and use tax exemption to a printer or publisher ~~((,))~~ for the following:

(a) Purchase and use of computer equipment ~~((, including))~~ primarily used in printing or publishing of any printed materials. This includes for repair parts and replacement parts ~~((for))~~ of such qualifying equipment ~~((, when the computer equipment is used primarily in the printing or publishing of any printed material, or to)).~~ "Computer equipment" has the same meaning as defined in RCW 82.08.806 (3) (b). "Primarily" means greater than 50 percent as measured by time. RCW 82.08.806 (3) (d).

(b) Sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the computer equipment.

~~((This exemption applies))~~ These exemptions apply only to computer equipment not otherwise exempt under RCW 82.08.02565.

(6) Commissions and discounts.

(a) There is a general trade practice in the printing industry of making allowances to advertising agencies of a certain percentage of the gross charge made for printed matter ordered by the agency either in its own name or in the name of the advertiser. This allowance may be a "commission" or may be a "discount."

(b) A "commission" paid by a seller constitutes an expense of doing business and is not deductible from the measure of ~~((tax under either business and occupation))~~ B&O tax or retail sales tax. On the other hand, a "discount" is a deduction from an established selling price allowed to buyers, and a bona fide discount is deductible under both ~~((these classifications))~~ B&O tax and retail sales tax.

(c) In order that there may be a definite understanding, printers, advertising agencies and advertisers are advised that tax liability in such cases is as follows:

(i) The allowance taken by an advertising agency will be deductible as a discount in the computation of the printer's liability only in the event that the printer bills the charge on a net basis; i.e., less the discount.

(ii) Where the printer bills the gross charge to the agency, and the advertiser pays the sales tax measured by the gross charge, no deduction will be allowed, irrespective of the fact that in payment of the account the printer actually receives from the agency the net amount only; i.e., the gross billing, less the commission retained by the agency. In all cases the commission received is taxable to the agency.

WSR 24-12-011

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed May 23, 2024, 1:59 p.m., effective June 23, 2024]

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

Purpose: The health care authority is amending WAC 182-527-2742 to add a new subsection (1)(e) to except from estate recovery state-only funded guardianship and conservatorship assistance program services.

Citation of Rules Affected by this Order: Amending WAC 182-527-2742.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 24-09-009 on April 4, 2024.

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: May 23, 2024.

Wendy Barcus
Rules Coordinator

OTS-5272.1

AMENDATORY SECTION (Amending WSR 17-12-019, filed 5/30/17, effective 7/1/17)

WAC 182-527-2742 Estate recovery—Service-related limitations.

For the purposes of this section, the term "agency" includes the agency's designee.

The agency's payment for the following services is subject to recovery:

- (1) State-only funded services, except:
 - (a) Adult protective services;
 - (b) Offender reentry community safety program services;
 - (c) Supplemental security payments (SSP) authorized by the developmental disabilities administration (DDA); ~~((and))~~
 - (d) Volunteer chore services; and
 - (e) Guardianship and conservatorship assistance program services.
- (2) For dates of service on and after January 1, 2014:
 - (a) Basic plus waiver services;
 - (b) Community first choice (CFC) services;
 - (c) Community option program entry system (COPES) services;
 - (d) Community protection waiver services;

- (e) Core waiver services;
 - (f) Hospice services;
 - (g) Intermediate care facility for individuals with intellectual disabilities services provided in either a private community setting or in a rural health clinic;
 - (h) Individual and family services;
 - (i) Medicaid personal care services;
 - (j) New Freedom consumer directed services;
 - (k) Nursing facility services;
 - (l) Personal care services funded under Title XIX or XXI;
 - (m) Private duty nursing administered by the aging and long-term support administration (ALTSA) or the DDA;
 - (n) Residential habilitation center services;
 - (o) Residential support waiver services;
 - (p) Roads to community living demonstration project services;
 - (q) The portion of the managed care premium used to pay for ALTSA-authorized long-term care services under the program of all-inclusive care for the elderly (PACE); and
 - (r) The hospital and prescription drug services provided to a client while the client was receiving services listed in this subsection.
- (3) For dates of service beginning January 1, 2010, through December 31, 2013:
- (a) Medicaid services;
 - (b) Premium payments to managed care organizations (MCOs); and
 - (c) The client's proportional share of the state's monthly contribution to the Centers for Medicare and Medicaid Services to defray the costs for outpatient prescription drug coverage provided to a person who is eligible for medicare Part D and medicaid.
- (4) For dates of service beginning June 1, 2004, through December 31, 2009:
- (a) Medicaid services;
 - (b) Medicare premiums for people also receiving medicaid;
 - (c) Medicare savings programs (MSPs) services for people also receiving medicaid; and
 - (d) Premium payments to MCOs.
- (5) For dates of service beginning July 1, 1995, through May 31, 2004:
- (a) Adult day health services;
 - (b) Home and community-based services;
 - (c) Medicaid personal care services;
 - (d) Nursing facility services;
 - (e) Private duty nursing services; and
 - (f) The hospital and prescription drug services provided to a client while the client was receiving services listed in this subsection.
- (6) For dates of service beginning July 1, 1994, through June 30, 1995:
- (a) Home and community-based services;
 - (b) Nursing facility services; and
 - (c) The hospital and prescription drug services provided to a client while the client was receiving services listed in this subsection.
- (7) For dates of service beginning July 26, 1987, through June 30, 1994: Medicaid services.
- (8) For dates of service through December 31, 2009. If a client was eligible for the MSP, but not otherwise medicaid eligible, the

client's estate is liable only for any sum paid to cover medicare premiums and cost-sharing benefits.

(9) For dates of service beginning January 1, 2010. If a client was eligible for medicaid and the MSP, the client's estate is not liable for any sum paid to cover medical assistance cost-sharing benefits.

(10) For dates of service beginning July 1, 2017, long-term services and supports authorized under the medicaid transformation project are exempt from estate recovery. Exempted services include those provided under:

(a) Medicaid alternative care under WAC 182-513-1600;

(b) Tailored supports for older adults under WAC 182-513-1610;

(c) Supportive housing under WAC 388-106-1700 through 388-106-1765; or

(d) Supported employment under WAC 388-106-1800 through 388-106-1865.

WSR 24-12-019

PERMANENT RULES

PUBLIC DISCLOSURE COMMISSION

[Filed May 24, 2024, 11:20 a.m., effective June 24, 2024]

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

Purpose: The rules further the purpose of SB 5152 (2023), codified under chapter 42.62 RCW, by requiring disclosure of synthetic media (deepfakes) used in election campaigning activity, including specific requirements within existing reporting systems for synthetic media in campaign communications.

Citation of Rules Affected by this Order: New [WAC 390-18-035]; and amending WAC 390-16-037, 390-16-063, and 390-18-050.

Statutory Authority for Adoption: RCW 42.17A.110, 42.62.040.

Adopted under notice filed as WSR 24-09-078 on April 22 [17], 2024.

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 3, Repealed 0.

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

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

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

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

Date Adopted: May 24, 2024.

Sean Flynn
General Counsel

OTS-5353.1

AMENDATORY SECTION (Amending WSR 20-02-062, filed 12/24/19, effective 1/24/20)

WAC 390-16-037 Purpose of campaign expenditures—How to report.

(1) Any person required to report the "purpose" of an expenditure under RCW 42.17A.240(6), or 42.17A.255 (5)(b), must identify any candidate(s) or ballot proposition(s) that are supported or opposed by the expenditure (~~unless such candidate(s) or ballot proposition(s) have been previously identified in a statement of organization of the person~~) as required to be filed under RCW 42.17A.205 (2)(f) and (g);

(2) Whenever an expenditure is made to a candidate or a political committee pursuant to an agreement or understanding of any kind regarding how the recipient will use the expenditure, the report must describe in detail that agreement or understanding and the goods and/or services to be provided.

Example A: If an expenditure is made directly to a vendor for get-out-the-vote (GOTV) phone calls or robocalls, the purpose must include the following details:

| Vendor Name | Purpose | Amount |
|--------------|--------------------------------------------------------------|---------|
| ABC Robocall | GOTV—phone bank 28th and 29th Legislative districts | \$1,000 |

Example B: If an expenditure is made directly to a vendor for printing, the purpose must include the following details:

| Vendor Name | Purpose | Amount |
|--------------|-----------------|---------|
| ABC Printing | 5,000 brochures | \$3,000 |

(3) Any expenditure using "synthetic media," as defined under RCW 42.62.020, in the creation or distribution of any political advertising or other expenditure, must identify:

(a) The name of the vendor that provided the software or other digital technology used to create the synthetic media;

(b) The commercial advertiser that sold the advertising, if any;
and

(c) The description of any audience targeting information provided as a service for any digital communication by a digital communication platform, or other vendor.

AMENDATORY SECTION (Amending WSR 24-01-028, filed 12/8/23, effective 1/8/24)

WAC 390-16-063 Additional information regarding independent expenditures and C-6 report filing. (1) RCW 42.17A.255 requires a person not otherwise subject to the disclosure requirements of chapter 42.17A RCW to disclose an independent expenditure of \$1,000 or more that supports or opposes a candidate or ballot measure. RCW 42.17A.260 requires the disclosure of political advertising with a fair market value of \$2,000 or more that is presented to the public within 21 days of an election, that supports or opposes a ballot proposition, or that qualifies as an independent expenditure and supports or opposes a candidate.

(a) **Prorating and attributing independent expenditures that support or oppose multiple candidates or ballot measures.** Whether to disclose an independent expenditure that supports or opposes multiple candidates or ballot measures is determined by prorating and attributing the cost of the expenditure among all candidates or ballot measures that are the subject of the expenditure. Disclosure is required when:

(i) The pro rata cost for a single candidate or ballot measure reaches or exceeds the statutory threshold and none of the subject candidates are seeking election to the same office and none of the subject ballot measures are competing measures; or

(ii) The sum of the pro rata costs attributable to all candidates seeking election to the same office or the sum of the pro rata costs attributable to competing ballot measures reaches or exceeds the statutory threshold.

Example 1 (prorating): A mailer/postcard supports one candidate and one ballot measure at a total cost of \$3,200. One side of the postcard is entirely devoted to the ballot measure. The other side is split evenly between the candidate and the ballot measure. The ballot

measure's pro rata share is \$2,400 (75%) and the candidate's pro rata share is \$800 (25%).

Example 2 (prorating and attributing): An independent expenditure ad appears in the newspaper two weeks before the election. The ad costs \$2,000; 50% of the ad supports a candidate and the other 50% opposes the candidate's opponent. The independent expenditure is disclosed under RCW 42.17A.260 because the sum of the pro rata share for the two candidates who seek the same office is \$2,000.

(b) **Disclosing independent expenditures that support or oppose multiple candidates or ballot measures.** When a pro rata, attributable cost reaches or exceeds the statutory threshold, the entire independent expenditure must be disclosed, including the amounts attributable to all candidates and ballot propositions supported or opposed by the expenditure.

(c) **Other applications of prorating and attributing independent expenditures.** Use the prorating and attribution steps explained in (a) (i) and (ii) of this section to determine when an independent expenditure as defined in RCW 42.17A.005 must comply with the "no candidate authorized this ad" sponsor identification and, if applicable, the "top 5" contributors required by RCW 42.17A.320 and WAC 390-18-010.

(2) A political committee reporting pursuant to RCW 42.17A.225, 42.17A.235 and 42.17A.240 is exempt from providing on a C-6 form the sources of any funds received by the committee for an electioneering communication, unless the committee received funds that were earmarked or otherwise designated for the communication.

(3) An out-of-state political committee must report pursuant to RCW 42.17A.305 if it sponsors an electioneering communication as defined in RCW 42.17A.005.

(4) The sponsor of an electioneering communication must report pursuant to RCW 42.17A.305 and these rules regarding electioneering communications, even if the expenditure also satisfies the definition of independent expenditure in RCW 42.17A.005 or 42.17A.255. Persons in compliance with this subsection are deemed in compliance with RCW 42.17A.255 or 42.17A.260.

(5) Any person making an expenditure that is reportable under RCW 42.17A.640, grass roots lobbying campaigns, that also satisfies the definition of electioneering communication in RCW 42.17A.005, must also file pursuant to RCW 42.17A.305 and these rules regarding electioneering communications. The report filed pursuant to RCW 42.17A.305 must identify the grass roots campaign.

(6) In addition to any other reporting requirements on the C-6 form, any political advertising that supports or opposes a ballot proposition or that supports or opposes a candidate and qualifies as an independent expenditure, or any electioneering communication, must identify any "synthetic media," as defined under RCW 42.62.020, that was used in the advertising or communication, and further report:

(a) The name of the vendor that provided the software or other digital technology used to create the synthetic media;

(b) The commercial advertiser that sold the advertising or communication, if any; and

(c) The description of any audience targeting information provided for any digital communication by a digital communication platform, or other vendor.

OTS-5354.2

NEW SECTION

WAC 390-18-035 Synthetic media—Application of disclosure statements in electioneering communications. For purposes of chapter 42.62 RCW, any disclosure statement regarding the use of "synthetic media" in an electioneering communication is in addition to any required disclosure statements under chapter 42.17A RCW and Title 390 RCW, and may not substitute, replace, or otherwise interfere with such disclaimer requirements.

AMENDATORY SECTION (Amending WSR 22-05-021, filed 2/4/22, effective 3/7/22)

WAC 390-18-050 Commercial advertisers—Public inspection of records. (1) "Commercial advertiser" as that term is used in the act and these rules is defined under RCW 42.17A.005.

(2) Any person that hosts political advertising or electioneering communications on a digital communication platform or other media is not required to maintain records on such advertising or communications if the services have been purchased directly through another commercial advertiser, however the commercial advertiser that directly sells the services must maintain the information as required in this section. In order to ensure that such commercial advertiser directly makes its books of account available for public inspection, when selling digital media services to be hosted on another platform or other media, the advertiser must include a separate text box or link that automatically appears with the advertisement or communication in a manner that is compatible with the device and technology used to display the advertising, and that reasonably directs the reader to at least one method under subsection (4) of this section for making the required information available. Such methods may include, but are not limited to, an address or location for receiving in-person inquiries, a link to a portal for processing requests, or a link to a website where the required information is maintained.

(3) Pursuant to RCW 42.17A.345, each commercial advertiser who has accepted or provided political advertising, or electioneering communications, must maintain current books of account and related materials as required by this section. Information contained in books of account must be updated within 24 hours of the time when an advertisement or communication initially has been publicly distributed or broadcast, and within 24 hours of any update or change to such information. Such records must be maintained for a period of no less than five years after the date of the applicable election.

(4) Until such time as the PDC provides an open access platform on its website for this information, which will replace the following methods of inspection for all required information, such information must be available for public inspection by any person, and provided:

- (a) In person during normal business hours; or
- (b) Electronically, in machine readable format and structured in a way that enables the data to be fully discoverable and useable by the end user:

- (i) By digital transmission, such as email, promptly upon request, but no later than two business days; or
- (ii) By online publication in one of the following formats:
- (A) On the advertiser's primary website; or
- (B) On a website controlled by the advertiser, created for purposes of publishing the information required by this section, if a link is prominently displayed on the advertiser's primary website directing users to the website on which the information is provided.
- (5) A commercial advertiser may have, to the extent necessary, up to three business days to update its books of account upon receiving notice regarding any missing political advertising or electioneering communication, if:
- (a) At the time the order was placed, the commercial advertiser had asked the purchaser in writing whether the order included any political advertising or electioneering communication;
- (b) The purchaser did not provide such information; and
- (c) The order was not reasonably identifiable to the commercial advertiser as political advertising or an electioneering communication.
- (6) The information and books of account that must be maintained open for public inspection pursuant to RCW 42.17A.345 are:
- (a) The name of the candidate or ballot measure supported or opposed or the name of the candidate otherwise identified;
- (b) A copy of the advertisement or communication in a print or digital graphic record for any media with a visual component, or in an audio or transcribed record for any radio or other media that does not include a visual component;
- (c) The name and address of the sponsoring person or persons actually paying for the advertising or electioneering communication, including the federal employer identification number, or other verifiable identification, if any, of an entity, so that the public can know who paid for the advertising or communication, without having to locate and identify any affiliated entities;
- (d) The total cost of the advertising or electioneering communication, or initial cost estimate if the total cost is not available upon initial distribution or broadcast, how much of that amount has been paid, as updated, who made the payment, when it was paid, and what method of payment was used; and
- (e) Date(s) the commercial advertiser rendered service, including the dates, where applicable, that the advertising or communication was presented to the public.
- (7) In addition to subsection (6) of this section and pursuant to RCW 42.17A.345, the materials and books of account open for public inspection must include the political advertisement or electioneering communication itself, and a description of the major work components or tasks, as specified in (a) through (g) of this subsection, that were required to provide the advertising or communications services.
- (a) For printers, reproducers and other persons who provide commercial duplicating services: Quantity of items, item description, design, layout, typesetting, photography, printing, silk screening, binding.
- (b) For mailing services: Quantity of items mailed, binding, stuffing, labeling, list or directory services, postage or delivery.
- (c) For broadcast media: Air time and number of spot advertisements. If the broadcaster provides additional services such as copy writing, talent, production, and tape reproduction, some type of record or notation evidencing the additional service must be available.

(d) For billboard or sign companies: Number and location of signs, design, printing and art work, erection/removal costs.

(e) For specialty or novelty commercial advertisers: Quantity of items provided, silk screening, design, printing and art work.

(f) For newspapers and other print media: Amount of advertising space and dates of publication. If the advertiser provides additional services such as design or layout, some type of record evidencing such additional services must be available.

(g) For digital communication platforms:

(i) A description of the demographic information((~~7~~));

(ii) The statistical characteristics of a population (e.g., age, gender, race, location, etc.), of the audiences targeted and reached, to the extent such information is collected by the commercial advertiser as part of its regular course of business((~~7~~and));

(iii) The total number of impressions generated by the advertisement or communication; and

(iv) Any generative adversarial network techniques, artificial intelligence, or other digital technology, provided by the commercial advertiser to produce any "synthetic media," as defined under RCW 42.62.020, for the advertisement or communication.

(8) At the request of the PDC, each commercial advertiser required to comply with this section must provide to the PDC copies of the information described above.

WSR 24-12-023

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed May 24, 2024, 1:16 p.m., effective July 1, 2024]

Effective Date of Rule: July 1, 2024.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: SHB 1570 (chapter 451, Laws of 2023) requires the pilot program to begin July 1, 2024.

Purpose: The paid family and medical leave (PFML) program is proposing a new chapter of rules under Title 192 WAC to implement the pilot program for transportation network company drivers (drivers) created under SHB 1570 (chapter 451, Laws of 2023). The law creates a pilot program for drivers to elect PFML coverage with premiums paid by the driver and reimbursed by their transportation network company. The pilot begins July 1, 2024, and ends December 31, 2028.

Citation of Rules Affected by this Order: New chapter 192-511 WAC, Transportation network company pilot program; WAC 192-511-005 Definitions applicable to the transportation network company pilot program, 192-511-010 How do transportation network company drivers elect paid family and medical leave coverage?, 192-511-015 Transportation network company rights and responsibilities, and 192-511-020 Self-employed elective coverage requirements apply to the pilot program.

Statutory Authority for Adoption: RCW 50A.05.060; chapter 451, Laws of 2023.

Adopted under notice filed as WSR 24-08-046 on March 28, 2024.

A final cost-benefit analysis is available by contacting Janette Benham, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-790-6583, Washington relay 711, (contact Teresa Eckstein at 360-507-9890 for accommodations), email rules@esd.wa.gov, website <https://paidleave.wa.gov/rulemaking/>.

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: May 24, 2024.

April Amundson
Policy and Rules Manager
ESPI, Leave and Care Programs

OTS-5291.3

Chapter 192-511 WAC

TRANSPORTATION NETWORK COMPANY PILOT PROGRAMNEW SECTION

WAC 192-511-005 Definitions applicable to the transportation network company pilot program. The following definitions are applicable under this chapter.

(1) "Compensation" has the same meaning as defined in RCW 49.46.300.

(2) "Department" means the employment security department.

(3) "Digital network" has the same meaning as defined in RCW 49.46.300.

(4) "Pilot program" refers to the temporary program providing elective coverage to transportation network company drivers created under chapter 451, Laws of 2023. The pilot program is effective from July 1, 2024, through December 31, 2028.

(5) "Third party" means a designated representative that is authorized to conduct business on behalf of the transportation network company driver. To represent a driver before the department, the driver or third party must submit documentation in a format approved by the department. The driver is responsible for all acts taken or failures to act by the third party on the driver's behalf.

(6) A "transportation network company" has the same meaning as defined in RCW 46.04.652.

(7) A "transportation network company driver" has the same meaning as commercial transportation services provider driver in RCW 48.177.005.

NEW SECTION

WAC 192-511-010 How do transportation network company drivers elect paid family and medical leave coverage? (1) Notice of election of coverage must be submitted to the department online or in another format approved by the department. Either the department or the third party if designated by a driver, may inform transportation network companies of a driver's election of coverage into the pilot program.

(2) Election of coverage begins on the first day of the quarter immediately following the notice of election.

(3) A transportation network company driver electing coverage is eligible for family and medical leave after working 820 hours in the state during the qualifying period.

(4) Any transportation network company driver or third party may file a notice of withdrawal within 30 days after the end of each quarterly period of coverage. The withdrawal will take effect the first day of the following quarter.

(5) A notice of withdrawal from coverage must be submitted to the department online or in another format approved by the department.

(6) Any levy resulting from the department's cancellation of coverage is in addition to the due and unpaid premiums and interest for the remainder of the quarterly period of coverage.

(7) Transportation network company drivers electing coverage must elect both family and medical leave and are responsible for 100 percent of all premiums assessed to an employee under RCW 50A.10.030.

NEW SECTION

WAC 192-511-015 Transportation network company rights and responsibilities. (1) By the 15th day of the month following the end of a calendar quarter, transportation network companies must report to each driver in Washington who opted into the pilot program, and to the driver's third-party representative when so designated by a driver, the total amount of compensation that the driver earned providing network services through the transportation network company's digital network in that quarter. The transportation network company shall share data with the third-party representative in a standard format approved by the department to facilitate quarterly reporting and premium payment.

(2) By the 15th day of the month following the driver's deadline for the calendar quarter, the department will provide data to each transportation network company on the drivers who, in that calendar quarter:

- (a) Reported and paid all obligated premiums; and
- (b) Withdrew or canceled paid family and medical leave coverage.

(3) Data described in subsection (2) of this section provided by the department includes:

- (a) When a driver has elected coverage;
- (b) A driver's assessed and paid premiums;
- (c) When a driver's elective coverage has been withdrawn or canceled; and

(d) Information related to a third party authorized to be acting on the driver's behalf regarding reporting and paying of premiums.

(e) The data described in this subsection will be provided to transportation network companies until February 15, 2029.

(4) By the 15th day following the receipt of information from the department described under subsection (3) of this section, transportation network companies must pay each driver who elected coverage under WAC 192-511-010 the premiums paid by the transportation network company driver. If the driver has designated a third-party representative, then the transportation network companies must pay the third party, rather than the driver, for any premiums paid by the third party on behalf of the transportation network company driver.

(a) For the purposes of this section, compensation does not include any amount listed in RCW 50A.05.010 (22)(d).

(b) The requirement to pay premiums under the pilot program ends December 31, 2028.

NEW SECTION

WAC 192-511-020 Self-employed elective coverage requirements apply to the pilot program. As described in RCW 46.72B.200, a driver who opts into the pilot program is subject to the rights and responsibilities as they apply to self-employed individuals who elect coverage

under Titles 50A RCW and 192 WAC, except for the period of coverage requirements described under RCW 50A.10.010(1) and WAC 192-510-010.

WSR 24-12-029

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed May 28, 2024, 2:03 p.m., effective June 28, 2024]

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

Purpose: The update is to conform the rule to ESHB 1175, which passed during the 2023 legislative session.

Citation of Rules Affected by this Order: Amending WAC 458-20-281 Petroleum product tax.

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

Adopted under notice filed as WSR 24-03-166 on March 13, 2024 [January 24, 2024].

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: May 28, 2024.

Brenton Madison
Rules Coordinator

OTS-5159.1

AMENDATORY SECTION (Amending WSR 17-01-155, filed 12/21/16, effective 1/21/17)

WAC 458-20-281 Petroleum product tax. (1) Introduction. Under chapter 82.23A RCW (hereinafter referred to as the "law"), a petroleum product tax is imposed upon the wholesale value of petroleum products in this state with specific credits and exemptions provided. The tax is an excise tax upon the privilege of first possessing petroleum products in this state. The tax is administered by the department of revenue.

(a) Chapter 82.23A RCW is administered exclusively under this rule. The application of the petroleum product tax with the exceptions noted below, is the same as the application of the hazardous substance tax explained in WAC 458-20-252 (1)(c).

(b) The petroleum product tax is imposed upon any possession of petroleum products in this state by any person who is not expressly exempt of the tax. However, it is the intent of the law that the economic burden of the tax should fall only upon the first such possession in this state just like the hazardous substance tax.

(2) Definitions. For purposes of this rule the following definitions will apply.

(a) "Tax" means the petroleum product tax imposed under chapter 82.23A RCW.

(b) "Petroleum product" means any plant condensate, lubricating oil, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, fuel oil, residual fuel oil, asphalt base, and every other product derived from the refining of crude oil, but the term does not include crude oil or liquefiable gases.

(c) "Possession" means control of a petroleum product located within this state and includes both actual and constructive possession.

(i) "Control" means the power to sell or use a petroleum product or to authorize the sale or use by another.

(ii) "Actual possession" occurs when the person with control has physical possession.

(iii) "Constructive possession" occurs when the person with control does not have physical possession.

(d) "Previously taxed petroleum product" means a petroleum product in respect to which the petroleum product tax has been paid and that has not been remanufactured or reprocessed in any manner (other than mere repackaging or recycling for beneficial reuse) since the tax was paid.

(e) "Wholesale value" is the tax measure or base. It means the fair market value determined by the wholesale selling price at the place of use of similar products of like quality and character.

(i) For purposes of determining the tax for petroleum products introduced at the rack, the wholesale value is determined when the petroleum product is removed at the rack unless the removal is to a properly licensed petroleum products exporter for direct delivery to a destination outside of the state. For all other cases, the wholesale value is determined upon the first nonbulk possession in the state.

(ii) In cases where no sale has occurred, wholesale value means the fair market wholesale value, determined as nearly as possible according to the wholesale selling price at the place of use of similar substances of like quality and character. In such cases, the wholesale value shall be the "value of the products" as determined under the alternate methods set forth in WAC 458-20-112.

(f) "Selling price" has the same meaning as provided in WAC 458-20-252 (2)(h).

(g) "State," for purposes of the credit provisions of the petroleum product tax, means:

(i) A state of the United States other than Washington, or any political subdivision of such other state;

(ii) The District of Columbia;

(iii) Any foreign country or political subdivision thereof; and

(iv) Territories and possessions of the United States.

(h) "Rack" means a mechanism for delivering petroleum products from a refinery or terminal into a truck, trailer, railcar, or other means of nonbulk transfer. For purposes of this definition:

(i) "Nonbulk transfer" means a transfer of a petroleum product that does not meet the definition of "bulk transfer" in (h)(ii) of this subsection;

(ii) "Bulk transfer" means a transfer of a petroleum product by pipeline or vessel; and

(iii) "Terminal" means a petroleum product storage and distribution facility that has been assigned a terminal control number by the internal revenue service, is supplied by pipeline or vessel, and from which certain petroleum products are removed at a rack.

(3) Tax rate and measure. The tax is imposed upon the privilege of possession of a petroleum product in this state.

(a) The tax rate is thirty one-hundredths of one percent (.003). (~~Starting July 1, 2021, the rate will be decreased from thirty one-hundredths of one percent (.003) to fifteen one-hundredths of one percent (.0015).~~)

(b) The tax measure or base is the wholesale value of the petroleum product, as defined in this rule.

(c) The tax will apply for first possessions of any petroleum products in all periods after its effective date unless the department notifies taxpayers in writing of the department's determination that the pollution liability reinsurance program trust account contains a sufficient balance to cause a moratorium on the tax application. The department will again notify taxpayers in writing if and when the account balance requires reapplication of the tax.

(4) Exemptions. The following are expressly exempt from the tax:

(a) Any successive possessions of any previously taxed petroleum products are exempt in precisely the manner as the same exemption for the hazardous substance tax. (Additional information is provided in WAC 458-20-252 (4)(a).) If the tax is paid by any person other than the first person having taxable possession of a petroleum product, the amount of tax paid shall constitute a debt owed by the first person having taxable possession to the person who paid the tax.

(b) Any possession of a petroleum product by a natural person for use of a personal or domestic nature rather than a business nature is exempt in precisely the manner as the same exemption for the hazardous substance tax. (Additional information is provided in WAC 458-20-252 (4)(b).)

(c) Any possessions of the following substances are tax exempt:

(i) Natural gas, or petroleum coke;

(ii) Liquid fuel or fuel gas used in processing petroleum;

(iii) Petroleum products that are exported for use or sale outside this state as fuel.

(iv) The exemption for possessions of petroleum products for export sale or use as fuel may be taken by any person within the chain of distribution of such products in this state. To perfect its entitlement to this exemption the person possessing such product(s) must take from its buyer or transferee of the product(s) a written certification in substantially the following form:

Certificate of Tax Exempt Export Petroleum Products

I hereby certify that the petroleum products specified herein, purchased by or transferred to the undersigned, from (seller or transferor), are for export for use or sale outside Washington state as fuel. I will become liable for and pay any petroleum product tax due upon all or any part of such products that are not so exported outside Washington state. This certificate is given with full knowledge of, and subject to the legally prescribed penalties for fraud and tax evasion.

Registration No.
(If applicable)
Type of Business
Registered Name
(If different)
Authorized Signature
Title

Identity of Petroleum Product
(Kind and amount by volume)

Date:.....

(v) Each successive possessor of such petroleum products must, in turn, take a certification in this form from any other person to whom such petroleum products are sold or transferred in this state. Failure to take and keep such certifications as part of its permanent records will incur petroleum product tax liability by such sellers or transferors of petroleum products.

(vi) Persons in possession of such petroleum products who themselves export or cause the exportation of such products to persons outside this state for further sale or use as fuel must keep the proofs of actual exportation required by WAC 458-20-193C, parts A or B. Carriers who will purchase fuel in this state to be taken out-of-state in the fuel tanks of any ship, airplane, truck, or other carrier vehicle will provide their fuel suppliers with this certification. Then such carriers will directly report and pay the tax only upon the portion of such fuel actually consumed by them in this state. (With respect to fuel brought into this state in fuel tanks and partially consumed here, information regarding the credit provisions is provided in WAC 458-20-252 (5) (b).)

(vii) Blanket export exemption certificates may never be accepted in connection with petroleum products exchanged under exchange agreements.

(d) Any possession of petroleum products packaged for sale to ultimate consumers. This exemption is limited to petroleum products that are prepared and packaged for sale at usual and ordinary retail outlets. Examples are containerized motor oil, lubricants, and aerosol solvents.

(5) Credits. There are two distinct kinds of tax credits against liability which are available under the law.

(a) A credit may be taken in the amount of the petroleum product tax upon the value of fuel which is carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle. The credit is applied in precisely the same manner as the hazardous substance tax in WAC 458-20-252 (5) (b).

The same form of certification as used for the fuel-in-tanks hazardous substance tax credit in WAC 458-20-252 (5) (b) (vi) may be used.

(b) A credit may be taken against the tax owed in this state in the amount of any other state's petroleum product tax that has been paid by the same person measured by the wholesale value of the same petroleum product tax.

(i) In order for this credit to apply, the other state's tax must be significantly similar to Washington's tax in all its various respects. The taxable incident must be on the act or privilege of possessing petroleum products and the tax must be of a kind that is not generally imposed on other activities or privileges; the tax purpose must be to fund pollution liability insurance; and the tax measure must be stated in terms of the wholesale value of the petroleum products, without deductions for costs of doing business, such that the other state's tax does not constitute an income tax or added value tax.

