

## WSR 25-03-018

## PERMANENT RULES

## DEPARTMENT OF LICENSING

[Filed January 6, 2025, 2:58 p.m., effective February 6, 2025]

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

Purpose: While administrative reviews/interviews are defined in RCW 46.20.245, the specifics of conducting the document review or interview must be defined by the department of licensing (department) and applicable business area. Standard procedures include eligibility, evidence to be reviewed, authority of the review, and other legal remedies available post-review.

Citation of Rules Affected by this Order: New WAC 308-111-010 Applicability, 308-111-020 Administrative review referees, 308-111-030 Computation of time, 308-111-040 Eligibility for administrative review or interview, 308-111-080 Requests for administrative review or interview, 308-111-090 Scheduling review—Notice of interview, 308-111-100 Scope of administrative review or interview, 308-111-110 Notice of appearance, 308-111-120 Continuances, 308-111-155 Evidence, 308-111-190 Interpreters, 308-111-220 Default, and 308-111-230 Final result.

Statutory Authority for Adoption: RCW 46.01.110 Rule-making authority.

Other Authority: RCW 46.20.245 Mandatory revocation—Persons subject to suspension, revocation, or denial who are eligible for certain full credit—Notice—Administrative, judicial review—Rules—Application.

Adopted under notice filed as WSR 24-22-126 on November 5, 2024.

Changes Other than Editing from Proposed to Adopted Version:

Based on public comments received, references to RCW 46.20.245 were included in WAC 308-111-101 for greater clarity. Additionally, the department added an additional subsection to WAC 308-111-040 which clarifies what constitutes "good cause."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 13, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: January 6, 2025.

Ellis Starrett  
Rules and Policy Manager

OTS-5954.2

Chapter 308-111 WAC

**RULES OF PROCEDURES FOR ADMINISTRATIVE REVIEWS AND INTERVIEWS UNDER  
RCW 46.20.245**NEW SECTION

**WAC 308-111-010 Applicability.** (1) This chapter applies to all adjudicative proceedings under the jurisdiction of the department of licensing or the director of the department of licensing as defined by RCW 46.20.245 for the administrative due process provided in the following types of cases:

(a) The mandatory suspension, revocation, cancellation, and disqualification or denial of a license or identicard based on court action or actions of any other reporting agency or entity (RCW 46.20.245 and 46.20.291);

(b) Violation of the terms of probation under the Habitual Traffic Offenders Act (chapter 46.65 RCW);

(c) Violation of probation under effect of accumulation of traffic offenses (RCW 46.20.2892 and WAC 308-104-027);

(d) Violation of probation for continuing offenses (RCW 46.20.291);

(e) Failure to submit to or provide documentation in support of relicensing based on medical condition, examination of driving skills, or treatment concerns (RCW 46.20.031, 46.20.041, 46.20.291, 46.20.305, and 46.61.5056);

(f) Failure to respond to a traffic infraction for a moving violation, failure to appear at a hearing for a moving violation, or failure to comply with the terms of a criminal complaint or criminal citation for a moving violation (RCW 46.20.289);

(g) Violation of the Uniform Commercial Driver's License Act (RCW 46.25.090); and

(h) Any administrative sanction by the department which defines the applicable due process under the authority of RCW 46.20.245.

(2) Unless otherwise specified, this chapter does not apply to administrative interviews conducted under RCW 46.20.322 through 46.20.328.

NEW SECTION

**WAC 308-111-020 Administrative review referees.** All adjudicative proceedings under this chapter shall be conducted by a paralegal appointed by the director. The director retains the discretion to revoke or limit the appointment at any time.

NEW SECTION

**WAC 308-111-030 Computation of time.** (1) In computing any period of time prescribed or allowed by any applicable statute or rule, RCW 1.12.040 shall apply.

(2) When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

(3) Whenever a person has the right to request an administrative review or interview within a prescribed period after notice is provided by the department under Title 46 RCW or 308 WAC, such notice is deemed to be given on the third day after the notice is deposited into the state mailing service or immediately when the notice is sent via electronic mail.

(4) A request for an administrative review or interview, under Title 46 RCW or 308 WAC, is deemed received by the department on the third day after the request is postmarked. A request for an administrative review or interview, under Title 46 RCW or 308 WAC, sent via electronic mail is deemed received by the department on the date filed.

#### NEW SECTION

**WAC 308-111-040 Eligibility for administrative review or interview.** (1) A person is eligible for an administrative review whenever the department proposes an adverse action against the driving privilege under this chapter and the request for an administrative review is received timely by the department.

(2) Upon timely request for an administrative review, the action subject to the department's notification shall be stayed pending the conclusion of the administrative review.

(3) A person who fails to submit the request for administrative review in the prescribed period or according to the department's instructions shall be denied an administrative review. The department shall notify the petitioner, in writing, of the reason for denial of the administrative review, and the department's sanction will go into effect as stated on the original notice.

(a) The department referee may set aside a denial of the administrative review if the petitioner establishes good cause.

(b) Good cause, which is defined as extending the administrative review or interview request deadline may include, but is not limited to:

- (i) Military deployment;
- (ii) Medical treatment or hospitalization;
- (iii) Housing instability;
- (iv) Language barriers;
- (v) Domestic violence; or
- (vi) Incarceration.

#### NEW SECTION

**WAC 308-111-080 Requests for administrative review or interview.**

(1) A request for administrative review or interview shall be in writing.

(2) When no deadline for requesting the review or interview is provided in Title 46 RCW, or other law or rule of the department, a review or interview request must be postmarked or received by the administrative law office within 15 days after notice is given.

(3) The administrative review or interview request form provided by the department shall include a statement that if the parties or witness(es) are hearing or speech impaired and/or non-English speaking, a qualified interpreter will be appointed at no cost to the parties or witnesses. The form shall include a section where the petitioner may request an interpreter and where the petitioner may identify the language and/or nature of the interpretive services needed.

(4) The request for review or interview shall include the following information with respect to the petitioner:

- (a) Full name;
- (b) Mailing address;
- (c) Daytime telephone number, including area code;
- (d) Date of birth; and
- (e) Driver's license number.

(5) The written request must be submitted on a form approved by the department. The request for a review or interview may also be submitted online if the petitioner meets the qualifications described on the website at [www.dol.wa.gov](http://www.dol.wa.gov).

#### NEW SECTION

**WAC 308-111-090 Scheduling review—Notice of interview.** (1) The department's referee shall conduct the administrative review on the department's electronic record and any documentation filed by the petitioner.

(2) A petitioner submitting the request for administrative review may request an administrative interview. The department may, in its discretion, grant the petitioner an administrative interview, which shall be conducted by telephone or other electronic means.

(3) The department shall send a notice to the petitioner, either deposited into the state mailing service or through electronic mail, no less than 10 days before the date set for the administrative interview.

(4) The notice of the administrative interview shall include:

- (a) The date and time of the administrative interview;
- (b) The assigned referee's name and contact information;
- (c) The case name and reference number of the proceeding;
- (d) The legal authority and jurisdiction under which the interview is to be conducted; and

(e) A statement that a petitioner who fails to participate in the administrative interview may be held in default.

#### NEW SECTION

**WAC 308-111-100 Scope of administrative review or interview.**

(1) The administrative review or interview shall solely address:

(a) Whether the records relied on by the department identify the correct person; and

(b) Whether the information transmitted from the court or other reporting agency or entity regarding the person accurately describes the action taken by the court or other reporting agency or entity.

(2) A person requesting administrative review or interview has the burden of showing by a preponderance of evidence that the person is not subject to the withholding of the driving privilege.

NEW SECTION

**WAC 308-111-110 Notice of appearance.** (1) If a petitioner has legal representation for the administrative review or interview, the petitioner shall provide the department with the legal representative's name, address, email address, and telephone number. The legal representative shall file a written notice of appearance with the department and, if applicable, shall file a notice of withdrawal.

(2) When a legal representative has appeared in a matter, documents related to the review or interview, including final orders, will be served upon the legal representative. Documents may be provided to a petitioner's legal representative via electronic mail, with the legal representative's agreement.

(3) For the purposes of this section, a "legal representative" means an attorney licensed to practice law in the state of Washington and in good standing with the Washington state bar association.

NEW SECTION

**WAC 308-111-120 Continuances.** (1) If, at the discretion of the department, an administrative interview has been scheduled, the petitioner may request a continuance or reschedule.

(2) The petitioner shall file the request for continuance or reschedule:

(a) In writing at least 48 hours prior to the scheduled appointment;

(b) Directed to the assigned referee and describe why the request is being made; and

(c) Include at least two replacement interview dates.

(3) Continuance or reschedule requests beyond the first request require the petitioner establish good cause, which is defined as justification for extending the interview date and may include, but are not limited to:

(a) Military deployment;

(b) Medical treatment or hospitalization;

(c) Housing instability;

(d) Language barriers;

(e) Domestic violence; or

(f) Incarceration.

(4) The petitioner shall not consider an administrative interview continued or rescheduled until notified affirmatively by the assigned referee. The referee may, on its own motion, continue or reschedule the interview at any time, including on the date of the interview.

(5) The referee may require the petitioner who requests a continuance or reschedule beyond the first request to submit documentary evidence that substantiates the reason for the request.

(6) If the petitioner elects to cancel their request for an interview, the petitioner must notify the department of their intent to do so in writing.

NEW SECTION

**WAC 308-111-155 Evidence.** (1) A petitioner may submit any exhibit or document for consideration by the referee in an administrative review or interview. Submittals may be made via any one of the following methods:

- (a) U.S. mail addressed to: Department of Licensing, Administrative Law Office, P.O. Box 9031, Olympia, WA 98507-9031.
- (b) Facsimile transmission to the assigned department referee.
- (c) An internet portal made available by the department.
- (d) Email to: Hearings@dol.wa.gov.

(2) Exhibits or documents submitted electronically must be submitted in pdf format.

(3) The petitioner shall submit any exhibits or documents on or before the deadline listed in the notice of administrative review or administrative interview.

(4) The department's referee shall rule on the admissibility and weight to be accorded to all evidence submitted. Evidence, including hearsay evidence, is admissible if in the judgment of the referee it is the kind of evidence on which reasonably prudent persons are accustomed to rely on in the conduct of their affairs. The referee may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

NEW SECTION

**WAC 308-111-190 Interpreters.** (1) When the petitioner in an administrative interview has a hearing or speech impairment, cannot readily understand or communicate in a spoken language or is a non-English speaking person, the department shall appoint an interpreter to assist the petitioner during the administrative interview.

(2) The department is responsible for the cost of the interpreter pursuant to RCW 2.43.040.

(3) The department shall use interpreters certified by the administrative office of the courts unless good cause is found and noted on the record by the referee. Good cause includes, but is not limited to, the determination that:

(a) Given the totality of the circumstances, including the nature of the proceeding and the potential penalty or consequences involved, the services of a certified interpreter are not reasonably available to the department; or

(b) The current list of certified interpreters maintained by the administrative office of the courts does not include an interpreter certified in the language spoken by the non-English-speaking person.

(4) If good cause is found for using a qualified interpreter, the referee shall make a preliminary determination on the record, that the proposed interpreter:

(a) Is capable of communicating with the referee and the petitioner; and

(b) Has read, understands, and will abide by the code of ethics for language interpreters established by court rules.

NEW SECTION

**WAC 308-111-220 Default.** (1) In the event that the person who requested an administrative interview does not participate by telephone at the time it is scheduled, an order of default shall be entered, and the department's proposed action shall be sustained.

(2) Within seven days after service of a default order, the petitioner may file a written motion requesting that the order of default be vacated and stating the reasons why petitioner did not participate in the administrative interview. In determining whether the default should be set aside, the referee shall consider whether there was good cause for the nonappearance.

NEW SECTION

**WAC 308-111-230 Final result.** (1) The referee shall enter a final result when completing the administrative review or interview.

(2) The judicial review of the final result in an administrative review or interview shall be available in the same manner as provided in RCW 46.20.308(8).

(3) A petition for judicial review of a final result under this section shall be served on the department and the attorney general within 30 days after service of the final result.

## WSR 25-03-021

## PERMANENT RULES

## DEPARTMENT OF HEALTH

[Filed January 7, 2025, 8:12 a.m., effective January 31, 2025]

Effective Date of Rule: January 31, 2025.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The opioid epidemic has resulted in imminent peril to the public health, safety, and welfare, and it is in the best interest of public health to have these rules be effective less than 31 days after filing as allowed by RCW 34.05.380 (3) (c).

Purpose: Behavioral health agency licensing and certification requirements as they relate to opioid treatment programs (OTP). The department of health (department) is adopting updates to chapter 246-341 WAC to provide greater access to care by streamlining the approval and certification process to operate an OTP and aligning state regulations with federal certification and treatment standards for OTPs in 42 C.F.R. Part 8, Subpart C (2024).

The department is also adopting updates to implement changes enacted by the legislature in 2E2SSB 5536 (chapter 1, Laws of 2023, 1st sp. sess.) that allow licensed OTPs to operate a mobile or fixed-site medication unit as part of, but geographically separate from, their existing licensed OTP. Finally, the department is adopting updates that correct two internal citations from a previous rules project.

Citation of Rules Affected by this Order: Repealing WAC 246-341-1005, 246-341-1010, 246-341-1015, 246-341-1020 and 246-341-1025; and amending WAC 246-341-0200, 246-341-0300, 246-341-0342, 246-341-1000, and 246-341-1100.

Statutory Authority for Adoption: RCW 71.24.037 and 2E2SSB 5536 (chapter 1, Laws of 2023, 1st sp. sess.), codified as RCW 71.24.590.

Adopted under notice filed as WSR 24-22-054 on October 28, 2024.

A final cost-benefit analysis is available by contacting Michelle Weatherly, P.O. Box 47843, Olympia, WA 98504-7843, phone 360-236-2992, TTY 711, email michelle.weatherly@doh.wa.gov, website www.doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 5, Repealed 5.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, Repealed 5.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 5.

Date Adopted: January 7, 2025.

Kristin Peterson, JD  
Chief of Policy  
for Umair A. Shah, MD, MPH  
Secretary of Health



OTS-5853.2

AMENDATORY SECTION (Amending WSR 24-17-003, filed 8/8/24, effective 9/8/24)

**WAC 246-341-0200 Behavioral health—Definitions.** The definitions in this section and RCW 71.05.020, 71.24.025, and 71.34.020 apply throughout this chapter unless the context clearly requires otherwise.

(1) "23-hour crisis relief center" has the same meaning as under RCW 71.24.025.

(2) "Administrator" means the designated person responsible for the day-to-day operation of either the licensed behavioral health agency, or certified treatment service, or both.

(3) "Adult" means an individual 18 years of age or older. For purposes of the medicaid program, adult means an individual 21 years of age or older.

(4) "ASAM criteria" means admission, continued service, transfer, and discharge criteria for the treatment of substance use disorders as published by the American Society of Addiction Medicine (ASAM).

(5) "Assessment" means the process of obtaining all pertinent bio-psychosocial information, as identified by the individual, and family and collateral sources, for determining a diagnosis and to plan individualized services and supports.

(6) "Behavioral health" means the prevention, treatment of, and recovery from any or all of the following disorders: Substance use disorders, mental health disorders, co-occurring disorders, or problem gambling and gambling disorders.

(7) "Behavioral health agency," "licensed behavioral health agency," or "agency" means an entity licensed by the department to provide behavioral health services under chapter 71.24, 71.05, or 71.34 RCW.

(8) "Behavioral health service" means the specific service(s) that may be provided under an approved certification.

(9) "Branch site" means a physically separate licensed site, governed by the same parent organization as the main site, where qualified staff provides certified treatment services.

(10) "Campus" means an area where all of the agency's buildings are located on contiguous properties undivided by:

(a) Public streets, not including alleyways used primarily for delivery services or parking; or

(b) Other land that is not owned and maintained by the owners of the property on which the agency is located.

(11) "Care coordination" or "coordination of care" means a process-oriented activity to facilitate ongoing communication and collaboration to meet multiple needs of an individual. Care coordination includes facilitating communication between the family, natural supports, community resources, and involved providers and agencies, organizing, facilitating and participating in team meetings, and providing for continuity of care by creating linkages to and managing transitions between levels of care.

(12) "Certified" or "certification" means the status given by the department that authorizes the agency to provide specific types of behavioral health services included under the certification category.

(13) "Child," "minor," and "youth" mean:

(a) An individual under the age of 18 years; or

(b) An individual age 18 to 21 years who is eligible to receive and who elects to receive an early and periodic screening, diagnostic, and treatment (EPSDT) medicaid service. An individual age 18 to 21 years who receives EPSDT services is not considered a "child" for any other purpose.

(14) "Clinical supervision" means regular and periodic activities performed by a mental health professional, co-occurring disorder specialist, or substance use disorder professional licensed, certified, or registered under Title 18 RCW. Clinical supervision may include review of assessment, diagnostic formulation, individual service plan development, progress toward completion of care, identification of barriers to care, continuation of services, authorization of care, and the direct observation of the delivery of clinical care. In the context of this chapter, clinical supervision is separate from clinical supervision required for purposes of obtaining supervised hours toward fulfilling requirements related to professional licensure under Title 18 RCW.

(15) "Community relations plan" means a plan to inform and educate the community about the opioid treatment program, which documents strategies used to obtain community input regarding the proposed location and address any concerns identified by the community.

(16) "Complaint" means an alleged violation of licensing or certification requirements under chapters 71.05, 71.12, 71.24, 71.34 RCW, and this chapter, which has been authorized by the department for investigation.

~~((16))~~ (17) "Consent" means agreement given by an individual after being provided with a description of the nature, character, anticipated results of proposed treatments and the recognized serious possible risks, complications, and anticipated benefits, including alternatives and nontreatment, that must be provided in a terminology that the individual can reasonably be expected to understand. Consent can be obtained from an individual's parent or legal representative, when applicable.

~~((17))~~ (18) "Consultation" means the clinical review and development of recommendations by persons with appropriate knowledge and experience regarding activities or decisions of clinical staff, contracted employees, volunteers, or students.

~~((18))~~ (19) "Co-occurring disorder" means the coexistence of both a mental health and a substance use disorder. Co-occurring treatment is a unified treatment approach intended to treat both disorders within the context of a primary treatment relationship or treatment setting.

~~((19))~~ (20) "Cultural competence" or "culturally competent" means the ability to recognize and respond to health-related beliefs and cultural values, disease incidence and prevalence, and treatment efficacy. Examples of culturally competent care include striving to overcome cultural, language, and communications barriers, providing an environment in which individuals from diverse cultural backgrounds feel comfortable discussing their cultural health beliefs and practices in the context of negotiating treatment options, encouraging individuals to express their spiritual beliefs and cultural practices, and being familiar with and respectful of various traditional healing systems and beliefs and, where appropriate, integrating these approaches into treatment plans.

~~((20))~~ (21) "Deemed" means a status that is given to a licensed behavioral health agency as a result of the agency receiving accredi-

tation by a recognized behavioral health accrediting body which has a current agreement with the department.

~~((21))~~ (22) "Disability" means a physical or mental impairment that substantially limits one or more major life activities of the individual and the individual:

(a) Has a record of such an impairment; or

(b) Is regarded as having such impairment.

~~((22))~~ (23) "Face-to-face" means either in person or by way of synchronous video conferencing.

~~((23))~~ (24) "Individual service record" means either a paper, or electronic file, or both that is maintained by the behavioral health agency and contains pertinent behavioral health, medical, and clinical information for each individual served.

~~((24))~~ (25) "Licensed" or "licensure" means the status given to behavioral health agencies by the department under its authority to license and certify mental health and substance use disorder programs under chapters 71.05, 71.12, 71.34, and 71.24 RCW and its authority to certify problem gambling and gambling disorder treatment programs under RCW 43.70.080(5) and 41.05.750.

~~((25))~~ (26) "Medical practitioner" means a physician licensed under chapter 18.57 or 18.71 RCW, advance registered nurse practitioner (ARNP) licensed under chapter 18.79 RCW, or physician assistant licensed under chapter 18.71A RCW.

~~((26))~~ (27) "Medication unit" means either:

(a) A fixed-site brick and mortar entity that is established as part of, but geographically separate from, an opioid treatment program from which appropriately licensed opioid treatment program practitioners, contractors working on behalf of the opioid treatment program, or community pharmacists may dispense or administer medication for opioid use disorder, collect samples for drug testing or analysis, or provide other opioid treatment program services; or

(b) A mobile medication unit which is a component of an opioid treatment program that the United States Drug Administration has approved to operate as a mobile narcotic treatment program pursuant to 21 C.F.R. § 1301.13 (e) (4).

(28) "Mental health disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on a person's cognitive or volitional functions.

~~((27))~~ (29) "Mental health professional" or "MHP" means a person who meets the definition in RCW 71.05.020.

~~((28))~~ (30) "Opioid treatment program" means the same as defined in RCW 71.24.590.

(31) "Peer" means a peer counselor as defined in WAC 182-538D-0200 or a certified peer specialist certified under chapter 18.420 RCW.

~~((29))~~ (32) "Peer support" means services provided by peer counselors to individuals under the supervision of a mental health professional or individual appropriately credentialed to provide substance use disorder treatment. Peer support provides scheduled activities that promote recovery, self-advocacy, development of natural supports, and maintenance of community living skills.

~~((30))~~ (33) "Problem gambling and gambling disorder" means one or more of the following disorders:

(a) "Gambling disorder" means a mental disorder characterized by loss of control over gambling, progression in preoccupation with gambling and in obtaining money to gamble, and continuation of gambling despite adverse consequences;

(b) "Problem gambling" is an earlier stage of gambling disorder that compromises, disrupts, or damages family or personal relationships or vocational pursuits.

~~((31))~~ (34) "Progress notes" means permanent written or electronic record of services and supports provided to an individual documenting the individual's participation in, and response to, treatment or support services, progress in recovery, and progress toward intended outcomes.