(ii) The credit is applied in precisely the same manner as the state credit for hazardous substance tax in WAC 458-20-252 (5) (c). The amount of the credit shall not exceed the petroleum product tax liability with respect to that petroleum product.

(6) General administration and tax reporting. The general administrative and tax reporting provisions for the hazardous substance tax contained in WAC 458-20-252 (8) through (14) apply as well for the petroleum product tax of this rule in precisely the same manner except the references to "hazardous substance(s)" or "substance(s)" should be replaced with the words, "petroleum products."

(7) Expiration date. The petroleum product tax expires July 1, 2030.

WSR 24-12-035
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

(Division of Child Support)

[Filed May 30, 2024, 7:43 a.m., effective June 30, 2024]

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

Purpose: The purpose of this proposal is to make nonsubstantive technical changes to WAC 388-14A-5001 in light of the enactment of the Revised Uniform Unclaimed Property Act, chapter 63.30 RCW, effective January 1, 2023.

The Washington state legislature enacted the Revised Uniform Unclaimed Property Act during the 2022 legislative session (chapter 225, Laws of 2022). The proposed amended rule replaces a citation to the Uniform Unclaimed Property Act, chapter 63.29 RCW, with a citation to the Revised Uniform Unclaimed Property Act, chapter 63.30 RCW. The proposal also makes other minor edits for grammatical purposes.

The division of child support has a strong interest in ensuring that its rules align with relevant statutes. Our proposal will ensure members of the public reading the rule are properly referred to relevant up-to-date statutory provisions.

Citation of Rules Affected by this Order: Amending WAC 388-14A-5001.

Statutory Authority for Adoption: RCW 26.23.035 and 34.05.353

(1) (c).

Adopted under notice filed as WSR 24-07-027 on March 12, 2024.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 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: May 30, 2024.

Katherine I. Vasquez
Rules Coordinator

SHS-5025.2

AMENDATORY SECTION (Amending WSR 11-06-042, filed 2/28/11, effective 3/31/11)

WAC 388-14A-5001 What procedures does DCS follow to distribute support collections? (1) When distributing support collections, the

division of child support (DCS) records collections in exact amounts of dollars and cents.

(2) DCS distributes support collections within two days of the date DCS receives the collection, unless DCS is unable to distribute the collection for one or more of the following reasons:

(a) DCS is unable to locate the payee and the payee has not signed up for electronic funds transfer (EFT) of disbursements;

(b) DCS does not have sufficient information to identify the accounts against which or to which it should distribute the money;

(c) An action is pending before a court or agency which has jurisdiction over the issue to determine whether child support is owed or how DCS should distribute the collection((~~-~~));

(d) DCS receives prepaid child support and is holding it for distribution in future months under WAC 388-14A-5008;

(e) DCS mails a notice of intent to distribute support money under WAC 388-14A-5050;

(f) DCS receives federal tax refund offset collections, which are distributed according to WAC 388-14A-5005 and 388-14A-5010((~~-~~));

(g) DCS may hold funds and not issue a check to the family for amounts under one dollar. DCS must give credit for the collection, but may delay disbursement of that amount until a future collection is received which increases the amount of the disbursement to the family to at least one dollar. If no future collections are received which increase the disbursement to the family to at least one dollar, DCS transfers the amount to the department of revenue under RCW ((~~63.29.130~~)) 63.30.040. This subsection does not apply to disbursements which can be made by EFT; or

(h) Other circumstances exist which make a proper and timely distribution of the collection impossible through no fault or lack of diligence of DCS.

(3) DCS distributes support collections based on the date DCS receives the collection, except as provided under WAC 388-14A-5005. DCS distributes support collections based on the date of collection. DCS considers the date of collection to be the date that DCS receives the support collection, no matter when the money was withheld from the noncustodial parent (NCP).

(4) Under state and federal law, the division of child support (DCS) disburses support collections to the:

(a) Department when the department provides or has provided public assistance payments for the support of the family;

(b) Payee under the order, or to the custodial parent (CP) of the child according to WAC 388-14A-5050;

(c) Child support enforcement agency in another state or foreign country which submitted a request for support enforcement services;

(d) Indian tribe which has a TANF program, child support program, ((~~and~~)) or a cooperative agreement regarding the delivery of child support services;

(e) Persons or entity making the payment when DCS is unable to identify the person to whom the support is payable after making reasonable efforts to obtain identification information.

(5) If DCS is unable to disburse a support collection because the location of the family or person is unknown, it must exercise reasonable efforts to locate the family or person. When the family or person cannot be located, DCS handles the collection in accordance with chapter ((~~63.29~~)) 63.30 RCW, the Revised Uniform Unclaimed Property Act.

(6) WAC 388-14A-5000 through 388-14A-5015 contain the rules for the distribution of support collections by DCS.

(7) DCS changes the distribution rules based on changes in federal statutes and regulations. DCS may also change the distribution rules based on the state budget, but only to the extent allowed by federal law.

WSR 24-12-036

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed May 30, 2024, 8:09 a.m., effective July 1, 2024]

Effective Date of Rule: July 1, 2024.

Purpose: The health care authority (HCA) amended these rules to add advanced social worker associates, independent clinical social worker associates, marriage and family therapist associates, and mental health counselor associates as provider types eligible to provide covered health care services to eligible clients. In WAC 182-502-0002, HCA replaced social workers with advanced social workers and independent clinical social workers.

HCA also added community behavioral health support services provider facilities to the list of eligible provider types in WAC 182-502-0002. HCA filed a preproposal statement of inquiry (CR-101) under WSR 22-09-074 to develop new rules in Title 182 WAC regarding the community behavioral health support services (CBHS) program. This rule making was postponed after necessary funding for the program was not provided. On March 18, 2024, HCA filed the proposed rule (CR-102) for the new CBHS program under WSR 24-07-072, followed by the rule-making order (CR-103P) on April 30, 2024, under WSR 24-10-081.

Citation of Rules Affected by this Order: Amending WAC 182-502-0002 and 182-531-1400.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 24-05-063 on February 20, 2024.

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

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

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

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

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

Date Adopted: May 30, 2024.

Wendy Barcus
Rules Coordinator

OTS-5163.3

AMENDATORY SECTION (Amending WSR 23-24-026, filed 11/29/23, effective 1/1/24)

WAC 182-502-0002 Eligible provider types. The following health care professionals, health care entities, suppliers or contractors of service may request enrollment with the Washington state health care authority (medicaid agency) to provide covered health care services to

eligible clients. For the purposes of this chapter, health care services include treatment, equipment, related supplies, and drugs.

- (1) Professionals:
 - (a) Advanced registered nurse practitioners;
 - (b) Advanced social workers;
 - (c) Advanced social worker associates;
 - (d) Anesthesiologists;
 - ~~((e))~~ (e) Applied behavior analysis (ABA) professionals, as provided in WAC 182-531A-0800:
 - (i) Licensed behavior analyst;
 - (ii) Licensed assistant behavior analyst; and
 - (iii) Certified behavior technician~~((-))~~;
 - ~~((d))~~ (f) Audiologists;
 - ~~((e))~~ (g) Chiropractors;
 - ~~((f))~~ (h) Dentists;
 - ~~((g))~~ (i) Dental health aide therapists, as provided in chapter 70.350 RCW;
 - ~~((h))~~ (j) Dental hygienists;
 - ~~((i))~~ (k) Denturists;
 - ~~((j))~~ (l) Dietitians or nutritionists;
 - ~~((k))~~ (m) Hearing aid fitters/dispensers;
 - ~~((l))~~ (n) Home health aide credentialed with DOH as nursing assistant certified or nursing assistant registered;
 - ~~((m))~~ (o) Independent clinical social workers;
 - (p) Independent clinical social worker associates;
 - (q) Licensed practical nurse;
 - ~~((n))~~ (r) Marriage and family therapists;
 - ~~((o))~~ (s) Mental health counselors;
 - ~~((p))~~ (t) Mental health counselor associates;
 - (u) Mental health care providers;
 - ~~((q))~~ (v) Midwives;
 - ~~((r))~~ (w) Naturopathic physicians;
 - ~~((s))~~ (x) Nurse anesthetist;
 - ~~((t))~~ Ocularists;
 - ~~((u))~~ (y) Ocularists;
 - (z) Occupational therapists;
 - ~~((v))~~ (aa) Ophthalmologists;
 - ~~((w))~~ (bb) Opticians;
 - ~~((x))~~ (cc) Optometrists;
 - ~~((y))~~ (dd) Orthodontists;
 - ~~((z))~~ (ee) Orthotist;
 - ~~((aa))~~ (ff) Osteopathic physicians;
 - ~~((bb))~~ (gg) Osteopathic physician assistants;
 - ~~((cc))~~ (hh) Peer counselors;
 - ~~((dd))~~ (ii) Podiatric physicians;
 - ~~((ee))~~ (jj) Pharmacists;
 - ~~((ff))~~ (kk) Physicians;
 - ~~((gg))~~ (ll) Physician assistants;
 - ~~((hh))~~ (mm) Physical therapists;
 - ~~((ii))~~ (nn) Prosthetist;
 - ~~((jj))~~ (oo) Psychiatrists;
 - ~~((kk))~~ (pp) Psychologists;
 - ~~((ll))~~ (qq) Radiologists;
 - ~~((mm))~~ (rr) Registered nurse;
 - ~~((nn))~~ (ss) Registered nurse delegators;
 - ~~((oo))~~ (tt) Registered nurse first assistants;
 - ~~((pp))~~ (uu) Respiratory therapists;

~~((qq))~~ Social workers; and
~~((rr))~~ (vv) Speech/language pathologists; and
~~((ss))~~ (ww) Substance use disorder professionals:
 (i) Mental health providers; and
 (ii) Peer counselors.
 (2) Agencies, centers and facilities:
 (a) Adult day health centers;
 (b) Ambulance services (ground and air);
 (c) Ambulatory surgery centers (medicare-certified);
 (d) Birthing centers (licensed by the department of health);
 (e) Cardiac diagnostic centers;
 (f) Case management agencies;
 (g) Substance use disorder treatment facilities certified by the
 department of health (DOH);
 (h) Withdrawal management treatment facilities certified by DOH;
 (i) Community AIDS services alternative agencies;
 (j) Community behavioral health support services provider facili-
ties;
(k) Community mental health centers;
~~((k))~~ (l) Diagnostic centers;
~~((l))~~ (m) Early and periodic screening, diagnosis, and treat-
 ment (EPSDT) clinics;
~~((m))~~ (n) Family planning clinics;
~~((n))~~ (o) Federally qualified health centers (designated by the
 federal department of health and human services);
~~((o))~~ (p) Genetic counseling agencies;
~~((p))~~ (q) Health departments;
~~((q))~~ (r) Health maintenance organization (HMO)/managed care
 organization (MCO);
~~((r))~~ (s) HIV/AIDS case management;
~~((s))~~ (t) Home health agencies;
~~((t))~~ (u) Hospice agencies;
~~((u))~~ (v) Hospitals;
~~((v))~~ (w) Indian health service facilities/tribal 638 facili-
 ties;
~~((w))~~ (x) Tribal or urban Indian clinics;
~~((x))~~ (y) Inpatient psychiatric facilities;
~~((y))~~ (z) Intermediate care facilities for individuals with in-
 tellectual disabilities (ICF-IID);
~~((z))~~ (aa) Kidney centers;
~~((aa))~~ (bb) Laboratories (CLIA certified);
~~((bb))~~ (cc) Maternity support services agencies; maternity case
 managers; infant case management, first steps providers;
~~((cc))~~ (dd) Neuromuscular and neurodevelopmental centers;
~~((dd))~~ (ee) Nurse services/delegation;
~~((ee))~~ (ff) Nursing facilities (approved by the DSHS aging and
 long-term support administration);
~~((ff))~~ (gg) Pathology laboratories;
~~((gg))~~ (hh) Pharmacies;
~~((hh))~~ (ii) Private duty nursing agencies;
~~((ii))~~ (jj) Radiology - Stand-alone clinics;
~~((jj))~~ (kk) Rural health clinics (medicare-certified);
~~((kk))~~ (ll) School districts and educational service districts;
and
~~((ll))~~ (mm) Sleep study centers(~~(; and~~
~~((mm))~~ Washington state school districts and educational service
 districts).

- (3) Suppliers of:
 - (a) Blood, blood products, and related services;
 - (b) Durable and nondurable medical equipment and supplies;
 - (c) Complex rehabilitation technologies;
 - (d) Infusion therapy equipment and supplies;
 - (e) Prosthetics/orthotics;
 - (f) Hearing aids; and
 - (g) Respiratory care, equipment, and supplies.
- (4) Contractors:
 - (a) Transportation brokers;
 - (b) Spoken language interpreter services agencies;
 - (c) Independent sign language interpreters; and
 - (d) Eyeglass and contact lens providers.

OTS-5164.1

AMENDATORY SECTION (Amending WSR 23-11-097, filed 5/18/23, effective 6/18/23)

WAC 182-531-1400 Psychiatric physician-related services and other professional mental health services. (1) The mental health services covered in this section are different from the mental health services covered under community mental health and involuntary treatment programs in chapter 182-538D WAC.

(2) Inpatient and outpatient mental health services not covered under chapter 182-538D WAC may be covered by the agency under this section.

Inpatient mental health services

(3) For hospital inpatient psychiatric admissions, providers must comply with chapter 182-538D WAC.

(4) The agency covers professional inpatient mental health services as follows:

(a) When provided by a psychiatrist, psychiatric advanced registered nurse practitioner (ARNP), psychiatric mental health nurse practitioner-board certified (PMHNP-BC), or psychologist in conjunction with the prescribing provider;

(b) The agency pays only for the total time spent on direct psychiatric client care during each visit, including services provided when making rounds. The agency considers services provided during rounds to be direct client care services and may include, but are not limited to:

- (i) Individual psychotherapy up to one hour;
- (ii) Family/group therapy; or
- (iii) Electroconvulsive therapy.

(c) One electroconvulsive therapy or narcosynthesis per client, per day, and only when performed by a psychiatrist.

Outpatient mental health services

(5) The agency covers outpatient mental health services when provided by the following licensed health care practitioners who are eligible providers under chapter 182-502 WAC:

- (a) Psychiatrists;

- (b) Psychologists;
- (c) Psychiatric advanced registered nurse practitioners (ARNP);
- (d) Psychiatric mental health nurse practitioners-board certified (PMHNP-BC);
- (e) Mental health counselors;
- (f) Mental health counselor associates;
- (g) Independent clinical social workers;
- ~~((g))~~ (h) Independent clinical social worker associates;
- (i) Advanced social workers; ~~((e~~
- ~~(h))~~ (j) Advanced social worker associates;
- (k) Marriage and family therapists; or
- (l) Marriage and family therapist associates.

(6) With the exception of child psychiatrists, as defined in RCW 71.34.020, qualified practitioners listed in subsection (5) of this section who diagnose and treat clients age 18 and younger must meet one of the following:

(a) The education and experience requirements for a child mental health specialist found in WAC 182-538D-0200; or

(b) Be working under the supervision of a practitioner who meets these requirements.

(7) The agency does not limit the total number of outpatient mental health visits a licensed health care professional can provide.

(8) The agency evaluates a request for covered outpatient mental health services in excess of the limitations in this section under WAC 182-501-0169.

(9) The agency covers outpatient mental health services with the following limitations:

(a) Diagnostic evaluations. One psychiatric diagnostic evaluation, per provider, per client, per calendar year, unless significant change in the client's circumstances renders an additional evaluation medically necessary and is authorized by the agency.

(i) For clients 20 years of age and younger, additional evaluations are paid for when medically necessary and authorized by the agency, per WAC 182-534-0100 and 182-501-0165.

(ii) For clients five years of age and younger, the agency pays for the following without requiring prior authorization:

(A) Up to five sessions to complete a psychiatric diagnostic evaluation; and

(B) Evaluations in the home or community setting, including reimbursement for provider travel.

(iii) For clients age five through age 20, the services in (a)(ii)(A) and (B) of this subsection are paid for when medically necessary and authorized by the agency.

(b) Psychotherapy. One or more individual or family/group psychotherapy visits, with or without the client, per day, per client, when medically necessary.

(c) Medication management. One psychiatric medication management service, per client, per day, in an outpatient setting when performed by one of the following:

(i) Psychiatrist;

(ii) Psychiatric advanced registered nurse practitioner (ARNP);

or

(iii) Psychiatric mental health nurse practitioner-board certified (PMHNP-BC).

(10) To receive payment for providing mental health services, providers must bill the agency using the agency's published billing instructions.

WSR 24-12-037

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed May 30, 2024, 9:16 a.m., effective June 30, 2024]

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

Purpose: To update WAC 458-20-252 to account for volumetric changes to petroleum products caused by differences in temperature and pressure. SSB [ESSB] 5993 (2019) added a new volumetric per barrel rate for petroleum products subject to the hazardous substance tax. This rule-making effort adds a definition for the term "barrel" in RCW 82.21.030(1) to address changes in volume due to differences in temperature and pressure, and other updates to enhance readability of the rule.

Citation of Rules Affected by this Order: Amending WAC 458-20-252.

Statutory Authority for Adoption: RCW 82.01.060(2), 82.32.300, and 82.21.030.

Adopted under notice filed as WSR 24-06-071 on March 5, 2024.

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: May 30, 2024.

Brenton Madison
Rules Coordinator

OTS-4891.2

AMENDATORY SECTION (Amending WSR 20-02-055, filed 12/24/19, effective 1/24/20)

WAC 458-20-252 Hazardous substance tax. (1) Introduction. Under chapter 82.21 RCW (referred to in this rule as the "law"), a hazardous substance tax is imposed upon the wholesale value of certain substances and products, with specific credits and exemptions provided. The tax is an excise tax upon the privilege of possessing hazardous substances in this state.

Before July 1, 2019, the tax was imposed upon the wholesale value of the hazardous substance. Starting July 1, 2019, the tax is imposed in one of two ways:

Upon the wholesale value of certain hazardous substances ("value-based tax"); or

Upon the volume of certain hazardous substances ("volumetric tax").

The volumetric tax applies to petroleum products that are easily measured on a per barrel basis. The value-based tax applies to all other hazardous substances, including petroleum products that are not easily measured on a per barrel basis.

(a) Chapter 82.21 RCW defines certain specific substances as being hazardous and includes other substances by reference to federal legislation governing such things. It also provides authority to the director of the state department of ecology to designate by rule any other substance or product as hazardous that could present a threat to human health or the environment. (Chapter 173-342 WAC.)

(b) Chapter 82.21 RCW is administered exclusively under this rule. The law relates exclusively to the possession of hazardous substances and products. The law does not relate to waste, releases or spills of any materials, cleanup, compensation, or liability for such things, nor does tax liability under the law depend upon such factors. The incidence or privilege that incurs tax liability is simply the possession of the hazardous substance or product, whether or not such possession actually causes any hazardous or dangerous circumstance.

(c) The hazardous substance tax is imposed upon any possession of a hazardous substance or product in this state by any person who is not expressly exempt of the tax. However, it is the intent of the law that the economic burden of the tax should fall upon the first such possession in this state. Therefore, the law provides that if the tax has not been paid upon any hazardous substance or product the department of revenue may collect the tax from any person who has had possession. The amount of tax paid then constitutes a debt owed by the first person having had taxable possession to the person who pays the tax.

(2) Definitions. For purposes of this rule the following definitions apply.

~~(a) ("Tax" means the hazardous substance tax imposed under chapter 82.21 RCW.~~

~~(b))~~ "Barrel" means a container that holds 42 billed gallons of a petroleum product, as defined in this rule. Starting July 1, 2019, it is the tax measure or base for petroleum products that are easily measured on a per barrel basis.

(b) "Billed gallon" means a U.S. gallon of petroleum product, whether net or gross as billed to the purchaser.

(c) "Gross gallon" means a U.S. gallon of petroleum product of 231 cubic inches as measured at the terminal rack.

(d) "Hazardous substance" means:

(i) Any substance that, on March 1, 2002, is a hazardous substance under section 101(14) of the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. Sec. 9601(14), as amended by Public Law 99-499 on October 17, 1986, except that hazardous substance does not include the following noncompound metals when in solid form in a particle larger than ~~(one hundred)~~ 100 micrometers (0.004 inches) in diameter: Antimony, arsenic, beryllium, cadmium, chromium, copper, lead, nickel, selenium, silver, thallium, or zinc. These substances consist of chemicals and elements in their purest form. A CERCLA substance that contains water is still considered pure. Combinations of CERCLA substances as ingredients together with nonhazardous substances will not be taxable unless the end product is specifically designated as a hazardous substance by the department of ecology;

(ii) Petroleum products (further defined below);

(iii) Pesticide products required to be registered under section 136a of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. Sec. 136 et seq., as amended by Public Law 104-170 on August 3, 1996; and

(iv) Anything else enumerated as a hazardous substance in chapter 173-342 WAC by the department of ecology.

~~((e) "Product(s)" means any item(s) containing a combination of ingredients, some of which are hazardous substances and some of which are not hazardous substances.~~

~~(d-))~~ (e) "Net gallon" means a U.S. gallon of petroleum product of 231 cubic inches at 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch (1 atmosphere).

(f) "Person" means any natural or artificial person, including a business organization of any kind, and has the further meaning defined in RCW 82.04.030.

The term "natural person," for purposes of the tax exemption in subsection (4)(b) of this rule regarding substances used for personal or domestic purposes, means human beings in a private, as opposed to a business sense.

(g) "Petroleum product" means any plant condensate, lubricating oil, crankcase motor oil, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, fuel oil, residual fuel, asphalt base, liquefied or liquefiable gases, such as butane, ethane and propane, and every other product derived from the refining of crude oil, but the term does not include crude oil.

The term "derived from the refining of crude oil" as used herein, means produced because of and during petroleum processing. "Petroleum processing" includes all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to crude oil or any byproduct of crude oil so that as a result thereof a fuel or lubricant is produced for sale or commercial or industrial use. "Fuel" includes all combustible gases and liquids suitable for the generation of energy. The term "derived from the refining of crude oil" does not mean petroleum products that are manufactured from refined oil derivatives, such as petroleum jellies, cleaning solvents, asphalt paving, etc. Such further manufactured products become hazardous substances only when expressly so designated by the director of the department of ecology in chapter 173-342 WAC.

~~((e) "Possession" means control of a hazardous substance located within this state and includes both actual and constructive possession.~~

~~(i) "Control" means the power to sell or use a hazardous substance or to authorize the sale or use by another.~~

~~(ii) "Actual possession" occurs when the person with control has physical possession.~~

~~(iii) "Constructive possession" occurs when the person with control does not have physical possession.~~

~~(f) "Previously taxed hazardous substance" means a hazardous substance upon which the tax has been paid and which has not been remanufactured or reprocessed in any manner.~~

~~(i) Remanufacturing or reprocessing does not include the mere repackaging or recycling for beneficial reuse. Rather, these terms embrace activities of a commercial or industrial nature involving the application of skill or labor by hand or machinery so that as a result, a new or different substance or product is produced.~~

~~(ii) "Recycling for beneficial reuse" means the recapturing of any used substance or product, for the sole purpose of extending the useful life of the original substance or product in its previously taxed form, without adding any new, different, or additional ingredient or component.~~

~~(iii) Example: Used motor oil drained from a crankcase, filtered, and containerized for reuse is not remanufactured or reprocessed. If the tax was paid on possession of the oil before use, the used oil is a previously taxed substance.~~

~~(iv) Possessions of used hazardous substances by persons who merely operate recycling centers or collection stations and who do not reprocess or remanufacture the used substances are not taxable possessions.~~

~~(g) "Wholesale value" means the fair market value determined by the wholesale selling price.~~

~~In cases where no sale has occurred, wholesale value means the fair market wholesale value, determined as nearly as possible according to the wholesale selling price at the place of use of similar substances of like quality and character. In such cases the wholesale value shall be the "value of the products" as determined under the alternate methods set forth in WAC 458-20-112.~~

~~Before July 1, 2019, the wholesale value was the tax measure or base for all hazardous substances. Starting July 1, 2019, the wholesale value is the tax measure or base for all hazardous substances other than petroleum products that are easily measured on a per barrel basis.)~~

~~(h) "Possession" means control of a hazardous substance located within this state and includes both actual and constructive possession.~~

~~(i) "Control" means the power to sell or use a hazardous substance or to authorize the sale or use by another.~~

~~(ii) "Actual possession" occurs when the person with control has physical possession.~~

~~(iii) "Constructive possession" occurs when the person with control does not have physical possession.~~

~~(i) "Previously taxed hazardous substance" means a hazardous substance upon which the tax has been paid and which has not been remanufactured or reprocessed in any manner.~~

~~(i) Remanufacturing or reprocessing does not include the mere repackaging or recycling for beneficial reuse. Rather, these terms embrace activities of a commercial or industrial nature involving the application of skill or labor by hand or machinery so that as a result, a new or different substance or product is produced.~~

~~(ii) "Recycling for beneficial reuse" means the recapturing of any used substance or product, for the sole purpose of extending the useful life of the original substance or product in its previously taxed form, without adding any new, different, or additional ingredient or component.~~

~~(iii) Example: Used motor oil drained from a crankcase, filtered, and containerized for reuse is not remanufactured or reprocessed. If the tax was paid on possession of the oil before use, the used oil is a previously taxed substance.~~

~~(iv) Possessions of used hazardous substances by persons who merely operate recycling centers or collection stations and who do not reprocess or remanufacture the used substances are not taxable possessions.~~

(j) "Product" means any item containing a combination of ingredients, some of which are hazardous substances and some of which are not hazardous substances.

(k) "Selling price" means consideration of any kind expressed in terms of money paid or delivered by a buyer to a seller, without any deductions for any costs whatsoever. Bona fide discounts actually granted to a buyer result in reductions in the selling price rather than deductions.

~~((i))~~ (l) "State," for purposes of the credit provisions of the hazardous substance tax, means:

(i) The state of Washington.

(ii) States of the United States or any political subdivisions of such other states.

(iii) The District of Columbia.

(iv) Territories and possessions of the United States.

(v) Any foreign country or political subdivision thereof.

~~((j) "Person" means any natural or artificial person, including a business organization of any kind, and has the further meaning defined in RCW 82.04.030.~~

~~The term "natural person," for purposes of the tax exemption in subsection (4)(b) of this rule regarding substances used for personal or domestic purposes, means human beings in a private, as opposed to a business sense.~~

~~(k))~~ (m) Except as otherwise expressly defined in this rule, the definitions of terms provided in chapters 82.04, 82.08, and 82.12 RCW apply equally for this rule. Other terms not expressly defined in these chapters or this rule are to be given their common and ordinary meanings.

~~((l) "Barrel" means a container that holds forty-two gallons of a petroleum product, as defined in this rule. Starting July 1, 2019, it is the tax measure or base for petroleum products that are easily measured on a per barrel basis.)~~ (n) "Tax" means the hazardous substance tax imposed under chapter 82.21 RCW.

(o) "Wholesale value" means the fair market value determined by the wholesale selling price.

In cases where no sale has occurred, wholesale value means the fair market wholesale value, determined as nearly as possible according to the wholesale selling price at the place of use of similar substances of like quality and character. In such cases the wholesale value shall be the "value of the products" as determined under the alternate methods set forth in WAC 458-20-112.

Before July 1, 2019, the wholesale value was the tax measure or base for all hazardous substances. Starting July 1, 2019, the wholesale value is the tax measure or base for all hazardous substances other than petroleum products that are easily measured on a per barrel basis.

(3) Tax rate and measure. The tax is imposed upon the privilege of possessing a hazardous substance in this state.

(a) For value-based tax. The value-based tax rate is seven tenths of one percent (.007). The value-based tax measure or base is the wholesale value of the substance, as defined in this rule. Before July 1, 2019, the value-based tax applied to all hazardous substances. Starting July 1, 2019, the value-based tax rate applies to all hazardous substances other than petroleum products that are easily measured on a per barrel basis.

(b) For volumetric tax. Starting July 1, 2019, the volumetric tax rate is ~~((one dollar and nine cents))~~ \$1.09 per barrel and applies to

petroleum products that are easily measured on a per barrel basis. Starting July 1, 2020, the volumetric tax rate on petroleum products will be adjusted to reflect the percentage change in the implicit price deflator for nonresidential structures as published by the United States Department of Commerce, Bureau of Economic Analysis for the most recent (~~twelve~~) 12-month period ending December 31st of the prior year.

(i) Density adjustments. For petroleum products that are easily measured on a per barrel basis, taxpayers will determine the amount of tax due based on billed gallons. Billed gallons may be calculated by using either gross gallons or net gallons. However, for contracts that adjust the formula for calculating billed gallons throughout the year to reduce the quantity of reported barrels, the department may employ the net gallons standard.

(ii) Example. Barrels are measured and reported to the department as billed gallons. However, to calculate billed gallons, Company A has negotiated a contract to employ the gross gallons standard during the winter in a location where average temperatures are 40 degrees Fahrenheit, while adjusting to the net gallons standard at the same location during the summer where average temperatures are 70 degrees Fahrenheit. Company A's seasonal formula for calculating billed gallons would ordinarily result in reducing the measured quantity of barrels throughout the year versus choosing a single formula to measure billed gallons. Therefore, the department may employ the net gallons standard for the entirety of the contract to measure the quantity of barrels.

(c) The department of revenue maintains lists of petroleum products that are easily measured, and petroleum products that are not easily measured, on a per barrel basis, on its website at dor.wa.gov. Petroleum products that remain in a liquid state at 77 degrees Fahrenheit and a pressure of 14.7 pounds per square inch (1 atmosphere) are subject to hazardous substance tax on a per barrel basis. These lists are not exclusive. If additional petroleum products are identified in the future, the department will add them to the applicable list. Products added to the lists will be subject to hazardous substance tax for all periods that the tax applies, even if the product was not on a list at the time.

(4) Exemptions. The following are expressly exempt from the tax:

(a) Any successive possessions of any previously taxed hazardous substances are tax exempt.

(i) Any person who possesses a hazardous substance that has been acquired from any other person who is registered with the department of revenue and doing business in this state may take a written statement certifying that the tax has been previously paid. Such certifications must be taken in good faith and must be in the form provided in subsection (14) of this rule. Blanket certifications may be taken, as appropriate, which must be renewed at intervals not to exceed four years. These certifications may be used for any single hazardous substance or any broad classification of hazardous substances, e.g., "all chemicals."

(ii) In the absence of taking such certifications, the person who possesses any hazardous substance must retain proofs that it purchased or otherwise acquired the substance from a previous possessor in this state. It is not necessary for subsequent possessors to obtain certificates of previously taxed hazardous substances in order to perfect their tax exemption. Documentation that establishes any evidence of previous tax payment by another person will suffice. This includes invoices or billings from in-state suppliers that reflect their payment

of the tax or simple bills of lading or delivery documents revealing an in-state source of the hazardous substances.

(iii) This exemption for taxes previously paid is available for any person in successive possession of a taxed hazardous substance even though the previous payment may have been satisfied by the use of credits or offsets available to the previous person in possession.

(iv) Example. Company A brings a substance into this state upon which it has paid a similar hazardous substance tax in another state. Company A takes a credit against its Washington tax liability in the amount of the other state's tax paid. It then sells the substance to Company B, and provides Company B with a certificate of previously taxed substance. Company B's possession is tax exempt even though Company A has not directly paid Washington's tax but has used a credit against its Washington liability.

(b) Any possession of a hazardous substance by a natural person for use of a personal or domestic nature, rather than a business nature, is tax exempt.

(i) This exemption extends to relatives, as well as other natural persons who reside with the person possessing the substance, and also to regular employees of that person who use the substance for the benefit of that person.

(ii) This exemption does not extend to possessions by any independent contractors hired by natural persons, which contractors themselves provide the hazardous substance.

(iii) Examples: Possessions of spray materials by an employee-gardener or soaps and cleaning solvents by an employee-domestic servant, when such substances are provided by the natural person for whose domestic benefit such things are used, are tax exempt. Also, possessions of fuel by private persons for use in privately owned vehicles are tax exempt.

(c) Any possession of any hazardous substance, other than pesticides or petroleum products, possessed by a retailer for making sales to consumers, in an amount that is determined to be "minimal" by the department of ecology. That department has determined that the term "minimal" means less than \$1,000.00 worth of such hazardous substances measured by their wholesale value, possessed during any calendar month.