~~((32))~~ (35) "Secretary" means the secretary of the department of health.

~~((33))~~ (36) "State minimum standards" means minimum requirements established by rules adopted by the secretary and necessary to implement chapters 71.05, 71.24, and 71.34 RCW for delivery of behavioral health services.

~~((34))~~ (37) "Substance use disorder professional" or "SUDP" means a person credentialed by the department as a substance use disorder professional (SUDP) under chapter 18.205 RCW.

~~((35))~~ (38) "Substance use disorder professional trainee" or "SUDPT" means a person credentialed by the department as a substance use disorder professional trainee (SUDPT) under chapter 18.205 RCW.

~~((36))~~ (39) "Summary suspension" means the immediate suspension of either a facility's license or program-specific certification or both by the department pending administrative proceedings for suspension, revocation, or other actions deemed necessary by the department.

~~((37))~~ (40) "Supervision" means the regular monitoring of the administrative, clinical, or clerical work performance of a staff member, trainee, student, volunteer, or employee on contract by a person with the authority to give direction and require change.

~~((38))~~ (41) "Suspend" means termination of a behavioral health agency's license or program specific certification to provide behavioral health treatment program service for a specified period or until specific conditions have been met and the department notifies the agency of the program's reinstatement of license or certification.

AMENDATORY SECTION (Amending WSR 22-24-091, filed 12/6/22, effective 5/1/23)

**WAC 246-341-0300 Agency licensure and certification—General information.** The department licenses behavioral health agencies and certifies them to provide behavioral health services. To obtain and maintain licensure and certification, an applicant shall meet the requirements of this chapter, applicable local and state rules, and applicable state and federal statutes and regulations. Licensure and certification under this chapter does not exempt a behavioral health agency from obtaining any other applicable state or federal licenses or registrations that are necessary to operate and provide services.

(1) The ~~((following))~~ behavioral health agency licensure process described in this section does not apply to a tribe that is licensed or seeking licensure via attestation as described in WAC 246-341-0367.

(2) Initial licensure of a behavioral health agency - Main site. The applicant shall submit a licensing application for a main site to the department that is signed by the agency's designated official. The application must include the following:

(a) The physical address of the agency;

(b) The type of certification(s) the agency is requesting, including the behavioral health services the agency will provide under the type of certification(s);

(c) A statement assuring the location where the services will be provided meets the Americans with Disabilities Act (ADA) standards and that any agency-operated facility where behavioral health services will be provided is:

(i) Suitable for the purposes intended, including having adequate space for private personal consultation with an individual and individual service record storage that adheres to confidentiality requirements;

(ii) Not a personal residence; and

(iii) Approved as meeting all local and state building and safety requirements, as applicable.

(d) Payment of associated fees according to WAC 246-341-0365;

(e) A copy of the applicant's master business license that authorizes the organization to do business in Washington state;

(f) A copy of the disclosure statement and report of findings from a background check of the administrator completed within the previous three months of the application date; and

(g) A copy of the policies and procedures specific to the agency and the certifications and behavioral health services for which the applicant is seeking approval that address all of the applicable requirements of this chapter.

(3) The department may issue a single agency license when the applicant identifies behavioral health treatment services will be provided in multiple buildings and either:

(a) The applicant operates the multiple buildings on the same campus as a single integrated system with governance by a single authority or body over all staff and buildings; or

(b) All behavioral health treatment services will be provided in buildings covered under a single hospital license.

(4) Initial licensure of a behavioral health agency - Branch site. To add a branch site, an existing behavioral health agency shall meet the application requirements in subsection ~~((1))~~ (2)(a) through (c) of this section and submit to the department:

(a) A written declaration that a current copy of agency policies and procedures that address all of the applicable requirements of this chapter are accessible to the branch site;

(b) A copy of policies and procedures for any behavioral health certifications and services that are unique to the branch site location, if applicable; and

(c) A copy of the disclosure statement and report of findings from a background check of the administrator completed within the previous three months of the application date, if the administrator of the branch site is different than the administrator of the main site location.

(5) In addition to the information required by subsections (2) through (4) of this section, an applicant seeking certification as an opioid treatment program must submit the following information with their application:

(a) Documentation that the applicant has communicated with the county legislative authority and, if applicable, the city legislative authority or tribal legislative authority, in order to secure a location that meets county, tribal, or city land use ordinances when proposing to open a new, or move an existing, opioid treatment program;

(b) A community relations plan developed and completed in consultation with the county, city, or tribal authority or their designee when proposing to open a new, or move an existing opioid treatment program; and

(c) For new applicants who operate opioid treatment programs in another state, copies of all review reports written by their national accreditation body and state certification, if applicable, within the past six years.

(6) Prior to an opioid treatment program license being issued, the applicant must obtain approval from:

(a) The Washington state department of health pharmacy quality assurance commission;

(b) The United States Center for Substance Abuse Treatment (CSAT), Substance Abuse and Mental Health Services Administration (SAMHSA), as required by 42 C.F.R. Part 8 for certification as an opioid treatment program; and

(c) The United States Drug Enforcement Administration (DEA).

(7) A mobile or fixed-site medication unit may be established as part of an opioid treatment program. Opioid treatment programs may establish a mobile or fixed-site medication unit and must notify the department on forms provided by the department. Department approval must be given before services can be provided from a mobile or fixed-site medication unit.

(8) License renewal. To renew a main site or branch site license and certification, an agency shall submit to the department a renewal request signed by the agency's designated official. The renewal request must:

(a) Be received by the department before the expiration date of the agency's current license; and

(b) Include full payment of the specific renewal fee according to WAC 246-341-0365.

((+6)) (9) Amending a license. A license amendment is required when there is a change in the administrator, when adding or removing a certification or behavioral health service, or when closing a location. To amend a license the agency shall submit to the department a licensing application requesting the amendment that is signed by the agency's designated official. The application shall include the following requirements as applicable to the amendment being requested:

(a) Change of the administrator. The application must include a copy of the disclosure statement and report of findings from a background check of the new administrator completed within the previous three months of the application date and within 30 calendar days of the change;

(b) Adding a certification. The agency must submit an application for certification before providing the behavioral health services listed under the certification. The application must include:

(i) The physical address or addresses of the agency-operated facility or facilities where the new type of certified service(s) will be provided;

(ii) A copy of the agency's policies and procedures relating to the new certification and behavioral health service(s) that will be provided; and

(iii) Payment of fees according to WAC 246-341-0365.

(c) Adding a behavioral health service. The agency may add a behavioral health service that is included under its existing certification by submitting the notification of the added service to the de-

partment within 30 calendar days of beginning the service. The notification must include:

(i) The physical address or addresses of the agency-operated facility or facilities where the new behavioral health service(s) will be provided; and

(ii) A copy of the agency's policies and procedures relating to the new behavioral health service(s) that will be provided.

(d) Canceling a behavioral health service or certification.

(i) The agency must provide notice to individuals who receive the service(s) to be canceled. The notice shall be provided at least 30 calendar days before the service(s) are canceled and the agency must assist individuals in accessing services at another location.

(ii) The application must include the physical address or addresses of the agency-operated facility or facilities where the service(s) will no longer be provided.

(e) Closing a location.

(i) The application must include the name of the licensed agency or entity storing and managing the records, including:

(A) The method of contact, such as a telephone number, electronic address, or both; and

(B) The mailing and street address where the records will be stored.

(ii) When a closing agency that has provided substance use disorder services arranges for the continued storage and management of individual service records by a qualified service organization (QSO), the closing agency must enter into a written agreement with the QSO that meets the requirements of 42 C.F.R. Part 2.

(iii) In the event of an agency closure the agency must provide each individual currently being served:

(A) Notice of the agency closure at least 30 calendar days before the date of closure;

(B) Assistance with accessing services at another location; and

(C) Information on how to access records to which the individual is entitled.

~~((7))~~ (10) Change of ownership.

(a) Change of ownership means one of the following:

(i) The ownership of a licensed behavioral health agency changes from one distinct legal owner to another distinct legal owner;

(ii) The type of business changes from one type to another, such as, from a sole proprietorship to a corporation; or

(iii) The current ownership takes on a new owner of five percent or more of the organizational assets.

(b) When a licensed behavioral health agency changes ownership, the agency shall submit to the department:

(i) An initial license application from the new owner in accordance with subsection (2) of this section. The new agency must receive a new license under the new ownership before providing any behavioral health service; and

(ii) A statement from the current owner regarding the disposition and management of individual service records in accordance with applicable state and federal statutes and regulations.

~~((8))~~ (11) Change in location. A licensed behavioral health agency must receive a new license under the new location's address before providing any behavioral health service at that address. The agency shall submit to the department a licensing application requesting a change in location that is signed by the agency's designated official. The application must include:

(a) The new address;

(b) A statement assuring the location meets the Americans with Disabilities Act (ADA) standards and that any agency-operated facility where behavioral health services will be provided is:

(i) Suitable for the purposes intended, including having adequate space for private personal consultation with an individual and individual service record storage that adheres to confidentiality requirements;

(ii) Not a personal residence; and

(iii) Approved as meeting all local and state building and safety requirements, as applicable.

(c) Payment of initial licensure fees according to WAC 246-341-0365.

~~((9))~~ (12) Granting a license. A new or amended license or certification will not be granted to an agency until:

(a) All of the applicable notification and application requirements of this section are met; and

(b) The department has reviewed and approved the policies and procedures for initial licensure or addition of new certifications that demonstrate that the agency will operate in compliance with the licensure and certification standards.

~~((10))~~ (13) Effective date. An agency's license and any behavioral health services certification is effective for up to 12 months from the date of issuance, subject to the agency maintaining compliance with the minimum license and certification standards in this chapter.

~~((11))~~ (14) After receiving the license. The agency shall post the department-issued license and certification(s) in a conspicuous place on the agency's premises, and, if applicable, on the agency's branch site premises.

AMENDATORY SECTION (Amending WSR 22-24-091, filed 12/6/22, effective 12/10/22)

**WAC 246-341-0342 Agency licensure and certification—Off-site locations.** (1) A behavioral health agency may provide certified services at an off-site location or from a mobile unit under the existing behavioral health agency license.

(2) For the purposes of this section:

(a) "Off-site" means the provision of services by a licensed behavioral health agency at a location where the assessment or treatment is not the primary purpose of the site, such as in schools, hospitals, long-term care facilities, correctional facilities, an individual's residence, the community, or housing provided by or under an agreement with the agency.

(b) "Established off-site location" means a location that is regularly used and set up to provide services rather than a location used on an individual, case-by-case basis.

(c) "Mobile unit" means a vehicle, lawfully used on public streets, roads, or highways with more than three wheels in contact with the ground, from which behavioral health services are provided at a nonpermanent location(s).

(3) A behavioral health agency that provides off-site services at an established off-site location(s) shall:



(a) Maintain a list of each established off-site location where services are provided on a regularly scheduled ongoing basis and include, for each established off-site location:

(i) The name and address of the location the services are provided;

(ii) The primary purpose of the off-site location;

(iii) The service(s) provided; and

(iv) The date off-site services began at that location;

(b) Maintain an individual's confidentiality at the off-site location; and

(c) Securely transport confidential information and individual records between the licensed agency and the off-site location, if applicable.

(4) In addition to meeting the requirements in subsection (3) of this section, an agency providing services to an individual in their place of residence or services in a public setting that is not an established off-site location where services are provided on a regularly scheduled ongoing basis must:

(a) Implement and maintain a written protocol of how services will be offered in a manner that promotes individual, staff member, and community safety; and

(b) For the purpose of emergency communication and as required by RCW 71.05.710, provide access to a wireless telephone or comparable device to any employee, contractor, student, or volunteer when making home visits to individuals.

(5) Before operating a mobile unit, agencies providing behavioral health services from a mobile unit must notify the department in writing in a manner outlined by the department. The notification must include that a mobile unit is being added under the agency license and indicate what services will be provided from the mobile unit (~~(, including whether it is operating as a mobile narcotic treatment program as defined in 21 C.F.R. Part 1300.01.~~

~~(6) An opioid treatment program operating a mobile narcotic treatment program must:~~

~~(a) Submit a copy of the Drug Enforcement Administration (DEA) approval for the mobile narcotic treatment program; and~~

~~(b) Comply with 21 C.F.R. Parts 1300, 1301, and 1304 and any applicable rules of the pharmacy quality assurance commission). Opioid treatment programs must also comply with WAC 246-341-0300(7) before operating a mobile unit.~~

AMENDATORY SECTION (Amending WSR 21-12-042, filed 5/25/21, effective 7/1/21)

**WAC 246-341-1000 Opioid treatment programs (OTP)—(General)**  
**Certification standards.** (~~(1) Opioid treatment programs (OTP) may order, possess, dispense, and administer medications approved by the United States Food and Drug Administration for the treatment of opioid use disorder, alcohol use disorder, tobacco use disorder, and reversal of opioid overdose. OTP services include withdrawal management and maintenance treatment along with evidence-based therapy.~~

~~(2) An agency providing opioid treatment program services must ensure that the agency's individual record system complies with all federal and state reporting requirements relevant to opioid drugs ap-~~

~~proved for use in treatment of opioid use disorder, alcohol use disorder, tobacco use disorder, and reversal of opioid overdose.~~

~~(3) An agency must:~~

~~(a) Use evidence-based therapy in addition to medication in the treatment program;~~

~~(b) Identify individual mental health needs during assessment process and refer them to appropriate treatment if not available on-site;~~

~~(c) Provide education to each individual admitted, totaling no more than fifty percent of treatment services, on:~~

~~(i) Alcohol, other drugs, and substance use disorder;~~

~~(ii) Relapse prevention;~~

~~(iii) Infectious diseases including human immunodeficiency virus (HIV) and hepatitis A, B, and C;~~

~~(iv) Sexually transmitted infections; and~~

~~(v) Tuberculosis (TB);~~

~~(d) Provide information to each individual on:~~

~~(i) Emotional, physical, and sexual abuse;~~

~~(ii) Nicotine use disorder;~~

~~(iii) The impact of substance use during pregnancy, risks to the developing fetus before prescribing any medications to treat opioid use disorder, the risks to both the expecting parent and fetus of not treating opioid use disorder, and the importance of informing medical practitioners of substance use during pregnancy; and~~

~~(iv) Family planning.~~

~~(e) Create and implement policies and procedures for:~~

~~(i) Diversion control that contains specific measures to reduce the possibility of the diversion of controlled substances from legitimate treatment use, and assign specific responsibility to the medical and administrative staff members for carrying out the described diversion control measures and functions;~~

~~(ii) Urinalysis and drug testing, to include:~~

~~(A) Obtaining specimen samples from each individual, at least eight times within twelve consecutive months;~~

~~(B) Documentation indicating the clinical need for additional urinalysis;~~

~~(C) Random samples, without notice to the individual;~~

~~(D) Samples in a therapeutic manner that minimizes falsification;~~

~~(E) Observed samples, when clinically appropriate; and~~

~~(F) Samples handled through proper chain of custody techniques.~~

~~(iii) Laboratory testing;~~

~~(iv) The response to medical and psychiatric emergencies; and~~

~~(v) Verifying the identity of an individual receiving treatment services, including maintaining a file in the dispensary with a photograph of the individual and updating the photographs when the individual's physical appearance changes significantly.~~

~~(4) An agency must ensure that an individual is not admitted to opioid treatment withdrawal management services more than two times in a twelve-month period following admission to services.~~

~~(5) An agency providing services to a pregnant woman must have a written procedure to address specific issues regarding their pregnancy and prenatal care needs, and to provide referral information to applicable resources.~~

~~(6) An agency providing youth opioid treatment program services must:~~

~~(a) Ensure that before admission the youth has had two documented attempts at short-term withdrawal management or drug-free treatment~~

~~within a twelve-month period, with a waiting period of no less than seven days between the first and second short-term withdrawal management treatment; and~~

~~(b) Ensure that when a youth is admitted for maintenance treatment, written consent by a parent or if applicable, legal guardian or responsible adult designated by the relevant state authority, is obtained.~~

~~(7) An agency providing opioid treatment program services must ensure:~~

~~(a) That notification to the federal Substance Abuse and Mental Health Services Administration (SAMHSA) and the department is made within three weeks of any replacement or other change in the status of the program, program sponsor as defined in 42 C.F.R. Part 8, or medical director;~~

~~(b) Treatment is provided to an individual in compliance with 42 C.F.R. Part 8;~~

~~(c) The individual record system complies with all federal and state reporting requirements relevant to opioid drugs approved for use in treatment of opioid use disorder; and~~

~~(d) The death of an individual enrolled in an opioid treatment program is reported to the department within forty-eight hours.) An agency providing opioid treatment program services must comply with the following:~~

(1) All applicable requirements, including those specific to medication units, of 21 C.F.R. §§ 1300, 1301, 1304, and 1306, and 42 C.F.R. Part 8, in effect as of April 2024. Copies of the incorporated version of 21 C.F.R. Part 1301 and 42 C.F.R. Part 8 are available at [www.doh.wa.gov/otp](http://www.doh.wa.gov/otp) or by contacting the department at 360-236-4700 and are available for public inspection at the department's office at Department of Health, Town Center 2, 111 Israel Road S.E., Tumwater, WA 98501.

(2) Develop, maintain, and implement policies and procedures for:

(a) Requirements in 42 C.F.R. Part 8.12 to include:

(i) Administrative and organizational structure;

(ii) Continuous quality improvement;

(iii) Staff credentials;

(iv) Patient admission criteria;

(v) Required services;

(vi) Recordkeeping and patient confidentiality;

(vii) Medication administration, dispensing, and use;

(viii) Unsupervised or take-home use; and

(ix) Interim maintenance treatment.

(b) The opioid treatment program's accreditation body standards;

(c) After-hours contact service to confirm patient dose amounts, seven days a week, 24 hours a day;

(d) Urinalysis and drug testing, to include:

(i) Documentation indicating the clinical need for additional urinalysis;

(ii) Observed samples, when clinically indicated; and

(iii) Samples handled through proper chain of custody techniques.

(e) The response to medical and psychiatric emergencies; and

(f) Verifying the identity of an individual receiving treatment services, including maintaining a file in the dispensary with a photograph of the individual and updating the photographs when the individual's physical appearance changes significantly.

(3) Use the state's central registry, as defined in subsection (15) of this rule, for, but not limited to, emergencies and dual en-

rollment, including submitting and maintaining all required data and tasks within the central registry;

(4) Offer on-site, or by referral, to each individual admitted:

(a) Hepatitis A and Hepatitis B vaccine;

(b) Screening, testing, and treatment for infectious diseases including:

(i) Human immunodeficiency virus (HIV);

(ii) Hepatitis B and C;

(iii) Syphilis; and

(iv) Tuberculosis (TB).

(5) Provide the following information to each individual admitted:

(a) Information and education, as appropriate, on:

(i) Emotional, physical, and sexual abuse;

(ii) The impact of opioid use and opioid use disorder medications during pregnancy as required by RCW 71.24.560 to all pregnant individuals before they are prescribed medications as part of their treatment, and to all individuals who become pregnant while receiving services; and

(iii) Reproductive health.

(b) Information about, and access to, opioid overdose reversal medication in accordance with RCW 71.24.594.

(6) Have at least one staff member on duty at all times who has documented training in:

(a) Cardiopulmonary resuscitation (CPR); and

(b) Management of opioid overdose.

(7) The medical director ensures that:

(a) There is a documented review of the department prescription drug monitoring program data on the individual:

(i) At admission;

(ii) Annually after the date of admission; and

(iii) Subsequent to any incidents of concern.

(b) For each individual admitted to withdrawal management services an approved withdrawal management schedule that is medically appropriate is developed; and

(c) For each individual administratively discharged from services an approved withdrawal management schedule that is medically appropriate is developed.

(8) All exceptions to take-home requirements are submitted and approved by the state opioid treatment authority and Substance Abuse and Mental Health Services Administration (SAMHSA).

(9) An agency providing opioid treatment program services may accept, possess, and administer patient-owned medications.

(10) Notify the federal SAMHSA and the department within three weeks of any replacement or other change in the status of the program, program sponsor, or medical director as defined in 42 C.F.R. Part 8.

(11) An agency operating a medication unit must comply with 21 C.F.R. Parts 1300, 1301, 1304, 1306, 42 C.F.R. Part 8, and any applicable rules of the pharmacy quality assurance commission.

(12) Report to the department deaths of individuals enrolled in an opioid treatment program, that do not occur on campus, within 48 hours upon learning of the death.

(13) Report to the department deaths that occur on the campus of an opioid treatment program as a critical incident according to WAC 246-341-0420(12).

(14) Develop an ongoing community relations plan to address new concerns expressed by the community.

(15) For the purposes of this section, "central registry" means the software system used to determine whether the patient is enrolled in any other opioid treatment program and to provide a continuum of care in times of disaster.

AMENDATORY SECTION (Amending WSR 22-24-091, filed 12/6/22, effective 5/1/23)

**WAC 246-341-1100 Withdrawal management—Certification standards.**

(1) Substance use disorder withdrawal management services are provided to assist in the process of withdrawal from psychoactive substances in a safe and effective manner that includes medical management or medical monitoring. Substance use disorder withdrawal management services under this certification include:

(a) Adult withdrawal management; and

(b) Youth withdrawal management.

(2) An agency certified for withdrawal management services must:

(a) Ensure the individual receives a substance use disorder screening before admission;

(b) Provide counseling to each individual that addresses the individual's:

(i) Substance use disorder and motivation; and

(ii) Continuing care needs and need for referral to other services.

(c) Maintain a list of resources and referral options that can be used by staff members to refer an individual to appropriate services; and

(d) Post any rules and responsibilities for individuals receiving treatment, including information on potential use of increased motivation interventions or sanctions, in a public place in the facility.