(d) Possessions of alumina or natural gas are tax exempt.

(e) Persons or activities that the state is prohibited from taxing under the United States Constitution are tax exempt.

(i) This exemption extends to the U.S. government, its agencies and instrumentalities, and to any possession the taxation of which has been expressly reserved or preempted under the laws of the United States.

(ii) The tax will not apply with respect to any possession of any hazardous substance purchased, extracted, produced or manufactured outside this state that is shipped or delivered into this state until the interstate transportation of such substance has finally ended in this state. Thus, out-of-state sellers or producers need not pay the tax on substances shipped directly to customers in this state. The customers must pay the tax upon their first possession unless otherwise expressly exempt.

(iii) Out-of-state sellers or producers will be subject to tax upon substances shipped or delivered to warehouses or other in-state facilities owned, leased, or otherwise controlled by them.

(iv) However, the tax will not apply with respect to possessions of substances that are only temporarily stored or possessed in this

state in connection with through, interstate movement of the substances from points of origin to points of destination both of which are outside of this state.

(f) The former exemption for petroleum products for export sale or use outside this state as fuel was effectively repealed by I-97 (1988). There are no exemptions under the law for any possessions of hazardous substances in this state simply because such substances may later be sold or used outside this state.

(g) Any possession of an agricultural crop protection product that is solely for use by a farmer or certified applicator as an agricultural crop protection product and is warehoused in this state or transported to or from this state is tax exempt, provided that the person possessing the product does not use, manufacture, package for sale, or sell the product in this state. The following definitions apply throughout this subsection unless the context clearly requires otherwise.

(i) "Agricultural crop protection product" means a chemical regulated under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Sec. 136 as amended as of September 1, 2015, when used to prevent, destroy, repel, mitigate, or control predators, diseases, weeds, or other pests.

(ii) "Certified applicator" has the same meaning as provided in RCW 17.21.020.

(iii) "Farmer" has the same meaning as in RCW 82.04.213.

(iv) "Manufacturing" includes mixing or combining agricultural crop protection products with other chemicals or other agricultural crop protection products.

(v) "Package for sale" includes transferring agricultural crop protection products from one container to another, including the transfer of fumigants and other liquid or gaseous chemicals from one tank to another.

(vi) "Use" has the same meaning as in RCW 82.12.010.

(5) Credits. There are three distinct kinds of tax credits against liability that are available under the law.

(a) A credit may be taken by any manufacturer or processor of a hazardous substance produced from ingredients or components that are themselves hazardous substances, and upon which the hazardous substance tax has been paid by the same person or is due for payment by the same person.

(i) Example. A manufacturer possesses hazardous chemicals that it combines to produce an acid, which is also designated as a hazardous substance or product. When it reports the tax upon the wholesale value of the acid it may use a credit to offset the tax by the amount of tax it has already paid or reported upon the hazardous chemical ingredients or components. In this manner the intent of the law to tax hazardous substances only once is fulfilled.

(ii) Under circumstances where the hazardous ingredient and the hazardous end product are both possessed by the same person during the same tax reporting period, the tax on the respective substances must be computed and the former must be offset against the latter so that the tax return reflects the tax liability after the credit adjustment.

(iii) This credit may be taken only by manufacturers who have the first possession in this state of both the hazardous ingredients and the hazardous end product.

(b) A credit may be taken in the amount of the hazardous substance tax upon the value of fuel that is carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle.

(i) The credit may be claimed only for the amount of tax reported or actually due to be paid on the fuel, not the amount representing the value of the fuel.

(ii) The purpose of this credit is to exclude from taxation any possessions of fuel that remains in the fuel tanks of any carrier vehicles powered by such fuel when they leave this state, regardless of where or from whom such fuel-in-tanks was acquired.

(iii) The nature of this credit is such that it generally has application only for interstate and foreign private or common carriers that carry fuel into this state ((and/)) or purchase fuel in this state. The intent is that the tax will apply only to so much of such fuel as is actually consumed by such carriers within this state.

(iv) In order to equitably and efficiently administer this tax credit, any fuel that is brought into this state in carrier vehicle fuel tanks must be accounted for separately from fuel that is purchased in this state for use in such fuel tanks. Formulas approved by the department of revenue for reporting the amount of fuel consumed in this state for purposes of this tax or other excise tax purposes will satisfy the separate accounting required under this subsection.

(v) Fuel-in-tanks brought into this state must be fully reported for tax and then the credit must be taken in the amount of such fuel that is taken back out of this state. This is to be done on the same periodic excise tax return so that the net effect is that the tax is actually paid only upon the portion of fuel consumed here.

(vi) The credit for fuel-in-tanks purchased in this state must be accounted for by using a fuel-in-tanks credit certificate in substantially the following form:

**Certificate of Credit for Fuel Carried
from this State in Fuel Tanks**

I hereby certify that the petroleum products specified herein, purchased by or transferred to the undersigned, from (name of seller or transferor), are entitled to the credit for fuel that is carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle operated by a private or common carrier in interstate or foreign commerce. I will become liable for and pay the taxes due upon all or any part of such fuel that is not so carried from this state. This certification is given with full knowledge of, and subject to the legally prescribed penalties for fraud and tax evasion.

Registration No.
(if applicable)

Type of Business

Firm Name

Business Address

Registered Name

(if different)

Tax Reporting Agent

(if applicable)

Authorized Signature

Title

Identity of Fuel

(kind and amount by volume)

Date:

(vii) This certificate may be executed and provided to any possessor of fuel in this state, throughout the chain of distribution, with respect to fuel that ultimately will be sold and delivered into any carrier's fuel tanks in this state. Thus, refiners or manufactur-

ers will take such certificates directly from carriers or from their wholesale purchasers who will sell to such carriers. Similarly, fuel dealers and distributors will take such certificates from carriers to whom they sell such fuel. These certificates must be retained as a permanent part of such seller's business records.

(viii) Persons who execute and provide these credit certificates to their fuel suppliers must retain suitable purchase and sales records as may be necessary to determine the amount of tax for which such persons may be liable.

(ix) Blanket certificates may be used to cover recurrent purchases of fuel by the same purchaser. Such blanket certificates must be renewed every two years.

(c) A credit may be taken against the tax owed in this state in the amount of any other state's hazardous substance tax that has been paid by the same person measured by the wholesale value of the same hazardous substance.

(i) In order for this credit to apply, the other state's tax must be significantly similar to Washington's tax in all its various respects. The taxable incident must be possessing the substance; the tax purpose must be that the substance is hazardous; and the tax measure must be stated in terms of the wholesale value, or volume, of the substance, without deductions for costs of doing business, such that the other state's tax does not constitute an income tax or added value tax.

(ii) This credit may be taken for the amount of any other state's qualifying tax that has actually been paid before Washington state's tax is incurred because the substance was previously possessed by the same person in another taxing jurisdiction.

(iii) The amount of credit is limited to the amount of tax paid in this state upon possession of the same hazardous substance in this state. Also, the credit may not be applied against any tax paid or owed in this state other than the hazardous substance tax imposed under chapter 82.21 RCW.

(iv) Exchange agreements under which hazardous substances or products possessed in this state are exchanged through any accounts crediting system with like substances possessed in other states do not qualify for this credit. The substance taxed in another state, and for which this credit is sought, must be actually, physically possessed in this state.

(v) Persons claiming this credit must maintain records necessary to verify that the credit taking qualifications have been met. Additional information regarding recordkeeping requirements is provided in WAC 458-20-19301. (~~The department of revenue will publish an excise tax bulletin listing other states' taxes that qualify for this credit.~~)

(6) Newly defined hazardous substances. Under chapter 82.21 RCW the director of the department of ecology may identify and designate other substances or products as being hazardous substances for purposes of the tax. The director of the department of ecology may also delete substances or products previously designated as hazardous substances. Such actions are done by amending chapter 173-342 WAC.

(a) The law allows the addition or deletion of substances or products as hazardous substances by rule amendments, no more often than twice in any calendar year.

(b) When such additions or deletions are made, they do not take effect for tax purposes until the first day of the following month

that is at least (~~thirty~~) 30 days after the effective date of rule amendment by the department of ecology.

(i) Example. The department of ecology amends chapter 173-342 WAC by adding a new substance and the effective date of the amendment is June 15th. Possession of the substance does not become taxable until August 1st.

(ii) The tax is owed by any person who has possession of the newly designated hazardous substance upon the tax effective date as explained herein. It is immaterial that the person in possession on that date was not the first person in possession of the substance in this state before it was designated as hazardous.

(7) Recurrent tax liability. It is the intent of the law that all hazardous substances possessed in this state should incur this tax liability only once unless they are expressly exempt. This is true of hazardous ingredients of products as well as the manufactured end product itself, if designated as a hazardous substance. The exemption for previously taxed hazardous substances does not apply to "products" that have been manufactured or remanufactured simply because an ingredient or ingredients of that product may have already been taxed when possessed by the manufacturer. Instead of an exemption, manufacturers in possession of both the hazardous ingredient(~~(s)~~) and end product(~~(s)~~) should use the *credit* provision explained at subsection (5)(a) of this rule.

(a) However, the term "product" is defined to mean only an item or items that contain a combination of both hazardous (~~(substance(s))~~) substances and nonhazardous (~~(substance(s))~~) substances. The term does not include combinations of only hazardous substances. Thus, possessions of substances produced by combining other hazardous substances upon all of which the tax has previously been paid will not again be taxable.

(b) When any hazardous substance(~~(s)~~) is first produced during and because of any physical combination or chemical reaction that occurs in a manufacturing or processing activity, the intermediate possession of such substance(~~(s)~~) within the manufacturing or processing plant is not considered a taxable possession if the substance(~~(s)~~) becomes a component or ingredient of the product being manufactured or processed or is otherwise consumed during the manufacturing or processing activity.

However, when any intermediate hazardous substance is first produced during a manufacturing or processing activity and is withdrawn for sale or transfer outside of the manufacturing or processing plant, a taxable first possession occurs.

(c) Concentrations or dilutions for shipment or storage. The mere addition or withdrawal of water or other nonhazardous substances to or from hazardous substances designated under CERCLA or FIFRA for the sole purpose of transportation, storage, or the later manufacturing use of such substances does not result in any new hazardous product.

(8) How and when to pay tax. The tax must be reported on a special line of the combined excise tax return designated "hazardous substances." It is due for payment together with the timely filing of the return upon which it is reported, covering the tax reporting period during which the hazardous substance(~~(s)~~) is first possessed within this state. Any person who is not expressly exempt of the tax and who possesses any hazardous substance in this state, without having proof that the tax has previously been paid on that substance, must report and pay the tax.

(a) It may be that the person who purchases a hazardous substance will not have billing information from which to determine the whole-sale value of the substance when the tax return for the period of possession is due. In such cases the tax is due for payment no later than the next regular reporting due date following the reporting period in which the substance(~~(s)~~) is first possessed.

(b) The taxable incident or event is the possession of the substance. Tax is due for payment by the purchaser of any hazardous substance whether or not the purchase price has been paid in part or in full.

(c) Special provision for manufacturers, refiners, and processors. Manufacturers, refiners, and processors who possess hazardous substances are required to report the tax and take any available exemptions and credits only at the time that such hazardous substances are withdrawn from storage for purposes of their sale, transfer, remanufacture, or consumption.

(9) How and when to claim credits. Credits should be claimed and offset against tax liability reported on the same excise tax return when possible. The tax return form provides a line for reporting tax on hazardous substances and a line for taking credits as an offset against the tax reported. It is not required that any documents or other evidence(~~(s)~~) of entitlement to credits be submitted with the report. Such proofs must be retained in permanent records for the purpose of verification of credits taken.

(10) Special provision for (~~(consumer/first)~~) consumer as first possessor(~~(s)~~). Under circumstances where the consumer is the first person in possession of any nonexempt hazardous substance (e.g., substances imported by the consumer), or where the consumer is the person who must pay the tax upon substances previously possessed in this state (fuel purchased for export in fuel tanks) the consumer's tax measure will be the wholesale value determined as nearly as possible according to the wholesale selling price at the place of use of similar substances of like quality and character.

(11) Hazardous substances or products on consignment. Consignees who possess hazardous substances or products in this state with the power to sell such things, in their own name or on behalf of a disclosed or undisclosed consignor are liable for payment of the tax. The exemption for previously taxed substances is available for such consignees only if the consignors have paid the tax and the consignee has retained the certification or other proof of previous tax payment referred to in subsection (4)(a)(i) and (ii) of this rule. Possession of consigned hazardous substances by a consignee does not constitute constructive possession by the consignor.

(12) Hazardous substances untraceable to source. Various circumstances may arise whereby a person will possess hazardous substances in this state, some of which have been previously taxed in this or other states and some of which may not. In such cases formulary tax reporting may be used(~~(, only)~~) upon a special ruling by the department of revenue.

Example. Fungible petroleum products from sources both within and outside this state are commingled in common storage facilities. Formulary reporting is appropriate based upon volume percentages reflecting the ratio of in-state production to out-of-state production or other form of acquisition.

(13) Administrative provisions. The provisions of chapter 82.32 RCW regarding due dates, reporting periods, tax return requirements, interest and penalties, tax audits and limitations, disputes and ap-

peals, and all such general administrative provisions apply equally to the hazardous substance tax. (~~Special requested rulings covering unique circumstances generally will be issued within sixty days from the date upon which complete information is provided to the department of revenue.~~) Taxpayers may request, from the department, tax rulings covering unique circumstances not addressed in this rule.

(14) Certification of previously taxed hazardous substance. Certification that the hazardous substance tax has already been paid by a person previously in possession of the substance(~~(s)~~) may be taken in substantially the following form:

I hereby certify that this purchase -
all purchases of
(omit one)
..... by
(identify (~~substance(s)~~)) (name of purchaser)
substances purchased)
who possesses registration no. ,
(buyer's number, if registered)

consists of the purchase of a hazardous substance(~~(s)~~) or product(~~(s)~~) upon which the hazardous substance tax has been paid in full by a person previously in possession of the substance(~~(s)~~) or product(~~(s)~~) in this state. This certificate is given with full knowledge of, and subject to the legally prescribed penalties for fraud and tax evasion, and with the full knowledge and agreement that the undersigned hereby assumes any liability for hazardous substance tax which has not been previously paid because of possession of the hazardous substance(~~(s)~~) or product(~~(s)~~) identified herein.

..... The registered seller named below personally paid the tax upon possession of the hazardous substances.
..... A person in possession of the hazardous substances prior to the possession of the registered seller named below paid the tax.

(Check the appropriate line.)

Name of registered seller Registration No.
Firm name Address
Type of business
Authorized signature Title
Date

WSR 24-12-042
PERMANENT RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed May 30, 2024, 1:09 p.m., effective July 1, 2024]

Effective Date of Rule: July 1, 2024.

Purpose: The early learning division of the department of children, youth, and families (DCYF) is amending WAC 110-425-0030 Definitions, because the Fair Start for Kids Act (E2SSB 5237) requires DCYF to establish a definition of an Indian child that will be used for early childhood education and assistance program (ECEAP) enrollment. The definition will include federally recognized tribal members and increase clarity around which children are eligible for enrollment as an Indian child into ECEAP programming. The definition needs to be in rule by July 1, 2024.

Citation of Rules Affected by this Order: Amending WAC 110-425-0030.

Statutory Authority for Adoption: RCW 43.216.505, 43.216.512, 43.216.5052; and E2SSB 5237, chapter 199, Laws of 2021.

Adopted under notice filed as WSR 24-08-066 on April 1, 2024.

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 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: May 30, 2024.

Brenda Villarreal
Rules Coordinator

OTS-5296.2

AMENDATORY SECTION (Amending WSR 19-24-014, filed 11/21/19, effective 12/22/19)

WAC 110-425-0030 Definitions. "Child allowed for enrollment" means a child that DCYF may permit to be enrolled in ECEAP under RCW 43.216.512, but who is not in the group that will be entitled to ECEAP beginning in the ((2022-23)) 2026-27 school year under RCW 43.216.556.

"Child eligible for enrollment" means a child who is eligible for ECEAP under RCW 43.216.505(4). This child is in the group that will be entitled to ECEAP beginning in the ((2022-23)) 2026-27 school year under RCW 43.216.556. Under RCW 43.216.514, a child eligible for enrollment must be given enrollment priority over a child allowed for en-

rollment. "Eligible child" has the same meaning as "child eligible for enrollment."

"Contractor" means a public or private organization that contracts with the department of children, youth, and families to provide local ECEAP services.

"Department" means the department of children, youth, and families.

"ECEAP" means the early childhood education and assistance program.

"Eligible organization" means public or private organizations including, but not limited to, school districts, educational service districts, community and technical colleges, local governments, non-profit organizations, and for-profit organizations provided that their proposed ECEAP is free from religious instruction, activities, or symbolism.

"Federal poverty level" or "FPL" means the measure of income in relation to family size issued by the federal U.S. Department of Health and Human Services and used to calculate ECEAP income eligibility.

"Indian child" means for:

(a) ECEAP sites run by sovereign tribal nations: Indian child as defined by the tribe and submitted to the department.

(b) Nontribal providers serving tribal children, including tribal nonprofit providers: Indian child as defined in WAC 110-110-0010.

"Performance standards" means the most current release of the ECEAP performance standards as incorporated into the ECEAP contract, which are accessible at <https://www.dcyf.wa.gov/services/early-learning-providers/eceap/contractors>.

WSR 24-12-043
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Behavioral Health Administration)

[Filed May 30, 2024, 3:30 p.m., effective June 30, 2024]

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

Purpose: The department of social and health services (department) recognizes these WAC have not been updated since 2013 and since then, there have been policy and RCW changes that require an update. The department has decided to change the name of the treatment program from "sexual predator program" to "sex offense specific treatment program" which will help clarify the type of treatment provided by the special commitment center. The department is updating the WAC that relate to the forensic evaluations that are completed as well as the qualifications of the forensic evaluators. The department is also updating language to include discharge planning.

Citation of Rules Affected by this Order: New WAC 388-880-041; repealing WAC 388-880-030, 388-880-034, 388-880-035 and 388-880-036; and amending WAC 388-880-005, 388-880-007, 388-880-010, 388-880-020, 388-880-031, 388-880-033, 388-880-040, and 388-880-050.

Statutory Authority for Adoption: RCW 71.09.070, 71.09.090, and 71.09.097.

Adopted under notice filed as WSR 24-09-058 on April 15, 2024.

Changes Other than Editing from Proposed to Adopted Version:

Based on comments received during the public rules hearing, the clarifying changes from the language proposed under WSR 24-09-058 are below.

WAC 388-880-010, the department will not remove the language from "evaluation" of "causes serious difficulty in controlling their sexually violent behavior and."

WAC 388-880-010, the department will not remove "post-commitment evaluations" as a definition.

WAC 388-880-010, the department is updating the definition of "secure community transition facility" to match statute.

WAC 388-880-010, the department removed the addition of the two RCWs under sexually violent offense.

WAC 388-880-033, the department changed the word "adjudicated" to "charged or convicted."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 1, 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 8, 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 1, Amended 8, Repealed 4.

Date Adopted: May 30, 2024.

Katherine I. Vasquez
Rules Coordinator

SHS-5024.6

AMENDATORY SECTION (Amending WSR 10-13-130, filed 6/22/10, effective 7/23/10)

WAC 388-880-005 Special commitment of sexually violent predators

—**Legal basis.** (1) Chapter 71.09 RCW authorizes the department to develop a ~~((sexual predator program (SPP)))~~ sex offender specific treatment program for a person the court determines to be a sexually violent predator.

(2) The department's ~~((SPP))~~ sex offender specific treatment program ~~((shall))~~ will provide:

(a) Custody, supervision, and evaluation of a person court-detained to the ~~((SPP))~~ sex offender specific treatment program to determine if the person meets the definition of a sexually violent predator under chapter 71.09 RCW; ~~((and))~~

(b) Treatment, care, evaluation and control of a person civilly committed as a sexually violent predator~~((r))~~; and

(c) Discharge planning in accordance with RCW 71.09.080(4)(a)-(g).

(3) Evaluations and evaluation procedures may be established in coordination with the department, the department of corrections and the end of sentence review committee.

(4) Secure facilities operated by the department for the ~~((sexual predator program))~~ sex offender specific treatment program include the special commitment center (SCC) total confinement facility, a secure community transition facility, and any community-based ~~((facility))~~ placement established under chapter 71.09 RCW and operated by the secretary or under contract with the secretary.

(5) The secretary or designee may execute such agreements as appropriate and necessary to implement this chapter.

AMENDATORY SECTION (Amending WSR 10-13-130, filed 6/22/10, effective 7/23/10)

WAC 388-880-007 Purpose. These rules carry out the legislative intent of chapter 71.09 RCW, authorizing the department to provide evaluation, care, control, and treatment of persons court-detained or civilly committed to the ~~((sexual predator program))~~ sex offender specific treatment program.

AMENDATORY SECTION (Amending WSR 23-11-031, filed 5/10/23, effective 6/10/23)

WAC 388-880-010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

"**Appropriate facility**" means the total confinement facility the department uses to hold and evaluate a person court-detained under chapter 71.09 RCW.

"Authorized third party" means a person approved in writing by the resident on a DSHS Form 17-063 (Authorization to disclose records), who may request and have access to the resident clinical file under chapter 71.09 RCW or the resident's medical records under chapter 70.02 RCW.

"Care" means a service the department provides during a person's detention or commitment within a secure facility toward adequate health, shelter, and physical sustenance.

"Chief executive officer (CEO)" means the person appointed by the secretary of the department to be responsible for the general operation, program, and facilities of the SCC. Also referred to as "superintendent of the special commitment center" and "superintendent" under chapter 71.09 RCW.

"Control" means a restraint, restriction, or confinement the department applies protecting a person from endangering self, others, or property during a period of custody under chapter 71.09 RCW.

"Department" means the department of social and health services or DSHS.

"Escorted leave" means a leave of absence under the continuous supervision of an escort from a facility housing persons who are court-detained or civilly committed under chapter 71.09 RCW.

"Evaluation" means an examination, report, or recommendation by a professionally qualified person to determine if a person has a personality disorder ~~((,))~~ or mental abnormality, ~~((or both,))~~ which causes serious difficulty in controlling their sexually violent behavior and renders the person likely to engage in predatory acts of sexual violence if not confined in a secure facility. The ~~((four))~~ types of evaluations that may occur related to a person's commitment or detention under chapter 71.09 RCW are as follows:

- The **initial evaluation** occurs before the person is detained at the SCC, usually occurring while the person is in prison, department of children, youth, and families, a state mental hospital, a county jail, or in the community following commission of a recent overt act.

~~((**Supplemental evaluations**, as required by RCW 71.09.040, are performed for civil commitment trial purposes.))~~

- **Annual review evaluations** occur only after a person has been civilly committed under RCW 71.09.070.

~~((**Post commitment evaluations**, as required by RCW 71.09.090, when the person qualifies for a conditional or unconditional release trial.))~~

"Health care facility" means any hospital, hospice care center, licensed or certified health care facility, health maintenance organization regulated under chapter 48.46 RCW, federally qualified health maintenance organization, federally approved renal dialysis center or facility, or federally approved blood bank.

"Health care practitioner" means an individual or firm licensed or certified to engage actively in a regulated health profession.

"Health care services" means those services provided by health professionals licensed pursuant to RCW 18.120.020 ~~((+))~~.

"Health profession" means those licensed or regulated professions set forth in RCW 18.120.020 ~~((+))~~.

"Immediate family" includes a resident's parents, stepparents, parent surrogates, legal guardians, grandparents, spouse, brothers, sisters, half or stepbrothers or sisters, children, stepchildren, registered domestic partner, and other dependents.

"Indigent" for purposes of escorted leave and state issued property, refers to the financial status of a resident who has maintained

a total balance of \$40 or less, combined, in their resident trust and resident store accounts for the past 30 days, after paying court ordered legal financial obligations, child support, or cost-of-care reimbursement, and who swears or affirms under penalty of perjury that they have no additional outside resources, including but not limited to pension income, business income, and a spouse's or registered domestic partner's employment or other income.

"Individual treatment plan (ITP)" means an outline the SCC staff persons develop detailing how control, care, and treatment services are provided to a civilly committed person or to a court-detained person.

"Legal mail" means a resident's written communications, to or from: Courts/court staff regarding a legal action currently before a court, a licensed attorney, a public defense agency, a licensed private investigator retained by private counsel representing a resident or appointed by a court, an expert retained by an attorney representing a resident or appointed by a court, and a law enforcement agency.

"Less restrictive alternative (LRA)" means court-ordered treatment in a setting less restrictive than total confinement which satisfies the conditions stated in RCW 71.09.092. A less restrictive alternative may not include placement in the community protection program as pursuant to RCW 71A.12.230.

"Less restrictive alternative facility" means a secure community transition facility as defined under RCW 71.09.020(16).

"Mental abnormality" means a congenital or acquired condition affecting the person's emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.

"Original format" means the format in which a record subject to public disclosure was originally produced.

"Oversight" means official direction, guidance, review, inspection, investigation, and information gathering activities conducted for the purposes of program quality assurance by persons or entities within, or external to, the SCC.

"Personality disorder" means an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment. Purported evidence of a personality disorder must be supported by testimony of a licensed forensic psychologist or psychiatrist.

"Predatory" means acts a person directs toward:

- (1) Strangers;
- (2) Individuals with whom a relationship has been established or promoted for the primary purpose of victimization; or
- (3) Persons of casual acquaintance with whom no substantial personal relationship exists.

"Professionally qualified person":

(1) **"Psychiatrist"** means a person licensed as a physician in this state, in accordance with chapters 18.71 and 18.57 RCW. In addition, the person must:

(a) Have completed three years of graduate training in a psychiatry program approved by the American Medical Association or the American Osteopathic Association; and

(b) Be certified, or eligible to be certified, by the American Board of Psychiatry and Neurology.

(2) **"Psychologist"** means a person licensed as a doctoral level psychologist in this state, in accordance with chapter 18.83 RCW.

"Relapse prevention plan (RPP)" details static and dynamic risk factors particular to the resident and contains a written plan of interventions for the purpose of reducing the risk of sexual offending.

"Resident" means a person court-detained or civilly committed pursuant to chapter 71.09 RCW.

"Resident trust account" means the custodial bank account, held by the state, which represents the resources of the individual resident which is held for the individual resident's use.

"Responsivity" refers to the delivery of treatment in a manner that is consistent with the abilities and learning style of the resident. Responsivity can be conceptualized within the following categories: Physical limitations and sensory impairments, cognitive and learning impairments, mental health symptoms and behavioral disorders, cultural and subcultural differences to the extent that these differences may interfere with treatment participation.

"Risk factors" means resident factors, supported by empirical evidence, shown to increase the likelihood an individual will engage in sexual offending behavior.

"Secretary" means the secretary of the department of social and health services or the secretary's designee.

"Secure community transition facility (SCTF)" means a residential facility for persons civilly committed and conditionally released to a less restrictive alternative under chapter 71.09 RCW. A secure community transition facility has supervision and security, and either provides or ensures the provision of sex offender treatment services. Secure community transition facilities include, but are not limited to, the facilities established in RCW 71.09.250 and any community-based facilities established under chapter 71.09 RCW and operated by the secretary or under contract with the secretary.

"SCTF residential community transition team (RCTT)" means a team made up of three key individuals who will be closely involved with day to day decision making related to the transition activities of a resident residing in an SCTF operated by the department of social and health services. These three individuals include the department of corrections (DOC) correctional specialist, the certified sex offender treatment provider employed by DSHS or who has been contracted by the SCC, and the SCTF manager, the chief of clinical services or designee may substitute for the SCTF manager. The RCTT must approve all community activities of an SCTF resident. As the agency responsible for funding SCTF activities, DSHS through its SCTF manager may consider budgetary constraints when approving or supporting discretionary activities such as community shopping or recreation, or personal activities such as visiting family and friends.

"Secure facility" means a residential facility for persons court-detained or civilly committed under the provisions of chapter 71.09 RCW that includes security measures sufficient to protect the community. Such facilities include total confinement facilities, secure community transition facilities, and any residence used as a court-ordered placement in RCW 71.09.096.

"Senior clinical team" means a team of professionally qualified persons employed by the department which are designated by the CEO to meet regularly to:

- Make decisions about the implementation of the sex offense treatment.

- Make clinical recommendations to provide input about residents releasing to less restrictive alternative (LRA) settings.
- Provide general consultation regarding resident treatment and behavioral management issues.
- Conduct outreach to program areas of SCC including staffing and consultation of residents in sex offense treatment.
- As requested, provide guidance and advice to the chief of clinical services, the CEO, and the treatment teams.

Members of the senior clinical team are expected to consider all available relevant information, including contextual and situational factors, to make optimal, clinically supportable decisions.

The team may include either a SCC contracted community-based psychologist with advanced forensic assessment and treatment expertise, a contracted community-based psychiatrist with advanced expertise in forensic assessment and treatment, or both.

The senior clinical team may not include the following persons, unless needed at the request of the chief of clinical services for consultation on a specific issue(s):

- The resident's attorney;
- The prosecuting agency;
- Any representative from DOC;
- Potential certified sex offender treatment providers (CSOTPs) or community providers of any type who may treat the resident; or
- Any other party who may serve to financially gain from the resident's release.

"(~~Sexual predator~~) Sex offender specific treatment program" means a department-administered and operated program including the special commitment center (SCC) established for:

- (1) A court-detained person's custody and evaluation; or
- (2) Control, care, and treatment of a civilly committed person defined as a sexually violent predator under chapter 71.09 RCW.

"**Sexually violent offense**" means an act defined under RCW 71.09.020.

"**Sexually violent predator**" means any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.

"**Special commitment center (SCC)**" means the department operated secure facility that provides supervision and sex offender treatment services in a total confinement setting for individuals detained or committed under RCW 71.09.

"**Total confinement facility**" means a facility that provides supervision and sex offender treatment services in a total confinement setting. Total confinement facilities include the special commitment center and any similar facility designated as a secure facility by the secretary.

AMENDATORY SECTION (Amending WSR 03-23-022, filed 11/10/03, effective 12/11/03)

WAC 388-880-020 Authorization for indefinite commitment to the (~~sexual predator~~) sex offender specific treatment program. A person must be admitted to the custody of the department when, under RCW 71.09.060, a court or jury determines, beyond a reasonable doubt, that

the person is a sexually violent predator and commits the person for placement in a secure facility operated by the department for control, care, and treatment.

AMENDATORY SECTION (Amending WSR 10-13-130, filed 6/22/10, effective 7/23/10)

WAC 388-880-031 ((Sexual predator program)) Sex offender specific treatment program annual review evaluation. (1) Annually or as required by court order, the department ((shall)) must conduct an evaluation and examine the mental condition of each person civilly committed under chapter 71.09 RCW. The evaluation ((shall)) must be conducted by a professionally qualified person ((designated by the secretary)).

(2) Under RCW 71.09.070, the annual review evaluation must include consideration of whether:

(a) The person currently meets the definition of a sexually violent predator; and

(b) Conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that would adequately protect the community.

(3) The report of the department ((shall)) must be in the form of a declaration or certification in compliance with the requirements of chapter 5.50 RCW ((9A.72.085)) and ((shall)) will be prepared by a professionally qualified person as defined herein.

(4) The department ((shall)) will file this ((periodic)) report with the court that civilly committed the person under chapter 71.09 RCW.

(5) A copy of this report ((shall)) will be served on the prosecuting agency involved in the initial hearing or commitment and upon the ((detained or)) committed person and ((his or her)) their counsel.

AMENDATORY SECTION (Amending WSR 10-13-130, filed 6/22/10, effective 7/23/10)

WAC 388-880-033 Evaluator—Qualifications. Professionally qualified persons employed by the department or under contract to provide evaluative services must have a license, in good standing, in the state of Washington as a psychologist or psychiatrist and:

(1) Have demonstrated expertise in conducting evaluations of ((sex offenders)) individuals charged or convicted for sexual and non-sexual crimes, including diagnosis and risk ((assessment of reoffense risk)) assessments;

(2) Have demonstrated expertise in providing expert testimony ((related to sex offenders or other forensic topics)) in legal proceedings involving individuals charged or convicted for sexual and nonsexual crimes; and

(3) Provide documentation of such qualification to the department initially and annually.