(3) Ensure that each staff member providing withdrawal management services to an individual, with the exception of substance use disorder professionals, substance use disorder professional trainees, physicians, physician assistants, advanced registered nurse practitioners, or person with a co-occurring disorder specialist enhancement, completes a minimum of 40 hours of documented training before being assigned individual care duties. This personnel training must include the following topics:

(a) Substance use disorders;

(b) Infectious diseases, to include hepatitis and tuberculosis (TB); and

(c) Withdrawal screening, admission, and signs of trauma.

(4) An agency certified for withdrawal management services must meet the certification standards for residential and inpatient behavioral health services in WAC (~~(246-341-1104)~~) 246-341-1105 and the individual service requirements for inpatient and residential substance use disorder services in WAC 246-341-1108.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 246-341-1005 Opioid treatment programs (OTP)—Agency certification requirements.
- WAC 246-341-1010 Opioid treatment programs (OTP)—Agency staff requirements.
- WAC 246-341-1015 Opioid treatment programs (OTP)—Individual service record content and documentation requirements.
- WAC 246-341-1020 Opioid treatment programs (OTP)—Medical director responsibility.
- WAC 246-341-1025 Opioid treatment programs (OTP)—Medication management.

## WSR 25-03-022

## PERMANENT RULES

## DEPARTMENT OF HEALTH

(Board of Osteopathic Medicine and Surgery)

[Filed January 7, 2025, 8:32 a.m., effective October 1, 2025]

Effective Date of Rule: October 1, 2025.

Purpose: Osteopathic physician exam requirements in WAC 246-853-020. The board of osteopathic medicine and surgery (board) has adopted amendments to update the examination requirements for licensure of osteopathic physicians.

The adopted changes will allow applicants to select one out of the four nationally approved examination series instead of selecting a combination of two or more examinations to qualify for licensure. Additionally, the board removed the osteopathic principles and practices exam as one of the examination options, as this is an underutilized pathway to licensure.

Citation of Rules Affected by this Order: Amending WAC 246-853-020.

Statutory Authority for Adoption: RCW 18.57.005, 18.130.050, and 18.340.020; and 2SHB 1724 (chapter 425, Laws of 2023), codified as RCW 18.130.077.

Adopted under notice filed as WSR 24-16-116 on August 5, 2024.

A final cost-benefit analysis is available by contacting Becky McElhiney, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4766, fax 360-236-2850, TTY 711, email osteopathic@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 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 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: September 13, 2024.

Lisa Galbraith, DO  
Chair

### OTS-5273.3

AMENDATORY SECTION (Amending WSR 15-16-085, filed 7/31/15, effective 8/31/15)

**WAC 246-853-020 Osteopathic medicine and surgery examination.**

~~((1))~~ An applicant for licensure as an osteopathic physician must successfully pass:

~~((a))~~ (1) Parts I, II, and III of the Comprehensive Osteopathic Medical Licensing Examination (COMLEX-USA) or Parts I, II, and III of

the exam administered by the National Board of Osteopathic Medical Examiners (NBOME); or

~~((b) The Washington Osteopathic Principles and Practices (OP&P) Examination with a minimum score of seventy-five percent in each section;))~~

~~(2) The Comprehensive Osteopathic Variable-Purpose Examination (COMVEX) administered by NBOME with a minimum passing score as established by NBOME; or ((other state administered OP&P exam approved by the board.~~

~~(2) In addition to the exams identified in subsection (1)(b) of this section, the applicant must also pass at least one of the following:~~

~~(a)) (3) The Federation of State Licensing Board (FLEX) I and FLEX II Examination with a minimum score of 75 on each component. If taken prior to June 1985, passed with a FLEX weighted average of a minimum ((seventy-five)) 75 percent; or~~

~~((b) The FLEX I and FLEX II Examination with a minimum score of seventy-five on each component; or~~

~~(e)) (4) The United States Medical Licensing Examination (USMLE) Steps I, II, and III after December 1993, with a minimum score as established by the Federation of State Medical Boards and the National Board of Medical Examiners.~~



WSR 25-03-026

PERMANENT RULES

WASHINGTON STATE PATROL

[Filed January 7, 2025, 10:22 a.m., effective February 7, 2025]

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

Purpose: Sections 1-3, chapter 17, Laws of 2023 (ESSB 5272); and sections 1-4, chapter 308, Laws of 2024 (SSB 6115), require the Washington state patrol to adopt rules related to the enforcement and adjudication of speed violations including, but not limited to, notice of infraction verification and issuance authorization, and determining which types of emergency vehicles are exempt from being issued notices of infraction under the law.

Citation of Rules Affected by this Order: New chapter 446-105 WAC.

Statutory Authority for Adoption: RCW 46.63.200.

Adopted under notice filed as WSR 24-24-112 on December 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 24, 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: January 7, 2025.

John R. Batiste  
Chief

OTS-5998.4

**Chapter 446-105 WAC  
Work Zone Speed Safety Camera Program**

NEW SECTION

**WAC 446-105-010 Application of this chapter.** This chapter applies to all adjudicative proceedings under the jurisdiction of the Washington state patrol for state highway work zone speed safety camera system infractions issued under RCW 46.63.200.

NEW SECTION

**WAC 446-105-020 Adoption of model rules of procedure.** Except as they may be inconsistent with RCW 46.63.075, 46.63.200, or the rules in this chapter, the Washington state patrol adopts the model rules of procedure as set forth in chapter 10-08 WAC. Where the rules of this chapter conflict with those of chapter 10-08 WAC, the rules of this chapter govern.

NEW SECTION

**WAC 446-105-030 Definitions.** The following definitions shall apply throughout this chapter.

- (1) "DOL" means the Washington state department of licensing.
- (2) "Hearing packet" means the documentary evidence that will be transmitted by the WSDOT to the OAH for each administrative hearing, including, but not limited to:
  - (a) The notice of infraction;
  - (b) The vehicle license plate images associated with the notice of infraction;
  - (c) The radar/lidar calibration certificate;
  - (d) The vehicle registration information;
  - (e) The petitioner's hearing request;
  - (f) Documents establishing worker presence; and
  - (g) The work zone speed safety camera deployment log.
- (3) "Notice of infraction" means the document issued under RCW 46.63.030 and 46.63.200 notifying the registered owner of a work zone speed safety camera system violation.
- (4) "OAH" means the Washington state office of administrative hearings.
- (5) "Patrol" means the Washington state patrol.
- (6) "Penalty" means the penalty assessed for a work zone speed safety camera system violation, as described in RCW 46.63.200(5).
- (7) "Petitioner" means a person or business cited for a work zone speed safety camera system violation who requests a hearing in response to a notice of infraction.
- (8) "WSDOT" means the Washington state department of transportation or its work zone speed safety camera system vendor.

NEW SECTION

**WAC 446-105-040 Brief adjudicative proceedings.** (1) Adoption of brief adjudicative proceedings. Under RCW 34.05.410 (1)(a), the patrol hereby adopts the use of brief adjudicative proceedings for the following matters:

- (a) Mitigation hearings in which the petitioner has admitted to the violation, under WAC 446-105-130;
  - (b) Payment plan hearings in which the petitioner has admitted to the violation, under WAC 446-105-140; and
  - (c) Contested hearings in which the only issue being raised is a denial of responsibility under RCW 46.63.075.
- (2) Conversion to a formal adjudicative proceeding. The administrative law judge may, in their sole discretion, convert a brief adju-

dicative proceeding to a formal adjudicative proceeding whenever it appears that a brief adjudicative proceeding is insufficient to resolve the case.

(a) When a brief adjudicative proceeding is converted to a formal adjudicative proceeding, the OAH shall issue a new notice of hearing for a date not less than 15 calendar days from the date of the notice; and

(b) The OAH shall serve the petitioner and the patrol with the new notice of hearing.

(3) Procedure for brief adjudicative proceedings. The following procedure applies to brief adjudicative proceedings:

(a) An administrative law judge with the OAH will conduct the brief adjudicative proceeding.

(b) Not less than 14 calendar days before the date of the hearing, the OAH shall serve notice on the petitioner that a brief adjudicative proceeding will occur. The notice of hearing will contain the following:

(i) The date of the brief adjudicative proceeding;

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

(iii) Notice that the administrative law judge's decision will be based on the written materials unless, within 10 calendar days of receiving the notice of hearing, the petitioner requests in writing to appear telephonically to submit sworn oral testimony.

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

(d) The administrative law judge's review will be limited to the record identified in subsection (4) of this section.

(e) If the petitioner has submitted a written request to appear telephonically, the administrative law judge will entertain oral testimony from the petitioner at a time and place designated by the administrative law judge.

(f) No witnesses, other than the petitioner, may offer oral testimony.

(g) Formal discovery, including depositions and interrogatories, is not allowed.

(h) The administrative law judge will issue an initial order within 15 calendar days of the date for final submission of written materials or oral testimony, if any.

(4) Record for brief adjudicative proceedings. The record for brief adjudicative proceedings will consist of the following:

(a) The hearing packet;

(b) Any additional records, sworn declarations, or oral testimony submitted by the petitioner; and

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

(5) Effectiveness of orders on brief adjudicative proceedings. Initial orders on brief adjudicative proceedings shall become final 21 calendar days after mailing of the initial order unless the petitioner files a written petition for review.

(a) The petition for review must:

- (i) Be filed with the OAH in accordance with WAC 10-08-110 within 21 calendar days of mailing of the initial order; and
  - (ii) Contain a concise statement of the issue(s) to be reviewed.
- (b) The reviewing officer will be an administrative law judge with the OAH.
- (c) The reviewing officer will issue a written final order that must include a brief statement of the reason(s) for the decision, and must be entered within 20 calendar days after the petition for review is filed with the OAH.

#### NEW SECTION

**WAC 446-105-050 Formal adjudicative proceedings.** The OAH will conduct formal adjudicative proceedings for all work zone speed safety camera system infraction hearings other than those identified in WAC 446-105-040(1). At the conclusion of a formal adjudicative proceeding, the administrative law judge shall enter a final order.

#### NEW SECTION

**WAC 446-105-060 What information must be included on a notice of infraction?** The notice of infraction shall include the following:

- (1) A statement that the notice represents a determination that the infraction has been committed by the person or business named in the notice, and that the determination shall be final unless contested as provided in RCW 46.63.200 and this chapter;
- (2) A statement that the infraction is a noncriminal offense for which imprisonment may not be imposed as a sanction, and that the infraction may result in nonrenewal of the vehicle registration if any monetary penalty is not timely paid;
- (3) A statement of the penalty established for the infraction;
- (4) If the penalty is \$0, a statement of the amount of the monetary penalty for second and subsequent infractions;
- (5) A statement of the options provided in this chapter for responding to the notice of infraction and the procedures necessary to exercise these options;
- (6) A statement that, at any hearing to contest the determination, the patrol has the burden of proving, by a preponderance of the evidence, that the infraction was committed;
- (7) A statement that, at any hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the infraction or for requesting a payment plan only, the person or business will be deemed to have committed the infraction;
- (8) A statement that the person or business must respond to the notice of infraction within 30 days of receipt; and
- (9) A statement that failure to appear at a hearing requested for the purpose of contesting the infraction, explaining mitigating circumstances, or seeking a payment plan may result in the refusal of the DOL to renew the vehicle registration if any penalties imposed under RCW 46.63.200 or this chapter have not been satisfied.

NEW SECTION

**WAC 446-105-070 Are any vehicles exempt from work zone speed safety camera system infractions?** The following vehicles are exempt from receiving an infraction for a work zone speed safety camera system violation:

- (1) Any vehicle registered to a fire department;
- (2) Any vehicle registered to a general authority law enforcement agency for use by a general authority Washington police officer, as defined in RCW 10.93.020;
- (3) Any vehicle registered to a sovereign tribal government for use by a tribal police officer, as defined in RCW 10.92.010;
- (4) Any vehicle registered to a federal law enforcement agency for use by a federal police officer, as defined in RCW 10.93.020;
- (5) Any aid vehicle registered to an aid service, as defined in RCW 18.73.030, equipped with emergency lights and sirens;
- (6) Any ambulance registered to a public or private ambulance service, as defined in RCW 18.73.030, equipped with emergency lights and sirens;
- (7) Any organ transplant vehicle registered to an organ transplant service, as defined in RCW 18.73.030, equipped with emergency lights and sirens; and
- (8) Any vehicle with valid diplomatic license plates.

NEW SECTION

**WAC 446-105-080 What can I do if I received a work zone speed safety camera system infraction but my vehicle is exempt under WAC 446-105-070?** Any person or business who receives a work zone speed safety camera system infraction for a vehicle that is exempt under WAC 446-105-070, may request a contested hearing to challenge the infraction.

- (1) At the contested hearing, the person or business may be required to submit documentary proof that the vehicle meets the requirements for any of the exemptions listed in WAC 446-105-070.
- (2) If the recipient of a notice of infraction fails to contest the infraction, the recipient will be liable for any penalty amount.

NEW SECTION

**WAC 446-105-090 How long do I have to request a hearing or pay a penalty?** Any person or business that receives a notice of infraction must remit payment for any penalty or request a hearing within 30 calendar days of receiving the notice of infraction. For purposes of determining the date of receipt, a notice of infraction shall be deemed received upon the third day following the day upon which the notice of infraction is placed in the mail, unless the third day falls on a Saturday, Sunday, or legal holiday, in which event the notice of infraction shall be deemed received on the first day other than a Saturday, Sunday, or legal holiday, following the third day.

NEW SECTION

**WAC 446-105-100 What can I do if I receive a notice of infraction with a \$0 penalty?** Any person or business that receives a notice of infraction with a \$0 penalty may:

- (1) Admit the violation; or
- (2) Request a hearing to contest the infraction.

NEW SECTION

**WAC 446-105-110 What can I do if I receive a notice of infraction with a \$248 penalty?** Any person or business that receives a notice of infraction with a \$248 penalty may:

- (1) Admit the violation and pay the penalty;
- (2) Admit the violation and request a hearing to mitigate the penalty and/or to establish a payment plan; or
- (3) Request a hearing to contest the infraction.

NEW SECTION

**WAC 446-105-120 How can I pay a work zone speed safety camera system infraction penalty?** (1) Work zone speed safety camera infraction penalties may be paid by credit/debit card, check, or money order.

- (2) Payments may be made:
  - (a) By mail, using the payment coupon mailed with the notice of infraction;
  - (b) By telephone, as described on the instructions contained in the notice of infraction; and
  - (c) Online, by following the instructions for online payments contained in the notice of infraction.
- (3) All payments must be made in full, unless a payment plan has been approved under WAC 446-105-140.
  - (a) Partial payments will not be accepted.
  - (b) If a payment plan has not been approved and a partial payment is received by mail, the payment will be returned to the sender.

NEW SECTION

**WAC 446-105-130 What is a hearing to mitigate the penalty and who can request one?** (1) The purpose of a mitigation hearing is to allow the petitioner to offer evidence to explain why they believe the monetary penalty should be reduced.

- (2) Any person or business who receives a work zone speed safety camera system notice of infraction with a \$248 penalty may request a mitigation hearing after first admitting to the violation.
- (3) A mitigation hearing is not available for a work zone speed safety camera system notice of infraction with a \$0 penalty.

NEW SECTION

**WAC 446-105-140 Who can request a hearing to establish a payment plan?** (1) Any person who receives a work zone speed safety camera system notice of infraction with a \$248 penalty may request a hearing to establish a payment plan.

(2) A hearing to establish a payment plan is not available for a work zone speed safety camera system notice of infraction with a \$0 penalty.

(3) A person or business may request a hearing for the sole purpose of establishing a payment plan after first admitting to the violation.

(4) If liability is established at a hearing to contest the infraction, the petitioner may still seek a payment plan during that hearing.

NEW SECTION

**WAC 446-105-150 Who can request a hearing to contest an infraction and what issues will be addressed at the hearing?** (1) Any person or business who receives a work zone speed safety camera system notice of infraction may request a hearing to contest the infraction.

(2) At the time a contested hearing is requested, the petitioner will be asked to identify the issues that they intend to raise at the hearing. The petitioner must identify all issues they intend to raise at the hearing when they make the hearing request.

(3) The petitioner may choose any of the following general issues at a hearing to contest the infraction:

(a) General denial. The petitioner does not believe they should be found liable for the infraction;

(b) Radar/Lidar. Challenges the proper operation of the radar/lidar equipment, including calibration;

(c) Worker presence. Challenges workers being present in the state highway work zone at the time of the violation, as defined in WAC 468-90-010;

(d) Nonresponsibility. The petitioner denies responsibility per RCW 46.63.075 because the vehicle was stolen, or the petitioner was not the person in control of the vehicle at the time of the violation;

(e) Exempt vehicle. The vehicle is exempt from the issuance of work zone speed safety camera infractions under WAC 446-105-070; and

(f) Other. Issues other than those identified in (a) through (e) of this subsection. The petitioner must describe in detail any other issues they intend to raise at the hearing.

(4) The issues the petitioner has identified will be reflected on the hearing notice that will be mailed. If no objection to the issues identified in the hearing notice is filed with the OAH within 10 calendar days after the date such notice is mailed, the notice will control the subsequent course of the proceeding unless modified for good cause by subsequent order.

NEW SECTION

**WAC 446-105-160 How can I request a hearing?** All hearing requests may be made by mail, by telephone, or online at <https://usview.cite-web.com/> by following the instructions contained in the notice of infraction.

NEW SECTION

**WAC 446-105-170 What will happen if I do not respond to a work zone speed safety camera system notice of infraction within 30 days of receipt?** (1) A notice of infraction represents a determination that the infraction has been committed, and the determination will be final unless it is contested.

(2) A person or business who receives a work zone speed safety camera system notice of infraction has 30 days from receipt, as defined in WAC 446-105-090, to respond as directed in the notice of infraction.

(3) The recipient must respond to all notices of infraction, whether the penalty is \$0 or \$248.

(4) If, within 30 days of receipt of the notice of infraction, the recipient does not respond by either admitting to the violation and paying any assessed penalty, or by requesting a hearing, a notification will be mailed finding the infraction committed and imposing the penalty identified in the notice of infraction.

NEW SECTION

**WAC 446-105-180 What will happen if I request a hearing to seek mitigation, to request a payment plan, or to contest the infraction solely on the basis that I was not in control of the vehicle at the time of the violation?** (1) Timely submitted hearing requests will proceed to a brief adjudicative proceeding as described in WAC 446-105-040.

(2) Once a hearing request has been received, a hearing notice will be mailed to the address at which the vehicle is registered, unless the mailing address was updated by the petitioner at the time the hearing was requested.

(3) If a petitioner has submitted a request to appear telephonically, the hearing notice will contain the date and time of the hearing, and instructions for participating.

(a) A petitioner who has requested to appear telephonically must attend the hearing.

(b) If the petitioner cannot attend a scheduled hearing, the petitioner is responsible for contacting the OAH at the phone number provided on the hearing notice to request a new hearing date.

NEW SECTION

**WAC 446-105-190 What will happen if I request a formal adjudicative hearing to contest the infraction?** (1) Timely submitted hearing



requests will proceed to a formal adjudicative hearing consistent with the Administrative Procedure Act and the provisions of this chapter.

(2) Once a request for a formal adjudicative hearing has been received, the OAH will mail a hearing notice to the address at which the vehicle is registered, unless the mailing address was updated by the petitioner at the time the hearing was requested.

(3) The hearing notice will contain the date and time of the hearing, and instructions for participating.

(4) Formal adjudicative proceedings will be held telephonically unless, within 10 calendar days of receiving the hearing notice, one or both parties request in writing to appear by videoconference.

(a) The request to appear by videoconference must be accompanied by a statement of the reason(s) for the request.

(b) The administrative law judge, in their sole discretion, will decide whether the formal adjudicative hearing shall be held by telephone or videoconference.

(5) The parties must attend the scheduled hearing. If the parties cannot attend a scheduled hearing, they are responsible for contacting the OAH in advance of the hearing to request a new hearing date.

#### NEW SECTION

**WAC 446-105-200 Who can appear in a representative capacity at a work zone speed safety camera system infraction hearing?** The following persons may appear in a representative capacity at a hearing:

(1) An individual representing themselves;

(2) An attorney at law duly qualified and entitled to practice before the supreme court of the state of Washington;

(3) A legal intern admitted to limited practice under Rule 9 of the Washington state supreme court's admission and practice rules. No legal intern, however, may appear without the presence of a supervising lawyer unless the administrative law judge approves the intern's sole appearance in advance; and

(4) A bona fide officer, partner, or owner of a business, association, partnership, or corporation who appears on behalf of such business, association, partnership, or corporation.

#### NEW SECTION

**WAC 446-105-210 What discovery is allowed in a formal adjudicative proceeding?** The parties should informally exchange information and documents relating to the case prior to the adjudicative proceeding. Formal discovery will be available only as follows:

(1) Methods and scope. Written discovery may be permitted at the discretion of the administrative law judge and to the extent authorized by CR 26(b). In permitting discovery, reference must be made to the civil rules applicable in court proceedings for guidance. The administrative law judge has the power to control the nature and frequency of discovery permitted, and to order discovery conferences to discuss discovery issues.

(2) Limitation on discovery. In addition to limitations on discovery set forth in any other applicable law, regulation, or rule, discovery does not include:

- (a) Depositions; or
- (b) Information or documents relating to work zone speed safety camera infractions issued to any person or entity other than the petitioner.

NEW SECTION

**WAC 446-105-220 What information about my infraction is available to me prior to my administrative hearing?** The documents contained in the hearing packet, which is defined in WAC 446-105-030(2), will be available to a petitioner prior to the administrative hearing. The hearing packet can be downloaded from <https://usview.cite-web.com/> within 48 hours after a hearing request has been received. A petitioner may also obtain a copy of the hearing packet by calling the customer service center, toll free, at 1-833-576-0318.