AMENDATORY SECTION (Amending WSR 10-13-130, filed 6/22/10, effective 7/23/10)

WAC 388-880-040 Individualized treatment: clinical services.

(1) When the court detains ~~((a person))~~ or commits a person to the SCC, SCC staff persons designated by the ~~((clinical director))~~ chief of clinical services ~~((shall))~~ must develop ~~((an individual))~~ a clinical treatment plan ~~((ITP))~~ for the person to address sex offense treatment progress. The resident ~~((shall))~~ will have an opportunity to participate in the treatment planning process.

(2) The ~~((ITP))~~ clinical treatment plan ~~((shall))~~ will be based upon, but not limited to, the following information as may be available:

(a) The person's offense history;

(b) A psycho-social history;

(c) The person's most recent forensic evaluation; and

(d) A statement of high-risk factors for potential reoffense, as may be ascertained over time.

(3) The ~~((ITP shall))~~ clinical treatment plan must include, but is not ~~((be))~~ limited to:

(a) A description of the person's specific treatment and responsibility needs ~~((in:))~~;

~~((i) Sex offender specific treatment;~~

~~((ii) Substance abuse treatment, as applicable;~~

~~((iii))~~ (b) Supports to promote psychiatric stability, as applicable;

~~((iv))~~ (c) Supports for medical conditions and disability, as applicable; and

~~((v) Social, family, and life skills.~~

~~((b))~~ (d) An outline of intermediate and long-range treatment goals, with cognitive and behavioral interventions for achieving the goals ~~((r))~~.

~~((c) A description of SCC staff persons' responsibilities; and~~

~~((d) A general plan and criteria, keyed to the resident's achievement of long-range treatment goals, for recommending to the court whether the person should be released to a less restrictive alternative.))~~

(4) ~~((SCC staff persons shall review the person's ITP every six months.))~~ Each resident's clinical treatment plan will be done as follows:

(a) A new clinical treatment plan will be issued ~~((every twelve months))~~ annually or more often as needed.

(b) ~~((Existing treatment plans))~~ Progress towards treatment goals will be reviewed at least once every six months by the treatment team, this review ~~((shall))~~ will be documented in a progress note.

(c) The review or reissue of a resident's clinical treatment plan may occur at any time based on the resident's behavior or treatment status.

(5) A court-detained person's plan may include access to program services and opportunities available to persons who are civilly committed, with the exception that the court-detained person may be restricted in employment and other activities, depending on program resources and incentives reserved for persons who are civilly committed ~~((and/))~~ or actively involved in treatment, or both.

(6) Nothing in this chapter ~~((shall))~~ will exclude a court-detained person from engaging in the sex offender treatment program and,

should the person elect to engage in treatment before the person's commitment trial:

(a) The person (~~(shall be accorded privileges and)~~) will have access to program services ((in a like manner as are accorded)) similar to a civilly committed person in treatment; and

(b) (~~Shall~~) Will not, solely by reason of the person's voluntary participation in treatment, be judged nor assumed by staff, administrators, or professional persons of the SCC or of the department to meet the definition of a sexually violent predator under chapter 71.09 RCW.

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

NEW SECTION

WAC 388-880-041 Individualized treatment: discharge planning.

(1) SCC will develop on an ongoing basis, clinically appropriate discharge plans for every resident. These plans will address at a minimum:

(a) The resident's known physical health, functioning, and any need for health aid devices;

(b) The resident's known intellectual or cognitive level of functioning and need for specialized programming;

(c) The resident's known history of substance use and abuse;

(d) The resident's known history of risky or impulsive behaviors, criminogenic needs, and treatment interventions to address them;

(e) The resident's known ability to perform life skills and activities of daily living independently and the resident's known need for any disability accommodations;

(f) A summary of the known community services and supports the resident needs for a safe life in the community and the type of providers of such services and support; and

(g) A plan to mitigate the needs identified in this subsection that also addresses ways to develop or increase social supports, recreation opportunities, gainful employment, and if applicable, spiritual opportunities.

(2) These plans are memorialized in a psychosocial assessment. These assessments will be written by the assigned social worker and reviewed by the social work manager. Psychosocial assessments are updated on an annual basis, or more frequently if needed.

AMENDATORY SECTION (Amending WSR 10-13-130, filed 6/22/10, effective 7/23/10)

WAC 388-880-050 Rights of a person court-detained or civilly committed to the special commitment center. (1) During a person's period of detention or commitment, the department (~~(shall)~~) must:

(a) (~~Apprise the person of the person's right to an attorney and to retain one professionally qualified person to perform an evaluation on the person's behalf; Provide access to the person and the person's records in accordance with RCW 71.09.080(3) and WAC 388-880-044; and~~)

(b) (~~Provide access to the person and the person's records in accordance with RCW 71.09.080 and WAC 388-880-044.~~) When a resident

requests review of their SCC records to the SCC records department, the SCC records department will compile all records and schedule a time and location for the resident to review those records.

(2) A person the court detains for evaluation or commits to the SCC ~~((shall))~~ will:

(a) Receive adequate care, ~~((and))~~ individualized treatment, and discharge planning;

(b) Be permitted to wear the person's own clothing and maintain the person's own possessions except ~~((as may be))~~ when:

(i) Required to wear state issued clothing during an escorted leave from the secure facility~~((, or when the wearing of state issued clothing is required within the facility for health or safety of self or others,))~~;

(ii) Doing so would impact the health, safety, or security of the facility, self, or others; ~~((or when the wearing of a particular type of clothing or a particular colored clothing or accoutrement is prohibited for the general safety and security within the facility where the person is housed; and to keep and use the person's own possessions, except when deprivation of possessions is necessary for the person's protection, health or safety, the protection, health or safety of others, or to))~~

(iii) ((limit)) Limiting the quantity of the person's personal possessions to within facility ((limitation)) limitations, or for the protection of property within the ((SCC)) TCF or SCTF;

(c) Be permitted to accumulate and spend a reasonable amount of money in the person's SCC resident trust account, while residing in the TCF;

~~((Have access to reasonable personal storage space within SCC limitations, which shall be outlined in an internal policy that is accessible to the person;~~

~~((Be permitted to have))~~ Have access to approved visitors ~~((within reasonable limitations))~~;

~~((f))~~ (e) Have ~~((reasonable))~~ access to a telephone to make and receive confidential calls within SCC limitations; and

~~((g))~~ (f) Have ~~((reasonable))~~ access to letter writing material and to:

(i) Receive and send correspondence through the mail within SCC policies~~((limitations and according to established safeguards against the receipt of contraband material))~~; and

(ii) Send written communication regarding the fact of the person's detention or commitment.

(3) A person the court commits to the SCC ~~((shall))~~ will have the following procedural rights to:

(a) Have reasonable access to an attorney and be informed of the name and address of the person's designated attorney;

(b) Petition the court for release from the SCC; and

(c) Receive annual written notice of the person's right to petition the committing court for release. The department's written notice and waiver ~~((shall))~~ must:

(i) Include the option to voluntarily waive the right to petition the committing court for release; and

(ii) Annually be forwarded to the committing court by the department.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|-----------------|----------------------------------------------------------------------------------|
| WAC 388-880-030 | Sexual predator program supplemental and post commitment evaluations. |
| WAC 388-880-034 | Evaluator—Supplemental and post commitment evaluation responsibilities. |
| WAC 388-880-035 | Refusal to participate in a supplemental or post commitment pretrial evaluation. |
| WAC 388-880-036 | Supplemental evaluation—Reporting. |

WSR 24-12-045
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed May 31, 2024, 8:30 a.m., effective July 1, 2024]

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

Purpose: 2SHB 1762, Laws of 2023, chapter 49.84 RCW, creates new protections for workers of warehouse distribution centers who are subject to performance quotas. 2SHB 1762 grants enforcement authority to the department of labor and industries' (L&I) fraud prevention and labor standards (FPLS) division and division of occupational safety and health (DOSH). The provisions enforced by FPLS require employers to:

- Provide quota descriptions to employees;
- Ensure quotas account for:
 - o Rest breaks;
 - o Time to travel to break locations; and
 - o Time to perform an activity required by the employer to complete the work subject to a quota;
- Refrain from retaliating or taking other adverse action related to protections under the chapter and rules.

FPLS is adopting the rule to implement the provisions of 2SHB 1762 enforced by the division. The rule clarifies and provides employers additional guidance on the quota protections established by the bill. The rule also describes the enforcement mechanisms FPLS will use to enforce the requirements, including the complaint, investigation, citation, and appeal processes. The rule provides remedies and penalties for violations of the rule.

Other requirements related to quotas for workers at certain warehouse distribution centers under chapter 49.84 RCW are enforced by L&I's DOSH. DOSH conducted simultaneous rule making and has adopted rules for the provisions of chapter 49.84 RCW enforced by the division in chapter 296-35 WAC.

Citation of Rules Affected by this Order: New WAC 296-136-010, 296-136-020, 296-136-030, 296-136-040, 296-136-050, 296-136-060, 296-136-070, 296-136-080, 296-136-090, 296-136-100, 296-136-110, 296-136-120, 296-136-130, 296-136-140, 296-136-150, 296-136-160, 296-136-170, and 296-136-180.

Statutory Authority for Adoption: Chapter 49.84 RCW.

Adopted under notice filed as WSR 24-06-080 on March 5, 2024.

Changes Other than Editing from Proposed to Adopted Version: **WAC 296-136-010(15) Definitions.** Added subsection (c) to the definition of the term "quota." It clarifies that a team quota, when applied to a group of employees, is considered a quota under the rule for each individual employee. The change provides additional guidance in instances where employers use a team quota.

WAC 296-136-030 Warehouse quota written descriptions and notices. Added language to subsection (4) to clarify employees may choose in which language(s) they receive a written quota description. The adopted rule also adds language to clarify employees must receive their initial written quota description in their preferred language within 15 calendar days of hire, and any updated description within the timelines established by WAC 296-136-030(7). The changes improve clarity around preferred language timelines.

Reorganized subsection (7) to improve readability. The adopted rule makes clear which language employers must offer written descrip-

tions in within two businesses days of when the employer changes a quota. The adopted rule also adds language to clarify employees may choose in which language(s) they receive a written description. The changes improve clarity around the preferred language requirements for updated quota descriptions.

WAC 296-136-050 Labor standards quota violations except under chapter 49.17 RCW. Reorganized subsection (3) to improve readability. The adopted rule adds language to clarify that employers may not take adverse action against an employee for failing to meet a quota that the employee had not yet received in their preferred language. The change provides clarity for when employers may not take adverse action against employees.

A final cost-benefit analysis is available by contacting Reed Simock, L&I, FPLS, Employment Standards, P.O. Box 44510, Olympia, WA 98504-4510, phone 360-480-3237, fax 360-902-5300, email WarehouseRules@Lni.wa.gov, website <https://www.lni.wa.gov/rulemaking-activity/?query=warehouse>.

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 18, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: May 31, 2024.

Joel Sacks
Director

OTS-5225.4

**Chapter 296-136 WAC
LABOR STANDARDS FOR QUOTAS AT WAREHOUSE DISTRIBUTION CENTERS**

NEW SECTION

WAC 296-136-010 Definitions. (1) "Adverse action" means any action taken or threatened by an employer against an employee for their exercise of chapter 49.84 RCW rights, which may include, but is not limited to:

- (a) Terminating, suspending, demoting, or denying a promotion;
- (b) Changing the number of work hours for which the employee is scheduled;
- (c) Altering the employee's preexisting work schedule;

(d) Reducing the employee's rate of pay;

(e) Threatening to take, or taking action, based upon the immigration status of an employee, former employee, or an employee or former employee's family member; and

(f) Preventing future job opportunities whether for the employer or elsewhere.

(2) "Affiliate" means a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person. For purposes of this subsection, "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.

(3) "Aggregated data" has the same meaning as "aggregated work speed data" and means information that an employer has combined or collected in summary or other form such that the data cannot be identified with any individual.

(4) "Defined time period" means any unit of time measurement equal to or less than the duration of an employee's shift, and includes hours, minutes, and seconds and any fraction thereof.

(5) "Department" means the department of labor and industries.

(6) "Designated employee representative" means any employee representative including, but not limited to, an authorized employee representative that has a collective bargaining relationship with the employer.

(7) "Director" means the director of the department of labor and industries or the director's designee.

(8) "Employee" means an employee who is not exempt under RCW 49.46.010 (3)(c) and works at a warehouse distribution center.

(9) "Employee work speed data" has the same meaning as "work speed data" and means information an employer collects, stores, analyzes, or interprets relating to an individual employee's performance of a quota including, but not limited to, quantities of tasks performed, quantities of items or materials handled or produced, rates or speeds of tasks performed, measurements or metrics of employee performance in relation to a quota, and time categorized as performing tasks or not performing tasks. Work speed data does not include qualitative performance assessments, personnel records, or itemized wage statements pursuant to department rules, except for any content of those records that includes work speed data as defined in this subsection.

(10) "Employer" means a person who directly or indirectly, or through an agent or any other person, including through the services of a third-party employer, temporary services, or staffing agency, independent contractor, or any similar entity, at any time, employs or exercises control over the wages, hours, or working conditions of 100 or more employees at a single warehouse distribution center in the state or 1,000 or more employees at one or more warehouse distribution centers in the state.

(a) For the purposes of determining the number of employees employed at a single warehouse distribution center or at one or more warehouse distribution centers, all employees employed directly or indirectly, or through an agency or any other person, and all employees employed by an employer and its affiliates, must be counted.

(b) For the purposes of determining responsible employers, all agents or other persons, and affiliates must be deemed employers and

are jointly and severally responsible for compliance with this chapter.

(11) "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. Normally, one business location has only one establishment. When distinct and separate economic activities are performed at a single physical location each would be considered separate establishments provided:

(a) No one industry description in the North American Industrial Classification System applies to the joint activities of the establishments;

(b) Separate reports are routinely prepared for each establishment on the number of employees, their wages and salaries, sales or receipts, and other business information; and

(c) Employment and output are significant for both activities.

(12) "Person" means an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.

(13) "Plain language" means language that is clear, concise, and visually easy to read. It must use common words, rather than jargon, acronyms, or unnecessary legal language.

(14) "Preferred language" means the employee's language of choice.

(15) "Quota" means a work performance standard, whether required or recommended, where:

(a) An employee is assigned or required to perform at a specified productivity speed, or perform a quantified number of tasks, or to handle or produce a quantified amount of material, within a defined time period and under which the employee may suffer an adverse employment action if they fail to complete the performance standard; or

(b) An employee's actions are categorized between time performing tasks and not performing tasks, if the employee may suffer an adverse employment action if they fail to meet the performance standard.

(c) For the purposes of this chapter, if any quota applies to a group of employees, each individual employee of the group is considered to have an individual quota.

(16) "Reasonable travel time" means that the employee must have enough time to access break locations considering the architecture and geography of the facility and location within the facility that the employee is located at the time a break is required.

(17) "Similar employee" means a covered employee performing similar tasks at the same warehouse distribution center.

(18) "Warehouse distribution center" means an establishment engaged in activities as defined by any of the following North American Industry Classification System codes; however, such establishment is denominated:

(a) 493 for warehousing and storage, but does not include 493130 for farm product warehousing and storage;

(b) 423 for merchant wholesalers, durable goods;

(c) 424 for merchant wholesalers, nondurable goods; or

(d) 454110 for electronic shopping and mail-order houses.

NEW SECTION

WAC 296-136-020 Determining employer size for quota requirement coverage. Employer size for the purposes of this chapter is determined based on the number of employees on the day of the alleged violation or the average number of employees over the previous 12 months, whichever is greater. For businesses operating less than one year, the size is based on the maximum number of employees since the company has been in business.

NEW SECTION

WAC 296-136-030 Warehouse quota written descriptions and notices. (1) An employer must provide to each employee, upon hire, or within 30 calendar days of July 1, 2024, a written description as required by RCW 49.84.020 which includes:

- (a) Each quota to which the employee is subject, including the quantified number of tasks to be performed or materials to be produced or handled within a defined time period;
- (b) Any potential adverse employment action that could result from failure to meet each quota; and
- (c) Any incentives or bonus programs associated with meeting or exceeding each quota.

(2) The format of the written description may be provided in an electronic or hard copy.

(3) The written description must be in plain language.

(4) The initial written description must be provided immediately in the employee's choice of English or English and the employee's selected language from the top six other languages spoken in the state, according to the current languages identified by the Washington office of financial management. If an employee makes the employer aware of a preferred language outside of English and the top six other languages spoken in the state, the employee must receive the initial written description in their preferred language within 15 calendar days. The employee must receive any future written descriptions in their preferred language and English in accordance with subsection (7) of this section.

(5) The written description must inform the employee of their protections under RCW 49.84.020 and associated rules.

(6) When providing a written description with an incentive or bonus program associated, such description must:

- (a) Describe any rate(s) in which the incentive or bonus is paid; and
- (b) How any rate(s) apply to the quantified number of tasks to be performed or materials to be produced or handled within a defined time period.

(7) Whenever there is a change to the quota that results in a different quota than the most recent written description provided to the employee, the employer must:

- (a) Notify the employee verbally or in writing as soon as possible and before the employee is subject to the new quota; and
- (b) Provide the employee with an updated written description of each quota to which the employee is subject within two business days of the quota change in the employee's choice of:
 - (i) English;

(ii) English and the employee's selected language from the top six other languages spoken in the state, according to the current languages identified by the Washington office of financial management; or

(iii) English and any preferred language outside of English and the top six other languages spoken in the state, if previously identified by the employee.

(8) Whenever an employer takes an adverse action against an employee in whole or in part for failure to meet a quota, the employer must provide that employee with the applicable quota for the employee and the personal work speed data for the employee that was the basis for the adverse action.

NEW SECTION

WAC 296-136-040 Quota time periods and reasonable travel time.

(1) The time period considered in a quota, including time designated as productive time or time on task must include:

(a) Time for rest breaks and reasonable time to travel to designated locations for rest breaks;

(b) Reasonable travel time to on-site designated meal break locations. Meal breaks are not considered time on task or productive time unless the employee is required by the employer to remain on duty on the premises or at a prescribed worksite in the interest of the employer;

(c) Time to perform any activity required by the employer in order to do the work subject to any quota;

(d) Time to use the bathroom, including reasonable travel time; and

(e) Time to take any actions necessary for the employee to exercise the employee's right to a safe and healthful workplace pursuant to chapter 49.17 RCW including, but not limited to, time to access tools or safety equipment necessary to perform the employee's duties.

(2) "Reasonable travel time" allows any employee enough time to access break locations considering the architecture and geography of the facility and location within the facility that the employee is located at the time a break is required.

(3) Employees must be allowed time to take meal and rest periods as required by WAC 296-126-092.

(4) Employees paid on a commission or piece work basis, wholly or partially, must be paid in accordance with WAC 296-126-021.

NEW SECTION

WAC 296-136-050 Labor standard quota violations except under chapter 49.17 RCW. (1) A quota violates a labor standard under chapter 49.84 RCW and applicable labor standard rules if the quota:

(a) Does not provide sufficient time as required under RCW 49.84.025 (1) (a), (b), and (c); or

(b) Prevents the performance of any activity required by the employer for the employee to do the work subject to any quota. "Any activity" includes travel to food safety stations, clock in stations, or supervisor check-ins.

(2) An employee is not required to meet a quota that violates chapter 49.84 RCW or any applicable labor standard rule.

(3) An employer may not take adverse action against an employee for failing to meet a quota that:

(a) Violates RCW 49.84.030 or this section;

(b) Was not disclosed to the employee as required under RCW 49.84.020 and any applicable rule; or

(c) Has not yet been provided in the employee's preferred language.

NEW SECTION

WAC 296-136-060 Employer recordkeeping requirements. (1) An employer must establish, maintain, and preserve contemporaneous, true, and accurate records of the following:

(a) Each employee's own personal work speed data;

(b) The aggregated work speed data for similar employees at the same warehouse distribution center; and

(c) The written descriptions of each quota the employee was provided pursuant to RCW 49.84.020 and any applicable rule.

(2) The required records must be maintained and preserved throughout the duration of each employee's period of employment and for the period required by this subsection.

(a) Except as required under (b) of this subsection, subsequent to an employee's separation from the employer, records relating to the six-month period prior to the date of the employee's separation from the employer must be preserved for at least three years from the date of the employee's separation.

(b) Where an employer has taken adverse action against an employee in whole or in part for failure to meet a quota, the employer must preserve the records relating to the basis for the adverse action for at least three years from the date of the adverse action.

(c) The employer must make records available to the director upon request.

(3) Records on how the time periods required under RCW 49.84.025 or WAC 296-136-040 were considered in determining any quota must be preserved for three years.

(4) Nothing in this section requires an employer to collect or keep such records if the employer does not use quotas or monitor work speed data.

(5) An employer who fails to allow adequate inspection of records in an inspection by the department within a reasonable time period may not use such records in any appeal to challenge the correctness of any citation and notice issued by the department.

NEW SECTION

WAC 296-136-070 Employee right to request written description and records. (1) An employee has the right to request, at any time, a written description of each quota to which the employee is subject, a copy of the employee's own personal work speed data for the prior six months, and a copy of the prior six months of aggregated work speed data for similar employees at the same warehouse distribution center.

(2) A former employee has the right to request, within three years subsequent to the date of their separation from the employer, a written description of the quota to which they were subject as of the date of their separation, a copy of the employee's own personal work speed data for the six months prior to their date of separation, and a copy of aggregated work speed data for similar employees at the same warehouse distribution center for the six months prior to their date of separation.

(3) An employer must provide records requested under this section at no cost to the employee or former employee.

(4) An employer must provide records requested under this section as soon as practicable and subject to the following:

(a) Requested records of written descriptions of a quota must be provided no later than two business days following the date of the receipt of the request;

(b) Requested personal work speed data and aggregated work speed data must be provided no later than seven business days following the date of the receipt of the request; and

(c) Requested written descriptions must be available in the employee's preferred language.

(5) Nothing in this section requires an employer to use quotas or monitor work speed data. An employer that does not use quotas or monitor work speed data has no obligation to provide records under this section.

NEW SECTION

WAC 296-136-080 Protection from adverse action for failure to meet a quota in violation of labor standards. (1) An employer may not take adverse action against an employee in whole or in part for failing to meet a quota that violates RCW 49.84.030 or this chapter. A quota that violates the law may not be any factor leading to an adverse action by the employer.

(2) A person who has adverse action taken against them in whole or in part for failure to meet a quota that violates RCW 49.84.030 or this chapter may file a complaint with the department in accordance with WAC 296-136-140.

NEW SECTION

WAC 296-136-090 Retaliation protections. (1) A person including, but not limited to, an employer, his or her agent, or person acting as or on behalf of a hiring entity, or the officer or agent of any entity, business, corporation, partnership, or limited liability company, may not discharge or in any way retaliate, discriminate, or take adverse action against an employee or former employee for exercising any rights established in this chapter, or for being perceived as exercising rights established in this chapter including, but not limited to:

(a) Initiating a request for information about a quota or personal work speed data pursuant to RCW 49.84.037 or associated rules; and

(b) Making a complaint to the employer, the director, or any local, state, or federal governmental agency or official, related to a quota that is allegedly in violation of this chapter.

(2) An employee or former employee need not explicitly refer to this section or the rights established in this chapter to be protected from an adverse action. The protection provided in this section applies to former employees and to employees who mistakenly but in good faith allege violations of this chapter.

(3) (a) If a person takes adverse action against an employee or former employee within 90 days of the employee engaging or attempting to engage in activities protected by this chapter, there is a rebuttable presumption that the adverse action is a retaliatory action in violation of this section.

(b) The presumption may be rebutted by a preponderance of the evidence that:

(i) The action was taken for other permissible reasons; and

(ii) The engaging or attempting to engage in activities protected by this chapter was not a motivating factor in the adverse action.

(4) An employee or former employee who believes that they were subject to retaliation under this section may file a complaint with the department in accordance with WAC 296-136-140.

NEW SECTION

WAC 296-136-100 Department investigations. (1) (a) An employee may file a complaint with the department alleging a violation under this chapter or applicable rules under this section, except for violations and enforcement of RCW 49.84.032 and 49.84.040 and associated rules. The department must investigate the complaint.

(b) The department may not investigate any such alleged violation of rights that occurred more than three years before the date that the employee filed the complaint.

(c) If an employee files a timely complaint with the department, the department must investigate the complaint and issue either a citation and notice of assessment or a determination of compliance within 90 days after the date on which the department received the complaint, unless the complaint is otherwise resolved. The department may extend the period by providing advance written notice to the employee and the employer setting forth good cause for an extension of the period and specifying the duration of the extension.

(d) The department must send the citation and notice of assessment or the determination of compliance to both the employer and the employee by service of process or using a method by which the mailing can be tracked or the delivery can be confirmed to their last known addresses.

(2) If the department's investigation finds that the employee's allegation cannot be substantiated, the department must issue a determination of compliance to the employee and the employer detailing such finding.

(3) The director or their designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this chapter, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as they may deem necessary or

appropriate to determine whether any person has violated any provision of this chapter, or which may aid in the enforcement of the provisions of this chapter.

(4) The director may initiate an investigation without an employee's complaint to ensure compliance with this chapter. The department may also initiate an investigation on behalf of one or more employees when the director otherwise has reason to believe that a violation has occurred or will occur.

(5) The department may conduct a consolidated investigation for any alleged violation identified under chapter 49.84 RCW, or associated rules, when there are common questions of law or fact. If the department consolidates such matters into a single investigation, it will provide notice to the employer.

(6) The department may request an employer perform a self-audit of any records relating to chapter 49.84 RCW which must be provided within a reasonable time. Reasonable timelines will be specified in the self-audit request. The department must determine reasonable time based on the number of affected employees and the period of time covered by the self-audit. The records examined by the employer in order to perform the self-audit must be made available to the department upon request.

(7) Upon the department's request, an employer must notify affected employees in writing that the department is conducting an investigation. The department may require the employer to include a general description of each investigation as part of the notification, including the allegations and whether the notified employee may be affected. The employer may consult with the department to provide the information for the description of the notification of investigation.

(8) Upon receiving a complaint, the department may request or subpoena the records of the warehouse distribution center.

(9) In addition to any enforcement authority provided in this chapter or applicable rules, the department may enforce any violation under this chapter or applicable rules, except for violations and enforcement of RCW 49.84.032, by filing an action in the superior court for the county in which the violation is alleged to have occurred. If the department prevails, it is entitled to reasonable attorneys' fees and costs, in the amount to be determined by the court.

NEW SECTION

WAC 296-136-110 Investigation—Civil penalties. (1) If the department determines that the employer has violated a requirement of WAC 296-136-100, the department may order the employer to pay the department a civil penalty of not less than \$1,000 for a first violation. Repeat violations may escalate as follows: The second violation may not exceed \$5,000. The third violation and each violation thereafter may not exceed \$10,000.

(2) For enforcement actions under this section, if any person fails to pay an assessment under this chapter, or under any rule under this chapter, after it has become a final and unappealable order, or after the court has entered final judgment in favor of the agency, the director may initiate collection procedures in accordance with the collection procedures under RCW 49.48.086.

(3) If the department finds that a quota violates chapter 49.84 RCW, the department may order the employer to review and provide a corrected written quota to the affected employee or employees within 15 calendar days and place a letter in the employee's personnel file to acknowledge the correction. If the employer fails to do so, the employer may be subject to the penalties under subsection (1) of this section and associated rules.

(4) Civil penalties must be deposited into the supplemental pension fund established under RCW 51.44.033.

NEW SECTION

WAC 296-136-120 Enforcement of meal and rest break violations resulting from quota violations. (1) If an employee files a complaint with the department alleging that employer has violated a requirement of this chapter or any rule adopted under this chapter resulting in a rest or meal period violation, the department will investigate the complaint pursuant to the procedures outlined in RCW 49.84.045, WAC 296-136-100, and 296-136-130.

(2) During an investigation, if the department discovers information suggesting additional violations of chapter 49.84 RCW or associated rules, the department may investigate and take appropriate enforcement action without any additional complaint in accordance with WAC 296-136-100. The department may also conduct a consolidated investigation for any alleged violation identified under chapter 49.84 RCW in accordance with WAC 296-136-100.

(3) If the department determines that the employer has violated a requirement of this chapter or any rule adopted under this chapter resulting in a rest or meal period violation, the employer must pay the employee one additional hour of pay at the employee's regular rate of pay for each day there is a violation. The employer must pay the employee at the employee's regular rate of pay for rest and meal periods where the employee is required to remain on duty or on the employer's premises at the employer's direction subject to call. The regular rate of pay is the hourly rate at which the employee is paid, but may not be less than the established minimum wage rate. The regular rate of pay is determined by dividing the amount of compensation received per week by the total number of hours worked during that week.

(4) If the department determines that an employer has violated a requirement of this chapter or any rule adopted under this chapter resulting in a rest or meal period violation, the department may order the employer to pay to the employee interest of one percent per month on all amounts owed. The interest owed must be calculated from the first date amounts were owed to the employee, except that the department may not order the employer to pay any interest that were owed more than three years before the date the complaint was filed with the department.

NEW SECTION

WAC 296-136-130 Appeals. (1) For enforcement actions under RCW 49.84.045, WAC 296-136-100, and 296-136-120, a person, firm, or corporation aggrieved by a citation and notice of assessment or determina-

tion of compliance by the department or any rules adopted under this chapter may appeal the citation and notice of assessment or determination of compliance to the director by filing a notice of appeal with the director within 15 calendar days of the department's issuance of the citation and notice of assessment or determination of compliance. A citation and notice of assessment or determination of compliance not appealed within 15 calendar days is final and binding, and not subject to further appeal.

(2) A notice of appeal filed with the director under this section stays the effectiveness of the citation and notice of assessment or determination of compliance pending final review of the appeal by the director as provided in chapter 34.05 RCW.

(3) Upon receipt of a notice of appeal, the director must assign the hearing to an administrative law judge of the office of administrative hearings to conduct the hearing and issue an initial order. The hearing and review procedures must be conducted in accordance with chapter 34.05 RCW, and the standard of review by the administrative law judge of an appealed citation and notice of assessment must be de novo. Any party who seeks to challenge an initial order must file a petition for administrative review with the director within 30 days after service of the initial order. The director must conduct an administrative review in accordance with chapter 34.05 RCW.

(4) The director must issue all final orders after appeal of the initial order. The final order of the director is subject to judicial review in accordance with chapter 34.05 RCW.

(5) Orders that are not appealed within the time period specified in this section and chapter 34.05 RCW are final and binding, and not subject to further appeal.

(6) An employer who fails to allow adequate inspection of records in an investigation by the department under this chapter within a reasonable time period may not use such records in any appeal under this section to challenge the correctness of any determination by the department of the penalty assessed.

NEW SECTION

WAC 296-136-140 Retaliation—Enforcement. (1) An employee or former employee who believes that they were subject to retaliation by their employer, as defined in chapter 49.84 RCW and associated rules, for the exercise of any employee right under chapter 49.84 RCW, may file a complaint with the department within 180 days of the alleged retaliatory action. The department may, at its discretion, extend the 180-day period on recognized equitable principles or because extenuating circumstances exist. For example, the department may extend the 180-day period when there is evidence that the employer has concealed or misled the employee regarding the alleged retaliatory action.

(2) If an employee files a timely complaint with the department alleging retaliation, the department will investigate the complaint and issue either a citation and notice of assessment or a determination of compliance within 90 days after the date on which the department received the complaint, unless the complaint is otherwise resolved. The department may extend the time period by providing advance written notice to the employee and the employer setting forth good

cause for an extension of the time period, and specifying the duration of the extension.

(3) The department may consider a complaint to be otherwise resolved when the employee and the employer reach a mutual agreement to remedy any retaliatory action, or the employee voluntarily and on the employee's own initiative withdraws the complaint. Mutual agreements include, but are not limited to, rehiring, reinstatement, back pay, and reestablishment of benefits.

(4) If the department's investigation finds that the employee's allegation of retaliation was rebutted by the employer and cannot be substantiated, the department will issue a determination of compliance to the employee and the employer detailing such finding.