NEW SECTION

**WAC 446-105-230 What evidence will be available to the administrative law judge at a formal adjudicative proceeding to contest the infraction?** (1) Hearing packet. Upon receipt of a request for a hearing, the hearing packet will be transmitted by the WSDOT to the OAH for consideration by the administrative law judge.

(2) Other evidence. During the hearing, any other documentary evidence or oral testimony may be admitted and considered by the administrative law judge.

(3) The administrative law judge may exclude evidence that is irrelevant, immaterial, or repetitious.

NEW SECTION

**WAC 446-105-240 How will I be notified of the administrative law judge's decision?** An administrative law judge with the OAH will enter a final order stating whether the petitioner is liable for any penalty. Orders issued as a result of a hearing will be provided to the petitioner and the patrol electronically or by mail. Orders that are mailed to the petitioner will be mailed to the address at which the vehicle is registered, unless the mailing address was updated by the petitioner.

NEW SECTION

**WAC 446-105-250 When is payment due if I am found liable for an infraction with a monetary penalty?** If a petitioner is found liable for a work zone speed safety camera system infraction with a monetary penalty after an administrative hearing, or due to a failure to respond to the notice of infraction as required by RCW 46.63.200, unless otherwise specified in the order, payment is due within 30 days of the date of the final order. If the petitioner does not pay the amount due

within the time allotted, a hold will be placed on the vehicle registration.

NEW SECTION

**WAC 446-105-260 What happens if I disagree with the outcome of a hearing?** A petitioner can appeal a final order to superior court as specified in chapter 34.05 RCW.

NEW SECTION

**WAC 446-105-270 How do I release a hold on my vehicle registration renewal?** A person or business can contact the DOL to find out if there is a hold on their vehicle registration renewal. To release a hold, the person or business must remit full payment for any unpaid work zone speed safety camera system infraction penalties. Payment may be initiated by calling the customer service center, toll free, at 1-833-576-0318.

**WSR 25-03-027**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**

[Filed January 7, 2025, 11:30 a.m., effective January 8, 2025]

Effective Date of Rule: January 8, 2025.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The law that this rule implements goes into effect on January 1, 2025, so the department of retirement systems is putting the rule into effect less than 31 days after filing.

Purpose: Invoicing law enforcement officers' and firefighters' (LEOFF) Plan 2 employers for benefit overpayments directly related to erroneous reporting of member information.

Citation of Rules Affected by this Order: Amending WAC 415-02-075.

Statutory Authority for Adoption: RCW 41.50.[0]50 and sections 301 through 303, chapter 304, Laws of 2024.

Adopted under notice filed as WSR 24-23-041 on November 14, 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 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 7, 2025.

Tracy Guerin  
Director

## OTS-5908.1

AMENDATORY SECTION (Amending WSR 23-07-043, filed 3/8/23, effective 4/8/23)

**WAC 415-02-075 Is my retirement account subject to correction after retirement or separation from service? (1) When can the department correct a member's record?** The department can correct your retirement account at any time when an error has been discovered.

**(2) What will happen if I have been underpaid?**

(a) If the underpayment is related to an on-going monthly benefit, the department will correct all future payments and compute the additional amount due from prior payments and pay you in a lump sum.

Example 1:

Chris retired September 1st and Chris' monthly retirement benefit was initially determined to be \$2,500. In November, Chris' former employer reported additional earnings. The department used that additional reporting to recalculate Chris' benefit, which is now set at \$2,525 per month. Chris will receive the new amount for the November and future monthly benefits. Chris will also receive a payment of \$50 to cover the additional \$25 amount for September and October.

(b) If the underpayment is related to a one-time payment, the additional amount will be paid once identified.

Example 2:

When separating from employment, Sandy chose to withdraw all retirement contributions instead of receiving an on-going benefit at retirement age. After the withdrawal, Sandy's employer submitted \$130 of additional retirement contributions that had been deducted from Sandy's paycheck. The department will pay that \$130 to Sandy.

**(3) What will happen if I have been overpaid?**

(a) If the overpayment is related to an on-going monthly benefit, the department will correct the payment amount for all future months. Except for overpayments caused by incorrect employer reporting in LEOFF Plan 2, an invoice will be created for the amount of the overpayment and you will normally have at least 90 days to return the amount of the overpayment to the department. If you cannot make payment in full within those 90 days, you can contact the department to discuss a payment plan which would allow deductions from your monthly benefit. Or you may choose to have your benefit permanently, actuarially reduced to pay the overpayment. Repayment options will be provided on the invoice you receive. If you do not establish a payment plan (which will include interest) or make payment in full by the invoice due date, the department will apply the actuarial reduction and permanently reduce your monthly benefit.

If you or the department identify that your full monthly benefit payment was in error (for example you were not eligible to retire), the department may ask your bank to reverse the payment (depending on the timing and banking rules) and return the funds to pay your invoice.

Example 3:

Pat retired July 1st, with a calculated retirement benefit of \$3,000 per month. However, Pat used vacation leave until August 15th, and so, Pat was not separated from employment and eligible to retire until September 1st. Once Pat's employer provided the department with their final reporting on Pat, the department invoiced Pat for \$6,000 representing the July and August pension payments (2 x \$3,000).

(b) If the overpayment is not related to an on-going monthly benefit payment, the department will invoice you and expect payment in full within 90 days and will apply interest to any balance outstanding after those 90 days have elapsed.

(c) In the event of a LEOFF Plan 2 overpayment caused by an employer's incorrect reporting, the employer will be liable for the overpayment.

**(4) What will happen if an overpayment is received by someone other than a member or beneficiary?** The overpayment will be a debt from the person or entity to the department and the department will invoice accordingly, unless the overpayment was caused by incorrect reporting by an employer in LEOFF Plan 2, in which case the employer will be invoiced.

## Example 4:

J. Smith passed on June 3rd, but with no knowledge of the death, the department deposited the on-going benefit into J. Smith's bank account on the last business day of June. When notified of the death during July, the department requested J. Smith's bank return the June deposit. Banking rules require the department request the deposit amount in full regardless of how much may be ultimately due to an estate.

The department will invoice J. Smith's estate for the June payment and any deductions taken from that payment (such as medical payments) but will apply any amounts received back from the bank or deduction vendors against that invoice. The department will calculate the amount owed to the estate for the month of death and pay J. Smith's estate for those days (three days of 30 for the month of June). Since J. Smith's June payment was \$5,000, the estate will be entitled to \$500 after all other amounts have been collected back by the department. Any amounts the department cannot collect will be a debt of the estate.

**(5) Is there any limit on how much of an overpayment the department may collect?**

(a) The department will calculate the total overpayment amount but may only collect three years back from the point of discovery of an error, unless the overpayment was caused by incorrect reporting from an employer in LEOFF Plan 2, which reduces the collection period to one year prior to discovery.

(b) In cases of fraud, the department may collect the entire overpayment amount.

## Example 5:

Jordan retired April 1, 2018. In October 2021, the department discovered their former employer removed erroneous earnings from Jordan's account, causing the department to recalculate Jordan's monthly benefit. After adjusting Jordan's benefit to the correct amount, the monthly overpayment amount was determined to be \$57 per month for 42 months for a total of \$2,394. The department will only invoice Jordan for three years back from the date of discovery in October 2021 for a total of \$2,052 (36 months x \$57).

**(6) How much can the department reduce my benefit to collect an overpayment?**

(a) Your monthly benefit cannot be reduced by more than half of the corrected benefit.

(b) If half of your corrected monthly benefit is less than the full actuarial reduction necessary to recover the overpayment you received, the department will reduce your benefit by half((~~r~~)) and may put a claim against your estate.

## WSR 25-03-030

## PERMANENT RULES

## DEPARTMENT OF TRANSPORTATION

[Filed January 7, 2025, 2:12 p.m., effective February 7, 2025]

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

Purpose: Per RCW 46.63.200, the Washington state department of transportation is responsible for all actions related to the operation and administration of speed safety camera systems in state highway work zones including, but not limited to, the procurement and administration of contracts necessary for the implementation of speed safety camera systems and the mailing of notices of infraction. This rule is intended to define worker presence to align with the RCW 46.63.200 requirements.

Citation of Rules Affected by this Order: New chapter 468-90 WAC.

Statutory Authority for Adoption: RCW 46.63.200.

Adopted under notice filed as WSR 24-24-100 on December 3, 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 1, Amended 0, Repealed 0.

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

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

Date Adopted: January 7, 2025.

Sam Wilson, Director  
Business Support Services

OTS-6000.1

**Chapter 468-90 WAC**  
**SPEED SAFETY CAMERA SYSTEMS IN STATE HIGHWAY WORK ZONES**

NEW SECTION

**WAC 468-90-010 Worker presence.** For the purposes of RCW 46.63.200 (4)(b), a worker is present in a state highway work zone when at least one state employee, contractor, or agent of the state, or any other individual authorized by the department of transportation, is within the state highway work zone for the purpose of performing construction, maintenance, utility work, or to respond to an incident.

## WSR 25-03-037

## PERMANENT RULES

## HEALTH CARE AUTHORITY

[Filed January 8, 2025, 8:33 a.m., effective February 8, 2025]

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

Purpose: The health care authority is correcting WAC cross citations without changing the rule's effect.

Citation of Rules Affected by this Order: Amending WAC 182-515-1506.

Statutory Authority for Adoption: RCW 41.05.021 and 41.05.160.

Adopted under notice filed as WSR 24-22-087 on October 31, 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: January 8, 2025.

Wendy Barcus  
Rules Coordinator

## OTS-5963.1

AMENDATORY SECTION (Amending WSR 23-04-034, filed 1/25/23, effective 2/25/23)

**WAC 182-515-1506 Home and community based (HCB) waiver services authorized by home and community services (HCS)—General eligibility.**

(1) To be eligible for home and community based (HCB) waiver services a person must:

(a) Meet the program and age requirements for the specific program:

(i) Community options program entry system (COPES), under WAC 388-106-0310;

(ii) Residential support waiver (RSW), under WAC ((~~388-106-0310~~)) ~~388-106-0338~~; or

(iii) New Freedom, under WAC ((~~388-106-0338~~)) ~~388-106-1410~~.

(b) Meet the disability criteria for the supplemental security income (SSI) program under WAC 182-512-0050;

(c) Require the level of care provided in a nursing facility under WAC 388-106-0355;

(d) Reside in a medical institution as defined in WAC 182-500-0050, or be likely to be placed in one within the next 30 days without HCB waiver services provided under one of the programs listed in (a) of this subsection;



(e) Attain institutional status under WAC 182-513-1320;

(f) Assessed for HCB waiver services, be approved for a plan of care, and receiving an HCB waiver service under (a) of this subsection;

(g) Be able to live at home with community support services and choose to remain at home, or live in a department-contracted alternate living facility under WAC 182-513-1100.

(2) A person is not eligible for home and community based (HCB) waiver services if the person:

(a) Is subject to a penalty period of ineligibility for the transfer of an asset under WAC 182-513-1363; or

(b) Has a home with equity in excess of the requirements under WAC 182-513-1350.

(3) See WAC 182-513-1315 for rules used to determine countable resources, income, and eligibility standards for long-term care (LTC) services.

(4) Current income and resource standards are found at [www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources](http://www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources).

## WSR 25-03-038

## PERMANENT RULES

## HEALTH CARE AUTHORITY

[Filed January 8, 2025, 9:36 a.m., effective February 8, 2025]

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

Purpose: These rules allow the prescription drug affordability board and the health care cost transparency board to access prescription drug cost data collected by the drug price transparency program.

Citation of Rules Affected by this Order: Amending WAC 182-51-0900.

Statutory Authority for Adoption: RCW 41.05.021 and 41.05.160.

Other Authority: RCW 70.390.050 (2SHB 1508, section 2 (2)(a), chapter 80, Laws of 2024).

Adopted under notice filed as WSR 24-24-052 on November 26, 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: January 8, 2025.

Wendy Barcus  
Rules Coordinator

## OTS-5960.2

AMENDATORY SECTION (Amending WSR 21-10-008, filed 4/22/21, effective 5/23/21)

**WAC 182-51-0900 Data confidentiality.** (1) For the purpose of reviewing drug prices and conducting affordability reviews, the following boards may access all data collected under RCW 43.71C.020 through 43.71C.080 and any analysis prepared by the authority:

(a) The prescription drug affordability board, as established in chapter 70.405 RCW; and

(b) The health care cost transparency board, as established in chapter 70.390 RCW.

(2) The authority provides data only after the data recipient, as defined by this chapter, has signed a nondisclosure agreement. The authority may prohibit access to or use of the data by a data recipient who violates the nondisclosure agreement.

~~((2))~~ (3) Data recipients must keep data confidential by:

(a) Accessing, using, and disclosing information only in accordance with this section and consistent with applicable statutes, regulations, and policies;

- (b) Having a public policy purpose to access and use the confidential information according to chapter 43.71C RCW;
  - (c) Protecting all confidential information against unauthorized use, access, disclosure, or loss by employing reasonable security measures, including physically securing any computers, documents, or other media containing confidential information and viewing confidential information only on secure workstations in nonpublic areas;
  - (d) Destroying all confidential information when it is no longer needed to perform authorized activities; and
  - (e) Adhering to the confidentiality requirements in this section after the data recipient is no longer an authorized data recipient under RCW 43.71C.100.
- ((+3)) (4) Data recipients must not:
- (a) Disclose any confidential information, as defined by WAC 182-51-0100, or otherwise publicly release the confidential information;
  - (b) Use or disclose any confidential information for any commercial or personal purpose, or any other purpose that is not authorized in chapter 43.17C RCW;
  - (c) Attempt to identify people who are the subject of the confidential information;
  - (d) Discuss confidential information in public spaces in a manner in which unauthorized individuals could overhear;
  - (e) Discuss confidential information with unauthorized individuals, including spouses, domestic partners, family members, or friends;
  - (f) Have any conflicts of interests under the ethics in public service act that would prevent the data recipient from accessing or using confidential information; and
  - (g) Share information received according to this chapter with any person who is not authorized to receive confidential information as specified by this chapter.

## WSR 25-03-049

## PERMANENT RULES

## DEPARTMENT OF LICENSING

[Filed January 10, 2025, 8:52 a.m., effective February 10, 2025]

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

Purpose: This rule making will align WAC with recent changes of the name of the hearings and interviews unit to the administrative law office.

Citation of Rules Affected by this Order: Amending WAC 308-102-006 Correspondence address.

Statutory Authority for Adoption: RCW 46.01.110 Rule-making authority.

Adopted under notice filed as WSR 24-21-140 on October 22, 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 0, Repealed 0.

Date Adopted: January 10, 2025.

Ellis Starrett  
Rules and Policy Manager

**OTS-5844.1**

AMENDATORY SECTION (Amending WSR 23-07-073, filed 3/13/23, effective 4/13/23)

**WAC 308-102-006 Correspondence address.** All correspondence shall be addressed to the Department of Licensing, (~~Hearings and Interviews Section~~) Administrative Law Office, P.O. Box 9031, Olympia, WA 98507-9031, or sent by facsimile transmission (fax) to 360-570-4950, or emailed to [hearings@dol.wa.gov](mailto:hearings@dol.wa.gov). Any correspondence must include the driver's full name and license number, or case number if assigned.

## WSR 25-03-057

## PERMANENT RULES

## DEPARTMENT OF LICENSING

[Filed January 13, 2025, 8:10 a.m., effective February 13, 2025]

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

Purpose: After analysis of our commercial driver's license (CDL) disqualification procedures, the department of licensing is proposing the repeal of WAC 308-101-230(4) to allow for these CDL disqualifications to be addressed within the personal driver's license hearing procedures pursuant to RCW 46.20.308 Implied consent—Test refusal—Procedures.

Citation of Rules Affected by this Order: Repealing WAC 308-101-230(4).

Statutory Authority for Adoption: RCW 46.01.110 Rule-making authority.

Other Authority: RCW 46.20.308 Implied consent—Test refusal—Procedures.

Adopted under notice filed as WSR 24-23-103 on November 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 0, Repealed 1.

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: January 13, 2025.

Ellis Starrett  
Rules and Policy Manager

**OTS-5952.1**

AMENDATORY SECTION (Amending WSR 23-23-087, filed 11/13/23, effective 12/14/23)

**WAC 308-101-230 Final orders.** (1) Every decision and final order shall:

(a) Be correctly captioned as to the name of the department of licensing and name of the proceeding;

(b) Designate all parties and representatives participating in the proceeding;

(c) Contain a final order disposing of all contested issues; and

(d) Contain a statement describing the right to appeal.

(2) In the event the original hearings examiner is unavailable, the department may assign a case to another hearings examiner to either hear the case if the record has not closed, or in a case where

the record is closed, make a determination as to the findings of fact and conclusions of law based on the record submitted.

(3) At any stage prior to commencement of the hearing the department may reassign a matter to a different hearings examiner.

~~((4) Pursuant to RCW 46.20.308, any commercial driver's license (CDL) holder that requests an administrative hearing to contest a suspension or revocation of their personal driver's license (PDL) and that hearing results in a verdict sustaining the suspension or revocation of the PDL, shall also receive an administrative review of the CDL disqualification under RCW 46.25.090. The administrative review shall be conducted no later than five business days after the final order is entered resolving the administrative sanction on the PDL. The sanctions, suspension, revocation, and/or disqualification of both the PDL and CDL for the same incident shall run concurrently.))~~

**WSR 25-03-062**  
**PERMANENT RULES**  
**GAMBLING COMMISSION**

[Filed January 13, 2025, 4:34 p.m., effective February 13, 2025]

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

Purpose: The proposed rules require card game licensees to exchange chips for cash unless the player requests payment by check; changes the formula for determining the minimum amount of cash required to be in the cage, safe, and/or vault for house-banked card rooms; allows for specific prizes to be paid by check; and requires house-banked card room licensees to have sufficient funds to pay fixed-based prizes offered.

Citation of Rules Affected by this Order: New WAC 230-15-186 and 230-15-187; and amending WAC 230-15-050.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 24-23-057 on November 15, 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 2, Amended 1, Repealed 0.

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

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

Date Adopted: January 9, 2025.

Adam Amorine  
Legal and Records Manager

## OTS-5382.6

AMENDATORY SECTION (Amending WSR 22-01-182, filed 12/20/21, effective 1/20/22)

**WAC 230-15-050 Minimum cash on hand requirements.** (1) Card game licensees must have sufficient cash on hand to redeem all chips issued for play (~~and pay out all prizes~~). Licensees must exchange chips brought to the cashier's cage by players for cash. However, in the event a player requests a check instead of cash for player gambling winnings over \$5,000, licensees must issue the player a check within 24 hours.

(2) Within three hours of opening for the business day, at a time included in the internal controls, house-banked card game licensees must have at least the following minimum amount of cash on premises in their cage, safe, and/or vault combined:

(a) (~~One~~) Two thousand dollars for each house-banked table on the gambling floor; plus

(b) ~~((The amount of the largest single prize available excluding progressive jackpot, player-supported jackpot, and house jackpot prizes.)) One percent times card room gross gambling receipts from the previous calendar year according to quarterly license reports submitted to the commission; however, a new house-banked card room who has not yet submitted a full calendar year of quarterly license reports must have at least \$30,000 for the purpose of this subsection.~~

For example: If a house-banked card room has 15 house-banked tables and ~~((a largest single prize of \$23,000, before opening, the cage)) their gross receipts were \$4,000,000 in their previous calendar year, they must have at least (((\$38,000)) \$70,000 cash on hand: 15 tables × (((\$1,000)) \$2,000 = (((\$15,000)) \$30,000 + ((largest single prize of \$23,000 = \$38,000)) 1% × \$4,000,000 = \$40,000.~~

(3) ~~((Except for the restrictions on player-supported jackpot pay outs in WAC 230-15-405 and progressive jackpot pay outs in WAC 230-15-690,)) Licensees may pay specific prizes by check if sufficient funds are available on deposit and they meet the restrictions in the rules below:~~

(a) WAC 230-15-405 - Player-supported jackpot prizes.

(b) WAC 230-15-690 - Progressive jackpot prizes.

(c) WAC 230-15-673 - House jackpot prizes.

(d) WAC 230-15-190 - Odds-based and fixed-based prizes.

(4) Failure to keep funds to cash in chips, pay prizes, or redeem gambling related checks is prima facie evidence of fraud. Meeting the minimum cage cash amount does not relieve the licensee from the requirement to have sufficient funds available to redeem all chips and pay out all prizes.

#### NEW SECTION

##### **WAC 230-15-186 Paying out odds-based and fixed-based prizes.**

(1) House-banked card room licensees must immediately pay out all individual odds-based and fixed-based prizes of \$5,000 or less.

(2) For individual odds-based and fixed-based prizes over \$5,000, licensees must immediately pay out a minimum of \$5,000 and pay the remaining balance within 24 hours by check. The player may request that the licensee pay up to the entire prize balance by check. Licensees must then issue a check for the entire prize balance within 24 hours.

#### NEW SECTION

**WAC 230-15-187 Keeping funds to pay fixed-based prizes.** House-banked card room licensees must maintain at least the amount of the single largest fixed-based prize offered in a bank, mutual savings bank, or credit union location in Washington. Alternatively, licensees may maintain the amount of the single largest fixed-based prize in cash on the licensed premises.



**WSR 25-03-064**  
**PERMANENT RULES**  
**PUBLIC EMPLOYMENT**  
**RELATIONS COMMISSION**

[Filed January 14, 2025, 9:09 a.m., effective February 14, 2025]

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

Purpose: When an unfair labor practice violation is found, the public employment relations commission (PERC) issues an order requiring the respondent to take certain steps to remedy the violation of state law. PERC assigns a staff member to monitor the compliance process to ensure that the order is complied with. The purpose of WAC 391-45-400 is to provide procedural structure to the compliance process.

Citation of Rules Affected by this Order: New WAC 391-45-400.

Statutory Authority for Adoption: RCW 28B.52.080, 41.58.050, 41.56.090, 41.59.110, 41.76.060, 47.64.135, and 49.39.060.

Adopted under notice filed as WSR 24-20-121 on October 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 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 1, 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: January 14, 2024 [2025].

Dario de la Rosa  
Rules Coordinator

## OTS-5765.1

### NEW SECTION

**WAC 391-45-400 Compliance.** (1) After issuance of a remedial order or entry of a court judgment enforcing an order, an agency compliance officer will work with the parties to facilitate compliance with the terms of the order.

(2) The compliance officer will regularly report to the executive director on the parties' progress toward compliance with the order. After a reasonable amount of time, the compliance officer will make a recommendation as to whether the parties have achieved compliance or whether disputed issues regarding compliance remain.

(a) If the compliance officer recommends that the parties have achieved compliance and neither party disputes compliance, the executive director may accept compliance and close the case.

(b) If the compliance officer identifies that disputed issues regarding compliance remain, the executive director will assign the mat-

ter to an examiner under WAC 391-45-130 to conduct a hearing on the disputed issues. If the matter is assigned to an examiner for a hearing, the compliance officer may continue compliance facilitation efforts with the parties.

(3) Hearings on whether the parties have complied with the terms of the order will be governed by WAC 391-45-270 and 391-45-290. The issues will be limited to the disputed issues regarding compliance. Unless appealed to the commission under WAC 391-45-350, a decision issued on the disputed issues under this section is the final order of the agency with the same force and effect as if issued by the commission.

**WSR 25-03-066**  
**PERMANENT RULES**  
**PUBLIC EMPLOYMENT**  
**RELATIONS COMMISSION**

[Filed January 14, 2025, 10:51 a.m., effective January 15, 2024]

Effective Date of Rule: January 15, 2024 [2025].

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: In 2024, the Washington state legislature adopted RCW 41.58.080, which requires the public employment relations commission (PERC) to adopt rules to allow for the use of electronic signatures for showing of interest cards. RCW 41.58.080 became effective on June 6, 2024. At the time RCW 41.58.080 became effective, the provisions of WAC 391-25-070, 391-25-110, and 391-25-400 required showing of interest cards to include employees' actual signatures and did not allow for electronic signatures. The proposed changes to chapter 391-25 WAC are necessary to harmonize PERC's rules with RCW 41.58.080 and prevent those rules from being inconsistent with the statute.

Purpose: In 2024, the Washington state legislature adopted RCW 41.58.080, which requires PERC to adopt rules to allow for the use of electronic signatures for showing of interest cards. The proposed changes to chapter 391-25 WAC are necessary to implement the provisions of RCW 41.58.080.

Citation of Rules Affected by this Order: Amending WAC 391-25-070, 391-25-110, and 391-25-400.

Statutory Authority for Adoption: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.080, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060.

Adopted under notice filed as WSR 24-20-122 on October 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 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 1 [0], Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1 [0], Amended 3, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 3, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 14, 2024 [2025].

Dario de la Rosa  
Rules Coordinator

**OTS-5767.1**

AMENDATORY SECTION (Amending WSR 22-23-101, filed 11/16/22, effective 1/1/23)

**WAC 391-25-070 Contents of petition filing forms.** Each completed representation petition filing form, whether obtained from the agency's website or through the agency's e-filing system, must include all of the following:

(1) Information identifying the parties and their representatives (if known), including:

(a) The name, email address, mailing address, and telephone number of the employer and of the employer's representative.

(b) The name, email address, mailing address, and telephone number of the petitioner and of the petitioner's representative.

(c) The name, email address, mailing address, and telephone number of any organization that currently represents the employees involved and of its principal representative.

(2) Information concerning the parties' relationships, including:

(a) The employer department or division involved;

(b) The parties' contractual relationship, indicating that:

(i) The parties have never had a contract covering the employees involved; or

(ii) The parties have had a contract, and a copy of the current or most recent collective bargaining agreement is attached.

(3) A description of the proposed or existing bargaining unit which the petitioner claims to be appropriate, specifying inclusions and exclusions and the number of employees in the proposed or existing bargaining unit(~~+~~).

(4) A statement consenting to the public employment relations commission's jurisdiction over the public employer and petitioner(~~+~~ and)).

(5) (~~The existence of~~) An indication as to whether any unfair labor practice complaints involving the petitioned-for employees exist.

(6) A statement that:

(a) The petitioner claims to represent a majority of the employees involved and requests certification as exclusive bargaining representative of the bargaining unit;

(b) The employees in the bargaining unit desire to change their exclusive bargaining representative and to designate the petitioner as their exclusive bargaining representative; or

(c) The employees in the bargaining unit no longer desire to be represented by any employee organization.

(7) A declaration that attests to the authenticity of the showing of interest submitted under WAC 391-25-110. If submitting showing of interest cards with electronic signatures as authorized by RCW 41.58.080, the declaration must also, at a minimum:

(a) Identify the technology used to obtain and verify the signatures on the showing of interest cards;

(b) Provide the methods used to ensure the authenticity of the signatures; and

(c) Confirm that the information transmitted to the signers was the same information to which the signers assented.

(8) Any other relevant facts.

(~~+~~) (9) The name, signature, and title, if any, of the person filing the petition, as well as the date of the signature.

~~((9))~~ (10) Any other information requested in the representation petition filing form found on the agency's website at [www.perc.wa.gov](http://www.perc.wa.gov) or as required through the agency's e-filing system.

AMENDATORY SECTION (Amending WSR 22-23-101, filed 11/16/22, effective 1/1/23)

**WAC 391-25-110 Supporting evidence—Showing of interest confidential.** ~~((1))~~ A petition filed by employees or an employee organization must be accompanied by a showing of interest indicating that the petitioner has the support of at least 30 percent of the employees in the bargaining unit which the petitioner claims to be appropriate. The language on the showing of interest card must indicate that the employee signing the card supports the purpose of the petition as described in WAC 391-25-070(6). The showing of interest must be filed under the same timeliness standards applicable to the petition and consist of original or legible paper or electronic copies of individual authorization cards or letters signed and dated by employees in the bargaining unit claimed appropriate.

(1)(a) Authorization cards or letters submitted in support of a petition for a new bargaining unit of unrepresented employees or to add unrepresented employees to an existing bargaining under WAC 391-25-080 are not valid unless electronically signed or hand-signed and dated during the one-year period preceding the filing of the petition. The authorization cards submitted in support of a petition under this section must, at a minimum, contain the following:

~~((a))~~ (i) The employee's name typed or printed legibly, the employee's electronic or hand-signed signature, and the date of the employee's electronic or hand-signed signature;

~~((b))~~ (ii) A statement that the employee designates the named labor organization as the employee's exclusive bargaining representative for purposes of collective bargaining;

~~((c))~~ (iii) A statement that the showing of interest may be used for purposes of a card check election;

~~((d))~~ (iv) A statement that the employee understands that the employee's signature on the card may be used to obtain certification of the named labor organization as the exclusive bargaining representative of the employee without a secret ballot election; and

~~((e))~~ (v) A statement that the employee has the right to ask the agency to revoke the employee's authorization card for purposes of card check.

(b) Authorization cards submitted in support of a petition to decertify or change the bargaining representative of an existing bargaining unit of employees are not valid unless hand-signed and dated during the one-year period preceding the filing of the petition.

(2) The agency shall notify the petitioner of the existence and number of any revocations filed under subsection (1) ~~((e))~~ (a)(v) of this section before the commencement of the card check but shall not disclose the identities of the employees involved.

(3) For any bargaining unit affected by RCW 74.39A.270 and 74.39A.300, the showing of interest requirement ~~((described in subsection (1) of this section))~~ is 10 percent for either a petitioner or an intervenor.

(4) The agency shall not disclose the identities of employees whose authorization cards or letters are filed with the agency in proceedings under this chapter.

(a) A petitioner or intervenor shall not serve its showing of interest on any other party to the proceeding.

(b) The question of whether a showing of interest requirement for a petition or for intervention has been satisfied is a matter for administrative determination by the agency and may not be litigated at any hearing.

(c) To preserve the confidentiality of the showing of interest and the right of employees to freely express their views on the selection of a bargaining representative, the agency shall not honor any attempt by an employee to withdraw any authorization submitted for purposes of this section.

AMENDATORY SECTION (Amending WSR 22-23-101, filed 11/16/22, effective 1/1/23)

**WAC 391-25-400 Card check.** (1) If only one organization is seeking certification as the exclusive representative of unrepresented employees and the showing of interest exceeds 50 percent of the employees subject to the petition, then the executive director or the executive director's designee may direct a card check to determine whether the employees desire to be represented by the petitioner. A card check may not be directed unless the petitioner submits a declaration that satisfies WAC 391-25-070(7).

(2) Any employee((s)) desiring to withdraw their showing of interest card((s)) for purposes of the card check may do so by sending an individual card or letter signed by the employee to the executive director or the executive director's designee before the date specified in the direction of card check. The agency shall notify the petitioner of any such request before the commencement of the card check but shall not disclose the identity of the employee submitting the request.

~~(3) ((The employer shall make available to the agency original or legible copies of employment records containing the names and signatures of the employees in the bargaining unit.~~

~~(4))~~ Before the commencement of the card check, the petitioner may file and serve, as required by WAC 391-08-120, a request that the question concerning representation be determined by a representation election.

~~((5) All card checks must be by actual comparison of records provided by the parties))~~ (4) When conducting card checks, the agency must compare the valid showing of interest cards submitted under WAC 391-24-110 to the agreed-upon list of eligible employees. The agency shall not disclose the names of employees giving representation authorization in favor of the organization. Following the comparison of records, the agency shall issue a tally sheet demonstrating the outcome of the card check.

~~((6))~~ (5) The card check procedures described in subsections (1) through ((5)) (4) of this section are not applicable for certificated employees who collectively bargain under chapter 41.59 RCW, academic employees who collectively bargain under chapter 28B.52 RCW, employees of the Washington state legislature who collective bargain under chapter 44.90 RCW, symphony musicians who collectively bargain

under chapter 49.39 RCW, and the bargaining units described in RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.510.

## WSR 25-03-072

## PERMANENT RULES

## DEPARTMENT OF TRANSPORTATION

[Filed January 14, 2025, 2:24 p.m., effective February 14, 2025]

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

Purpose: This amendment corrects information about the ways a member of the public can submit a public records request to the Washington state department of transportation. It also adds an alternative option for submitting a request.

Citation of Rules Affected by this Order: Amending WAC 468-06-060.

Statutory Authority for Adoption: Chapter 42.56 RCW.

Adopted under notice filed as WSR 24-22-137 on November 6, 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: January 14, 2025.

Sam Wilson, Director  
Business Support Services

## OTS-5444.1

AMENDATORY SECTION (Amending WSR 19-24-068, filed 11/27/19, effective 12/28/19)

**WAC 468-06-060 Requesting public records.** (1) Submitting a request. Requests for public records to the department or the commission can be made by:

(a) Using the public disclosure request center ~~((r))~~ by ~~((clicking on the link on the website at <http://www.wsdot.wa.gov/Contact/PublicDisclosure>, or))~~ going to <https://wsdot.mycusthelp.com/WEBAPP/rs/supporthome.aspx>; or

(b) Submitting a written request to the department that includes:

(i) The name, address, telephone number, and email address of the person requesting the records;

(ii) The date and time of the request;

(iii) A description of the public records sought adequate for the department to identify and locate all responsive records;

(iv) Language stating that the request for records is intended as a public records request or a similar statement placing the department on fair notice that records are being sought under the ~~((PRA))~~ Public Records Act chapter 42.56 RCW; and



(v) A statement indicating whether copies (~~(of)~~) of the records are sought or if the requestor wants to arrange to inspect records.

Requests not submitted through the public disclosure request center identified in (a) of this subsection can be submitted via U.S. mail, hand delivery, email, or facsimile at:

Public Records Office  
Transportation Building  
310 Maple Park Avenue S.E.  
P.O. Box 47410  
Olympia, WA 98504-7410  
Email: HQPDRCoordinators@wsdot.wa.gov  
Facsimile: 360-705-((6808)) 6805

(2) A request not submitted in a manner identified in subsection (1) of this section will not be considered a public records request under chapter 42.56 RCW, but will be responded to as an informal routine inquiry or a general request for information.

(3) Requested production. Nonexempt records are available through inspection, paper copies, or electronic copies. The requestor should indicate the production preference and make arrangements to pay the fees, if any.

**WSR 25-03-078**  
**PERMANENT RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed January 15, 2025, 9:42 a.m., effective February 15, 2025]

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

Purpose: The office of superintendent of public instruction (OSPI) is adopting rule making to allow for potential binding conditions to be placed upon a school district or a charter school when the board of directors of a school district or a charter school board provides OSPI with an annual statement of financial condition (i.e., state Form F-196), and the reported information shows that a deficient general fund balance is reasonably foreseeable and likely. The rule amendments would allow OSPI to hold school districts and charter schools that have an actual year-end negative fund balance to the same state monitoring and oversight process as the school districts and charter schools that have a budgeted negative year-end fund balance, because an actual negative year-end fund balance is a greater indicator of financial insolvency than a projected negative year-end fund balance.

Citation of Rules Affected by this Order: Amending WAC 392-123-120.

Statutory Authority for Adoption: RCW 28A.150.290, 28A.505.140, 28A.710.040, and 28A.710.220.

Adopted under notice filed as WSR 24-20-119 on October 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 0, Repealed 0.

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

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

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

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

Date Adopted: January 15, 2025.

Chris P.S. Reykdal  
State Superintendent of Public Instruction

**OTS-5901.1**

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

**WAC 392-123-120 Statement of financial condition—Financial position of the school district.** The administration of each school district and charter school shall be required to provide the board of directors of the district or charter school board with a statement of financial condition monthly. The "statement of revenues, expenditures

and changes in fund balance" in state Form F-196, is an example of the type of format and level of information necessary for this report.

Subject to timely reporting requirements in chapter 392-117 WAC, the district board of directors or charter school board shall be required to provide the superintendent of public instruction with an annual statement of financial condition in the format of state Form F-196. The data will be used by the superintendent to determine whether it is reasonably foreseeable and likely that the district will have to report a deficit general fund balance. Per RCW 28A.315.025, a deficit general fund balance is an indicator of financial insolvency and subjects the district or charter school to potential conditions which would become binding upon the district or charter school.

**WSR 25-03-085**  
**PERMANENT RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed January 16, 2025, 8:34 a.m., effective February 16, 2025]

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

Purpose: In an effort to improve the current processing system for educator certification applications in Washington state, the office of superintendent of public instruction (OSPI) is working with the professional educator standards board to implement a new application deadline system that requires renewal certification applications to be submitted six months in advance of the certification expiration date. To enforce this change, OSPI is adopting rule making to make effective starting in the 2030 renewal cycle a late fee for educators who submit applications after their respective certification application deadlines have passed.

Citation of Rules Affected by this Order: Amending WAC 392-194-002.

Statutory Authority for Adoption: RCW 28A.410.062.

Adopted under notice filed as WSR 24-24-040 on November 25, 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 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: January 16, 2025.

Chris P.S. Reykdal  
State Superintendent of Public Instruction

**OTS-5997.1**

AMENDATORY SECTION (Amending WSR 21-24-103, filed 12/1/21, effective 1/1/22)

**WAC 392-194-002 Fee for processing initial educator certificate applications and subsequent actions.** The superintendent of public instruction will charge a nonrefundable fee of \$51 for processing any certificate application or requests for administrative action which results in the issuance, renewal, or reissuance of a permit or certificate in accordance with chapters 28A.410 and 28A.413 RCW.

(1) Educator certificates issued under chapter 181-79A WAC will be charged a fee of \$51 for processing educator certificates and subsequent actions. As of January 2, 2030, the superintendent of public instruction will charge a late fee of \$35 for any renewal application

or request for administrative action submitted after the applicant's renewal application submission deadline. Applicants applying to reinstate a certificate will not be charged a late fee.

(2) Paraeducator certificates issued under Title 179 WAC will be charged a fee of \$39 for processing paraeducator certificates and subsequent actions.

## WSR 25-03-089

## PERMANENT RULES

## EMPLOYMENT SECURITY DEPARTMENT

[Filed January 16, 2025, 2:11 p.m., effective February 16, 2025]

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

Purpose: The employment security department (department), paid family and medical leave program (Title 50A RCW) is adopting rule amendments and repealing rules. The amendments modify the definition of "health care provider" to include naturopathic physicians licensed under chapter 18.36A RCW, change gender-specific pronouns to gender-neutral pronouns, set a prevailing interest rate for late payments associated with damages to align with the interest rate for late premium payments, align backdating timelines associated with good cause with timelines associated with all other backdating reasons, align rule language with statutory language and agency practice that requires employees to report hours worked in self-employment on a weekly claim for benefits, and give the department discretion to allow for the designation of an authorized representative without written documentation in certain situations. Three rules related to the pandemic leave assistance program are being repealed because the program is no longer available due to statutory timelines.

Citation of Rules Affected by this Order: Repealing WAC 192-500-200 Pandemic leave assistance, 192-530-100 Are voluntary plans required to pay pandemic leave assistance benefits? and 192-610-100 What is the attestation required for an employee claiming pandemic leave assistance?; and amending WAC 192-500-090 Health care provider, 192-510-031 What are reportable wages for self-employed persons electing coverage?, 192-570-050 How are damages and liquidated damages assessed by the department, awarded, and paid?, 192-610-040 Can an employee backdate an application or a weekly claim for benefits?, 192-620-020 What information will the department request from an employee when filing for weekly benefits?, 192-620-035 When will a weekly benefit amount be prorated?, and 192-800-150 Can an employee designate a representative to act on their behalf?

Statutory Authority for Adoption: RCW 50A.05.060.

Adopted under notice filed as WSR 24-24-105 on December 4, 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 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 7, Repealed 3.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 7, 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 7, Repealed 3.

Date Adopted: January 16, 2025.

April Amundson

**OTS-6013.1**

AMENDATORY SECTION (Amending WSR 19-08-016, filed 3/22/19, effective 4/22/19)

**WAC 192-500-090 Health care provider.** "Health care provider" means:

(1) A physician or an osteopathic physician who is licensed to practice medicine or surgery, as appropriate, by the state in which the physician practices;

(2) Nurse practitioners, nurse-midwives, midwives, clinical social workers, physician assistants, podiatrists, dentists, clinical psychologists, optometrists, and physical therapists licensed to practice under state law and who are performing within the scope of their practice as defined under state law by the state in which they practice;

(3) Naturopathic physicians licensed under chapter 18.36A RCW;

(4) A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of the health care provider's practice as defined under such law; or

~~((4))~~ (5) Any other provider permitted to certify the existence of a serious health condition under the federal Family and Medical Leave Act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6, as it existed on October 19, 2017).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 192-500-200 Pandemic leave assistance.

**OTS-6014.1**

AMENDATORY SECTION (Amending WSR 21-04-067, filed 1/29/21, effective 3/1/21)

**WAC 192-510-031 What are reportable wages for self-employed persons electing coverage?** Each quarter, a self-employed individual who has elected coverage under Title 50A RCW will report to the department wages equal to the combined total of:

(1) The self-employed individual's net income related to their self-employment; and

(2) The gross amount of wages, if any, as defined in RCW 50A.05.010, paid to the self-employed individual from the self-employed individual's business entity.

**Example 1:** A sole-proprietor selling crafts online earns \$3,000 in a quarter and incurred \$2,000 in business-related expenses. The individual would report \$1,000 to the department for that quarter.

**Example 2:** A member of a limited liability company (~~pays her self~~) draws a salary in the amount of \$10,000 in a quarter. (~~She~~) They also take(~~s~~) a draw from (~~her~~) their company in the amount of \$5,000. (~~She~~) They would report \$15,000 to the department for that quarter.

### OTS-6015.1

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 192-530-100      Are voluntary plans required to pay pandemic leave assistance benefits?

### OTS-6016.1

AMENDATORY SECTION (Amending WSR 20-20-074, filed 10/2/20, effective 11/2/20)

**WAC 192-570-050 How are damages and liquidated damages assessed by the department, awarded, and paid?** (1) If the department finds the employer has violated RCW 50A.40.010, the department will assess monetary damages referenced in RCW 50A.40.030 plus any interest accrued on the assessed damages.

(2) If the department finds that the employer has committed a violation of RCW 50A.40.010 that is willful as defined in RCW 50A.40.030(4), additional liquidated damages will be added equal to the sum of the assessed damages.

(3) Damages and liquidated damages must be paid by the employer directly to the employee.

(4) If liquidated damages are assessed, the employer must pay all damages owed directly to the employee within (~~thirty~~) 30 calendar days from the day the determination is issued, unless the employer files an appeal under chapter 50A.50 RCW.

(5) The department is not responsible for collection action against an employer that defaults on the payment of all damages awarded. A collection action may be initiated by the employee against the employer by filing a warrant with the clerk of any county within the state.



(6) If damages are not paid to the employee on the date on which they are due and payable as prescribed by the commissioner, the whole or part thereof remaining unpaid shall bear interest at the rate of one percent per month or fraction thereof from and after such date until payment plus accrued interest is received by the employee.

#### OTS-6017.1

AMENDATORY SECTION (Amending WSR 21-18-082, filed 8/30/21, effective 9/30/21)

**WAC 192-610-040 Can an employee backdate an application or a weekly claim for benefits?** (1) Generally, paid family or medical leave benefits are payable on or after the date the employee applies for benefits. An application or weekly claim may be backdated for good cause or for the convenience of the department.

(2) For the purpose of this section:

(a) (i) "Good cause" means factors beyond the employee's control that reasonably prevented an employee from applying for benefits at the time of need for paid leave. These factors include, but are not limited to, a serious health condition, a period of incapacity, or a natural disaster.