(5) If the department's investigation finds that the employer retaliated against the employee, and the complaint is not otherwise resolved, the department may, at its discretion, notify the employer that the department intends to issue a citation and notice of assessment, and may provide up to 30 days after the date of such notification for the employer to take corrective action to remedy the retaliatory action. If the complaint is not otherwise resolved, then the department shall issue a citation and notice of assessment. The department's citation and notice of assessment may:

(a) Order the employer to make payable to the employee earnings that the employee did not receive due to the employer's retaliatory action, including interest of one percent per month on all earnings owed. The earnings and interest owed will be calculated from the first date earnings were owed to the employee;

(b) Order the employer to restore the employee to the position of employment held by the employee when the retaliation occurred, or restore the employee to an equivalent position with equivalent employment hours, work schedule, benefits, pay, and other terms and conditions of employment;

(c) Order the employer to pay the department a civil penalty as specified in WAC 296-136-150.

(6) The department will send the citation and notice of assessment or determination of compliance to both the employer and employee by service of process or using a method by which the mailing can be tracked or the delivery can be confirmed to their last known addresses.

(7) During an investigation of the employee's retaliation complaint, if the department discovers information suggesting alleged violations by the employer of the employee's other wage and labor standard protections in statutes and applicable rules, the department may investigate and take appropriate enforcement action without requiring the employee to file a new or separate complaint. If the department determines that the employer violated additional wage and labor standard protections in statutes and applicable rules, the employer may be subject to additional enforcement actions for the violation of such rights. If the department discovers information alleging the employer retaliated against or otherwise violated wage and labor standard protections in statutes and applicable rules, the department may launch further investigation under chapters 49.46 and 49.84 RCW, and all applicable rules, without requiring additional complaints to be filed.

(8) The department may prioritize retaliation investigations as needed to allow for timely resolution of complaints.

(9) Nothing in chapter 49.84 RCW or associated rules impedes the department's ability to investigate under the authority prescribed in RCW 49.84.040.

NEW SECTION

WAC 296-136-150 Retaliation—Civil penalties. (1) If the department's investigation finds that an employer retaliated against an employee, pursuant to the procedures outlined in WAC 296-136-140, the department may order the employer to pay the department a civil penalty. A civil penalty for an employer's retaliatory action will not be less than \$1,000 or an amount equal to 10 percent of the total amount of unpaid earnings attributable to the retaliatory action, whichever is greater. The maximum civil penalty for an employer's retaliatory action shall be \$20,000 for the first violation, and \$40,000 for each repeat violation.

(2) The department may, at any time, waive or reduce any civil penalty assessed against an employer under this section if the department determines that the employer has taken corrective action to remedy the retaliatory action.

(3) The department will deposit civil penalties paid under this section in the supplemental pension fund established under RCW 51.44.033.

(4) Collections of amounts owed for unpaid citations and notices of assessment, as detailed in WAC 296-136-140(5), will be handled pursuant to the procedures outlined in RCW 49.48.086.

NEW SECTION

WAC 296-136-160 Retaliation appeals. (1) For enforcement actions under RCW 49.84.040 and associated rules, a person, firm, or corporation aggrieved by a citation and notice of assessment or a determination of compliance may, within 30 days after the date of such decision, submit a request for reconsideration to the department setting forth the grounds for seeking such reconsideration, or submit an appeal to the director pursuant to the procedures outlined in subsection (4) of this section. If the department receives a timely request for reconsideration, the department will either accept the request or treat the request as a notice of appeal.

(2) If a request for reconsideration is accepted, the department will send notice of the request for reconsideration to the employer and the employee. The department will determine if there are any valid reasons to reverse or modify the department's original decision to issue a citation and notice of assessment or determination of compliance within 30 days of receipt of such request. The department may extend this period by providing advance written notice to the employee and employer setting forth good cause for an extension of the period, and specifying the duration of the extension. After reviewing the reconsideration, the department will either:

(a) Notify the employee and the employer that the citation and notice of assessment or determination of compliance is affirmed; or

(b) Notify the employee and the employer that the citation and notice of assessment or determination of compliance has been reversed or modified.

(3) A request for reconsideration submitted to the department shall stay the effectiveness of the citation and notice of assessment or the determination of compliance pending the reconsideration decision by the department.

(4) Within 30 days after the date the department issues a citation and notice of assessment or a determination of compliance, or within 30 days after the date the department issues its decision on the request for reconsideration, a person, firm, or corporation aggrieved by a citation and notice of assessment or a determination of compliance may file with the director a notice of appeal.

(5) A notice of appeal filed with the director under this section shall stay the effectiveness of the citation and notice of assessment or the determination of compliance pending final review of the appeal by the director as provided for in chapter 34.05 RCW.

(6) Upon receipt of a notice of appeal, the director shall assign the hearing to an administrative law judge of the office of administrative hearings to conduct the hearing and issue an initial order. The hearing and review procedures shall be conducted in accordance with chapter 34.05 RCW, and the standard of review by the administrative law judge of an appealed citation and notice of assessment or determination of compliance shall be de novo. Any party who seeks to challenge an initial order shall file a petition for administrative review with the director within 30 days after service of the initial order. The director shall conduct administrative review in accordance with chapter 34.05 RCW.

(7) If a request for reconsideration is not submitted to the department within 30 days after the date of the original citation and notice of assessment or determination of compliance, and a person, firm, or corporation aggrieved by a citation and notice of assessment or determination of compliance did not submit an appeal to the director, then the citation and notice of assessment or determination of compliance is final and binding, and not subject to further appeal.

(8) The director shall issue all final orders after appeal of the initial order. The final order of the director is subject to judicial review in accordance with chapter 34.05 RCW.

(9) Director's orders that are not appealed within the time period specified in this section and chapter 34.05 RCW are final and binding, and not subject to further appeal.

(10) An employer who fails to allow adequate inspection of records required under chapter 49.84 RCW and this chapter within a reasonable time period when requested by the department during an investigation may not use such records in any appeal to challenge the correctness of any determination by the department.

NEW SECTION

WAC 296-136-170 Discretionary enforcement provisions. (1) The department may enforce this section by engaging in coordinated and strategic enforcement efforts with the divisions within the department including, but not limited to, the division of fraud prevention and labor standards, the division of occupational safety and health, and insurance services. The department may access data from various divisions including employer-reported injury data and enforcement actions in warehouses, and the identity of uninsured employers, and employers who are committing workers' compensation fraud, wage theft, or other information relevant to the department's authority.

(2) The department may strategically collaborate with stakeholders to educate workers and employers about their rights and obligations under this part, respectively, in order to increase compliance.

NEW SECTION

WAC 296-136-180 Severability clause. If any provision of the rules in this chapter, or their application to any person or circumstance is held invalid, the remainder of these rules or their application of the provision to other persons or circumstances is not affected.

WSR 24-12-047
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed May 31, 2024, 8:31 a.m., effective July 1, 2024]

Effective Date of Rule: July 1, 2024.

Purpose: This adoption updates a conversion factor provided in WAC 296-20-135 and maximum daily fees provided in WAC 296-23-220 and 296-23-230 for certain professional health care services for injured workers. Rule changes are necessary to maintain current overall fees for health care services, which are published annually in the medical aid rules and fee schedules.

These updates increase the resource based relative value scale (RBRVS) conversion factor, increase the anesthesia conversion factor, and increase the maximum daily caps to be consistent with the changes for other professional fees resulting from our RBRVS process and changes in the relative value units published by the Centers for Medicare and Medicaid Services.

Citation of Rules Affected by this Order: Amending WAC 296-20-135, 296-23-220, and 296-23-230.

Statutory Authority for Adoption: RCW 51.04.020(1) and 51.04.030.

Adopted under notice filed as WSR 24-07-087 on March 19, 2024.

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: May 31, 2024.

Joel Sacks
Director

OTS-5240.1

AMENDATORY SECTION (Amending WSR 23-11-126, filed 5/23/23, effective 7/1/23)

WAC 296-20-135 Conversion factors. (1) Conversion factors are used to calculate payment levels for services reimbursed under the Washington resource based relative value scale (RBRVS), and for anesthesia services payable with base and time units.

(2) **Washington RBRVS** services have a conversion factor of (~~(\$59.54)~~) \$59.98. The fee schedules list the reimbursement levels for these services.

(3) **Anesthesia services** that are paid with base and time units have a conversion factor of (~~(\$3.83)~~) \$3.89 per minute, which is equivalent to (~~(\$57.45)~~) \$58.35 per 15 minutes. The base units and payment policies can be found in the fee schedules.

OTS-5241.1

AMENDATORY SECTION (Amending WSR 23-11-126, filed 5/23/23, effective 7/1/23)

WAC 296-23-220 Physical therapy rules. Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 regarding the use of conversion factors.

All supplies and materials must be billed using HCPCS Level II codes. Refer to chapter 296-21 WAC for additional information. HCPCS codes are listed in the fee schedules.

Refer to chapter 296-20 WAC (WAC 296-20-125) and to the department's billing instructions for additional information.

Physical therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed physical therapist, a physical therapist assistant serving under the direction of a licensed physical therapist as required in RCW 18.74.180 (3)(a), or a licensed athletic trainer serving under the direction of a licensed physical therapist as required in RCW 18.250.010 (4)(a)(v). In addition, physician assistants may order physical therapy under these rules for the attending doctor. Doctors rendering physical therapy should refer to WAC 296-21-290.

The department or self-insurer will review the quality and medical necessity of physical therapy services provided to workers. Practitioners should refer to WAC 296-20-01002 for the department's rules regarding medical necessity and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department or self-insurer will pay for a maximum of one physical therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or (~~(\$143.66)~~) \$147.97 whichever is less. These limits will not apply to physical therapy that is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for physical therapists who render care to workers.

Use of diapulse or similar machines on workers is not authorized. See WAC 296-20-03002 for further information.

A physical therapy progress report must be submitted to the attending doctor and the department or the self-insurer following 12 treatment visits or one month, whichever occurs first. Physical therapy treatment beyond initial 12 treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of

the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

Physical therapy services rendered in the home and/or places other than the practitioner's usual and customary office, clinic, or business facilities will be allowed only upon prior authorization by the department or self-insurer.

No inpatient physical therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Biofeedback treatment may be rendered on doctor's orders only. The extent of biofeedback treatment is limited to those procedures allowed within the scope of practice of a licensed physical therapist. See chapter 296-21 WAC for rules pertaining to conditions authorized and report requirements.

Billing codes and reimbursement levels are listed in the fee schedules.

AMENDATORY SECTION (Amending WSR 23-11-126, filed 5/23/23, effective 7/1/23)

WAC 296-23-230 Occupational therapy rules. Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 for information regarding the conversion factors.

All supplies and materials must be billed using HCPCS Level II codes, refer to the department's billing instructions for additional information.

Occupational therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed occupational therapist or an occupational therapist assistant serving under the direction of a licensed occupational therapist. In addition, physician assistants may order occupational therapy under these rules for the attending doctor. Vocational counselors assigned to injured workers by the department or self-insurer may request an occupational therapy evaluation. However, occupational therapy treatment must be ordered by the worker's attending doctor or by the physician assistant.

An occupational therapy progress report must be submitted to the attending doctor and the department or self-insurer following 12 treatment visits or one month, whichever occurs first. Occupational therapy treatment beyond the initial 12 treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

The department or self-insurer will review the quality and medical necessity of occupational therapy services. Practitioners should refer to WAC 296-20-01002 for the department's definition of medically necessary and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department will pay for a maximum of one occupational therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or (~~(\$143.66)~~) \$147.97 whichever is less. These limits will not apply to occupational therapy which is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for occupational therapists who render care to workers.

Occupational therapy services rendered in the worker's home and/or places other than the practitioner's usual and customary office, clinic, or business facility will be allowed only upon prior authorization by the department or self-insurer.

No inpatient occupational therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Billing codes, reimbursement levels, and supporting policies for occupational therapy services are listed in the fee schedules.

WSR 24-12-048
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed May 31, 2024, 8:32 a.m., effective July 1, 2024]

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

Purpose: The department of labor and industries' (L&I) division of occupational safety and health (DOSH) and division of fraud prevention and labor standards (FPLS) are required to implement and enforce 2SHB 1762, codified as chapter 49.84 RCW. 2SHB 1762 is an act related to protecting the health and safety of employees who are subject to quotas in warehouse distribution centers. L&I must adopt WAC rules to fully and adequately enforce the law. This act becomes effective July 1, 2024.

The adopted rule establishes the following safety standards under chapter 49.84 RCW:

- Require quotas to take into account reasonable travel time and time to use the restroom;
- Establish how DOSH will determine employer size for purposes of determining penalties under the rule;
- Outline when a quota will be considered a violation of the Washington Industrial Safety and Health Act (WISHA) as established in RCW 49.84.032. The rule includes examples of activities or equipment to help employers understand what may contribute to a quota being found unlawful;
- Establish recordkeeping requirements; and
- Establish and reiterate protections from adverse actions when an employee does not meet an unlawful quota, and general retaliation protections. The retaliation provisions include reiterating the rebuttable presumption established in RCW 49.84.040.

Other requirements related to quotas for workers at certain warehouse distribution centers under chapter 49.84 RCW are enforced by L&I's FPLS. FPLS conducted simultaneous rule making and has adopted rules for the provisions of chapter 49.84 RCW enforced by that division in chapter 296-136 WAC.

Citation of Rules Affected by this Order: WAC 296-35-010, 296-35-100, 296-35-200, 296-35-250, 296-35-300, 296-35-350, 296-35-400, 296-35-500, 296-35-600, and 296-360-200.

Statutory Authority for Adoption: RCW 49.84.060, 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

Other Authority: Chapters 49.17 and 49.84 RCW.

Adopted under notice filed as WSR 24-06-081 on March 5, 2024.

Changes Other than Editing from Proposed to Adopted Version: WAC 296-35-100(11) Definitions, added subsection (c) to the definition of the term "quota" that clarifies that a team quota, when applied to a group of employees, is considered a quota under the rule for each individual employee. The change provides additional guidance in instances where employers use a team quota.

A final cost-benefit analysis is available by contacting Carmyn Shute, Administrative Regulations Analyst, L&I, DOSH, P.O. Box 44620, Olympia, WA 98504-4620, phone 360-870-4525, fax 360-902-5619, email WarehouseRules@lni.wa.gov, website <https://lni.wa.gov/safety-health/safety-rules/rulemaking-stakeholder-information/warehouse-distribution-centers>.

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 10, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: May 31, 2024.

Joel Sacks
Director

OTS-5213.6

Chapter 296-35 WAC
SAFETY STANDARDS FOR QUOTAS FOR WAREHOUSE DISTRIBUTION CENTERS

NEW SECTION

WAC 296-35-010 Scope. This chapter applies to employers as defined in this chapter at warehouse distribution centers.

NEW SECTION

WAC 296-35-100 Definitions. (1) **Adverse action.** Any action taken or threatened by an employer against an employee for their exercise of chapter 49.84 RCW rights, which may include, but is not limited to:

- (a) Terminating, suspending, demoting, or denying a promotion;
- (b) Changing the number of work hours for which the employee is scheduled;
- (c) Altering the employee's preexisting work schedule;
- (d) Reducing the employee's rate of pay;
- (e) Threatening to take, or taking action, based upon the immigration status of an employee, former employee, or an employee or former employee's family member; and
- (f) Preventing future job opportunities whether for the employer or elsewhere.

(2) **Affiliate.** A person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person. For purposes of this subsection, "control" means the possession, directly or indirectly, of more than 50 percent of the power to direct or cause the direction of the manage-

ment and policies of a person, whether through the ownership of voting shares, by contract, or otherwise.

(3) **Defined time period.** Any unit of time measurement equal to or less than the duration of an employee's shift, and includes hours, minutes, and seconds and any fraction thereof.

(4) **Department.** The department of labor and industries.

(5) **Director.** The director of the department of labor and industries or the director's designee.

(6) **Employee.** An employee who is not exempt under RCW 49.46.010

(3)(c) and works at a warehouse distribution center.

(7) **Employer.** A person who directly or indirectly, or through an agent or any other person, including through the services of a third-party employer, temporary services, or staffing agency, independent contractor, or any similar entity, at any time, employs or exercises control over the wages, hours, or working conditions of 100 or more employees at one or more warehouse distribution centers in the state.

(a) For the purposes of determining the number of employees employed at a single warehouse distribution center or at one or more warehouse distribution centers, all employees employed directly or indirectly, or through an agency or any other person, and all employees employed by an employer and its affiliates, must be counted.

(b) For the purposes of determining responsible employers, all agents or other persons, and affiliates must be deemed employers and are jointly and severally responsible for compliance with this chapter.

(8) **Establishment.** A single physical location where business is conducted or where services or industrial operations are performed. Normally, one business location has only one establishment.

When distinct and separate economic activities are performed at a single physical location each would be considered separate establishments provided:

(a) No one industry description in the North American Industrial Classification System applies to the joint activities of the establishments;

(b) Separate reports are routinely prepared for each establishment on the number of employees, their wages and salaries, sales or receipts, and other business information; and

(c) Employment and output are significant for both activities.

(9) **Occupational safety and health hazards.** For purposes of this chapter, means potential sources of harm or adverse health effects for workers including, but not limited to, physical safety hazards, chemical hazards, biological hazards, physical safety hazards, and ergonomic risk factors. See table of examples in WAC 296-35-300.

(10) **Person.** An individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.

(11) **Quota.** A work performance standard, whether required or recommended, where:

(a) An employee is assigned or required to perform at a specified productivity speed, or perform a quantified number of tasks, or to handle or produce a quantified number of tasks, or to handle or produce a quantified amount of material, within a defined time period and under which the employee may suffer an adverse employment action if they fail to complete the performance standard; or

(b) An employee's actions are categorized between time performing tasks and not performing tasks, if the employee may suffer an adverse employment action if they fail to meet the performance standard.

(c) For the purposes of this chapter, if any quota applies to a group of employees, each individual employee of the group is considered to have an individual quota.

(12) **Reasonable travel time.** The employee must have enough time to access bathroom locations considering the architecture and geography of the facility and the location within the facility that the employee is located at the time a bathroom is required.

(13) **Warehouse distribution center.** An establishment engaged in activities as defined by any of the following North American Industry Classification System codes, however such establishment is denominated:

(a) 493 for warehousing and storage, but does not include 493130 for farm product warehousing and storage;

(b) 423 for merchant wholesalers, durable goods;

(c) 424 for merchant wholesalers, nondurable goods; or

(d) 454110 for electronic shopping and mail-order houses.

NEW SECTION

WAC 296-35-200 Quota time periods and reasonable travel time.

(1) The time period considered in a quota, including designated as productive time or time on task must include time to use the bathroom, including reasonable travel time; and

(2) The time period considered in a quota, including designated as productive time or time on task must include time to take any actions necessary for the employee to exercise the employee's right to a safe and healthful workplace pursuant to chapter 49.17 RCW including, but not limited to, time to access tools or safety equipment necessary to perform the employee's duties.

NEW SECTION

WAC 296-35-250 Employer size determination. Employer size, for the purposes of this chapter, is determined based on the number of employees on the day of the alleged violation or the average number of employees over the previous 12 months, whichever is greater, except for the purposes of establishing penalties under chapter 49.17 RCW and associated rules. For the purposes of setting penalties under chapter 49.17 RCW and associated rules, the size of business will be measured on the maximum number of employees at all workplaces nationwide, in the previous 12 months. For businesses operating for less than one year, the size will be based on the maximum number of employees since the company has been in business.

NEW SECTION

WAC 296-35-300 Quota—Violations of WISHA. (1) A quota violates chapter 49.17 RCW if the quota:

(a) Does not provide sufficient time as required under WAC 296-35-200;

(b) Prevents the performance of any activity related to occupational safety and health required by the employer for the employee to do the work subject to any quota; or

(c) Exposes an employee to occupational safety and health hazards in violation of chapter 49.17 RCW and the applicable rules or regulations. A quota that substantially contributes to a hazard or the exposure to a hazard is a violation of this subsection.

(2) An employee is not required to meet a quota that violates this section.

(3) The following table is a nonexhaustive list of examples of activities or equipment for use in understanding this section and how to determine what may contribute to a quota being found in violation of chapter 49.84 RCW or this chapter.

| Examples | WAC Reference (Where applicable) |
|------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|
| Examples of tools and equipment necessary to perform the employee's duties in WAC 296-35-200 including, but not limited to: | |
| Carts and hand trucks. | WAC 296-800-11030 Prohibit employees from using tools and equipment that are not safe. |
| Step stools and ladders. | Chapter 296-876 WAC, Ladders, portable and fixed. |
| Dock plates. | WAC 296-24-75006 Dockboards (bridge plates). |
| Safety shoes. | WAC 296-800-160600 Make sure your employees use appropriate foot protection. |
| High visibility vests. | WAC 296-800-16015 Select appropriate PPE for your employees. |
| Examples of safety or health related activities mentioned in WAC 296-35-300 (1)(b). | |
| Cleaning up spills or moving obstructions from aisles. | WAC 296-24-73505, walking working surfaces general requirements. |
| Inspecting powered industrial vehicle before use. | Chapter 296-863 WAC, Forklifts and other powered industrial trucks. |
| Setting up ladders properly. | Chapter 296-876 WAC, Ladders, portable and fixed. |
| Waiting for help with team lifting. | WAC 296-800-11035 Establish, supervise, and enforce rules that lead to a safe and healthy work environment that are effective in practice. |
| Examples of where the quota exposes employees to an occupational safety and health hazards under WAC 296-35-300 (1)(c). | |
| Heat stress. | WAC 296-800-11005 Provide a workplace free from recognized hazards. WAC 296-62-09013 Temperature, radiant heat, or temperature-humidity combinations. |
| Unsafe floor conditions, rushing (slip/trip/fall). | WAC 296-24-73505, walking working surfaces general requirements. |
| Manual material handling. | WAC 296-800-11005 Provide a workplace free from recognized hazards. |
| Powered industrial vehicle operations. | Chapter 296-863 WAC, Forklifts and other powered industrial trucks. |
| Safe material storage. | WAC 296-800-22035 Store things safely. |
| Machine safety. | Chapter 296-806 WAC, Safety standards for machine safety. |
| Lockout/tagout. | Chapter 296-803 WAC, Lockout/tagout (control of hazardous energy). |

| Examples | WAC Reference (Where applicable) |
|-------------------------------|---------------------------------------------------------------------|
| Recognized ergonomic hazards. | WAC 296-800-11005 Provide a workplace free from recognized hazards. |

NEW SECTION

WAC 296-35-350 Employer recordkeeping requirements. (1) An employer must maintain and preserve all records required under WAC 296-136-060.

(2) Records on how the time periods required under RCW 49.84.025 or WAC 296-35-200 were considered in determining any quota must be preserved for three years.

(3) Nothing in this section requires an employer to collect or keep such records if the employer does not use quotas or monitor work speed data.

(4) The records must be made available to the department or director upon request. An employer who fails to allow adequate inspection of records in an inspection by the department within a reasonable time period may not use such records in any appeal to challenge the correctness of any citation and notice issued by the department.

NEW SECTION

WAC 296-35-400 Protection from adverse action for failure to meet a quota in violation of WISHA. (1) An employer may not take adverse action against an employee in whole or in part for failing to meet a quota that violates RCW 49.84.032 or this chapter. A quota that violates the law may not be a factor leading to an adverse action by the employer.

(2) A person who has adverse action taken against them in whole or in part for failure to meet a quota that violates RCW 49.84.032 or this chapter may file a complaint within 90 days of the adverse action with the department in accordance with WAC 296-360-030.

(3) Complaints under this section will be investigated according to chapter 296-360 WAC, including appropriate relief, payment of damages, penalties, and appeal of citations of notices of assessment.

NEW SECTION

WAC 296-35-500 Retaliation protections and enforcement. (1) A person including, but not limited to, an employer, their agent, a person acting as or on behalf of a hiring entity, or the officer or agent of any entity, business, corporation, partnership, or limited liability company, may not discharge or in any way retaliate, discriminate, or take adverse action against an employee or former employee for exercising any rights established in this chapter including, but not limited to:

(a) The right to make a complaint to the employer, the director, or any local, state, or federal governmental agency or official, rela-

ted to a quota that is allegedly in violation of chapter 49.17 RCW, RCW 49.84.032, or this chapter;

(b) The right to participate in any proceeding related to a quota that is allegedly in violation of chapter 49.17 RCW, RCW 49.84.032, or this chapter; and

(c) The right to testify in any proceeding related to a quota that is allegedly in violation of chapter 49.17 RCW, RCW 49.84.032, or this chapter, including any statements given in the course of judicial, quasi-judicial, and administrative proceedings, including inspections, investigations, administrative adjudications, and rules hearings.

(2) (a) If a person takes adverse action against an employee or former employee within 90 days of the employee engaging or attempting to engage in activities protected by this chapter, there is a rebuttable presumption that the adverse action is a retaliatory action in violation of this chapter.

(b) The presumption may be rebutted by a preponderance of the evidence that:

(i) The action was taken for other permissible reasons; and

(ii) Engagement or attempted engagement in activities protected by this chapter was not a motivating factor in the adverse action.

(3) An employee or former employee who believes that they were subject to retaliation under this section may file a complaint with the department in accordance with WAC 296-360-030.

(4) Complaints under this section will be investigated according to chapter 296-360 WAC, including appropriate relief, payment of damages, penalties, and appeal of citations of notices of assessment, except the presumption in subsection (3) of this section applies.

NEW SECTION

WAC 296-35-600 Severability clause. If any provision of the rules in this chapter, or their application to any person or circumstances is held invalid, the remainder of these rules or their application of the provision to other persons or circumstances is not affected.

OTS-5214.1

NEW SECTION

WAC 296-360-200 Retaliation protections and enforcement—Warehouse distribution centers. This chapter applies to protected activities established in RCW 49.84.032, 49.84.040, and associated rules under chapter 296-35 WAC. WAC 296-35-400 establishes protected activities covered by this chapter, and includes a rebuttable presumption on when an adverse action has taken place.

WSR 24-12-050
PERMANENT RULES
INDETERMINATE SENTENCE
REVIEW BOARD

[Filed May 31, 2024, 10:20 a.m., effective July 1, 2024]

Following is chapter 381-100 WAC for filing. The indeterminate sentence review board is exercising its exemption to the Administrative Procedure Act under RCW 34.05.030 (1)(c) and is requesting the code revisor's office publish the revisions to this chapter as contained in the attachment.

Corey McNally
 Executive Director

OTS-5471.1

Chapter 381-100 WAC
PROCEDURES FOR CONDUCTING COMMUNITY CUSTODY ((BOARD)) VIOLATION HEARINGS

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-010 Purpose. The purpose of this chapter is to specify policies and procedures relating to community custody ((board)) violation hearings. The following regulations set forth procedural guidelines. They do not create procedural or substantive rights in any person((~~r~~)) and should not be interpreted or applied in such a manner as to abridge rights already guaranteed by the United States Constitution, the Washington Constitution, or state law. The regulations should be interpreted to have sufficient flexibility so as to be consistent with law and to permit the indeterminate sentence review board to accomplish its statutory purposes.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-020 Authority. RCW 9.95.150, 9.95.420, 10.95.030(2), 9.94A.730, 9.95.425, 9.95.430, 9.95.435, 9.95.440, 9.94A.507, and 9.95.900.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-030 Scope. The provisions of this chapter shall apply to ((adult felony offenders)) individuals granted community custo-

dy from a prison sentence (~~(under RCW 9.94A.507)~~) pursuant to RCW 9.95.420, 10.95.030(2), or 9.94A.730, who are alleged to have violated the (~~(terms)~~) conditions of their order of release.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-040 Definitions. For purposes of this chapter, the following words have the following meanings:

"Appeals panel" means three reviewing officers designated by the chair of the board or their designee with the authority to review decisions made by a board member or hearing officer, and to affirm, reverse, or modify decisions and sanctions in accordance with RCW 9.95.435.

"Board" means the members of the indeterminate sentence review board.

"Board warning" means a letter served to the individual to address alleged violation behavior and notify the individual of consequences of violation behavior.

"Business day" means working day.

"Community corrections officer (CCO)" means an employee of the department of corrections responsible for carrying out specific duties concerning the supervision of (~~(sentenced offenders)~~) individuals and monitoring of sentence conditions.

"Community custody" means that portion of an (~~(offender's)~~) individual's sentence served in the community subject to controls placed on the (~~(offender's)~~) individual's movement and activities by the board and supervised by the department of corrections. (~~(Offenders supervised on "community custody board" placement are those)~~)

"Community custody board" means the board when acting in relation to individuals who have been ((sentenced under RCW 9.94A.712.)) released, or are releasable, under RCW 9.95.420.

"Department" means the department of corrections.

"Electronically" when used in reference to submission of documents to the board, means via facsimile, electronic mail or other generally accepted electronic means.

"Graduated sanction system" means structured incremental responses designed to reduce risk to the public, effectively intervene in noncompliant behavior, where possible, repair harm to the community, and make efficient use of limited state resources. The graduated sanction system provides the board options for sanctions in response to violations to the conditions of supervision and the board may choose a sanction commensurate to the violation. Sanctions may include, but are not limited to, work release; home detention with electronic monitoring; work crew; community restitution; inpatient treatment; daily reporting; curfew; educational or counseling sessions; supervision enhanced through electronic monitoring; or any other sanctions available in the community; or, may include board warnings, stipulated agreements, or suspension or revocation of the release to community custody.

"Hearing officer" means a member, employee, or designee of the indeterminate sentence review board authorized to preside over community custody (~~(board)~~) violation hearings.

(~~("Offender" means any person in the custody of or subject to the jurisdiction of the board.)~~)

"Individual" means any person under the jurisdiction of the ISRB pursuant to RCW 9.95.420, 10.95.030, or 9.94A.730.

"ISRB" means the indeterminate sentence review board.

"Juvenile board" means the board when acting in relation to individuals who have been released by the board pursuant to RCW 10.95.030 or 9.94A.730.

"On-site desk" means the board's designee that receives notice of violations of community custody (~~board~~) conditions and schedules violation hearings.

"Presiding officer" means a member, employee or designee of the board authorized to act as a hearing officer to preside over community custody (~~board~~) violation hearings.

"Probable cause" means a determination, made by a hearing officer, that there is cause to believe a violation has occurred.

"Stipulated agreement" means an agreement between the (~~offender~~) individual and the board in which the (~~offender~~) individual admits violations and agrees to comply with intermediate sanctions. For the purposes of this subsection, "intermediate sanction" means board-imposed sanctions that are served in the community rather than total confinement.

"Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for (~~twenty-four~~) 24 hours a day, to include, but not be limited to, adult correctional facilities, camp and prerelease facilities, or (~~a~~) county or municipal jails.

"Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the criminal conduct of the (~~offender~~) individual. (~~"Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.~~)

"Working day" means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-050 Intent. (1) The indeterminate sentence review board will exercise its authority over (~~offenders~~) the individuals under its jurisdiction in a manner that:

- (a) Places a high priority on public safety;
- (b) Imposes only those reasonable and enforceable conditions of community custody necessary to facilitate the safety of previous victims and potential victims, encourage responsibility, and to assist the (~~offender's~~) individual's lawful reintegration into the community; and
- (c) Supports the role and responsibility of the community corrections officer to assist (~~offenders~~) individuals to reenter the community in a law-abiding manner.

(2) In making a decision on sanctions, community custody revocation or reinstatement, the indeterminate sentence review board may consider the following factors in addition to factors that are case specific:

- (a) Whether or not the community custody violation behavior (~~(a) has~~) has resulted, or may result in a criminal conviction;
- (b) The relationship of the community custody violation behavior to the committing offense and the nature of the violation;
- (c) The length of time the (~~(offender)~~) individual has been on community custody as well as time previously served on the conviction;
- (d) The perspective and recommendation of victim(s) and/or other concerned citizens;
- (e) The recommendation and supporting reasons offered by the community corrections officer, the (~~(offender)~~) individual and/or attorney, and the assistant attorney general;
- (f) The level of risk to the community posed by the (~~(offender)~~) individual;
- (g) The previous board action during the current or prior periods of community custody;
- (h) The number of previous violation (~~(hearings)~~) processes and (~~(offender)~~) compliance with resulting sanctions; (~~(and)~~)
- (i) The (~~(sanction range under the administrative sanction grid)~~) graduated sanction system;
- (j) Relevant case law; and
- (k) Adjustment to supervision.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-055 Board notification of alleged violations. (1) Whenever (~~(the CCO receives notification)~~) a CCO becomes aware of an (~~(offender's)~~) individual's alleged violation behavior, the CCO must notify the ISRB (~~(hearing officer)~~) of the alleged violation(s) within one working day. Notification (~~(may be made via telephone or electronic means)~~) should be submitted electronically.

(2) Notifications are to include:

- (a) The factual circumstances of the alleged violation; and
- (b) The date of violation or approximation thereof.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-070 Notice of suspension of community custody. When a community corrections officer becomes aware of an individual's arrest by law enforcement or causes the arrest and detention of an (~~(offender)~~) individual under the jurisdiction of the ISRB, the community corrections officer shall (~~(cause a suspension of)~~) suspend the individual's community custody by personally serving the order (~~(to be personally served)~~) for arrest and detention on the (~~(offender within twenty-four hours of arrest, excluding weekends and holidays)~~) individual within one working day of the arrest or becoming aware of arrest, whichever is later. The community corrections officer shall electronically submit a copy of the (~~(suspension of community custody)~~) order for arrest and detention to the board (~~(and the attorney general)~~) within one working day of service (~~(of the suspension order)~~).

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-090 Administrative reinstatements. (1) ~~((When a community corrections))~~ A community corrections officer shall submit a written request for reinstatement or report with recommendations to the ISRB when the officer has caused the arrest and detention of an ((offender)) individual and after investigation determines:

(a) That the alleged violations are unfounded; or

(b) That the seriousness of the alleged violations is mitigated by new information; or

(c) That further custody is unwarranted and a community custody ~~((board revocation))~~ violation hearing is unnecessary ~~((; the officer shall submit a written request for reinstatement or report with recommendations to the ISRB))~~.

(2) The board may ~~((exercise the option of administrative reinstatement absent))~~ reinstate the individual on community custody with or without a recommendation of the community corrections officer under the same or modified community custody conditions, when such reinstatement is consistent with criteria identified ((within)) in WAC 381-100-050 and RCW 9.95.440.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-100 ((Notice and allegations.)) Violations specified. (1) **In custody((-):** When ~~((a community corrections officer is notified of the arrest and detention by law enforcement of an alleged community custody violator and/or the))~~ community custody is suspended by the community corrections officer, the community corrections officer shall cause the ~~((offender))~~ individual to be personally served with a copy of the ~~((Notice of Allegations))~~ Violations Specified and Rights and Privileges forms within three working days of the service of ~~((suspension of))~~ the order for arrest and detention suspending community custody. The CCO shall submit the ~~((notice of allegations))~~ signed forms electronically to the board ~~((with a copy to the attorney general within twenty-four hours of service, excluding weekends and holidays))~~ within one working day of service.

(2) **Out of custody((-):** If an out of custody hearing is requested by the community corrections officer and/or ordered by the board, the ~~((notice of allegations))~~ Violations Specified and Rights and Privileges forms shall be served on the ~~((offender))~~ individual within three working days of ~~((written notice of probable cause from the board, but not less than two working days prior to the hearing))~~ notice to the board of the discovery of alleged violations of conditions of supervision occurring in WAC 381-100-055. The CCO shall submit the ~~((notice of allegations))~~ signed violations specified form electronically to the board ~~((with a copy to the attorney general within twenty-four hours of service, excluding weekends and holidays))~~ within one working day of service.

(3) **New or amended allegations.** If, after service of ~~((alleged violations))~~ the Violations Specified and Rights and Privileges forms as set forth above, the CCO ~~((brings forth additional alleged))~~ alleges additional violations or changes ~~((to))~~ the existing alleged violations, the CCO shall cause the ~~((offender))~~ individual to be personal-

ly served with a copy of the new or amended allegations in the form of a new violations specified document. The ~~((offender))~~ individual will have two working days from the date of service of the new or amended allegations before the board will consider the allegations. The ~~((offender))~~ individual may waive the two working days' notice and proceed with those new or amended allegations at an already scheduled hearing.

(a) The CCO shall electronically submit such new or amended allegations of violation electronically to the board with a copy to the attorney general and defense counsel if applicable, within one working day of service on the ~~((offender))~~ individual.

(b) The board will determine probable cause upon receipt of the new or amended allegations of violation(s) pursuant to WAC 381-100-110.

(c) The board will not accept new or amended violations later than two working days before the scheduled hearing. If the CCO discovers new or revises the alleged violations less than two working days before the scheduled hearing, the board may choose to:

(i) Schedule a new hearing to address the new alleged violations and allow all parties to review the new information;

(ii) Address any unamended violations in the current hearing and schedule a new hearing to address the amended violations; or

(iii) Pursue the amended violations in the scheduled hearing with agreement from the individual and/or their attorney.

(4) **Interpreter services.** Community corrections officers shall obtain interpreter services for ~~((offenders))~~ individuals with known language or communication barriers when serving documents. For a board hearing, ~~((court-certified))~~ state contracted interpreters shall be used ~~((when possible. The CCO shall obtain interpreter services for the offender's board hearing))~~.

(5) ~~((Contents of factual allegations.))~~ **Specifying the violations.** The ~~((factual allegations))~~ specifications of the violations of each condition shall include:

(a) The factual circumstances of the alleged violation(s); and

(b) Date of violation or approximation thereof ~~((; and~~

~~((location or place where violation occurred))~~).

(6) **Allegations of a new crime.** Whenever an ~~((offender))~~ individual is accused of a violation of their community custody conditions that ~~((includes the commission of))~~ may constitute a felony or misdemeanor, the community corrections officer shall advise the board of the status of any pending criminal charge(s). In the case of pending criminal ~~((allegations))~~ charges, the board may defer any board hearing pending the outcome or may dismiss without prejudice one or more ~~((allegations))~~ alleged violations. If the ~~((offender))~~ individual is convicted of a new crime, the CCO shall provide the board with a certified copy of the judgment and sentence within two working days of receipt.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-110 Probable cause review. A probable cause review shall be conducted by the board's designee within ~~((forty-eight hours))~~ two working days of the board's receipt of the ~~((factual allegation(s)))~~ most recent signed violations specified form to determine whether probable cause exists to believe the ~~((violation or))~~ alleged

violation(s) occurred. A written probable cause finding will be issued. If the hearing officer finds probable cause, the hearing officer will ~~((decide))~~ recommend to the board if the ~~((offender will be))~~ individual should be reinstated, conditionally released, or remain in custody pending further action by the board.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-120 Notice of violation report to be submitted by community corrections officer. (1) ~~((For community custody board offenders who are being held in total confinement))~~ Prior to a hearing, the community corrections officer shall ((cause the offender to be personally served a violation report within five working days after receipt of written notice of probable cause from the board.

~~(2) For community custody board offenders who are not being held in total confinement prior to the hearing, the community corrections officer shall cause the offender to be personally served a violation report within ten working days after receipt of written notice of probable cause from the board.~~

~~(3) The violation report shall be submitted to the board and the attorney general within two business days from the date of service of the notice of violations on the offender.~~

~~(4) The violation report may be submitted electronically.~~

~~(5))~~ electronically submit the notice of violation report to the board, as well as serve the notice of violation report on the individual, within five working days of serving the violations specified and rights and privileges forms on the individual.

(2) The notice of violation report shall contain the following:

~~(a) ((The specific conditions alleged to have been violated;))~~

The alleged violations as listed in the violations specified document;

~~(b) A summary of facts supporting the allegations;~~

~~(c) Any mitigating information;~~

~~(d) The evidence relating to the violations to be introduced at the hearing; and~~

~~(e) A preliminary recommendation for disposition.~~

~~((6))~~ (3) The notice of violation report should include a list of witnesses whom the community custody officer may wish to have called for testimony.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-130 Administrative review. (1) Following receipt of the notice of violation report, a board hearing officer will conduct an administrative review within 15 working days of the board's receiving notice of the individual's alleged violation under WAC 381-100-055 to determine the next board action.

~~(2) The ((offender))~~ individual and/or attorney may submit information in writing that the board shall consider in an administrative review within 15 days from the notice of the alleged violations occurring in WAC 381-100-055.

(3) The board will notify the community corrections officer if the next action is to reinstate or conditionally release the individual.

(4) If the next board action is to retain the individual in custody pending a violation hearing, the hearing officer shall:

(a) Appoint defense counsel for the individual.

(i) Prior to the violation hearing, the individual may request appointment of new counsel for good cause, such as appointed counsel's actual conflict of interest, irreconcilable conflict between attorney and the individual, or a complete breakdown in communication between attorney and the individual.

(ii) The individual's loss of confidence in appointed counsel, a disagreement over strategy, or a breakdown in communication caused by the individual is insufficient to constitute good cause;

(b) Notify the community corrections officer, the attorney general's office, and defense counsel of the probable cause findings for each of the alleged violations;

(c) Request that the community corrections officer electronically provide any served documents as well as discovery material to the attorney general's office, defense counsel, and the ISRB immediately.

NEW SECTION

WAC 381-100-135 Opportunity to waive hearing. (1) The individual, after service of the violations specified and rights and privileges forms, may waive their right to a community custody violation hearing, and admit guilt to the alleged violations.

(2) If the waiver is accepted by the board, the board may do one or more of the following:

(a) Reinstate the individual on community custody with the same or modified conditions of supervision;

(b) Impose an appropriate sanction short of revocation; or

(c) Revoke the individual's community custody, enter an order of community custody revocation, and return the individual to prison. A determination of a new minimum sentence shall be made within 30 days of return to state custody.

(3) If the waiver is rejected by the board, a community custody violation hearing will be scheduled.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-140 Scheduling community custody ((board)) violation hearings. (1) The board shall schedule all community custody ((board)) violation hearings ((and)).

(2) Out of custody hearing: The board shall provide notice to the community corrections officer and alleged community custody violator of the time and place of the out of custody hearing no less than five working days prior to the hearing.

((2) Such notice shall also be provided) (3) In custody hearing: The board shall provide notice to the ((department of corrections)) community corrections officer, the attorney general, and to counsel for the ((offender, if retained or appointed)) individual, no

less than ~~((two))~~ five working days prior to ~~((the))~~ an in-custody violation hearing.

~~((3))~~ (4) The board reserves the right to select and change the place of the community custody ~~((board))~~ violation hearing.

~~((4))~~ (5) The CCO will arrange interpreter services for ~~((offenders))~~ individuals with known language or communication barriers for violation hearings and will provide the information to the board prior to the scheduling of a hearing.

(6) Hearings may be held in person, via telephone or videoconference.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-150 Rights and privileges relating to violation hearings. (1) An alleged community custody violator shall be entitled to a fair and impartial hearing of the charges of the community custody violation within ~~((thirty))~~ 30 working days, but not less than two working days, after notice of service of violations specified is received by the board.

(2) The board shall notify the ~~((offender))~~ individual of the right to:

(a) Be present during the fact finding and disposition phases of the hearing. If the ~~((offender))~~ individual waives this right, acts in a persistently disruptive manner during the hearing, or refuses to ~~((participate in))~~ attend the hearing, the board may conduct the hearing in the absence of the ~~((offender))~~ individual and may impose sanctions ~~((that could include loss of liberty of the offender)), including the revocation of community custody;~~

(b) Have the assistance of an interpreter if the ~~((offender))~~ individual has a known language or communications barrier;

(c) Testify or remain silent;

(d) Call witnesses and present documentary evidence ~~((, provided, however:~~

~~((i) At an in-custody hearing, outside witnesses may be excluded due to institutional or community concerns; or~~

~~((ii) The presiding officer may exclude persons from the hearing upon a finding of good cause; or~~

~~((iii) The presiding officer may allow a witness to testify outside of the offender's presence when there is substantial likelihood that the witness will not be able to give effective, truthful testimony in the presence of the offender during the hearing. The offender may submit a list of questions to ask such witness and testimony may be limited to evidence relevant to the issues under consideration;~~

~~((iv) The presiding officer may allow telephonic testimony of witnesses.))~~ subject to the provisions in WAC 381-100-250;

(e) Question witnesses who testify subject to WAC 381-100-250;

(f) Be represented by counsel if revocation of the release to community custody is a probable sanction for the violation, unless the individual waives or forfeits the right to counsel;

(g) Receive a copy of the findings and conclusions ~~((This includes the evidence relied upon, a finding of guilty or not guilty, the reasons to support the findings, and any sanction(s) imposed));~~

(h) Receive notice of the right to appeal the sanction to the board; and

- (i) Receive notice of the right to file a personal restraint petition ~~((under court rules after the final decision of the board.~~
- ~~(3) The board may not revoke the release to community custody of any offender who was not represented by counsel at the hearing, unless the offender has:~~
- ~~(a) Waived the right to counsel; and/or~~
 - ~~(b) Waived their right to appear; and/or~~
 - ~~(c) Refused to participate in the hearing).~~

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-160 Acknowledgment of rights. The community corrections officer shall forward to the board and attorney general signed copies of the receipt and acknowledgment of ~~((these))~~ the rights set forth in WAC 381-100-150 along with copies of the ~~((factual allegations))~~ violations specified. Should the ~~((offender))~~ individual refuse to sign either the ~~((factual allegations))~~ violations specified or ~~((notification of rights))~~ the rights and privileges, the community corrections officer shall witness the refusal and note the time and place of service.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-170 Discovery. (1) The community corrections officer shall provide the ~~((department's AAG))~~ attorney general, the ~~((offender and/))~~ unrepresented individual, or the ~~((offender's))~~ represented individual's defense attorney with a copy of the ~~((factual allegations))~~ violations specified, the ~~((violation report, and))~~ notice of violation report, all evidence ~~((relating to))~~ relevant to establishing the violations charged that is intended for introduction at the hearing, ~~((either as factual evidence or in support of a))~~ and all evidence relevant for the dispositional recommendation at least two working days prior to the scheduled hearing. ~~((Such documents, materials, and information should include, but not be limited to, copies of the community custody order and addenda, copies of prior violation reports submitted to the board, and copies of all board actions or hearing findings issued during the current community custody.))~~

(2) The ~~((offender))~~ unrepresented individual or defense counsel shall provide to all parties ~~((, including the board, such documents, materials, and information that may))~~ and the board all documentary evidence to be introduced at the hearing at least two working days prior to the scheduled hearing.

(3) The community corrections officer and defense shall provide to all parties ~~((, including the board,))~~ a list of witnesses they may wish to call for testimony.

~~((4) In addition, the CCO must provide to the offender and/or offender's attorney any material or information within the CCO's knowledge or possession which tends to negate and/or mitigate the offender's guilt as to the violations charged.))~~

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-180 Filing with the board. (~~(Papers)~~) Materials required to be filed with the board shall be deemed filed, upon actual receipt by the board (~~(at its offices in Olympia, or by a member or designee presiding at a hearing at any place within the state)~~) as recorded by electronic date stamp in the digital record.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-190 Subpoenas. (1) The board (~~(shall have)~~) has the authority to issue subpoenas for compulsory attendance of witnesses and production of evidence at community custody revocation or violation hearings under RCW 9.95.123.

(2) Every subpoena, where authorized by law, shall state "indeterminate sentence review board," and the title of the proceeding. The subpoena shall command the person to whom it is directed to (~~attend and/or give testimony or~~) appear for testimony, produce designated documents at a specified time and place, or both.

(3) Subpoenas (~~(requiring the attendance and/or testimony of witnesses or the production of evidence)~~) may be issued upon application of any party, provided that such subpoenas are executed without expense to the board.

(4) Quashing subpoenas: Upon motion made promptly, and in any event, at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed and upon notice to the party to whom the subpoena was issued, the board or its authorized member may quash the subpoena.

(5) Subpoena enforcement: The board may seek judicial enforcement of the subpoena in accordance with RCW 9.95.123, unless the subpoena was quashed.

(6) Geographical scope: Attendance of witnesses and the production of evidence may be required by subpoena from any place in the state of Washington to any designated place of the hearing. The board will consider requests for reasonable accommodations brought to its attention.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-200 Hearing procedures—Presiding officer. All hearings conducted under this chapter will be heard by a minimum of one member of the board or a designee of the board, serving as the presiding officer. It is the duty of the presiding officer to conduct hearings in an impartial and orderly manner. (~~(He or she)~~) They shall have the authority, subject to other provisions of these rules and the law, to:

- (1) Administer oaths and affirmations;
- (2) Issue subpoenas;
- (3) Rule on all procedural matters, objections, and motions;

~~((3))~~ (4) Rule on offers of proof and receive relevant evidence;

~~((4))~~ (5) Question witnesses to develop any facts deemed necessary to fairly and adequately decide the matter;

~~((5))~~ (6) Render or defer a decision; and

~~((6))~~ (7) Take any other action necessary and authorized by these rules and the law.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-210 Hearing procedures—Prehearing conference. In any proceeding, the presiding officer, ~~((on his or her))~~ upon their own motion or on the motion of one of the parties or their representatives, may direct the parties to appear in person or through electronic means at a specified time and place for a prehearing conference. Such conference may be held immediately prior to the community custody violation ~~((proceeding))~~ hearing. A prehearing conference is for the purpose of considering:

(1) Simplification of the issues;

(2) Amendments to any of the ~~((papers))~~ materials filed with the board;

(3) Obtaining stipulations, admissions of fact, and documents;

(4) ~~((Limitation of))~~ Limiting the number of witnesses; and

(5) Such other matters as may aid in the disposition of the proceeding.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-230 Hearing procedures—Appearance and practice before agency—Who may appear. No person may appear before the board in a representative capacity on behalf of the ~~((offender))~~ individual at a community custody ~~((board))~~ violation hearing other than the following:

(1) Attorneys at law, qualified and ~~((entitled))~~ admitted to practice before the supreme court of the state of Washington.

(2) Law students admitted to practice under the Washington admission ~~((to))~~ and practice rules ~~((9 may represent the department of corrections, with the prior permission of the presiding officer))~~.

(3) Out-of-state attorneys must comply with the Washington admission ~~((to))~~ and practice rules ~~((7—(see Washington court rules)))~~.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-250 Hearing procedures—Witnesses. (1) Either party may call witnesses to testify in-person, by telephone, or electronically.

(2) The presiding officer may limit the number of witnesses and the scope of the testimony to matters relevant to the allegations and/or disposition.

(3) Witnesses may be excluded from in-person appearance (~~as follows:~~

~~(a) Due to facility concerns; or~~

~~(b) Upon a finding of)~~ for good cause determined by the presiding officer.

(4) (~~In addition~~) Specifically, the presiding officer may exclude a witness from testifying at a hearing or may require a witness to testify outside of the presence of the (~~offender~~) individual when there is a substantial likelihood that the witness will not be able to give effective, truthful testimony in the (~~offender's~~) individual's presence (~~during the hearing~~).

(a) In this circumstance, if the (~~offender~~) individual is not represented by counsel, (~~the offender~~) they shall be provided the opportunity to submit a list of questions for any witness testifying outside of their presence. This list shall be made part of the hearing record. The presiding officer shall present these questions to the witness on the record to the extent they seek to elicit relevant testimony.

(b) If the (~~offender~~) individual is represented by counsel, the attorney shall be allowed to question the witness on the record, but outside the presence of the (~~offender~~) individual.

(5) In all cases, the presiding officer shall take reasonable precautions related to the safety concerns of witnesses.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-260 Hearing procedures—Continuances. (1) Any party to a community custody (~~board~~) violation hearing who desires a continuance shall notify the board in writing and state the reasons why the continuance is necessary. If represented by counsel, all continuance requests by the individual must come from the representing counsel.

(2) Requests for continuances must (~~arrive at the board offices in Olympia not less than twenty-four hours~~) be received by the board at least one business day prior to the scheduled hearing. The presiding officer shall consider whether the request was timely and made for good cause and whether the (~~offender~~) individual will be substantially prejudiced in the presentation of their defense.

(3) The board may continue a hearing on its own motion if local prosecution is pending or if other circumstances require rescheduling.

(4) The board will notify all parties when continuances are granted.

(5) During a community custody (~~board~~) violation hearing, the presiding officer may, in their discretion or upon motion of (~~counsel~~) a party, continue the hearing for the introduction of additional evidence, presentation or argument.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-270 Hearing procedures—Persons present. Community custody (~~board~~) violation hearings are open to the public (~~unless~~) to attend virtually given the facility has the resources to accommodate virtual or telephonic hearings. The presiding officer(~~r~~) may preclude public attendance for a specifically stated reason, close(~~s~~) the hearing in whole or in part, or limits the number of persons that may be present. For in-custody hearings where the facility does not allow for virtual public attendance, the public may attend dependent on facility rules.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-280 Rules of evidence—Admissibility. (1) All relevant evidence shall be admissible which, in the opinion of the presiding officer, is the best evidence reasonably obtainable, having due regard for its necessity, availability, and trustworthiness. "Relevant evidence" (~~means evidence having a tendency to make the determination of the action more or less probable than it would be without the evidence~~) has the same meaning as in Washington rule of evidence 401.

(2) In passing upon admissibility of evidence, the presiding officer shall give consideration to, but shall not be bound to follow, the Washington rules of evidence (~~governing civil proceedings, in matters not involving trial by jury, in the superior courts in the state of Washington~~).

(3) When objection is made to the admissibility of evidence, the evidence may be received subject to a later ruling.

(4) The presiding officer may, in (~~his or her~~) their discretion, either with or without objection, exclude inadmissible evidence, or order cumulative evidence discontinued.

(5) Parties objecting to the introduction of evidence shall state the precise grounds of objection at the time such evidence is offered.

(6) A certified laboratory report or a copy of such shall be admissible without further authentication.

(7) If the sole evidence to support the allegation is hearsay that would be inadmissible in a superior court proceeding and is not substantiated or corroborated, the board shall not enter a finding of guilt.

(8) If the sole evidence presented to substantiate the allegation is the result of a polygraph examination, a finding of guilty shall not be made. The results of polygraph examinations shall not be admissible into evidence at community custody violation hearings unless the parties have stipulated that the polygraph examination be conducted and the results be admissible in community custody violation hearing. Such stipulation may be evidenced by:

(a) Showing that the individual has submitted to a condition of supervision that they submit themselves to polygraph examination at the request of the community corrections officer, and that the results of said examination(s) shall be admissible at a subsequent community custody violation hearing; or

(b) Presenting a written stipulation entered by the individual, signed by the community corrections officer or their designee and by the individual before the polygraph examination in question was taken.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-290 Hearing procedures—Findings and conclusions.

(1) Alleged violations of the conditions of community custody must be proven by a preponderance of evidence.

(2) No finding of a violation of conditions may be based on unsubstantiated or uncorroborated hearsay evidence alone.

(3) If the presiding officer concludes that none of the alleged violations of conditions of community custody have ~~((not))~~ been proven by a preponderance of evidence, the ~~((offender))~~ individual shall be reinstated on community custody on the same or modified conditions.

(4) If the presiding officer concludes that at least one of the alleged violations of conditions of community custody ~~((have))~~ has been proven by a preponderance of the evidence, the presiding officer may, in accordance with the graduated sanction system, impose sanctions ~~((in accordance with an adopted graduated sanction grid))~~ reasonably related to at least one of the following: The crime of conviction, the violation committed, the individual's risk of reoffending, or the safety of the community. If the sanction is revocation of the ~~((offender's))~~ individual's community custody, the board shall enter an order of community custody revocation and return the ~~((offender))~~ individual to prison.

(5) After issuance of a revocation sanction, the board will set a new minimum term ~~((in a timely manner))~~ within 30 days of return to state custody in accordance with WAC 381-90-060.

(6) An ~~((offender))~~ individual convicted and sentenced to incarceration on a new criminal charge will have the right to a dispositional violation hearing by the board where the individual has the rights and privileges set forth in WAC 381-100-150. The individual may waive the right to a dispositional violation hearing. The board may:

(a) Revoke the community custody of the ~~((offender))~~ individual and enter an order of community custody revocation or impose other appropriate sanctions.

(b) Reinstatement the ~~((offender))~~ individual on community custody supervision under the same or modified conditions.

(7) The presiding officer shall make written findings and conclusions concerning the allegations ~~((in a timely manner following the decision))~~ within 10 working days of the hearing.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-310 Hearing record preservation. There will be

~~((a))~~ an audio recording made of all hearings conducted under the provisions of this chapter. Such recordings shall be preserved in accordance with the indeterminate sentence review board's records retention policies. Parties requesting duplication of any hearing must submit a

request in writing; response to all such requests shall be governed by the applicable public disclosure statutes.

AMENDATORY SECTION (Amending WSR 09-08-109, filed 3/31/09, effective 5/1/09)

WAC 381-100-320 Appeal of community custody violation sanctions.

(1) The ~~((offender))~~ individual may appeal the sanction of the community custody ~~((board))~~ violation hearing. Appeals must be filed with the board within seven days after the ~~((offender))~~ individual receives the findings and conclusions.

(2) The chair of the board or the chair's designee shall appoint a panel of three reviewing examiners to consider the appeal.

(3) The sanction shall be reversed or modified if a majority of the panel finds that the sanction was not reasonably related to ~~((any))~~ at least one of the following:

- (a) The crime of conviction;
- (b) The violation committed;
- (c) The ~~((offender's))~~ individual's risk of reoffending; or
- (d) The safety of the community.

NEW SECTION

WAC 381-100-330 Determination of competency. (1) If, at any time prior to, or at the beginning of, the violation hearing, the individual or defense counsel raises the issue of the individual's competency, or there is reason to doubt competency, the presiding board member may order an evaluation of competency to be completed.

(2) The certified evaluator shall have access to all information obtained by the board including the ISRB file.

(3) The evaluation/assessment should include:

- (a) A diagnosis of the mental condition of the individual;
- (b) If the individual has indicated their intention to rely on the fact of their competency at the time of the specified violations, an opinion as to the individual's competency at the time of the alleged violation behavior;
- (c) An opinion as to whether the individual is a danger to themselves or other persons;
- (d) An opinion as to whether the individual is able to understand the nature of the proceeding and/or assist in their own defense.

(4) At the time the competency evaluation is ordered, the fact determination phase of the hearing may be completed. The dispositional phase of the hearing shall be continued until the competency evaluation can be submitted to the board for consideration and inclusion in the dispositional phase of the hearing.

(5) The board shall not lose jurisdiction of an individual, regardless of the outcome of the competency evaluation.

(6) Once the dispositional phase has been convened, the board shall consider the results of the evaluation and the evidence presented by both parties in making its decision to revoke or reinstate the individual.

(7) Should the board determine that the individual is competent, the board may reinstate the individual to supervision with special or

modified conditions, revoke the individual and return them to a state correctional institution, or impose other appropriate sanctions.

(8) Should the board member determine that the individual is not competent, the board may reinstate the individual with the special condition that the individual utilize the voluntary commitment provisions under chapter 71.05 RCW, or the board may revoke the individual and recommend that the individual seek further mental health services while at the correctional institution.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 381-100-060 Notice of arrest by law enforcement officer.
- WAC 381-100-080 Board to reinstate.

WSR 24-12-066

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Nursing)

[Filed June 3, 2024, 4:50 p.m., effective July 1, 2024]

Effective Date of Rule: July 1, 2024.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: SHB 1255 (chapter 141, Laws of 2023) codified in RCW 18.79.440(9) states "The *commission shall establish the stipend program no later than July 1, 2024."

Purpose: Substance use disorder (SUD) monitoring program for nursing professionals, amending WAC 246-840-750 through 246-840-780 and adding WAC 246-840-790.

The Washington state board of nursing (board) established new definitions, changed "commission" to "board," "abuse" to "use," and made other changes relating to the board's SUD monitoring program in response to SHB 1255 (chapter 141, Laws of 2023) codified in RCW 18.79.440.

The board created a new rule section establishing application requirements for a stipend to offset treatment costs, as directed by SHB 1255. The intent of the stipend program is to encourage initial participation and continuation in the board's approved SUD monitoring program authorized by RCW 18.130.175. The new rule mirrors the statute's eligibility requirements, further defines the process the board will use to pay the out-of-pocket expenses through the stipend program, clarifies the board's approved SUD program as established in existing rules, and establishes eligibility requirements, including the definition of "financial need."

Citation of Rules Affected by this Order: New WAC 246-840-790; and amending WAC 246-846-750, 246-840-760, 246-840-770, and 246-840-780.

Statutory Authority for Adoption: RCW 18.79.010, 18.79.110, 18.130.175; and SHB 1255 (chapter 141, Laws of 2023) codified in RCW 18.79.440.

Adopted under notice filed as WSR 24-07-063 on March 15, 2024.

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 WABONRules@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 1, Amended 4, 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 4, 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 4, Repealed 0.

Date Adopted: May 31, 2024.

Alison Bradywood, DNP, MH/MPH, RN, NEA-BC
Executive Director
Washington State Board of Nursing

OTS-5149.4

AMENDATORY SECTION (Amending WSR 17-11-132, filed 5/24/17, effective 6/24/17)

WAC 246-840-750 Philosophy governing voluntary substance ((abuse)) use monitoring programs. The ~~((nursing care quality assurance commission (commission)))~~ Washington state board of nursing (board) recognizes the need to establish a means of providing early recognition and treatment options for licensed practical nurses or registered nurses whose competency may be impaired due to the ~~((abuse))~~ use of drugs or alcohol. The ~~((commission))~~ board intends that such nurses be treated, and their treatment monitored so that they can return to or continue to practice their profession in a manner, that safeguards the public. The Washington health professional services (WHPS) program is the ~~((commission's))~~ board's approved substance ~~((abuse))~~ use monitoring program under RCW 18.130.175. The ~~((commission))~~ board may refer licensed practical nurses or registered nurses to WHPS as either an alternative to or in connection with disciplinary actions under RCW 18.130.160.

AMENDATORY SECTION (Amending WSR 17-11-132, filed 5/24/17, effective 6/24/17)

WAC 246-840-760 Definitions of terms used in WAC 246-840-750 through ((246-840-780)) 246-840-790. The definitions in this section apply throughout WAC 246-840-750 through ~~((246-840-780))~~ 246-840-790 unless the text clearly requires otherwise.

~~(1) ("Approved treatment facility" is a facility certified by the division of behavioral health and recovery (DBHR) department of social and health services, according to chapters 388-877 through 388-877B WAC that meets the defined standards. Drug and alcohol treatment facilities located out-of-state must have substantially equivalent standards.~~

~~(2))~~ "Continuing care" means the phase of treatment following acute treatment. Common elements of continuing care include relapse prevention and self-help group participation.

~~((3))~~ (2) "Defray" means the board may pay up to 80 percent of out-of-pocket expenses related to WHPS program participation that includes substance use disorder (SUD) evaluations, SUD treatment and other ancillary services including drug testing, participation, professional peer support groups, and any other expenses deemed appropriate by the board.

(3) "Financial assistance" means board approval to use funds to pay for a participant's out-of-pocket costs associated with participation in the WHPS program.

(4) "Financial need" means a demonstrated need by a WHPS participant when they need help to pay for costs related to participation in the WHPS program.

(5) "Monitoring contract" is a comprehensive, structured agreement between the recovering nurse and WHPS defining the requirements of the nurse's program participation.

~~((4))~~ (6) "Peer support group" is a professionally facilitated support group designed to support recovery and re-entry into practice.

~~((5))~~ (7) "Random drug screens" means laboratory tests to detect the presence of drugs ~~((of abuse))~~ in body fluids and other biologic specimens that are performed at irregular intervals not known in advance by the person to be tested.

~~((6))~~ (8) "Referral contract" is a formal agreement between the ~~((commission))~~ board and the nurse to comply with the requirements of the WHPS program in lieu of discipline.

~~((7))~~ (9) "Self-help groups" means groups or fellowships providing support for people with substance use disorder to support their sobriety and recovery.

~~((8) "Substance abuse" or)~~ (10) "Stipend program" means the board program to defray the out-of-pocket expenses for participants who have applied for and been approved to receive financial assistance in connection with participation in WHPS. The purpose is to assist nurses who would otherwise be unable to participate in the program because of personal financial limitations.