(ii) The burden is on the employee to establish that good cause exists. The employee must provide all pertinent information and documentation which demonstrates that the factors prevented the employee from applying for benefits when the qualifying event occurred. This may include, but is not limited to, certification from a health care provider, evidence of a natural disaster, or other information required by the department.

(b) "For the convenience of the department" means for the purpose of program administration or situations when accepting timely applications or weekly claims was difficult or impossible. These include, but are not limited to, equipment breakdown or lack of available staff.

(3) An employee who wants to backdate an application or weekly claim must file for benefits during the first (~~seven~~) 30 days after the date that the factors that constitute good cause no longer exist.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 192-610-100	What is the attestation required for an employee claiming pandemic leave assistance?
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#### OTS-6018.1

AMENDATORY SECTION (Amending WSR 21-11-009, filed 5/7/21, effective 6/7/21)

**WAC 192-620-020 What information will the department request from an employee when filing for weekly benefits?** (1) The department must determine if an employee qualifies for benefits when the employee files a weekly claim for the payment of benefits. For the week that the employee is claiming, the department will ask if the employee:

(a) Worked in self-employment or for wages during the week, and for the hours associated with that work;

(b) Received any paid leave such as vacation leave, sick leave, or other paid time off that was not considered a supplemental benefit payment provided by the employer, and the hours associated with that leave;

(c) Received any benefit that may disqualify the employee for paid family or medical leave, such as unemployment insurance; and

(d) Experienced a change in the qualifying event that affects the eligibility for, or duration of, paid family or medical leave benefits.

(2) The employee may be asked to provide additional information.

AMENDATORY SECTION (Amending WSR 22-10-031, filed 4/26/22, effective 6/9/22)

**WAC 192-620-035 When will a weekly benefit amount be prorated?**

(1) For an employee on paid family or medical leave, a weekly benefit amount is prorated when:

(a) The employee reports hours worked for wages or hours worked in self-employment;

(b) The employee reports hours for paid sick leave, paid vacation leave, or other paid time off that is not considered a supplemental benefit payment as defined in WAC 192-500-180; or

(c) The employee files a weekly application for benefits that contains a day or days for which the employee was not approved for paid family or medical leave.

(2) If an employee reports hours under subsection (1)(a) or (b) of this section, proration will be calculated as specified by RCW 50A.15.020(2).

(3) This section does not apply to a week that is claimed to satisfy an employee's waiting period.

(4) If an employee is approved for leave for part of a week under subsection (1)(c) of this section, proration for that week will occur as follows:

(a) The employee's typical workweek hours are multiplied by the number of days approved for leave, then divided by seven. The result is rounded down to the nearest whole hour. This amount is the employee's adjusted typical workweek hours.

(b) Any hours worked or taken as paid time off as reported by the employee are then subtracted from the employee's adjusted typical workweek hours. This amount will be the number of hours of paid family or medical leave claimed for that week.

(c) The number of hours claimed for that week are then divided by the employee's typical workweek hours to produce a percentage.

(d) The resulting percentage is then multiplied by the employee's normal weekly benefit amount. The resulting amount, rounded down to

the nearest whole dollar, is the employee's benefit payment for that week.

**Example 1:** An employee has already served a waiting period in the claim year and files a claim for a week of paid medical leave. The employee typically works 40 hours a week at eight hours per day. In the week for which the employee is claiming, the employee claimed one day of paid medical leave and worked the other four days. This employee's weekly benefit is usually \$800. The weekly benefit would then be prorated by the hours on paid medical leave (eight hours) relative to the typical workweek hours (40 hours). Eight hours is 20 percent of 40 hours. The employee's weekly benefit would be prorated to 20 percent for a total of \$160.

**Example 2:** An employee with typical workweek hours of 40 and a weekly benefit amount of \$1,000 is approved for leave through Thursday. The employee is not approved for leave Friday or Saturday. For this week only, the following proration will occur:

(a) The employee's typical workweek hours (40) are multiplied by the number of approved days of leave for that week (five) and then divided by seven and rounded down. The result is an adjusted typical workweek hours of 28.

(b) The employee reports no hours of work or paid time off for that week. The resulting number of hours claimed for that week are 28.

(c) The number of hours claimed for that week (28) are then divided by the employee's normal typical workweek hours (40). This results in a percentage of 70 percent.

(d) The percentage (70) is then multiplied by the employee's weekly benefit amount (\$1,000). For that week, the employee will receive \$700.

**Example 3:** An employee with typical workweek hours of 40 and a weekly benefit amount of \$1,000 is approved for leave through Thursday. The employee is not approved for leave Friday or Saturday. For this week only, the following proration will occur:

(a) The employee's typical workweek hours (40) are multiplied by the number of approved days of leave for that week (five) and then divided by seven and rounded down. The result is an adjusted typical workweek hours of 28.

(b) The employee reports eight hours of work and eight hours of paid time for that week. The adjusted workweek hours are reduced to reflect 16 hours of work and paid time. The resulting number of hours claimed for that week are 12.

(c) The number of hours claimed for that week (12) are then divided by the employee's normal typical workweek hours (40). This results in a percentage of 30 percent.

(d) The percentage (30) is then multiplied by the employee's weekly benefit amount (\$1,000). For that week, the employee will receive \$300.

**OTS-6019.1**

AMENDATORY SECTION (Amending WSR 23-11-083, filed 5/17/23, effective 7/1/23)

**WAC 192-800-150 Can an employee designate a representative to act on their behalf?** (1) The department may authorize another individual to act on the employee's behalf for the purposes of paid family and medical leave benefits if:

(a) An employee designates an authorized representative by submitting written documentation or other information as required by the department;

(b) A court-appointed legal guardian with authority to make decisions on a person's behalf submits documentation as required by the department;

(c) An individual designated as an attorney-in-fact under a power of attorney submits documentation satisfactory to the department to act on the employee's behalf; or

(d) If an employee is unable to designate an authorized representative due to a serious health condition, an individual may represent the employee by submitting a complete and signed authorized representative designation form made available by the department, which must include:

(i) Documentation from the employee's health care provider certifying that the employee is incapable of completing the administrative requirements necessary for receiving paid family and medical leave benefits and is unable to designate an authorized representative to act on the employee's behalf; and

(ii) An affidavit or declaration authorized by chapter 5.50 RCW attesting to the responsibility to act in the employee's best interest.

(2) A person meeting the requirements under subsection (1) of this section may file an initial application and weekly claims up to and including the week in which the employee died subject to WAC 192-620-010.

(3) If an employee has been approved for benefit payments and the employee dies, an estate executor or administrator may file weekly claims for any weeks in which the employee was unable to file a weekly claim up to and including the week in which they died, subject to WAC 192-620-010.

(4) The department will terminate the authority given to the authorized representative:

(a) When the employee or authorized representative notifies the department verbally or in writing; or

(b) At the department's discretion.

(5) For the purposes of paid family and medical leave the term employee is used for both employee and authorized representative.

**WSR 25-03-090**  
**PERMANENT RULES**  
**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed January 16, 2025, 2:26 p.m., effective February 16, 2025]

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

Purpose: The department of social and health services is adopting amendments to WAC 388-60B-0015 What definitions apply to this chapter?, 388-60B-0025 What is the purpose of this chapter?, 388-60B-0105 Application process—How must a program apply for certification or recertification to provide domestic violence assessments or intervention treatment services?, 388-60B-0110 Required documentation for certification and recertification—What must be included in an application to provide domestic violence assessments or treatment?, 388-60B-0120 Facility requirements—What facility requirements must a program meet for the space where domestic violence intervention assessments or treatment services are provided?, 388-60B-0125 Quality management—What are the minimum treatment outcomes for participants and how must a program measure staff and treatment effectiveness?, 388-60B-0130 Adding to existing certification—How must a program add assessments or a level of treatment to an existing certification?, 388-60B-0140 Change of address—What must be sent to the department when a program changes the physical location of where they provide assessments or groups?, 388-60B-0210 Minimum staff qualifications—What staff qualifications must a program document for direct service staff?, 388-60B-0260 Supervisor responsibilities—What responsibilities must the supervisor document for the program?, 388-60B-0280 Adding direct treatment staff—What documentation must a program submit to the department to add a new direct service staff person, or request designation as a staff or supervisor for existing direct service staff during a certification period?, 388-60B-0315 Group treatment—What standards must programs follow regarding the provision of group treatment?, 388-60B-0320 Treatment practices—How must a program approach treatment and what must happen if it is determined that a participant should move into a different level of treatment?, 388-60B-0325 Victim safety—What steps must programs take in order to help increase victim safety?, 388-60B-0345 Participant requirements—What must the program require of participants accepted into a domestic violence intervention treatment program?, 388-60B-0400 Behavioral assessment and interview criteria—Who may conduct the interview and assessment and what must in [it] include?, 388-60B-0500 On-site reviews and plans of correction—How does the department review certified programs for compliance with the regulations of this chapter?, and 388-60B-0510 Complaint investigations—How must an investigation get initiated and what is the process of the investigation?

These amendments allow domestic violence intervention treatment (DVIT) programs to provide services via Health Insurance Portability and Accountability Act-compliant video sessions, when certain standards are met. This filing is in response to a rule-making petition received from a consortium of DVIT providers seeking to preserve the ability to provide treatment through virtual platforms, which began during pandemic-related shutdowns. As applicable, these amendments make additional changes required to improve clarity, update policy, or better align rule language with state and federal law or regulations.

Citation of Rules Affected by this Order: Amending WAC 388-60B-0015, 388-60B-0025, 388-60B-0105, 388-60B-0110, 388-60B-0120, 388-60B-0125, 388-60B-0130, 388-60B-0140, 388-60B-0210, 388-60B-0260, 388-60B-0280, 388-60B-0315, 388-60B-0320, 388-60B-0325, 388-60B-0345, 388-60B-0400, 388-60B-0500, and 388-60B-0510.

Statutory Authority for Adoption: RCW 43.20A.735.

Adopted under notice filed as WSR 24-18-099 on September 3, 2024.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-60B-0110 (1)(i)(ii) was amended to further clarify that providers do not need to attend meetings if they do not exist, or if they need to attend virtually and virtual attendance is not available to them.

A final cost-benefit analysis is available by contacting Amie Roberts, P.O. Box 45470, Olympia, WA 98504-5470, phone 360-790-1483, email amie.roberts@dshs.wa.gov. Note: The cost-benefit analysis did not change since the formal proposed rule stage.

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 12, 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 6, 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 18, Repealed 0.

Date Adopted: January 16, 2025.

Lisa N.H. Yanagida  
Chief of Staff

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 25-04 issue of the Register.

**WSR 25-03-091**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed January 16, 2025, 3:32 p.m., effective February 17, 2025]

Effective Date of Rule: February 17, 2025.

Purpose: The division of occupational safety and health (DOSH) initiated this rule making to update how base penalties are calculated in order to make penalties more effective and address concerns raised through the Occupational Safety and Health Administration (OSHA) State Activities Mandated Measures (SAMM) report that Washington penalties continue to be below the national average. OSHA uses the SAMM report to determine whether state plans are as-effective-as OSHA.

The adopted rule includes the following changes:

- The base penalty rate will be adjusted for inflation every year based on the consumer price index for all urban consumers (CPI-U).
- The base penalty amount may also be increased by an additional two percent if DOSH is not within 25 percent of the national penalty average determined by OSHA.
- Numbering definitions to aid in education and research.
- Removing the terms "you" and "we" and replacing with "employee" and "employer" to provide clarity.
- Removing the term "Washington Industrial Safety and Health Act" or "WISHA" and replacing with "DOSH" where the term is meant to refer to DOSH.
- Removing outdated fax number information.
- Updating USPS mail and email resources for contacting the department of labor and industries.

Citation of Rules Affected by this Order: Amending WAC 296-900-099, 296-900-100, 296-900-110, 296-900-11005, 296-900-11010, 296-900-11015, 296-900-11020, 296-900-11025, 296-900-120, 296-900-12005, 296-900-12010, 296-900-12015, 296-900-130, 296-900-13005, 296-900-13010, 296-900-13015, 296-900-140, 296-900-14005, 296-900-14010, 296-900-14015, 296-900-14020, 296-900-150, 296-900-15005, 296-900-15010, 296-900-15015, 296-900-15020, 296-900-15025, 296-900-15030, 296-900-160, 296-900-16005, 296-900-16010, 296-900-16015, 296-900-16020, 296-900-16025, 296-900-16030, 296-900-170, 296-900-17005, 296-900-17010, 296-900-17015, 296-900-17505, 296-900-17520, 296-900-17525, and 296-900-17535.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, 49.17.180, and 49.17.190.

Other Authority: Chapter 49.17 RCW.

Adopted under notice filed as WSR 24-18-095 on September 3, 2024.  
 Changes Other than Editing from Proposed to Adopted Version:

- Reverted to current language regarding one way base penalties are calculated using "specific amounts that are dictated in statute" rather than the proposed language "specific factors that are dictated by statute."
- Removed the language regarding the base penalty rate adjustments from the beginning of the section.
- Removed the word "note" before the language on the base penalty rate adjustment following the gravity-based penalty Table 6.

- A definition for "inflation factor" was added to this section to provide clarity for employers on exactly how the calculation is factored.
- Added clarification that the base penalty amount may also be increased by an additional two percent if DOSH is not within 25 percent of the national penalty average as determined by OSHA based on the federal fiscal year preceding the date of the adjustment.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, 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 42, 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: January 16, 2025.

Joel Sacks  
Director

## OTS-5776.5

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

**WAC 296-900-099 Definitions.** (1) Affected employees. Employees who could be one of the following:

(a) Exposed to unsafe conditions or practices.

(b) Affected by a request for, or change in, a variance from ((WISHA)) DOSH requirements.

(2) Applicant. The entity submitting an application and formal proposal for a safety and health investment projects award.

(3) Assistant director. The assistant director for the division of occupational safety and health (DOSH) at the department of labor and industries or ((his/her)) their designated representative.

(4) Base penalty. The penalty amount calculated for a violation by considering either specific statutory penalty amounts or the gravity of the violation.

(5) Board or BIIA. The board of industrial insurance appeals.

(6) Certification. An employer's written statement describing when and how a citation violation was corrected.

(7) Citation. See citation and notice.

(8) Citation and notice. Issued to an employer for any violation of ((WISHA safety and health)) DOSH requirements. Also known as a citation and notice of assessment, or simply citation.

(9) Correction action plans. Your written plans for correcting a ((WISHA)) DOSH violation.



(10) **Correction date.** The date by which you must meet the ((WI-SHA)) DOSH requirements listed on either a:

- (a) Citation and notice (C&N); or
- (b) A corrective notice of redetermination (CNR).

(11) **Corrective notice of redetermination (CNR).** Notice issued ((by WISHA)) after ((WISHA)) DOSH has reassumed jurisdiction over an appealed citation and notice.

(12) **Department.** The department of labor and industries.

(13) **Designated representative.** Any of the following:

- (a) Any individual or organization to which an employee gives written authorization.
- (b) A recognized or certified collective bargaining agent without regard to written employee authorization.
- (c) The legal representative of a deceased or legally incapacitated employee.

(14) **Division or DOSH.** The division of occupational safety and health ((, Washington state department of labor and industries)).

(15) **Documentation.** Material that an employer submits to prove that a correction is completed. Documentation includes, but is not limited to, photographs, receipts for materials and labor.

(16) **Failure to abate (FTA).** A DOSH violation that was cited previously which the employer has not fixed.

(17) **Final order.** Any of the following (unless an employer or other party files a timely appeal):

- (a) Citation and notice.
- (b) Corrective notice of redetermination.
- (c) Decision and order from the board of industrial insurance appeals.
- (d) Denial of petition for review from the board of industrial insurance appeals.
- (e) Decision from a Washington state superior court, court of appeals, or the state supreme court.

(18) **Final order date.** The date a final order is issued.

(19) **Funding cycle.** How frequently safety and health investment project (SHIP) awards are given.

(20) **Gravity.** For purposes of calculating a penalty means the amount calculated by multiplying a violation's severity rate by its probability rate.

(21) **Hazard.** Any condition, potential or inherent, which can cause injury, death, or occupational disease.

(22) **Imminent danger violation.** Any violation resulting from conditions or practices in any place of employment, which are such that a danger exists which could reasonably be expected to cause death or serious physical harm, immediately or before such danger can be eliminated through the enforcement procedures otherwise provided by the Washington Industrial Safety and Health Act.

(23) **Inpatient hospitalization.** Formal admission to the inpatient service of a hospital or an equivalent medical facility on an emergent basis for a work-related injury, or illness.

(24) **Interim order.** An order allowing an employer to vary from ((WISHA)) DOSH requirements until a permanent or temporary variance is granted.

(25) **Medical aid fund.** Industrial insurance funds established in chapter 51.44 RCW.

(26) **Milestones.** Critical points of achievement for the safety and health investment projects, showing progress toward project com-

pletion. Milestones are interim accomplishments that define project progress.

(27) **Monetary penalties.** Fines assessed against an employer for violations of safety and health requirements.

(28) **Movable equipment.** A hand-held or nonhand-held machine or device that:

(a) Is powered or nonpowered.

(b) Can be moved within or between worksites.

(29) **Must.** Means mandatory.

(30) **Permanent variance.** Allows an employer to vary from ((WI-SHA)) DOSH requirements when an alternate means, that provides equal protection to workers, is used.

(31) **Probability.** A number that describes the likelihood of an injury, illness, or disease occurring, ranging from 1 (lowest) to 3 (highest).

(32) **Product.** Any of the following that are developed as the result of a safety and health investment project: Written materials; manufactured materials; designs; equipment; programs; services; workplace changes; or other results of any kind, tangible or intangible.

(33) **Reassume jurisdiction.** ((WISHA)) DOSH has decided to provide the employer with an informal conference to discuss their appeal.

(34) **Recipient.** An agency, firm, organization, individual or other legal entity receiving project award funds from the safety and health investment projects.

(35) **Repeat violation.** A DOSH violation where the employer has been cited one or more times previously for a substantially similar hazard, and the prior violation has become a final order no more than three years prior to the employer committing the violation being cited.

(36) **Serious violation.** A DOSH violation when there is a substantial probability that death or serious physical harm could result from one of the following in the workplace:

(a) A condition that exists.

(b) One or more practices, means, methods, operations, or processes that have been adopted or are in use.

(37) **Severity.** For purposes of calculating a penalty means the most serious injury, illness, or disease that could be reasonably expected to occur, ranging from 1 (lowest) to 3 (highest), because of a hazardous condition.

(38) **Temporary variance.** Allows an employer to vary from ((WI-SHA)) DOSH requirements under certain circumstances.

(39) **Variance.** Provides an approved alternative to ((WISHA)) DOSH requirements to protect employees from a workplace hazard. Variances can be permanent or temporary.

(40) **WAC.** An acronym for Washington Administrative Code, which are rules developed to address state law.

(41) **WISHA.** This is an acronym for the Washington Industrial Safety and Health Act, chapter 49.17 RCW.

((~~You. An employer.~~))

Sample Tag for Cited Moveable Equipment

<p><b>WARNING: EQUIPMENT HAZARD</b></p> <p>Cited by the <b>Department of Labor and Industries</b></p>	Equipment cited:
	Hazard cited:
	For detailed information, see L&I citation posted at:

<p><b>WARNING: EQUIPMENT HAZARD</b></p> <p>See reverse side</p>	<p>This tag or similar tag or a copy of the citation must remain attached to this equipment until the criteria for removal in WAC 296-900-15035 are met.</p> <p>The tag/citation copy must not be altered, defaced, or covered by other material.</p>
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AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

**WAC 296-900-100 Scope.** This chapter applies to the following requirements and information regarding administration of the Washington Industrial Safety and Health Act (WISHA), chapter 49.17 RCW:

- (1) Employer requests for using an alternative to ((WISHA)) DOSH requirements.
- (2) Workplace inspections conducted by ((WISHA)) DOSH.
- (3) Citations and penalties for violations of ((~~WISHA safety and health~~)) DOSH requirements.
- (4) How to respond to actions that ((WISHA)) DOSH may take when requirements have been violated.
- (5) Employer correction of cited violations, and notification to ((WISHA)) DOSH when the corrections are made.
- (6) Employer obligations to inform employees.
- (7) Reporting alleged safety and health hazards.
- (8) Appeal and hearing processes for employers and employees.
- (9) Safety and health investment projects (SHIP).

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

**WAC 296-900-110 Variances.**

**Summary:**

**Employer responsibility.**

<del>((You))</del> <b>Employer must meet the requirements...</b>	<b>in this section:</b>
Applying for a variance	WAC 296-900-11005
Interim orders	WAC 296-900-11010
Renewing a temporary variance	WAC 296-900-11015
Changing a variance	WAC 296-900-11020
Variance hearings	WAC 296-900-11025

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

**WAC 296-900-11005 Applying for a variance.**

**IMPORTANT :**

1. A variance provides an approved alternative to ~~((WISHA))~~ DOSH requirements to protect employees from a workplace hazard. Variances can be permanent or temporary.

2. Variances will **not** be retroactive. Employers are obligated to follow ~~((WISHA))~~ DOSH requirements until the variance is granted.

(1) ~~((You))~~ The employer must follow steps 1-5 to apply for a variance when ~~((you))~~ they wish to use an alternative to ~~((WISHA))~~ DOSH requirements as a means to protect ~~((your))~~ employees.

Step 1: Decide what type of variance is needed by reviewing the types of variances in Table 1, Requesting a Variance.

Step 2: Complete a written application for the variance, following the requirements in Table 1, Requesting a Variance.

**Note:** A form, Variance Application (~~((F414-021-000))~~ F414-157-000), is available for requesting variances:  
 1. From any L&I office.  
 2. On our website under Safety Forms, Variance Application (<http://www.lni.wa.gov/FormPublications/TablesForms/Safety/SafetyHealth.asp>)  
<https://lni.wa.gov/forms-publications/F414-157-000.pdf>.