(11) "Stipend program application" means a board form that the participant uses to request stipend assistance that provides information to determine eligibility for stipend funds.

(12) "Substance use disorder" (SUD) means a chronic progressive illness that involves the use of alcohol or other drugs to a degree that it interferes with the functional life of the registrant/licensee, as manifested by health, family, job (professional services), legal, financial, or emotional problems.

~~((9))~~ (13) "Washington health professional services (WHPS)" is the approved substance ~~((abuse))~~ use monitoring program as described in RCW 18.130.175 that meets criteria established by the ~~((commission))~~ board. WHPS does not provide evaluation or treatment services.

AMENDATORY SECTION (Amending WSR 17-11-132, filed 5/24/17, effective 6/24/17)

WAC 246-840-770 Approval of substance ~~((abuse))~~ use monitoring programs. The ~~((commission))~~ board uses WHPS as the approved monitoring program.

(1) WHPS will:

(a) Employ staff with the qualifications and knowledge of both substance ~~((abuse))~~ use and the practice of nursing as defined in this chapter to be able to evaluate:

(i) Clinical laboratories;

(ii) Laboratory results;

(iii) Providers of substance ~~((abuse))~~ use treatment, both individuals and facilities;

(iv) Peer support groups;

(v) The nursing work environment; and

(vi) The ability of the nurse to practice with reasonable skill and safety.

(b) Enter into a monitoring contract with the nurse to oversee the nurse's required recovery activities. Exceptions may be made to individual components of the contract as needed.

(c) Determine, on an individual basis, whether a nurse will be prohibited from engaging in the practice of nursing for a period of time and restrictions, if any, on the nurse's access to controlled substances in the workplace.

(d) Maintain case records on participating nurses.

(e) Report to the ~~((commission))~~ board any nurse who fails to comply with the requirements of the monitoring program as defined by the ~~((commission))~~ board.

(f) Provide the ~~((commission))~~ board with an annual statistical report.

(2) The ~~((commission))~~ board approves WHPS's procedures on treatment, monitoring, and limitations on the practice of nursing for those participating in the program.

AMENDATORY SECTION (Amending WSR 17-11-132, filed 5/24/17, effective 6/24/17)

WAC 246-840-780 Conditions for participants entering the approved substance ~~((abuse))~~ use monitoring program. (1) Any nurse participating in the substance ~~((abuse))~~ use monitoring program must:

(a) Undergo a complete substance use disorder evaluation. This evaluation will be performed by health care professional(s) with expertise in chemical dependency.

(b) Enter into a monitoring contract with WHPS which includes, but is not limited to, the following terms, which require the nurse to:

(i) Undergo any recommended level of treatment ~~((in an approved treatment facility))~~ by a board-designated licensed treatment provider, including continuing care;

(ii) Abstain from all mind-altering substances including alcohol and cannabis except for medications prescribed by an authorized prescriber, as defined in RCW 69.41.030 and 69.50.101;

(iii) Cause the treatment counselor(s) to provide reports to the approved monitoring program at specified intervals;

(iv) Attend peer support group, or self-help group meetings, or both as specified by WHPS;

(v) Complete random or for-cause drug screening as specified by WHPS;

(vi) Comply with specified employment conditions and restrictions as defined by the monitoring contract;

(vii) Agree in writing to allow WHPS to release information to the ~~((commission))~~ board if the nurse does not comply with any contract requirements or is unable to practice with reasonable skill and safety;

(viii) Pay the costs of any required evaluations, substance ~~((abuse))~~ use treatment, peer support group, random drug screens, and other personal expenses incurred in relation to the monitoring program;

(ix) Sign any requested release of information authorizations.

(2) When referred to WHPS in lieu of discipline, the nurse must enter into a referral contract with the ~~((commission))~~ board. The ~~((commission))~~ board may take disciplinary action against the nurse's license under RCW 18.130.160 based on any violation by the nurse of the referral contract.

(3) A nurse may voluntarily participate in WHPS in accordance with RCW 18.130.175(2) without first being referred to WHPS by the ~~((commission))~~ board.

NEW SECTION

WAC 246-840-790 Substance use disorder monitoring stipend program. (1) Applicants must meet the requirements in RCW 18.79.440 to be eligible for the substance use disorder monitoring stipend program (stipend program). All disbursements of stipend program funds are subject to availability of budgeted funds.

(2) To be eligible for the stipend program, a person must:

- (a) Hold an active, inactive, or suspended license issued pursuant to this chapter;
- (b) Submit an application on forms provided by the board;
- (c) Be actively participating in the board's approved substance use disorder monitoring program (WHPS program) or have completed the WHPS program within six months of submission of an application for the stipend program; and
- (d) Have a demonstrated need for financial assistance with the expenses incurred in connection with participation in the WHPS program.

(3) A person is not eligible for the stipend program if they have previously applied for and participated in the stipend program and had benefits paid on their behalf from the stipend program.

(4) The board may defray up to 80 percent of each out-of-pocket expense deemed eligible for defrayment under this section. The board will not pay stipend program funds directly to any person participating in the stipend program. The board will pay out-of-pocket expenses directly to entities providing services to the person participating in the stipend program.

(5) Out-of-pocket expenses eligible for defrayment under this section include the costs of substance use evaluation, treatment, other ancillary services, including drug testing, participation in professional peer support groups, and any other expenses deemed appropriate by the board.

(6) A person participating in the stipend program established in this section shall document and submit their out-of-pocket expenses in a manner specified by the board.

(7) Eligibility:

(a) A person may participate in the stipend program by having the stipend program defray authorized out-of-pocket expenses for one monitoring contract period only, including extensions of the contract monitoring period directed by WHPS.

(b) An applicant who was approved for the stipend program for a monitoring contract period without having benefits paid from the stipend program on their behalf, and later reenters the WHPS program, may be approved to participate in the stipend program.

(c) Stipend program applications are approved for a 12-month period. Persons participating in the stipend program shall submit an application every 12 months to renew their participation in the stipend program.

(d) A person may participate in the stipend program for a maximum of five years from the approval date of the initial stipend program application. Eligibility for the stipend program terminates upon successful completion of or discharge from the WHPS program.

(e) An applicant who previously applied for the stipend program but whose application was denied is eligible to reapply if the applicant's financial circumstances have changed.

(8) To establish financial need for the stipend program, a person shall provide documentary proof that total household income is less

than 400 percent of the federal poverty level as determined under 42 U.S.C. 9902(2) and published annually by the U.S. Department of Health and Human Services.

(9) Application forms and documentary proof provided to the board under this section by applicants will be submitted under penalty of perjury and, if shown to be false, could subject the applicant to criminal penalties or other adverse action including, but not limited to, adverse action for moral turpitude, misrepresentation, or fraud.

(10) The stipend program may defray the cost of eligible out-of-pocket expenses incurred by a stipend program participant up to six months prior to application submission.

(11) The board may adopt, publish, and use procedures, forms, guidelines, and other documents necessary for implementation of this rule. Such procedures, forms, guidelines, and documents may be revised, amended, or discontinued as necessary in the sole discretion of the board.

WSR 24-12-067
PERMANENT RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed June 3, 2024, 4:54 p.m., effective July 4, 2024]

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

Purpose: The department of children, youth, and families (DCYF) licensing division is amending WAC 110-148-1326 to give DCYF the authority to issue child-specific licenses to an Indian child's family or extended family member with children in the custody of an Indian tribe or the tribe's child-placing agency. This authority is required by SB 5683.

Citation of Rules Affected by this Order: Amending WAC 110-148-1326.

Statutory Authority for Adoption: SB 5683; RCW 74.15.125.

Adopted under notice filed as WSR 24-09-073 on April 16, 2024.

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 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: June 3, 2024.

Brenda Villarreal
Rules Coordinator

OTS-5350.1

AMENDATORY SECTION (Amending WSR 22-16-028, filed 7/25/22, effective 8/25/22)

WAC 110-148-1326 Can I get a license to care for a specific child, and what are the requirements? (1) Pursuant to RCW

74.15.125(7), the department may issue a child-specific license to:

(a) Relatives or suitable persons, as defined in RCW 13.36.020, to provide foster care services to a ((specified)) specific child and that child's siblings or relatives in the department's care and authority((=

~~(a) These~~); or

(b) An Indian child's family or extended family members, as defined in RCW 13.38.040, or suitable persons, as defined in RCW 13.36.020, to provide foster care services to a specific Indian child and that child's siblings or relatives in the custody of an Indian tribe, as defined in RCW 43.376.010, or the tribe's child placing agency.

(2) Placements of children in the care and authority of the department are at the discretion of the department.

~~((b))~~ (3) Licensees under this section may only receive placement of one or more specific children identified prior to the issuance of a license.

~~((2))~~ (4) The department must reassess licenses issued under this section when licensees want to:

(a) Add a child to their child specific license and that child was not identified prior to licensure; or

(b) Receive a general foster family home license.

~~((3))~~ (5) Reassessment under subsection ~~((2))~~ (4) of this section may require licensees to give up their current child specific licenses, complete new or additional training, or submit new licensing applications as a condition of receiving new or different licenses.

~~((4))~~ (6) Licensees under this section must meet the licensing requirements detailed in RCW 74.15.030(2) and this chapter.

~~((5))~~ (7) A child-specific license does not grant licensees the right to:

(a) Have a specific child placed in their care; or

(b) Be a party in any juvenile court proceeding under chapter 13.34 RCW.

WSR 24-12-068
PERMANENT RULES
DEPARTMENT OF

LABOR AND INDUSTRIES
(Board of Boiler Rules)

[Filed June 4, 2024, 10:06 a.m., effective July 5, 2024]

Effective Date of Rule: July 5, 2024.

Purpose: The purpose of this rule making is to adopt amendments to the boiler rules under chapter 296-104 WAC. The changes affect safety codes, installers, clearance requirements, and fees for boilers and pressure vessels. The amendments are needed to ensure the rules are consistent with national boiler and unfired pressure vessel safety standards and industry practice.

Adopted amendments to the chapter are as follows:

WAC 296-104-020 Administration—What are the filing requirements for boilers and unfired pressure vessels before their installation/reinstallation?

- Adds a new subsection that installers are responsible for correcting deficiencies found on initial permit inspection and paying subsequent inspection fees.
- Renumbers subsections and converts spelled numbers to numerals for formatting.

WAC 296-104-102 Inspection—What are the standards for in-service inspection?

- Removes the National Board Inspection Code (NBIC), current edition Part 4, Section 6, Supplement 3 from the nonmandatory guidelines for pressure relief devices for consistency with the code.

WAC 296-104-200 Construction—What are the standards for new construction?

- Adds new Section XIII from the 2023 edition of the American Society of Mechanical Engineers (ASME), to the standards for new construction of boilers and pressure vessels for consistency with the code.
- Converts a spelled number to a numeral for formatting.

WAC 296-104-255 Installation—What are the required clearances for boilers?

- Allows for clearances less than 18 inches for boilers when recommended by the manufacturer's instructions to provide better direction for clearances.
- Rearranges the existing requirements and renumbers subsections for formatting.

WAC 296-104-260 Installation—What are the required clearances for unfired pressure vessels?

- Adds a new exception that allows for side clearances less than 18 inches for pressure vessels when recommended by the manufacturer's instructions and it does not inhibit inspection, maintenance, or repair to provide better direction for clearances. This also includes:
 - o Notating that exceptions must be documented in the state's jurisdictional database.

- o Clarifying the access requirements for manholes.

WAC 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses?

- Increases fees by the fiscal growth factor rate of 6.40 percent to support operating expenses for the boiler program.

Citation of Rules Affected by this Order: Amending WAC 296-104-020, 296-104-102, 296-104-200, 296-104-255, 296-104-260, and 296-104-700.

Statutory Authority for Adoption: Chapter 70.79 RCW, Boilers and unfired pressure vessels.

Adopted under notice filed as WSR 24-02-070 [and 24-09-062] on January 2, 2024 [and April 16, 2024].

A final cost-benefit analysis is available by contacting Meagan Edwards, Department of Labor and Industries, Field Services and Public Safety, P.O. Box 44400, Olympia, WA 98504-4400, phone 360-522-0125, fax 360-704-1980, email Meagan.Edwards@Lni.wa.gov, website <https://lni.wa.gov/licensing-permits/boilers/laws-rules>.

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 6, 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 6, Repealed 0.

Date Adopted: June 4, 2024.

Tim Barker, Chair
Board of Boiler Rules

OTS-5060.3

AMENDATORY SECTION (Amending WSR 18-01-113, filed 12/19/17, effective 1/31/18)

WAC 296-104-020 Administration—What are the filing requirements for boilers and unfired pressure vessels before their installation/reinstallation? (1) "Boiler/pressure vessel, water heater installation or reinstallation permit" shall mean a permit approved by the chief inspector and submitted by the installer prior to starting installation or reinstallation of any boiler/pressure vessel or water heater within the jurisdiction of Washington.

(2) The "installer" is any entity or person who physically or mechanically installs a boiler, pressure vessel or water heater that meets the in-service inspection requirements of this chapter. The in-

staller is responsible for the installation/reinstallation permit fee per WAC 296-104-700.

(3) If a nonconformance condition or deficiency is found on the initial permit inspection, the installer will be responsible for implementing immediate corrective action and any subsequent inspection fees after corrections per the fee schedule in WAC 296-104-700.

(4) The following pressure retaining items, as defined in WAC 296-104-010, require a boiler/pressure vessel and water heater installation or reinstallation permit:

- Expansion tanks;
- Historical boilers and unfired pressure vessels;
- Hot water heaters;
- Indirect water heaters;
- Jacketed steam kettles;
- Low pressure boilers;
- Nonstandard boilers and unfired pressure vessels;
- Pool heaters;
- Power boilers;
- Reinstalled boilers and unfired pressure vessels;
- Secondhand boilers and unfired pressure vessels;
- Standard boilers and unfired pressure vessels;
- Unfired pressure vessels;
- Unfired steam boilers.

~~((4))~~ (5) The installer shall notify the chief inspector utilizing the permit form to request a permit inspection not less than ~~((ten))~~ 10 working days prior to placing equipment in operation. Equipment shall not be operated other than for testing, prior to an inspection being conducted which finds the boiler or pressure vessel to be in compliance with this chapter.

~~((5))~~ (6) If an emergency installation (due to leakage, failure, etc.) situation occurs, the installer will notify the chief inspector within ~~((forty-eight))~~ 48 hours after installation, utilizing the permit form to request an immediate inspection of the installation.

~~((6))~~ (7) The installer may be subject to civil penalties per WAC 296-104-701 for failure to comply with the filing requirements of the installation permit.

AMENDATORY SECTION (Amending WSR 18-23-092, filed 11/20/18, effective 1/1/19)

WAC 296-104-102 Inspection—What are the standards for in-service inspection? Where a conflict exists between the requirements of the standards listed below and this chapter, this chapter shall prevail. The duties of the in-service inspector do not include the installation's compliance with other standards and requirements (environmental, construction, electrical, undefined industrial standards, etc.), for which other regulatory agencies have authority and responsibility to oversee.

(1) The standard for inspection of nonnuclear boilers and unfired pressure vessels is the National Board Inspection Code (NBIC), current edition Part 2, excluding Section 6, Supplements 1, 5, 6, and 7 which may be used as nonmandatory guidelines.

(2) The standard for installation, in-service inspection, and repair of pressure relief devices is the National Board Inspection Code (NBIC), current edition Part 4, excluding Section 6, Supplement((s)) 1 ((and 3)) which may be used as nonmandatory guidelines.

(3) The standard for inspection of historical steam boilers of riveted construction preserved, restored, or maintained for hobby or demonstration use, shall be Part 2, Section 6, Supplement 2 of the National Board Inspection Code (NBIC) current edition.

(4) The standard for inspection of nuclear items is ASME section XI. The applicable ASME Code edition and addenda shall be as specified in the owner in-service inspection program plan.

(5) Where a petroleum or chemical process industry owner/user inspection agency so chooses, the standard for inspection of unfired pressure vessels used by the owner shall be the API-510 Pressure Vessel Inspection Code, current edition. This code may be used on or after the date of issue.

(6) TAPPI TIP 0402-16, revised 2011 may be used for both pulp dryers and paper machine dryers when requested by the owner. When requested by the owner, this document becomes a requirement and not a guideline.

AMENDATORY SECTION (Amending WSR 13-10-018, filed 4/23/13, effective 6/1/13)

WAC 296-104-200 Construction—What are the standards for new construction? The standards for new construction are:

(1) ASME Boiler and Pressure Vessel Code, current edition, Sections I, III, IV, VIII, Division 1, 2, 3, X, XII, XIII;

(2) ASME PVHO-1 Safety Standard for Pressure Vessels for Human Occupancy, current edition; and

(3) Standards of construction approved by the chief inspector and meeting the National Board Criteria for Registration of Boilers, Pressure Vessels and Other Pressure Retaining Items.

These codes and standards may be used on or after the date of issue and become mandatory ((~~twelve~~)) 12 months after adoption by the board as specified in RCW 70.79.050(2). ASME Code Cases may be approved for use when accepted by the chief inspector. The board recognizes that the ASME Code states that new editions of the code become mandatory six months after the date of issue. For nuclear systems, components and parts the time period for addenda becoming mandatory is defined in the Code of Federal Regulations.

AMENDATORY SECTION (Amending WSR 06-24-042, filed 11/30/06, effective 1/1/07)

WAC 296-104-255 Installation—What are the required clearances for boilers? When boilers are replaced or new boilers installed in either existing or new buildings, a minimum top clearance as specified below shall be provided between the top of boiler proper and ceiling. Sufficient access must be provided for inspection, maintenance, operations, and repair. Required clearances shall be:

(1) ~~((Minimum clearance on top of power boilers having a steam generating capacity in excess of 5,000 pounds per hour or having a heating surface in excess of 1,000 sq. ft. or input in excess of 5,000,000 btu per hour shall be. 7 feet.~~

~~(2) Minimum clearance on top of low pressure heating boilers which exceed any one of the following limits: 5,000,000 btu input; 5,000 lbs. steam per hour capacity or 1,000 sq. ft. heating surface; and power boilers which do not exceed any of the following limits: 5,000,000 btu input; 5,000 lbs. steam per hour capacity or 1,000 sq. ft. heating surface; shall be. 3 feet.~~

~~(3) Minimum clearance on top of boilers which do not exceed the above limits and miniature boilers; shall be. 2 feet.~~

~~(4) Minimum clearance from manhole openings and any wall, ceiling, or piping that will prevent a person from entering the boiler shall be. 5 feet.~~

~~(5) Minimum clearances at sides, front and back wall shall be the manufacturers' recommendations, but in no case less than eighteen inches.) Minimum clearances at sides, front, and back wall shall be the manufacturers' service clearance recommendations. If no recommendations are stated by the manufacturer, then 18 inches shall be the minimum clearance.~~

~~(2) Minimum clearance from manhole openings and any wall, ceiling, or piping that will prevent a person from entering the boiler shall be. 5 feet.~~

~~(3) Minimum clearance on top of power boilers having a steam generating capacity in excess of 5,000 pounds per hour or having a heat surface in excess of 1,000 sq. ft. or input in excess of 5,000,000 btu per hour shall be. 7 feet.~~

~~(4) Minimum clearance on top of low pressure heating boilers which exceed any one of the following limits: 5,000,000 btu input; 5,000 lbs. steam per hour capacity or 1,000 sq. ft. heating surface; and power boilers which do not exceed any of the following limits: 5,000,000 btu input; 5,000 lbs. steam per hour capacity or 1,000 sq. ft. heating surface shall be. 3 feet.~~

~~(5) Minimum clearance on top of boilers which do not exceed the above limits and miniature boilers shall be. 2 feet.~~

AMENDATORY SECTION (Amending WSR 02-23-036, filed 11/13/02, effective 12/14/02)

WAC 296-104-260 Installation—What are the required clearances for unfired pressure vessels? When unfired pressure vessels are replaced or new vessels are installed in either existing or new buildings, ~~((manufacturers' recommendations shall be used, but in no case less than eighteen inches shall be provided between the top of the unfired pressure vessel and the ceiling and adjacent walls or other structures. All unfired pressure vessels having manholes shall have five feet clearance from manhole openings and any wall, ceiling, or piping that will prevent a person from entering the unfired pressure vessel))~~ clearances shall be provided to allow access for safe operation, inspection, maintenance, and/or repair. Passageways around all sides of pressure vessels shall have an unobstructed width of not less than 18 inches. Exception: Unfired pressure vessels may be installed with a side clearance of less than 18 inches if the lesser clearance

does not violate the manufacturer's installation instructions or inhibit inspection, maintenance, and/or repair. Any exception shall be notated in object comments in the jurisdictional database. All unfired pressure vessels having a manhole shall have five foot clearance at the manhole opening to allow an individual to have safe access to the inside of the vessel to perform inspection and/or maintenance.

AMENDATORY SECTION (Amending WSR 22-09-062, filed 4/19/22, effective 7/1/22)

WAC 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses? The following fees shall be paid by, or on behalf of, the owner or user upon the completion of the inspection. The inspection fees apply to inspections made by inspectors employed by the state.

The boiler and pressure vessel installation/reinstallation permit fee of (~~(\$69.60)~~) \$74.00 shall be paid by the installer, as defined in WAC 296-104-010.

Certificate of inspection fees: For objects inspected, the certificate of inspection fee per object is (~~(\$29.90)~~) \$31.80.

Hot water heaters per RCW 70.79.090, inspection fee: (~~(\$8.90)~~) \$9.40.

The department shall assess a (~~(\$7.30)~~) \$7.70 fee, per object, for processing of jurisdictional inspection reports to any authorized in-service inspection agency or inspector who does not file the report directly into the department's electronic inspection report system.

| Heating boilers: | Internal | External |
|-----------------------------------------------------------------------------------------|----------------------------------------------|--------------------------------------------|
| Cast iron—All sizes | ((\$50.60)) <u>\$53.80</u> | ((\$40.50)) <u>\$43.00</u> |
| All other boilers less than 500 sq. ft. | ((\$50.60)) <u>\$53.80</u> | ((\$40.50)) <u>\$43.00</u> |
| 500 sq. ft. to 2500 sq. ft. | ((\$101.30)) <u>\$107.70</u> | ((\$50.60)) <u>\$53.80</u> |
| Each additional 2500 sq. ft. of total heating surface, or any portion thereof | ((\$40.50)) <u>\$43.00</u> | ((\$19.70)) <u>\$20.90</u> |
| Power boilers: | Internal | External |
| Less than 100 sq. ft. | ((\$50.60)) <u>\$53.80</u> | ((\$40.50)) <u>\$43.00</u> |
| 100 sq. ft. to less than 500 sq. ft. | ((\$61.30)) <u>\$65.20</u> | ((\$40.50)) <u>\$43.00</u> |
| 500 sq. ft. to 2500 sq. ft. | ((\$101.30)) <u>\$107.70</u> | ((\$50.60)) <u>\$53.80</u> |
| Each additional 2500 sq. ft. of total heating surface, or any portion thereof | ((\$40.50)) <u>\$43.00</u> | ((\$19.70)) <u>\$20.90</u> |
| Pressure vessels: | | |
| Square feet shall be determined by multiplying the length of the shell by its diameter. | Internal | External |
| Less than 15 sq. ft. | ((\$40.50)) <u>\$43.00</u> | ((\$29.90)) <u>\$31.80</u> |
| 15 sq. ft. to less than 50 sq. ft. | ((\$60.10)) <u>\$63.90</u> | ((\$29.90)) <u>\$31.80</u> |
| 50 sq. ft. to 100 sq. ft. | ((\$70.20)) <u>\$74.60</u> | ((\$40.50)) <u>\$43.00</u> |

| | | |
|----------------------------------------------------------------------------------------------------------------|---------------------------------|---------------------------------|
| For each additional 100 sq. ft. or any portion thereof | (\$70.10) \$74.50 | (\$19.70) \$20.90 |
| Nonnuclear shop inspections, field construction inspections, and special inspection services: | | |
| For each hour or part of an hour up to 8 hours | (\$61.30) | \$65.20 |
| For each hour or part of an hour in excess of 8 hours | (\$91.60) | \$97.40 |
| Nuclear shop inspections, nuclear field construction inspections, and nuclear triennial shop survey and audit: | | |
| For each hour or part of an hour up to 8 hours | (\$91.60) | \$97.40 |
| For each hour or part of an hour in excess of 8 hours | (\$143.50) | \$152.60 |
| Nonnuclear triennial shop survey and audit: | | |
| When state is authorized inspection agency: | | |
| For each hour or part of an hour up to 8 hours | (\$61.30) | \$65.20 |
| For each hour or part of an hour in excess of 8 hours | (\$91.60) | \$97.40 |
| When insurance company is authorized inspection agency: | | |
| For each hour or part of an hour up to 8 hours | (\$91.60) | \$97.40 |
| For each hour or part of an hour in excess of 8 hours | (\$143.50) | \$152.60 |

Examination fee: A fee of (~~(\$113.40)~~) \$120.60 will be charged for each applicant sitting for an inspection examination(s).

Special inspector commission: A fee of (~~(\$61.20)~~) \$65.10 for initial work card. A fee of (~~(\$38.00)~~) \$40.40 for annual renewal.

If a special inspector changes companies: A work card fee of (~~(\$61.20)~~) \$65.10.

Expenses shall include:

Travel time and mileage: The department shall charge for its inspectors' travel time from their offices to the inspection sites and return. The travel time shall be charged for at the same rate as that for the inspection, audit, or survey. The department shall also charge the current Washington office of financial management accepted mileage cost fees or the actual cost of purchased transportation. Hotel and meals: Actual cost not to exceed the office of financial management approved rate.

Requests for Washington state specials and extensions of inspection frequency: For each vessel to be considered by the board, a fee of (~~(\$571.90)~~) \$608.50 must be paid to the department before the board meets to consider the vessel. The board may, at its discretion, prorate the fee when a number of vessels that are essentially the same are to be considered.

WSR 24-12-069
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed June 4, 2024, 10:10 a.m., effective July 5, 2024]

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

Purpose: The purpose of this expedited rule making was to create new WAC 296-71-060 Appendix A: Training course content—Nonmandatory. Appendix A was published in WSR 22-19-101 and located in WAC 296-71-050, making it hard to find for readers utilizing training course content. The department of labor and industries worked with stakeholders in November 2022 to make some clarifications to the appendix which helped assist training providers preparing curriculum and avoid unintended jurisdiction issues. This updated version will be located in the new WAC section. References to Appendix A in WAC 296-71-030 were also updated. Training courses currently approved were reviewed to the updated Appendix A and no change to existing courses is required based on this rule making.

Citation of Rules Affected by this Order: New WAC 296-71-060; and amending WAC 296-71-030 and 296-71-050.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

Adopted under notice filed as WSR 24-07-088 on March 19, 2024.

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 2, Repealed 0.

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

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

Date Adopted: June 4, 2024.

Joel Sacks
Director

OTS-5208.1

AMENDATORY SECTION (Amending WSR 22-19-101, filed 9/21/22, effective 10/22/22)

WAC 296-71-030 Training course approval. (1) High hazard facilities 20-hour training courses may be sponsored by any person, or other entity having department approval. An approved course must include 20 hours of in-person and laboratory instruction, and meet the minimum required elements for approved course in WAC 296-71-060, Appendix A, including topics and hours.

(2) Prior to receiving department approval, each course must be evaluated by the department for the breadth of knowledge and experience required to properly train workers. Course content must be carefully scrutinized for adequacy and accuracy. Training techniques will be evaluated by the department.

(3) Sponsors of training courses proposed for approval must submit:

(a) Background information about course sponsors;

(b) Course locations;

(c) Course fees;

(d) Copies of course handouts;

(e) A detailed description of course content and the amount of time allotted to each major topic. See WAC 296-71-060, Appendix A for a list of required training topics that must be included;

(f) A description of teaching methods to be utilized and a list of all audio-visual materials; the department may, in its discretion, request that copies of the materials be provided for review;

(g) A list of all personnel involved in course preparation and presentation and a description of the background, special training and qualifications of each. Training must be taught by competent instructors. The department may, in its discretion, require proposed instructors to pass an examination on subjects related to their respective topics of instruction;

(h) A description of student evaluation methods;

(i) A description of course evaluation methods;

(j) Any restrictions on attendance (language, class size, affiliation, etc.);

(k) A list of any other states that currently approve the training course; and

(l) The amount and type of hands-on training.

(4) Materials may be submitted electronically through the online portal or mailed to:

High Hazard Facilities Program
Department of Labor & Industries
P.O. Box 44615
Olympia, WA 98504-4615

(5) For timely approval, the initial application for training course approval and course materials must be submitted to the department at least 60 days prior to the requested approval date.

(6) The decision to grant or renew approval of a training course is the sole discretion of the department.

(a) Following approval of a training course, the department will issue the course sponsor an approval that is valid for three years from the date of issuance.

(b) Application for renewal must follow the procedures described in subsections (3) and (4) of this section.

(7) In recognition that the industry is evolving, the department reserves the right to require additional subjects to be taught and to specify the amount of time which must be allotted to adequately cover required subjects. To ensure adequate coverage of required material, each course sponsor must be provided and required to incorporate into their training course, a detailed outline of subject matter developed by the department.

(8) For timely approval, the training course approval renewal must be received by the department no later than 30 days before the approval expiration date.

(9) Any changes to a training course must be approved by the department in advance.

(10) The course sponsor must provide the department with a roster of all persons who have completed the training course. The list must be provided no later than 10 days after course completion and must include the:

- (a) Training course provider name;
- (b) Instructor name(s);
- (c) Course name;
- (d) Dates of class;
- (e) Location of class;
- (f) Student's name;
- (g) Student's mailing address; and
- (h) Certificate number (if applicable).

(11) The course sponsor must notify the department, in writing, at least 14 days before a training class is scheduled to begin. The notification must include the date, time, instructor, and address where the training will be conducted.

(12) A representative of the department may, at the department's discretion, attend a training course as an observer to verify that the training course is conducted in accordance with the program approved by the department.

(a) Course sponsors conducting training outside the state of Washington must reimburse the department for reasonable travel expenses associated with department audits of the training courses.

(b) Reasonable travel expenses are defined as current state of Washington per diem and travel allowance rates including airfare and/or surface transportation rates. Such reimbursement must be paid within 30 days of receipt of the billing notice.

(13) The training course sponsor must limit each class to a maximum of 50 participants.

(14) There must be at least one instructor for every 25 students.

(15) Denial, suspension, or revocation of approval will be done in accordance with WAC 296-71-050.

(16) Recordkeeping requirements for training providers: All approved providers of accredited training courses must comply with the following minimum recordkeeping requirements:

(a) Training course materials. A training provider must retain copies of all instructional materials used in delivery of the classroom training such as student manuals, instructor notebooks and handouts.

(b) Instructor qualifications. A training provider must retain copies of all instructors' resumes, and the documents approving each instructor issued by the department. Instructors must be approved by the department before teaching courses for accreditation purposes. A training provider must notify the department in advance whenever it changes course instructors. Records must accurately identify the instructors that taught each particular class for each date that a course is offered.

(c) Training records. The training providers must maintain records that document the names of all persons who have completed training, the disciplines for which training was provided, training dates and training locations.

(d) Record retention and access. The training provider must maintain the records in a manner that allows verification of the required information via telephone, or other communication.

(i) The training provider must maintain all required training course materials for a minimum of the duration of the course offering plus four years.

(ii) The training provider must maintain all required instructor qualification records for the duration of the instructor's employment plus four years.

(iii) The training provider must maintain all required training records for a minimum of four years. The training provider may find it advantageous to retain these records for a longer period.

(iv) The training provider must allow reasonable access to all of the records which may be required by the department for the approval of training providers or the accreditation of training courses, to the department, on request.

(v) If a training provider ceases to conduct training, the training provider must notify the department and give it the opportunity to take possession of that provider's training records.

AMENDATORY SECTION (Amending WSR 22-19-101, filed 9/21/22, effective 10/22/22)

WAC 296-71-050 Denial, suspension, and revocation. (1) The department may deny, suspend, or revoke a course approval if the course sponsor does not comply with the training standards and accreditation requirements of this chapter.

(2) The department may suspend or revoke the training course approval, if in the department's judgment the sponsor does not maintain the course content and quality as initially approved, or make changes to a course as required by WAC 296-71-030(7). The criteria for suspension or revocation of training course approval includes, but is not limited to, at least one of the following:

(a) Misrepresentation of the extent of training course approval;

(b) Failure to submit required information or notification in a timely manner;

(c) Failure to maintain requisite records;

(d) Falsification of accreditation records, instructor qualifications, or other accreditation information; or

(e) Failure to adhere to the training standards and accreditation requirements of this chapter.

(3) The department may deny, suspend, or revoke any certificate issued under this chapter if the certificate was obtained through error or fraud.

(4) The criteria for denying, suspending, or revoking a certificate for workers must include at least one of the following:

(a) Obtaining certification from a training provider that does not have approval to offer training;

(b) Obtaining certification through fraudulent representation of training documents;

(c) Obtaining training documentation through fraudulent means.

(5) Before any course approval or certificate may be denied, suspended, or revoked, the holder thereof must be given written notice of the department's intention to do so, mailed by registered mail, return receipt requested, to the holder's last known address.

(6) A denial, suspension, or revocation order may be appealed in accordance with RCW 49.17.140. Any party aggrieved by an order of the

board of industrial insurance appeals may obtain superior court review in the manner provided in RCW 49.17.150.

(~~Appendix A: Training course content – Nonmandatory~~)

| Fundamentals of Petroleum Refining | 4.0 Hours General Overview | Specific content |
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| Crude oil and its refining into downstream products | Basic high-level information about refineries | How crude oil is processed; relevant hazards as described on the safety data sheet for crude oil; fractions and their related hazards (temperatures, pressures, etc.); introduction to key refining processes; classes of refinery processes and refinery configurations; properties of the refinery-produced streams; and the interrelationship between processing units. |
| Refining Industry Safety Concepts | 8.0 Hours WAC Reference | Overview |
| Exit routes and employee alarm systems | WAC 296-800-310 | Details of emergency action plan concepts. |
| Process safety management for refineries | Chapter 296-67 WAC | Overview of the requirements for process safety management, including: Workplace assessments; stop work authority; job hazard analysis; contractor roles and responsibilities in a refinery facility; and other sections of the rule. |
| Emergency response | Chapter 296-824 WAC, Emergency response; WAC 296-24-567 Employee emergency plans and fire prevention plans | General overview of emergency operations in a refinery. May include facility-specific information. |
| Fire brigades | Chapter 296-811 WAC | Understanding how refinery fire brigades work, including rescue operations, confined space entry protocols, fire suppression techniques, use of testing instruments, etc. May include facility-specific information. |
| Fire prevention and protection | WAC 296-24-567 (general industry); WAC 296-155-250 (construction industry) | Basic overview touching on fire prevention, ignition sources, testing before hot work, etc. May include facility-specific information. |
| Hazard communication | Chapter 296-901 WAC | Review of chemicals found in refineries and their locations, including general "streams"; personal protective equipment and practices; signs and symptoms of exposure; long-term health effects; and a comprehensive review of relevant safety data sheets. |
| Personal protective equipment (PPE) for refinery work | WAC 296-800-160 (general industry); WAC 296-155-200 (construction industry) | Fire resistant clothing; head protection; eye protection; foot protection; hearing protection; and contaminated clothing. |
| Respiratory protection | Chapter 296-842 WAC | The use of respirators in certain refinery locations. May include facility-specific information. |
| Hearing conservation | Chapter 296-817 WAC | Understanding the areas in a refinery facility where hearing protection is required. May include facility-specific information. |
| Lockout/tagout | Chapter 296-803 WAC (general industry); WAC 296-155-429 (construction industry) | Energy control protocols in a refinery. May include facility-specific information. |
| Confined spaces | Chapter 296-809 WAC (general industry) in addition to WAC 296-155-203 (construction industry) | Types of confined spaces in a refinery; entry protocols; atmospheric testing; other related hazards. May include facility-specific information and permit forms. |

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| Heat-related illness | WAC 296-62-095 | Maintain awareness of outdoor heat in the hot areas of a refinery, which may contribute to heat-related illness. |
| Refinery safe work practices | General safety in a refinery | Identify walking/working surface hazards; areas of nonentry; understanding general hazards of vessels and other equipment. May include facility-specific information. |
| Craft-Specific Safety Training Including, but not limited to: | 8.0 Hours WAC References | The purpose of this section is to have a discussion about specific interdependencies and relationships of trades, including stacked work; dissimilar trades in direct proximity with each other; dissimilar risks associated with various trades (i.e., radiation, potential falling objects, etc.); job sequencing; and barricading. |
| Hot work | WAC 296-24-695 Fire prevention and protection (general industry); WAC 296-155-250, fire prevention and protection (construction industry) | Understanding what hot work is and how to perform craft work safely; awareness of ignition sources such as welding, and performing dissimilar work around such areas. Hot work permits are specific to each facility and facility-specific information may be included in training. |
| Working at heights | Chapter 296-874 WAC, Scaffolds; Chapter 296-880 WAC, Unified safety standards for fall protection | Recognizing where overhead work is occurring; understanding any hazards associated with craft work in such areas. |
| Electrical | WAC 296-24-957 (general industry); WAC 296-155-426 (construction industry) | Recognizing potential hazards about electrical work in a refinery and how to perform such work around other contract operations. |
| Pipefitting | Chapter 296-155 WAC: Part D Fire protection and prevention; Part F-1, rigging other than with the use of a crane (winch/tugger, chainfall, etc.); Part G Tools—Hand and power; Part H Welding and cutting; Part L, rigging and signaling with cranes | Basic knowledge of pipe safety: Including eliminating risk of contamination in process lines through fit, purge, weld techniques and pre and post weld buffing and machining. Basic knowledge of testing lines e.g.: Nondestructive pipe testing techniques; safety regarding fuel and pressure pipes including design, construction, location, leak detection and environmental considerations; pressure vessel fabrication certification; welding qualifications; knowledge and application of relevant standards; pipe corrosion; pipe cracks; pipe modifications, e.g., removing; cutting into or destroying existing pipe lines and piping, installing new pipes, maintaining old pipes, etc. |
| Equipment operating engineers | Chapter 296-155 WAC: Part L, rigging and signaling with cranes; Part F-1, rigging other than with the use of a crane (winch/tugger, chainfall, etc.) | Crane principles, rigging, signaling; forklift principles, etc. |
| Finishing trades | Chapter 296-155 WAC: Part F, general requirements for storage (Brick/block, handling cement/lime); Part G Tools—Hand and power; Part O Concrete, concrete forms, shoring, and masonry construction | Lead renovator, repair and painting program (RRP) Toxic Substance Control Act (TSCA) Section 402/chapter 365-230 WAC. |

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| <p>Cement masons</p> | <p>Chapter 296-155 WAC: Part F, general requirements for storage (Brick/block, handling cement/lime); Part G Tools—Hand and power; Part O Concrete, concrete forms, shoring, and masonry construction</p> | <p>How cement masons work relates to other work performed in the refinery.</p> |
| <p>Ironworkers, boilermakers, and steelworkers</p> | <p>Chapter 296-155 WAC: Part D Fire protection and prevention; Part F-1, rigging other than with the use of a crane (winch/tugger, chainfall, etc.); Part G Tools—Hand and power; Part H Welding and cutting; Part L, rigging and signaling with cranes; Part P Steel erection</p> | <p>How boilermakers', ironworkers', and steelworkers' work relates to other work performed in the refinery, including: Measuring, fabricating, cutting, welding and shaping steel parts such as girders, columns and frames; using equipment including shears, welding tools and torches; hoisting steel parts to their appropriate location; ensuring proper alignment and positioning and bolting them into place; assembly and use of equipment, including setting up cable and chain systems for hoisting or moving steel parts; disassembling it after completion of the task; following blueprint and instructions from supervisors to perform all tasks involved in assembly of steel structures; communicate with supervisors and coworkers to ensure smooth teamwork; notifying supervisors immediately of safety or structural concerns; taking apart structures or equipment in accordance with directions and standard operating procedures; repair steel components in older structures; directing crane operators as they move and position steel components; drilling holes and aligning parts with framework in preparation for riveting; use of tools including levels, laser tools and plumb bobs to ensure precise alignment.)</p> |

NEW SECTION

WAC 296-71-060 Appendix A: Training course content—Nonmandatory

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| <p>Fundamentals of Petroleum Refining (4-hours)</p> | |
| <p>Fundamentals of petroleum refining will explore the critical role refining plays in unleashing the potential of a barrel of crude oil and turning it into the specially formulated products that we rely on every day. These products include gasoline, agricultural chemicals, heating oil, plastics, and even prescription medicines. The training will also cover basic refining streams and unit configurations. Also covered will be hazards inherent to high hazard facilities and common emergency response processes. A section of the training will explain refining culture as it may differ from other industry sectors. An introduction to common refining terminology will be covered.</p> <p>A major objective of this course is to address:</p> <ul style="list-style-type: none"> • Fundamentals of the petroleum refining industry • Crude oil and its properties • Classes of refinery processes and refinery configurations • Properties of the refinery-produced streams • Refinery hazards and emergency response procedures <p>Suggested text and training material for instructors: <i>Fundamentals of Petroleum Refining</i>, Authors: Mohamed A. Fahim, Taher A. Alsahhaf, Amal Sayed Elkilani</p> | |

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| Refining Industry Safety Concepts/Refinery Safety Overview (8-hours) This course addresses the basic safety principles associated with working in high hazard facilities. The program provides an awareness level orientation of the following elements: | Applicable WAC or Best Practices recommended as training resources |
| Overview/awareness of personal requirements for refineries | Transportation Worker Identification Credential Drug Test Respirator Fit Test WAC 296-67-029 Contractors WAC 296-67-025 Training Refinery Site Specific Training |
| Hazard communication | Chapter 296-901 WAC |
| Emergency preparation and response | Chapter 296-824 WAC, Emergency response; WAC 296-24-567, Employee emergency plans and fire prevention plans. |
| Exit routes and employee alarm systems | WAC 296-800-310 |
| Fire brigades | Chapter 296-811 WAC Understanding how refinery fire brigades work, including rescue operations, confined space entry protocols, fire suppression techniques, use of testing instruments, etc. May include facility-specific information. |
| Fire prevention and protection | WAC 296-24-567 (general industry); WAC 296-155-250 (construction industry); Basic overview on fire prevention, ignition sources, gas monitoring before hot work, etc. May include facility-specific information. |
| Toxicology | Asbestos awareness training WAC 296-155-176, Lead in construction Chapter 296-849 WAC, Benzene Chapter 296-840 WAC, Respirable chrystalline silica Best Practice Hydrogen Sulfide (H ₂ S) Best Practice Hydrofluoric Acid Best Practice Asphyxiants SDS's, CSB videos, department of labor & industries training kits, etc., recommended as training resources. |
| Personal protective equipment (PPE) for refinery work | WAC 296-800-160 (general industry); WAC 296-155-200 (construction industry); Flame Resistant Clothing Hard Hat Eye Protection Appropriate Footwear Hearing Protection Fall Protection Personal Cleanliness Protective Clothing Contaminated Clothing |
| Respiratory protection | Chapter 296-842 WAC |
| Hearing conservation | Chapter 296-817 WAC |
| Energy control (lockout/tagout) | Chapter 296-803 WAC (general industry); WAC 296-155-429 (construction industry). |
| Confined space | Chapter 296-809 WAC (general industry); WAC 296-155-203 (construction industry). |
| Heat related illness | WAC 296-62-095 |
| Refinery safe work practices | Best practice - General safety in a refinery |
| Process safety management for refineries | Chapter 296-67 WAC |
| Craft-Specific Safety Training (8-hours) | Applicable WAC or Best Practices recommended as training resources |

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| <p>Participants will learn the specific work performed by various trades working in the refinery. Working safely alongside other crafts and recognizing the similar and dissimilar risks associated with each craft is the focus of this course. Participants will also learn about interdependency and relationships between the crafts, stacked work, dissimilar trades working near each other, dissimilar risks associated with trade types (i.e., electrical energy, product energy, radiation, potential falling objects, etc.) job sequencing, and barricading.</p> <p>Craft specific safety training must cover individual craft hazards in a minimum of three categories:</p> <p>Hard trades: Boilermaker, pipefitting, welders, electricians, etc.</p> <p>Soft trades: Painting, scaffold building, insulation, carpentry, etc.</p> <p>Support crafts: Cranes, inspection, hydroblasting, vac trucks, safety attendant, etc.</p> | |
| <p>Hot work Multiple trades are involved in hot work operations. Trades working in other operations on the location at the same time could be impacted from the hazards associated with hot work.</p> | <p>WAC 296-24-695 Fire prevention and protection (general industry); WAC 296-155-250 fire prevention and protection (construction industry); Understanding what hot work is and how to perform craft work safely; awareness of ignition sources such as welding, and performing dissimilar work around such areas; Hot work permits are specific to each facility and facility-specific information may be included in training.</p> |
| <p>Working at heights The work of multiple trades may require working at heights and supporting working at heights. Trades working in areas where overhead work is occurring at the same time could be impacted from hazards such as falling objects.</p> | <p>Chapter 296-874 WAC, Scaffolds; Chapter 296-880 WAC, Unified safety standards for fall protection; Recognizing where overhead work is occurring; understanding any hazards associated with craft work in such areas.</p> |
| <p>Electrical</p> | <p>WAC 296-24-957 (general industry); WAC 296-155-426 (construction industry); Understanding electric shock and electrocution; Recognizing potential hazards around work involving electricity; Maintaining clearances around panels; Using proper protective devices; Eliminating access to exposed energized parts; How electricians work relates to other work performed in the refinery.</p> |
| <p>Pipefitting</p> | <p>Chapter 296-155 WAC: Part D Fire protection and prevention; Part F-1, rigging other than with the use of a crane (winch/tugger, chainfall, etc.); Part G Tools - Hand and power; Part H Welding and cutting; Part L, rigging and signaling with cranes; How pipefitters work relates to other work performed in the refinery.</p> |
| <p>Crane and material handling</p> | <p>Chapter 296-155 WAC: Part L, rigging and signaling with cranes; Part F-1, rigging other than with the use of a crane (winch/tugger, chainfall, etc.); Chapter 296-863 WAC, Forklifts and other powered industrial trucks; How equipment operating engineers work relates to other work performed in the refinery.</p> |
| <p>Finishing trades - Painters and drywall</p> | <p>Chapter 296-155 WAC How finishing trades work relates to other work performed in the refinery.</p> |
| <p>Cement masons</p> | <p>Chapter 296-155 WAC How cement masons work relates to other work performed in the refinery.</p> |
| <p>Construction laborers</p> | <p>Chapter 296-155 WAC How construction laborers work relates to other work performed in the refinery.</p> |

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| Carpenters scaffold erectors | Chapter 296-874 WAC, Scaffold; Chapter 296-880 WAC, Unified safety standards for fall protection; How carpenter scaffold erectors work relates to other work performed in the refinery. |
| Ironworkers, boilermakers, steelworkers | Chapter 296-155 WAC How ironworkers, boilermakers, and steelworkers work relates to other work performed in the refinery. |
| Asbestos workers | Chapter 296-155 WAC; Chapter 296-65 WAC, Asbestos removal and encapsulation; How asbestos workers work relates to other work performed in the refinery. |

WSR 24-12-083

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed June 5, 2024, 7:16 a.m., effective July 6, 2024]

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

Purpose: The health care authority is expanding the age limit for the enhancement rate for pediatric care services and the administration of vaccines provided to clients from age 18 and younger to age 20 and younger.

Citation of Rules Affected by this Order: Amending WAC 182-531-2030.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 24-10-079 on April 30, 2024.

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: June 5, 2024.

Wendy Barcus
Rules Coordinator

OTS-5284.1

AMENDATORY SECTION (Amending WSR 18-17-047, filed 8/8/18, effective 10/1/18)

WAC 182-531-2030 Enhanced rates for pediatric care services and administration of vaccines. (1) Subject to available funds, the medicaid agency pays an enhanced rate for covered pediatric care services and the administration of vaccines provided to clients age ((~~eighteen~~)) 20 and younger.

(2) For the purposes of this section, pediatric care services are defined as covered evaluation and management services.

(3) The agency uses the resource-based relative value scale (RBRVS) payment methodology described in WAC 182-531-1850 to calculate the enhanced rate.

(4) If the enhanced rate is less than the agency's published fee schedule rate, the agency pays the published rate.

(5) This enhanced rate applies only to pediatric care services and administration of vaccines for clients age ((~~eighteen~~)) 20 and younger that are not already paid at an enhanced rate.

WSR 24-12-087

PERMANENT RULES

SECRETARY OF STATE

[Filed June 5, 2024, 9:37 a.m., effective July 6, 2024]

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

Purpose: The purpose of this proposal is to update the process and standards for verifying ballot declaration signatures in a manner that reduces and ensures consistency in counties throughout the state. The rule is expected to result in fewer mistaken rejections of valid ballots.

Citation of Rules Affected by this Order: Amending WAC 434-208-060, 434-261-051, 434-261-052, 434-261-053, and 434-262-031.

Statutory Authority for Adoption: RCW 29A.04.611.

Adopted under notice filed as WSR 24-10-116 on May 1, 2024.

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 5, 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 5, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 5, 2024.

Amanda Doyle
Chief of Staff

OTS-5396.1

AMENDATORY SECTION (Amending WSR 24-03-053, filed 1/10/24, effective 2/10/24)

WAC 434-208-060 Electronic filings. (1) In addition to those documents specified by RCW 29A.04.255, the secretary of state or the county auditor shall accept and file (~~in his or her office~~) electronic transmissions of the following documents:

(a) The text of any proposed initiative, referendum, or recall measure and any accompanying documents required by law;

(b) Any minor party or independent candidate filing material for president and vice president, except nominating petitions;

(c) Lists of presidential electors selected by political parties or independent candidates;

(d) Voted ballots and signed ballot declarations from service (~~and~~) or overseas voters received no later than 8:00 p.m. on election day;

(e) Resolutions from cities, towns, and other districts calling for a special election;

(f) Voter registration forms and cancellation (~~(forms)~~) material(s), unless the form or material(s) is illegible or the signature image is poor quality, requiring the county auditor to reject the form or material(s);

(g) Signed ballot declarations, and any accompanying materials, submitted pursuant to RCW 29A.60.165 and WAC (~~(434-261-050)~~) 434-261-053; and

(h) Requests to withdraw a declaration of candidacy.

(2) If payment of a fee is required, the electronic filing is not complete until the fee is received.

(3) No initiative, nominating petition, referendum, recall, or other signature petitions may be filed electronically.

(4) County auditors must use best practices provided by the secretary of state for securely handling documents received by fax and email.

OTS-5398.2

AMENDATORY SECTION (Amending WSR 24-07-018, filed 3/8/24, effective 5/4/24)

WAC 434-261-051 Standards for verifying ballot declaration signatures. (1) This regulation, together with WAC 434-261-052 and 434-261-053, describes the process for verifying that a signature on the ballot declaration is the (~~(voter's)~~) same as the signature(s) in the voter registration ((signature)) record.

(2) At each stage of the signature verification process, there is a presumption that the signature on the ballot declaration is the voter's signature.

(3) When reviewing ballot declaration signatures, staff assigned to verify signatures shall consider the following criteria:

(a) Agreement in style and general appearance, including basic construction, skill, alignment, fluency, and a general uniformity and consistency between signatures;

(b) Agreement in the proportions of individual letters, characters, or symbols, height to width, and heights of the upper to lower case letters, characters, or symbols;

(c) Irregular spacing, slants, or sizes of letters, characters, or symbols that are duplicated in both signatures;

(d) Agreement of the most distinctive, unusual traits of the signatures;

(e) The ballot declaration signature is in the same format as the signature(s) in the voter registration ((signatures)) record, such as in printed(~~(, in)) or cursive, various languages, pictorial, symbol~~, or another form;

(f) Agreement of individual characteristics, such as how "t's" are crossed, "i's" are dotted, or loops are made on letters, characters, or symbols;

(g) Agreement of initial strokes and connecting strokes of the signature;

(h) Agreement of similar endings, such as an abrupt end, a long tail, or loop back around;

(i) Agreement of presence or absence of pen lifts;

(j) Agreement in the way names are spelled; and

(k) After considering the general traits, agreement of the most distinctive, unusual traits of the signatures.

(4) If it appears the voter has changed their name, and the information required under RCW 29A.08.440 to complete a name change is not provided or legible, the county auditor shall send the voter a change of name form or voter registration form under RCW 29A.08.440 and direct the voter to complete the form.

(5) When reviewing ballot declaration signatures that appear to contain ~~((diserepancies))~~ a discrepancy, staff verifying signatures should accept signatures if the appearance of a discrepancy can reasonably be explained by the following:

(a) A shaky signature that could be health-related or the result of aging;

(b) The voter's use of a variation of the voter's full name, such as the use of initials, including or omitting a middle name, or substituting a middle name for a first name;

(c) A change in the voter's signature over time;

(d) A signature written in haste;

(e) A signature in the voter's registration ~~((file))~~ record that was written with a stylus pen or other electronic signature tool, which may result in a thick or fuzzy quality;

(f) A writing surface that was hard, soft, uneven, or unstable;

(g) The voter has a limited history of fewer than three ballots returned; and

(h) Any other reasonable factor.

~~((+5))~~ (6) An agent, including someone acting under a power of attorney, cannot sign a ballot declaration on behalf of their principal.

~~((+6))~~ (7) If a voter ~~((inadvertently))~~ signs another voter's ballot declaration, but elections personnel can identify the correct voter ~~((and))~~, verify that ~~((voter's signature))~~ the provided signature matches the signature(s) in the voter registration record and verify that the voter who signed the ballot declaration has not returned another ballot, the signature and the ballot must be accepted for the voter ~~((that))~~ who signed the ballot declaration. The county auditor may only count the races and measures for which the voter who signed the declaration is eligible to vote. If the voter who signed the ballot declaration has previously submitted a ballot, the county auditor shall refer the ballot(s) received after the initially received ballot to the canvassing board. If the ballot was identified by staff on or before election day, the county auditor must attempt to contact the voter to whom the ballot was issued by phone, email, text message, or, if time allows, by mail, and provide the voter a replacement ballot.

~~((+7))~~ (8) All staff verifying ballot declaration signatures must receive training on these signature verification standards before verifying ballot declaration signatures. They must attend the training at least once every two years. This applies to, but is not necessarily limited to, individuals performing the initial review, secondary review, and review of signatures as part of the cure process. Members of the county canvassing board are required to receive training except as exempted by RCW 29A.04.540. The county auditor shall publish on its website the names of all canvassing board members who received training on the statewide standards for signature verification and the date(s) on which the training was completed. The website shall be up-

dated at least 18 days before the next election with the canvassing board members' training date(s).

~~((8))~~ (9) The canvassing board may designate the county auditor or the county auditor's staff to perform the signature verification function. All personnel assigned to the duty of signature verification shall subscribe to an oath administered by the county auditor regarding the discharge of their duties.

~~((9))~~ (10) The signature verification process shall be open to the public, subject to reasonable procedures adopted and promulgated by the canvassing board to ensure that order is maintained and to safeguard the integrity of the process.

AMENDATORY SECTION (Amending WSR 24-07-018, filed 3/8/24, effective 5/4/24)

WAC 434-261-052 Initial and secondary review of ballot declaration signatures. (1) When conducting an initial review of a ballot declaration signature, the county auditor must accept the signature under the following conditions:

(a) The county auditor must accept the signature unless, considering the criteria in WAC 434-261-051 ~~((3) and (4))~~, the signature on the ballot envelope has multiple, significant, and obvious discrepancies from ~~((all signatures))~~ the signature(s) in the ~~((voter's))~~ voter registration record; or

(b) If the voter is unable to sign their name as they are registered to vote, the signature must be accepted so long as the voter has made a mark ~~((, symbol,))~~ or signature stamp, and the ballot declaration includes two witness signatures.

(2) If the signature is not accepted following the initial review, the ballot declaration signature must be referred to a second review.

(a) A different person who has received signature verification training under WAC 434-261-051 ~~((7))~~ (8) must conduct the second review of the signature.

(b) If, considering the criteria in WAC 434-261-051 ~~((3) and (4))~~, the second reviewer determines that there are multiple, significant, obvious discrepancies from ~~((all signatures))~~ the signature(s) in the ~~((voter's))~~ voter registration record, the voter must be notified of the process to cure the signature;

(3) The county auditor may conduct additional reviews of ballot declaration signatures that have not yet been accepted. For example, if the county auditor becomes aware of reasonable explanations that should be considered under WAC 434-261-051 ~~((4))~~ (5), an additional review may be appropriate.

(4) Even if the ballot declaration signature appears to match the ~~((signature))~~ signature(s) in the voter registration record, and notwithstanding any other provision, a ballot may be referred to the canvassing board if there is clear, objective evidence, beyond the signature itself, that a ballot declaration signature is fraudulent. This provision is intended to apply only very rarely, such as in instances of confessed forgery or similar circumstances. A person verifying signatures may refer a ballot declaration signature to the county auditor, and, if satisfied that the standard is met, the county auditor may refer the ballot to the canvassing board. The county auditor and the canvassing board may refer the matter to law enforcement.

(5) The county auditor may conduct the initial signature review by using an automated verification system approved by the secretary of state. If a signature is not accepted by the automated verification system, the county auditor must manually use the process described in this section.

(6) If two ballots are returned in one return envelope, ballots may be accepted in the following manner. In all other circumstances, the ballots must be referred to the canvassing board for rejection.

(a) If there is only one valid signature on the ballot declaration and the races and measures voted are the same on both ballots, the races and measures voted the same on both ballots may be counted once;

(b) If there are two valid signatures on the ballot declaration, both ballots may be counted in their entirety; or

(c) If there is one valid signature on the ballot declaration and the envelope contains one voted ballot and one blank ballot without marked votes, the voted ballot may be counted in its entirety.

AMENDATORY SECTION (Amending WSR 24-07-018, filed 3/8/24, effective 5/4/24)

WAC 434-261-053 Ballot declaration signature cure process. (1)

If a ballot declaration signature is not accepted following secondary review, the voter used a mark or signature stamp but did not include witnesses, or if the ballot declaration was not signed, the ballot cannot be counted until the voter cures their signature. The voter identified on the ballot return envelope must be notified as soon as practicable, but no later than three business days following receipt, that the signature on the ballot declaration does not match the signature(s) in the voter registration record. The county must notify the voter of the procedure for curing their signature by:

(a) A notice letter package sent by first class mail with a signature update form or a missing signature form. The form((s)) must include the ballot declaration required by WAC 434-230-015. The notice letter package must also include a prepaid envelope in which to return a completed signature update or missing signature form. The notice letter must:

(i) Be in substantially the same form as the sample notice letter created by the secretary of state; and

(ii) Be available in all languages required by the Department of Justice.

(b) ((Phone)) Telephone, leaving a voicemail if the voter does not answer and voicemail is available (if the voter has provided a phone number);

(c) Text message (if the voter has opted into text message notifications); and

(d) Email, enclosing a copy of the signature cure form (if the voter has provided an email address).

(2) The voter may cure their ballot signature no later than the close of business the day before the election is certified.

If the voter has not responded to the signature cure notice by five business days before the final meeting of the canvassing board, the county auditor must attempt to notify the voter by:

(a) Telephone, leaving a voicemail if the voter does not answer and voicemail is available (if the voter has provided a phone number);

(b) Text message (if the voter has opted into text message notifications); and

(c) Email, enclosing a copy of the signature cure form (if the voter has provided an email address).

(3) A voter may cure a missing signature by:

(a) Returning a signed missing signature form. The signature on the form must be compared to the (~~voter's signature~~) signature(s) in the voter registration record using the process described in WAC 434-261-052; or

(b) Appearing in person and signing the ballot declaration. The signature on the ballot declaration must be compared to the (~~voter's signature~~) signature(s) in the voter registration record using the process described in WAC 434-261-052.

(4) A voter using a mark or signature stamp may cure a failure to have two witnesses attest to the ballot declaration signature by returning a missing signature form. The form must contain the voter's mark or signature stamp and the signatures of two witnesses.

(5) A voter may cure a nonmatching signature by either:

(a) Returning a signature update form or appearing in person and signing a new registration form.

(i) The signature on the form must be compared to the signature on the ballot declaration using the process described in WAC 434-261-052;

(ii) The signature on the form is saved as a new signature in the voter registration record for the current and future elections; or

(b) Providing valid secondary identity verification. The county auditor must verify the secondary identification is for the voter who signed the ballot declaration. Secondary identification may be:

(i) The last four digits of the voter's Social Security number or the voter's full driver's license (~~(number)~~), instruction permit, or state (~~(identity card)~~) identocard number;

(ii) Photo identification, valid enrollment card of a federally recognized Indian tribe in Washington state, copy of a current utility bill or current bank statement, copy of a current government check, copy of a current paycheck, or a government document, other than a voter registration card, that shows both the name and address of the voter; or

(iii) A multifactor authentication code, from a system approved by the secretary of state, the county auditor sent to the voter's phone number or email address that has previously been provided by the voter.

If a voter successfully provides secondary identity verification and confirms, orally or in writing, that the voter in fact returned the ballot, the ballot must be accepted unless two persons who have received signature verification training under WAC 434-261-051(~~(+7)~~)

(8) conclude beyond a reasonable doubt that a person other than the voter signed the ballot declaration. This conclusion may be based on evidence including, but not limited to, other ballots in the same election bearing the same signature.

(6) If the registered voter asserts that the signature on the ballot declaration is not the voter's signature prior to 8:00 p.m. on election day, the voter may (~~(vote a provisional)~~) be provided the opportunity to vote a replacement ballot.

(7) If the voter does not successfully cure their signature by close of business the day before certification of the election, the ballot must be sent to the canvassing board.

(8) A record must be kept of the process used to cure ballot envelopes with missing and mismatched signatures. The record must contain the date on which each voter was contacted, the notice was mailed, and the date on which each voter subsequently submitted a signature to cure the missing or mismatched signature.

OTS-5397.2

AMENDATORY SECTION (Amending WSR 24-07-018, filed 3/8/24, effective 5/4/24)

WAC 434-262-031 Rejection of ballots or parts of ballots. (1)

The disposition of provisional ballots is governed by WAC 434-262-032. The county canvassing board must reject any ballot cast by a voter who was not qualified to vote, or for other reasons required by law or administrative rule. A log must be kept of all voted ballots rejected, and must be included in the minutes of each county canvassing board meeting.

(2) Ballots or parts of ballots shall be rejected by the canvassing board in the following instances:

- (a) Where a ballot or parts of a ballot are marked in such a way that it is not possible to determine the voter's intent consistent with WAC 434-261-086;
- (b) Where the voter has voted for candidates or issues for whom the voter is not entitled to vote;
- (c) Where the voter has overvoted;
- (d) Where the ballot was created for a prior election;
- (e) Where a ballot was submitted with a fraudulent signature; and
- (f) Where the ballot declaration signature did not match the signature(s) in the voter registration ((signature)) record, or the signature was missing and the voter did not cure the signature by close of business the day before the election was certified.

(3) If a voter's ballot is rejected in two consecutive primaries, presidential primaries, special elections, or elections due to a mismatched signature, the auditor must contact the voter by:

(a) A notice sent by first class mail with a signature update form and request that the voter update the signature for their voter registration record. The form must include the voter declaration required by RCW 29A.08.230 (subject to the March 15, 2024, Consent Decree entered in *Washington State Alliance for Retired Americans v. Hobbs, et al.*, W.D.WA. Case No. 3-23-CV-06014-TMC). The package must include a prepaid envelope in which to return a completed signature update form. The notice letter must:

(i) Be in substantially the same form as the sample notice letter created by the secretary of state; and

(ii) Be available in all languages required by the Department of Justice.

(b) Telephone, leaving a voicemail if the voter does not answer and voicemail is available (if the voter provided a phone number);

(c) Text message (if the voter has opted into text message notifications); and

(d) Email, enclosing a copy of the signature update form (if the voter has provided an email address).