**Reference:** For a list of the local L&I offices, see the resources section of the Safety and health core rules, chapter 296-800 WAC.

Step 3: Notify employees before submitting any type of variance request by doing all of the following:

- Posting a copy of the request on ~~((your))~~ the safety bulletin board or where employees will easily access the information such as a break or lunch room.
- Using other appropriate means for notifying employees who may not be expected to receive notices posted on the safety bulletin board. For example, provide a copy to a designated representative or the safety committee.

Step 4: Submit the written request, using one of the following means:

- Mail to:  
~~((Assistant Director))~~ Department of Labor & Industries  
~~((WISHA Services))~~ Division of Occupational Safety and Health  
 P.O. Box 44650

Olympia, WA 98504-4650

- ((Fax to: 360-902-5438)) Email to:  
DOSHVarianceProgram@Lni.wa.gov
- Take to any L&I office.

Step 5: After receiving a written decision from ((WISHA about your request)) DOSH, immediately notify affected employees of the decision by using the methods in Step 3.

(2) You must follow the specific requirements of the variance that ((WISHA)) DOSH has granted.

**Notes:**

1. If employers fail to follow Steps 1-5 above, the variance cannot be granted.
2. Citations may be issued for failing to follow a variance.
3. Employers can always follow the original ((WISHA)) DOSH requirements instead of the variance requirements.
4. If your variance is no longer necessary and ((you)) the employer decide to follow the ((WISHA)) DOSH requirements instead, please advise ((WISHA)) DOSH in writing.

**Table 1**  
**Requesting a Variance**

<b>For this type of variance:</b>	<b>Include the following on ((your)) written application:</b>
<p><b>Permanent variance</b></p> <ul style="list-style-type: none"> <li>- Request a permanent variance if ((you can show that you)) <u>it can be shown that the employer will be providing alternate methods of protecting employees from hazards that are as effective as those provided by the requirements ((from which you are)) the variance is requesting relief.</u></li> </ul> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>• A permanent variance remains in effect unless ((WISHA)) <u>DOSH</u> modifies or revokes it. Examples of reasons a variance might be revoked include:                             <ul style="list-style-type: none"> <li>- An employer requests the variance be revoked</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Employer name and address</li> <li>• Employer or employer representative signature</li> <li>• Work locations and situations that apply to the variance</li> <li>• Which specific requirements you want to vary from, with WAC numbers</li> <li>• Description of proposed alternative methods of protection, and how they will protect employees.</li> <li>• How employees will be notified:                             <ul style="list-style-type: none"> <li>- About the variance request, as required in Step 2</li> <li>- That they may request a hearing</li> </ul> </li> <li>• The following notice on the first page of your posted application, written in large and clear enough print to be easily read:</li> </ul>

For this type of variance:	Include the following on ((your)) written application:
<ul style="list-style-type: none"> <li>- Requirements that existed when the variance was approved are modified</li> <li>- The work location is changed</li> </ul>	<p>"Attention Employees: Your employer is applying to ((WISHA)) DOSH for a variance from safety and health requirements. You have a right to ask ((WISHA)) DOSH for a hearing on the variance request, but you must ask for the hearing in writing by (date*). If no hearing is requested, ((WISHA)) DOSH will act on the variance request without a hearing."</p> <p>*This date must be 21 calendar days after the variance request is mailed or delivered.</p>
<p><b>Temporary variance</b> Request a temporary variance if both of the following apply:</p> <ul style="list-style-type: none"> <li>• New ((WISHA)) DOSH requirements cannot be met for any of the following reasons:                             <ul style="list-style-type: none"> <li>- Professional or technical people are not available</li> <li>- Materials or equipment are not available</li> <li>- Construction or alteration of facilities cannot be completed by the effective date of the requirements</li> </ul> </li> <li>• ((You have)) Employer has an effective plan for meeting ((WISHA)) DOSH requirements as soon as possible.</li> </ul> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>• Temporary variances remain in effect:                             <ul style="list-style-type: none"> <li>- Until current ((WISHA)) DOSH requirements are met</li> <li>- No longer than one year, unless extended</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Provide all the information required above for permanent variances</li> <li>• Also provide all of the following:                             <ul style="list-style-type: none"> <li>- An explanation of why ((WISHA)) DOSH requirements cannot be met, including documentation that supports this belief</li> <li>- Steps that will be taken to protect employees until ((WISHA)) DOSH requirements can be met</li> <li>- When ((WISHA)) DOSH requirements will be met</li> <li>- A statement that this request is from a qualified person who has first hand knowledge of the facts represented</li> </ul> </li> </ul>

**What to expect from ((WISHA)) DOSH:**

(3) A review of all variance requests.

If more information is needed to make a decision, ((WISHA)) DOSH may:

(a) Contact ((you)) the employer or others who may have the needed information.

(b) Visit ((your)) the workplace after contacting ((you)) the employer to make arrangements.

(c) Deny ((your)) the request if ((you do not provide)) information needed to make a decision on it is not provided.

(4) A decision at least ((twenty-one)) 21 calendar days from when the request was posted for employees.

The ((twenty-one)) 21-day period allows employees time to request a hearing on ((your)) a variance application. See Variance hearings, WAC 296-900-11025.

(5) A written decision either granting or denying the variance.

(a) If granted, the written decision will include all of the following:

(i) The requirement for which the variance applies.

(ii) The locations where the variance applies.

(iii) What ((you)) the employer must do as an alternative means of protecting employees.

(iv) The effective date of the variance.

(v) An expiration date for the variance, if applicable.

(vi) The requirement to post the decision.

(b) If denied, the written decision will include:

(i) A brief statement with reasons for the denial.

(ii) The requirement to post the decision.

(6) ((WISHA)) DOSH will review permanent variances periodically after they have been in effect for six months, to decide whether they are still needed or need to be changed.

**Note:** If there is an appealed ((WISHA)) DOSH citation and notice that relates to the variance request, the decision on the variance may be delayed until the appeal is resolved.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

**WAC 296-900-11010 Interim orders.****(~~Definition:~~**

~~An interim order allows an employer to vary from WISHA requirements until a permanent or temporary variance is granted.)~~

(1) ((You)) Employers must request an interim order if alternate methods of protecting employees are needed while waiting for a permanent or temporary variance.

**Note:** An interim order may be requested at the same time a permanent or temporary variance is requested, or anytime after that.

**What to expect from ((WISHA)) DOSH:**

(2) A review of the request for an interim order.

If more information is needed to make a decision, ((WISHA)) DOSH may:

(a) Contact the employer or others who may have the needed information.

(b) Visit the workplace after contacting the employer to make arrangements.

(c) Deny the request if the employer does not provide information needed to make a decision.

(3) A decision at least (~~twenty-one~~) 21 calendar days from when the request was posted for employees.

The (~~twenty-one~~) 21-day period allows employees time to request a hearing on (~~your~~) the temporary variance renewal. See Variance hearings, WAC 296-900-11025.

(4) A written decision either granting or denying the interim order request.

(a) If granted, the decision will include all of the following:

(i) The requirement for which the interim order applies.

(ii) The locations where the interim order applies.

(iii) What (~~you~~) the employer must do as an alternative means of protecting employees.

(iv) The effective date of the interim order.

(v) An expiration date for the interim order.

(vi) The requirement to post the decision.

(b) If denied, the decision will include:

(i) A brief statement with reasons for the denial.

(ii) The requirement to post the decision.

**Notes:**

1. (~~WISHA's~~) DOSH's decision to grant or deny an interim order request will not affect the decision on a permanent or temporary variance request.
2. (~~WISHA~~) DOSH may choose to issue an interim order in response to a variance request, even when the interim order was not specifically requested.
3. Interim orders are effective until they are revoked, or until the variance request is granted or denied.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

**WAC 296-900-11015 Renewing a temporary variance.**

**IMPORTANT:**

Temporary variances can be renewed up to two times, for up to (~~one hundred eighty~~) 180 days each time.

(1) (~~You~~) The employer must apply for a temporary variance renewal at least (~~ninety~~) 90 days before the temporary variance expires.

(2) (~~You~~) The employer must send a letter, explaining why more time is needed to fulfill the current requirements.

**What to expect from (~~WISHA~~) DOSH:**

(3) A review of the temporary variance renewal request.

If more information is needed to make a decision, (~~WISHA~~) DOSH may:

(a) Contact (~~you~~) the employer or others who may have the needed information.

(b) Visit your workplace after contacting (~~you~~) the employer to make arrangements.

(c) Deny (~~your~~) the request if (~~you do not provide~~) information needed to make a decision is not provided.

(4) A decision at least (~~twenty-one~~) 21 calendar days from when the request was posted for employees.

The (~~twenty-one~~) 21-day period allows employees time to request a hearing on (~~your~~) a temporary variance renewal. See Variance hearings, WAC 296-900-11025.

(5) A written decision either granting or denying the temporary variance renewal request.

(a) If granted, the written decision will include all of the following:

(i) The requirements for which the temporary variance applies.



- (ii) The locations where the temporary variance applies.
- (iii) What ~~((you))~~ the employer must do as an alternative means of protecting employees.
- (iv) The effective date of the temporary variance.
- (v) An expiration date for the temporary variance.
- (vi) The requirement to post the decision.
- (b) If denied, the written decision will include:
  - (i) A brief statement with reasons for the denial.
  - (ii) The requirement to post the decision.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

**WAC 296-900-11020 Changing a variance.** (1) ~~((You))~~ An employer, ~~((your))~~ employees, or their representatives may request changes to variances in writing as follows:

- (a) For a permanent variance only after it has been in effect for at least six months.
- (b) For a temporary variance, only when renewing it.

**Notes:**

1. After six months, ~~((WISHA))~~ DOSH may initiate changes to a variance if ~~((they appear to be))~~ warranted.
2. Employers can decide at any time to follow the original requirement, instead of the requested variance.

**What to expect from ~~((WISHA))~~ DOSH:**

- (2) A review of your request to change a variance.
- If more information is needed to make a decision, ~~((WISHA))~~ DOSH may:
- (a) Contact ~~((you))~~ the employer or others who may have the needed information.
  - (b) Visit ~~((your))~~ the workplace after contacting you to make arrangements.
  - (c) Deny ~~((your))~~ the request for a change if ~~((you do not provide))~~ information needed to make a decision is not provided.
- (3) A decision at least ~~((twenty-one))~~ 21 calendar days from when the request was posted for employees.
- The ~~((twenty-one))~~ 21-day period allows employees time to request a hearing on ~~((your))~~ the request to change a variance. See Variance hearings, WAC 296-900-11025.
- (4) A written decision either granting or denying the change in variance.
    - (a) If granted, the written decision will include all of the following:
      - (i) The requirements for which the variance applies.
      - (ii) The locations for which the variance applies.
      - (iii) What ~~((you))~~ the employer must do as an alternative means of protecting employees.
      - (iv) The effective date of the change in variance.
      - (v) An expiration date of the variance, if applicable.
      - (vi) The requirement to post the decision.
      - (b) If denied, the written decision will include:
        - (i) A brief statement with reasons for the denial.
        - (ii) The requirement to post the decision.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

**WAC 296-900-11025 Variance hearings.**

**IMPORTANT :**

Employers, affected employees, or employee representatives may request a hearing on any of the following:

1. Permanent or temporary variance requests.
2. Changes to existing variances.

(1) ~~((You))~~ The employer and ~~((your))~~ affected employees must do all of the following if requesting a variance hearing:

- (a) Put the request in writing and sign it.
- (b) Make sure the request is posted or delivered to the ~~((department))~~ DOSH within ~~((twenty-one))~~ 21 calendar days from the variance application date, or renewal request date.
- (c) Send the written request to ~~((WISHA))~~ DOSH, using one of the following means:

Mail to:

~~((Assistant Director~~  
~~WISHA Services))~~ Department of Labor & Industries  
Division of Occupational Safety and Health  
 P.O. Box 44650  
 Olympia, WA 98504-4650

~~((Fax to: 360-902-5438))~~ Email to: DOSHVarianceProgram@Lni.wa.gov

Take to any L&I office.

(2) ~~((You))~~ The employer must immediately do all of the following when ~~((you))~~ they receive a notice of the hearing from ~~((WISHA))~~ DOSH:

- (a) Post a copy of the notice on the safety bulletin board.
- (b) Give a copy of the notice to affected employees and employee representatives.

(c) Use any other appropriate means for notifying employees who may not receive notices posted on the safety bulletin board. For example, provide a copy to a designated representative or the safety committee.

**What to expect from ~~((WISHA))~~ DOSH:**

(3) ~~((WISHA))~~ DOSH will do both of the following after receiving a request for a hearing on a variance, change of variance, or temporary variance renewal:

(a) Within ~~((ten))~~ 10 days, issue a notice advising all interested parties listed on the application that they have the option to participate in the hearing.

(b) Provide ~~((you))~~ the employer with a notice of the hearing at least ~~((twenty))~~ 20 calendar days before the hearing date.

(4) A hearing for the variance or variance change will be conducted as follows:

(a) A ~~((WISHA))~~ DOSH representative will explain ~~((WISHA's))~~ DOSH's view of the request for a variance or any proposed change to a variance.

(b) Employers, employees, or employee representatives will then have an opportunity to explain their views and provide any relevant documents or information.

(5) Information gathered at the hearing will be used to make a decision about whether to grant or deny the request for a variance or change in variance.

**Notes:**

1. ~~((WISHA))~~ DOSH may record a variance hearing.
2. Employers, employees, or employee representatives may request copies of recordings or transcripts of variance hearings at cost.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

**WAC 296-900-120 Inspections.  
Summary.**

<b>((You)) The employer must meet the requirements...</b>	<b>in this section:</b>
<b>((WISHA)) DOSH inspections</b>	WAC 296-900-12005
Inspection techniques	WAC 296-900-12010
Complaints	WAC 296-900-12015

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

**WAC 296-900-12005 ((WISHA)) DOSH inspections.** (1) ((WISHA))

DOSH conducts the following types of **programmed** inspections:

(a) Hazardous workplaces.

((WISHA)) DOSH identifies hazardous workplaces using objective criteria and inspection-scheduling systems that may include any of the following factors:

(i) Type of industry.

(ii) Injury and illness data that identifies hazards.

(iii) Employer's industrial insurance experience.

(iv) Number, type, and toxicity of contaminants in the workplace.

(v) Degree of exposure to hazards.

(vi) Number of employees exposed.

(vii) Other factors, such as history of employee complaints.

**Note:** ((WISHA)) DOSH periodically reviews the scheduling systems and may adjust the type or significance of each criteria.

(b) High hazard industries that include the following:

(i) Agriculture.

(ii) Asbestos renovation and demolition.

(iii) Construction.

(iv) Electrical utilities and communications.

(v) Logging.

(vi) Maritime.

(2) ((WISHA)) DOSH conducts the following types of **unprogrammed** inspections of workplaces that may be in violation of ((WISHA)) DOSH safety or health requirements or chapter 49.17 RCW, Washington Industrial Safety and Health Act. These inspections may focus only on certain areas or processes in a workplace or, depending on initial findings, may be expanded to include the entire workplace. Unprogrammed inspections may occur because of:

(a) Complaints from current employees or employee representatives who believe they have been exposed to a hazard because of a violation.

(b) Referrals from anyone, including former employees, who reasonably believes that workers under ((WISHA)) DOSH jurisdiction are being, or have been, exposed to a hazard because of a violation.

(c) Workplace deaths, catastrophic events, or serious injury or illness.

(d) A reason to believe that employees may be in imminent danger of serious injury or death.

(e) Follow-up inspections to verify that hazards identified in a previous inspection have been corrected.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

- WAC 296-900-12010 Inspection techniques.** During an inspection, ((WISHA)) DOSH staff may:
- (1) Take samples, photographs, videotapes, or audiotapes.
  - (2) Conduct tests or interviews.
  - (3) Ask employees to wear sampling devices.
  - (4) Privately question, on or off the worksite, any:
    - (a) Employer.
    - (b) Employer representative.
    - (c) Owner.
    - (d) Operator.
    - (e) Employee.
    - (f) Employee representative.
  - (5) Employ any other reasonable investigative techniques.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

**WAC 296-900-12015 Complaints.** (1) Employees or employee representatives may file a written complaint if they believe they have been exposed to a hazard that is a violation of ((WISHA safety and health)) DOSH requirements.

**What to expect from ((WISHA)) DOSH:**

(2) After receiving a written complaint from an employee or employee representative, ((WISHA)) DOSH reviews the allegations and responds according to Table 2, ((WISHA)) DOSH Responses to Employee Complaints.

**Table 2**  
**((WISHA)) DOSH Responses to Employee Complaints**

For this determination:	((WISHA)) <u>DOSH</u> will take the following actions:
The complaint is within ((WISHA)) <u>DOSH</u> jurisdiction and an inspection does not appear to be needed at this time	<ul style="list-style-type: none"> <li>• Call the employer to discuss the complaint</li> <li>• Set a deadline for the employer to respond in writing</li> <li>• ((Fax)) <u>Email</u> or mail a complaint notification letter to the employer. Before the complaint is ((faxed)) <u>emailed</u> or mailed, the following names will be removed unless specific permission is given to include them:                             <ul style="list-style-type: none"> <li>– The name of the person submitting the complaint</li> <li>– The names of any employees identified in the complaint</li> </ul> </li> </ul>

<p><b>For this determination:</b></p>	<p><b>((WISHA)) DOSH will take the following actions:</b></p>
	<ul style="list-style-type: none"> <li>• Evaluate the employer's response, and do one of the following:                             <ul style="list-style-type: none"> <li>– Close the complaint because the issues have been addressed, and send a copy of the employer's response to the person filing the complaint</li> <li>– Inspect the workplace</li> </ul> </li> </ul> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>• If the complaint is closed and additional information is received from the person filing the complaint disputing the employer's written response, ((WISHA)) <u>DOSH</u> may schedule an inspection</li> <li>• If the person who filed the original complaint requests in writing that ((WISHA)) <u>DOSH</u> review a decision not to conduct an inspection, ((WISHA)) <u>DOSH</u> will review the decision and notify the person in writing of the results</li> <li>• If the person requesting the review is not satisfied with the results of the review, they may request a second review by the assistant director or designee</li> </ul>
<p>The complaint is within ((WISHA)) <u>DOSH</u> jurisdiction and an inspection needs to be conducted</p>	<ul style="list-style-type: none"> <li>• Conduct an inspection</li> <li>• Issue a citation and notice that shows one of the following:                             <ul style="list-style-type: none"> <li>– Violations found</li> <li>– No violations were found</li> </ul> </li> <li>• Send a letter to the person filing the complaint with inspection results</li> </ul> <p><b>Reference:</b> For citation and notice information, turn to citation and notice, WAC 296-900-130</p>

<b>For this determination:</b>	<b>((WISHA)) DOSH will take the following actions:</b>
The complaint is not within ((WISHA)) DOSH jurisdiction	<ul style="list-style-type: none"> <li>• Send a written response to the person filing the complaint explaining the matter is not within ((WISHA)) DOSH jurisdiction</li> </ul> <p><b>Note:</b> ((WISHA)) DOSH may make a referral to the proper authority</p>

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

**WAC 296-900-130 Citation and notice.**

**Summary:**

**Employer responsibility:**

**To notify employees when a citation and notice is received.**

<b><del>((You))</del> The employer must meet the requirements...</b>	<b>in this section:</b>
Citation and notice	WAC 296-900-13005
Copies of future citations and notices	WAC 296-900-13010
Posting citation and notices	WAC 296-900-13015

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

**WAC 296-900-13005 Citation and notice.**

**Definition:**

(1) A citation and notice is a document issued to an employer notifying them of:

(a) Inspection results.

(b) Any specific violations of ((WISHA safety and health)) DOSH requirements.

(c) Any monetary penalties assessed.

(d) Employer certification of correction requirements.

(e) ((WISHA)) DOSH will mail or serve by electronic means a citation and notice to you as soon as possible but not later than six months following any inspection or investigation.

(2) If violations are found, the citation and notice will include:

(a) A description of violations found.

(b) The amount and type of assessed penalties.

(c) The length of time given to correct the violations not already corrected during the inspection.

(3) If no violations are found, a notice of inspection results will be sent stating that no violations were found or penalties assessed.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

**WAC 296-900-13010 Copies of future citation and notices. Employees or their representatives wishing to receive copies of citation and notices during the next (~~twelve~~) 12 months must:**

(1) Submit a request for copy of citation and notice form to the following:

Department of Labor and Industries  
 (~~Standards and Information~~) Division of Occupational Safety and Health  
 P.O. Box 44638  
 Olympia, WA 98504-4638

**Note:** A request for copy of citation and notice form can be obtained by:  
 1. Calling 360-902-5553.  
 2. Contacting the local L&I office.

**Reference:** For a list of the local L&I offices, see the resources section of the Safety and health core rules, chapter 296-800 WAC.

**What to expect from (~~WISHA~~) DOSH:**

(2) (~~WISHA~~) DOSH may decide who will receive copies of the citation and notices if more than one employee or employee representative requests a copy.

(3) (~~WISHA~~) DOSH may deny a request for copies of citation and notices if the person filing the request is not an employee or employee representative.

(4) If (~~WISHA~~) DOSH grants the request for copies of citation and notices, the employee or employee representative will:

(a) Receive an approval document from (~~WISHA~~) DOSH.

(b) Receive all citation and notices issued to that employer for the next (~~twelve~~) 12 months.

(c) Continue receiving citation and notices for an additional (~~twelve~~) 12 months if a one-year extension is requested and approved.

AMENDATORY SECTION (Amending WSR 21-22-089, filed 11/2/21, effective 12/3/21)

**WAC 296-900-13015 Posting citation and notices.** (1) (~~You~~) The employer must immediately notify employees of a citation and notice by posting it and any correspondence related to an employee complaint on the safety bulletin board for seven working days, excluding weekends and holidays, or until all violations are corrected, whichever time period is longer. As an option, an employer may use electronic means to supplement the bulletin board, such as with telework employees.

(2) (~~You~~) The employer must use any other appropriate means to notify employees who may receive notices posted on the safety bulletin board.

Examples of other appropriate means include sending a copy by mail or electronically to any of the following:

(a) A designated employee representative.

(b) Safety representatives.

(c) The safety committee.

AMENDATORY SECTION (Amending WSR 19-01-097, filed 12/18/18, effective 1/21/19)

**WAC 296-900-140 Monetary penalties.**

**Summary:**

**Employer responsibility:**

To pay monetary penalties if assessed.

**Contents:**

Reasons for monetary penalties

WAC 296-900-14005.

Base penalties

WAC 296-900-14010.

Base penalty adjustments

WAC 296-900-14015.

Increases to adjusted base penalties

WAC 296-900-14020.

**(Definitions:**

• ~~"Base penalty" means that penalty amount calculated for a violation by considering either specific statutory penalty amounts or the gravity of the violation.~~

• ~~"Division" or "DOSH" means the division of occupational safety and health, Washington state department of labor and industries.~~

• ~~"Gravity" for purposes of calculating a penalty, means the amount calculated by multiplying a violation's severity rate by its probability rate.~~

• ~~"Inpatient hospitalization" means formal admission to the inpatient service of a hospital or an equivalent medical facility on an emergent basis for a work-related injury, or illness.~~

• ~~"Monetary penalties" are fines assessed against an employer for violations of safety and health requirements.~~

• ~~"Probability" means a number that describes the likelihood that an injury, illness, or disease will occur ranging from 1 (lowest) to 3 (highest).~~

• ~~"Severity" for purposes of calculating a penalty, means the most serious injury, illness, or disease that could be reasonably expected to occur, ranging from 1 (lowest) to 3 (highest), because of a hazardous condition.~~

• ~~"Standard penalty" means any penalty that does not have an otherwise designated minimum amount.~~

• ~~"WISHA" means the Washington Industrial Safety and Health Act.)~~

AMENDATORY SECTION (Amending WSR 19-01-097, filed 12/18/18, effective 1/21/19)

**WAC 296-900-14005 Reasons for monetary penalties.**

• DOSH **may** assess monetary penalties when a citation and notice is issued for any violation of safety and health rules or statutes.

• DOSH **will** assess monetary penalties under the following conditions:

- When a citation and notice is issued for a serious, repeat, willful, or egregious violation.

- When civil penalties are specified by statute as described in RCW 49.17.180.

**Note:** In addition to penalties specified by ((WISHA)) DOSH under chapter 49.17 RCW, there are penalties specified by other statutes, such as:



- Asbestos construction projects, RCW 49.26.016.
- Right to know (RTK)—SDS, RCW 49.70.190.
- Right to know—Penalty for late payment, RCW 49.70.177.
- Fire-resistant material applicators, chapter 49.105 RCW.

- The minimum civil penalties assessed by DOSH are:
  - (~~(One hundred dollars)~~) \$100 for any standard penalty.
  - (~~(Two thousand five hundred dollars)~~) \$2,500 per violation for serious violations contributing to a fatality.
  - (~~(Five thousand dollars)~~) \$5,000 per violation for all willful violations unless set to a specific higher amount by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15, and (~~(this state)~~) Washington is required to equal the higher penalty amount to qualify as ((a)) an approved OSHA State Plan ((state)).
  - (~~(Two hundred fifty dollars)~~) \$250 per day for asbestos good faith inspection (RCW 49.26.016 and 49.26.013).

AMENDATORY SECTION (Amending WSR 19-01-097, filed 12/18/18, effective 1/21/19)

**WAC 296-900-14010 Base penalties.**

• DOSH calculates the base penalty for a violation by considering the following:

- Specific amounts that are dictated by statute;

OR

- By assigning a weight to a violation, called "gravity." Gravity is calculated by multiplying a violation's severity rate by its probability rate. Expressed as a formula:

$$\text{Gravity} = \text{Severity} \times \text{Probability}$$

**Note:** Most base penalties are calculated by the gravity method.

- Severity and probability are established in the following ways:

**Severity:**

- Severity rates are based on the most serious injury, illness, or disease that could be reasonably expected to occur because of a hazardous condition.
- Severity rates are expressed in whole numbers and range from 1 (lowest) to 3 (highest).
- Tables 3 and 4 are used to determine the severity rate for a violation.

**Table 3  
Severity - Serious Violations**

3	<ul style="list-style-type: none"> <li>• Death</li> <li>• Injuries involving permanent disability</li> <li>• Chronic, irreversible illness</li> </ul>
2	<ul style="list-style-type: none"> <li>• Disability of a limited nature</li> <li>• Injuries or reversible illnesses resulting in hospitalization</li> </ul>
1	<ul style="list-style-type: none"> <li>• Injuries or temporary, reversible illnesses resulting in serious physical harm</li> <li>• May require removal from exposure or supportive treatment without hospitalization for recovery</li> </ul>

**Table 4**

Severity - General Violations

<b>General violation</b>
<ul style="list-style-type: none"> <li>• Conditions that could cause injury or illness to an employee but would not result in serious physical harm</li> </ul>

**Probability:**

**Definition:**

A probability rate is a number that describes the likelihood that an injury, illness, or disease will occur ranging from 1 (lowest) to 3 (highest). See Table 5.

- When determining probability, DOSH considers a variety of factors, depending on the situation, such as:

- Frequency and amount of exposure.
- Number of employees exposed.
- Instances, or number of times, the hazard is identified in the workplace.
- How close an employee is to the hazard, i.e., the proximity of the employee to the hazard.
- Weather and other working conditions.
- Employee skill level and training.
- Employee awareness of the hazard.
- The pace, speed, and nature of the task or work.
- Use of personal protective equipment.
- Other mitigating or contributing circumstances.

**Table 5  
Probability**

3	<ul style="list-style-type: none"> <li>• If the factors considered indicate the likelihood of injury or illness would be relatively high.</li> </ul>
2	<ul style="list-style-type: none"> <li>• If the factors considered indicate the likelihood of injury or illness would be moderate.</li> </ul>
1	<ul style="list-style-type: none"> <li>• If the factors considered indicate an injury or illness could occur, but the likelihood would be relatively low.</li> </ul>

- Table 6 is used to determine the dollar amount for each gravity-based penalty, unless otherwise specified by statute.

**Table 6  
Gravity-Based Penalty - Serious Violations  
Severity x Probability = Gravity**

9 High	<del>(\$7,000)</del> \$7,140 + Inflation Factor + <u>2% catch up to national penalty average, if needed</u>
6	<del>(\$6,000)</del> \$6,120 + Inflation Factor + <u>2% catch up to national penalty average, if needed</u>
4	<del>(\$4,000)</del> \$4,080 + Inflation Factor + <u>2% catch up to national penalty average, if needed</u>
3	<del>(\$3,000)</del> \$3,060 + Inflation Factor + <u>2% catch up to national penalty average, if needed</u>
2	<del>(\$2,000)</del> \$2,040 + Inflation Factor + <u>2% catch up to national penalty average, if needed</u>

1 Low	(( <del>\$1,000</del> ) <u>\$1,020 + Inflation Factor + 2% catch up to national penalty average, if needed</u> )
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Inflation factor will be adjusted each year based on the consumer price index for all urban consumers (CPI-U). The inflation factor is determined by dividing the consumer price index (CPI-U) for the month of October preceding the date of the adjustment by the CPI-U for October 12 months prior and rounded to five decimal points. The base penalty amount may also be increased by an additional two percent if DOSH is not within 25 percent of the national penalty average for the federal fiscal year preceding the date of the adjustment as determined by the United States Occupational Safety and Health Administration (OSHA).

The minimum penalty for a standard serious violation = ((~~one hundred dollars~~)) \$100.

(A penalty is required by statute for a serious violation; where adjustments would result in a penalty below the minimum, the minimum will be applied.)

The maximum statutory penalty for a serious violation will be the maximum civil penalty established by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 or ((~~seven thousand dollars~~)) \$7,000, whichever is more.

Links:

- Occupational Safety and Health Administration—OSHA penalties.
- Occupational Safety and Health Administration 29 C.F.R. 1903.15

Proposed penalties.

- RCW 49.17.180 Violations—Civil penalties.

**Table 7  
General Violations Penalty**

General violation (first time nonstatutory)	\$0
General violation base penalty	\$200

A penalty is not applied to first time general violations. The base penalty is used to calculate the penalty for willful, repeat, or failure to abate general violations.

AMENDATORY SECTION (Amending WSR 19-01-097, filed 12/18/18, effective 1/21/19)

**WAC 296-900-14015 Base penalty adjustments.**

• Tables 8 through 11 describe the various factors DOSH considers when adjusting a base penalty, and the effect on the fine.

- The minimum adjusted base penalty for any standard violation carrying a penalty is ((~~one hundred dollars~~)) \$100.

- The minimum adjusted penalty for serious violations contributing to a fatality is ((~~two thousand five hundred dollars~~)) \$2,500.

- The minimum penalty for willful violations is ((~~five thousand dollars~~)) \$5,000 per violation unless set to a specific higher amount by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 and this state is required to equal the higher penalty amount to qualify as a state plan state.

- The maximum adjusted base penalty for a violation will be the maximum civil penalty established by the federal Occupational Safety

and Health Administration under 29 C.F.R. 1903.15 or ((seven thousand dollars)) \$7,000, whichever is more.

• No adjustments are made to minimum penalty amounts specified by statute.

**Table 8  
Employer Inspection History**

History Assessment	Penalty Adjustment
Above Average: Previous inspections with less than one serious violation on average and no willful, repeat, or failure to abate violations.	-10%
Average: No previous inspections or inspections with less than two serious violations on average.	None
Below Average: Previous inspections with willful, repeat, or failure to abate violations or inspections with two or more serious violations on average.	+10%

- History is based on the prior three years statewide.
- No reduction is given for violations classified as willful, repeat, failure to abate, or violations contributing to an inpatient hospitalization with an assigned gravity of 6 or 9 or any violations contributing to a fatality.

**Table 9  
Good Faith**

Good Faith	Penalty Adjustment
Good	-20%
Average	None
Below Average	+20%

Based on:

- Evidence of an overall safety and health program, including a written accident prevention program (APP), other required written programs, training, etc.
- Efforts to fully communicate safety and health policies.
- Employees are clearly involved in the safety and health programs.
- Management's commitment at all levels is apparent.
- Employer's injury and illness rate.

No reduction is given for violations classified as willful, repeat, or failure to abate.

**Table 10  
Abatement Quick-Fix Reduction**

Immediate correction of hazard provided such corrective action is substantial and not temporary or superficial	-15%
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No reduction is given for:

- Violations classified as willful, repeat, or failure to abate.
- Violations contributing to an inpatient hospitalization or fatality, or to any incidents resulting in serious injuries to employees.

- Blatant violations that are easily corrected or "abated" due to the short-term duration of work at a specific location.

**Table 11**  
**Size of Workforce**

Number of Employees	Penalty Adjustment
1 - 10	-70%
11 - 25	-60%
26 - 100	-40%
101 - 250	-20%
251 or more	None

Based on workforce size nationwide.

AMENDATORY SECTION (Amending WSR 19-01-097, filed 12/18/18, effective 1/21/19)

**WAC 296-900-14020 Increases to adjusted base penalties.**

- Tables 12 through 14 describe circumstances where an increase may be applied by DOSH to an adjusted base penalty.

**Table 12**  
**Repeat Violations**  
(~~((increases the adjusted base penalty, after willful assessment))~~)

1 <sup>st</sup> time x 2
2 <sup>nd</sup> time x 5
3 <sup>rd</sup> time x 8
4 <sup>th</sup> time x 12
5 <sup>th</sup> time x 15

History is based on the prior three years.

The maximum statutory penalty will be the maximum civil penalty established by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 or (~~(seventy thousand dollars))~~ \$70,000, whichever is more.

**Note:** For repeat willful violations the repeat adjustment is applied after the willful assessment.

**Table 13**  
**Willful Violations**

Multiply the adjusted based penalty by 10.
• No reduction is given for good faith, history, or abatement quick-fix.

The minimum statutory penalty for willful violations is (~~(five thousand dollars))~~ \$5,000 per violation unless set to a specific higher amount by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 and this state is required to equal the higher penalty amount to qualify as a state plan state.

The maximum statutory penalty will be the maximum civil penalty established under the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 or (~~(seventy thousand dollars))~~ \$70,000, whichever is more.

**Table 14**

**Failure to Abate**

Increases the adjusted base penalty:
Adjusted base penalty is multiplied by the number of calendar days past the correction date, with a minimum of five days.
<ul style="list-style-type: none"> <li>No reduction in the base penalty is given for good faith, history, or abatement quick-fix.</li> </ul>

The maximum statutory penalty will be the maximum civil penalty established by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 or (~~seven thousand dollars~~) \$7,000, whichever is more, per day if violation is not corrected.

**Table 15  
Egregious Violation**

<p>If the violation was willful and at least one of the following:</p> <ul style="list-style-type: none"> <li>The violations resulted in worker fatalities, a worksite catastrophe, or large number of injuries or illnesses.</li> <li>The violation resulted in persistently high rates of worker injuries or illnesses.</li> <li>The employer has an extensive history of prior violations.</li> <li>The employer has intentionally disregarded its safety and health responsibilities.</li> <li>The employer's conduct taken as a whole amounts to clear bad faith in the performance of his/her duties.</li> <li>The employer has committed a large number of violations so as to undermine significantly the effectiveness of any safety and health program that might be in place.</li> </ul>	<ul style="list-style-type: none"> <li>The adjusted base penalty may be increased as follows: With a separate penalty issued for each instance, the employer fails to follow a specific requirement.</li> </ul>
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**Table 16  
Penalty Calculation Method**

<p>All penalty adjustments factors are summed.</p> <ul style="list-style-type: none"> <li>History: Up to a 10% reduction</li> <li>Good Faith: Up to a 20% reduction</li> <li>Quick-Fix: Up to a 15% reduction</li> <li>Size: Up to a 70% reduction</li> </ul>
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AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

**WAC 296-900-150 Certifying violation corrections.**

**Summary:**

**Employer responsibility:**

- (1) To certify that violations to safety and health requirements have been corrected.
- (2) To submit, if required:
  - (a) Additional information.
  - (b) Correction action plans.
  - (c) Progress reports.
- (3) To comply with correction due dates.
- (4) To tag cited moveable equipment to warn employees of a hazard.
- (5) To inform affected employees that each violation was corrected.

<del>((You))</del> <b>The employer must meet the requirements...</b>	<b>in this section:</b>
Certifying violation correction	WAC 296-900-15005
Violation correction action plans	WAC 296-900-15010
Progress reports	WAC 296-900-15015
Timeliness of violation correction documents	WAC 296-900-15020
Inform employees about violation correction	WAC 296-900-15025
Tag moveable equipment	WAC 296-900-15030

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

**WAC 296-900-15005 Certifying violation correction.**

**Definition:**

A correction date is the date by which you must meet the (~~WI-SHA~~) DOSH requirements listed on either a: Citation and notice (C&N) or a corrective notice of redetermination (CNR).

- (1) (~~((You))~~) The employer must certify in writing within (~~(ten))~~ 10 calendar days following the correction date shown on the C&N that each violation has been corrected. Include the following:
  - (a) Employer name and address.
  - (b) The inspection number involved.
  - (c) The citation and item numbers which have been corrected.
  - (d) The date each violation was corrected and the method used to correct them.
  - (e) A statement that both:
    - (i) Affected employees and their representatives were informed that each violation was corrected; and
    - (ii) The information submitted is accurate.
  - (f) Employer's signature or the signature of employer's designated representative.

**Note:** Certification is not required if the (~~WISHA~~) DOSH compliance officer indicates in the C&N, or a reassumption hearings officer indicates in a CNR, that they have already been corrected.

(2) ((~~You~~)) The employer must submit additional documentation for willful or repeated violations, demonstrating that ((~~they~~)) the violations were corrected. This documentation may include, but is not limited to:

- (a) Evidence of the purchase or repair of equipment.
- (b) Photographic or video evidence of corrections.
- (c) Other written records.

(3) ((~~You~~)) The employer must submit additional documentation for serious violations when required in the C&N or CNR.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

**WAC 296-900-15010 Violation correction action plans.** (1)

((~~You~~)) The employer must submit a written violation correction action plan within ((~~twenty-five~~)) 25 calendar days from the final order date when the citation and notice or corrective notice of redetermination requires it. Include all of the following in the violation correction action plan:

- (a) Identification of the violation.
- (b) The steps that will be taken to correct the violation.
- (c) A schedule to complete the steps.
- (d) A description of how employees will be protected until the corrections are completed.

**What to expect from ((WISHA)) DOSH:**

(2) ((WISHA)) DOSH will notify you in writing only if your plan is not adequate, and describe necessary changes.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

**WAC 296-900-15015 Progress reports.** (1) ((~~You~~)) The employer

must submit written progress reports on corrections when required in the citation and notice (C&N) or corrective notice of redetermination (CNR), and briefly explain the:

- (a) Status of each violation.
- (b) Action taken to correct each violation.
- (c) Date each action has or will be taken.

**What to expect from ((WISHA)) DOSH:**

(2) ((WISHA)) DOSH will state in the C&N or CNR if progress reports are required, including:

- (a) Items that require progress reports.

(b) Date when an initial progress report must be submitted. The initial progress report is due no sooner than ((~~thirty~~)) 30 calendar days after you submit a correction action plan.

(c) Whether additional progress reports are required, and the dates by which they must be submitted.



AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

**WAC 296-900-15020 Timeliness of violation correction documents.**

**What to expect from ((WISHA)) DOSH:**

((WISHA)) DOSH will determine the timeliness of violation correction documents by reviewing the following:

- (1) The postmark date for documents sent by mail.
- (2) The date received by other means, such as personal delivery, email or fax.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

**WAC 296-900-15025 Inform employees about violation correction.**

(1) ((~~You~~)) The employer must inform employees about violation corrections by doing the following:

(a) Post a copy of each violation correction document submitted to ((WISHA)) DOSH, or a summary, near the place where the violations occurred, if practical.

If posting near the place where the violation occurred is not practical, such as with a mobile work operation, post in a place readily accessible to affected employees or take other steps to fully communicate actions taken to affected employees or their representatives.

(b) Keep violation correction information posted for at least three working days after submitting the correction documents to ((WISHA)) DOSH.

(c) Give notice to employees and their representatives on or before the date you submit correction information to ((WISHA)) DOSH.

(d) Make sure that all posted correction documents are not altered, defaced, or covered by other materials.

(2) ((~~You~~)) The employer must inform employees and their representatives of their right to examine and copy all correction documents submitted to ((WISHA)) DOSH.

If they ask to examine or copy documents within three working days of receiving notice that the documents were submitted to ((WISHA)) DOSH, provide access or copies no later than five days after receiving their request.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

**WAC 296-900-15030 Tag moveable equipment.** (1) ((~~You~~)) The employer must tag moveable equipment that has been cited to warn employees if a hazard has not been corrected, as follows:

(a) Attach a warning tag or a copy of the citation to the equipment's operating controls or to the cited component.

(b) For hand-held equipment, tag it immediately after you receive a citation.

(c) For other equipment, tag it before moving it within the work-site or between worksites.

**Note:** The tag should warn employees about the nature of the violation and tell them where the citation is posted.

**Reference:** For a sample tag that meets this requirement, go to helpful tools, sample tag for cited moveable equipment, in the resources section of this chapter.

(2) ~~((You))~~ The employer must make sure that the tag or copy of the citation attached to movable equipment is not altered, defaced, or covered by other materials.

(3) ~~((You))~~ The employer must keep the tag or copy of the citation attached to movable equipment until one of the following occurs:

- (a) Violations have been corrected and all certification documents have been submitted to ~~((WISHA))~~ DOSH.
- (b) Cited equipment is permanently removed from service.
- (c) The final order from an appeal vacates (voids) the violation.

**Note:** Safety standards for construction work, chapter 296-155 WAC, has information on warning tags. ~~((You))~~ The employer can use warning tags that meet those requirements instead of the warning tags required by this rule.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

**WAC 296-900-160 More time to comply.**

**Summary:**

~~((You))~~ **Employer responsibility:**

To submit timely requests when more time is needed to correct violations. To post requests for more time for employees.

<del>((You))</del> <b>Employer must meet the requirements...</b>	<b>in this section:</b>
Requesting more time to comply	WAC 296-900-16005
Post <del>((WISHA's))</del> <u>DOSH's</u> response to requests for more time	WAC 296-900-16010
Correction date hearing requests	WAC 296-900-16015
Post <del>((WISHA's))</del> <u>DOSH's</u> violation correction hearing notice	WAC 296-900-16020
Violation correction hearing procedures	WAC 296-900-16025
Post the violation correction hearing decision	WAC 296-900-16030

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

**WAC 296-900-16005 Requesting more time to comply.**

**IMPORTANT:**

~~((You))~~ The employer can request more time to correct violations if they:

- 1. Have made a good faith effort to correct the violation.
- 2. Have not corrected the violation because of factors beyond their control.

(1) ~~((You))~~ The employer must submit any requests for more time to correct violations in writing. Requests must be received or post-marked before midnight of the correction date shown on the citation

and notice (C&N) or corrective notice of redetermination (CNR), and include:

- (a) The business name.
  - (b) The address of the workplaces.
  - (c) The citation and the correction dates to be extended.
  - (d) The new correction date and length of correction period being requested.
  - (e) A description of the actions that have been, and are being, taken to meet the correction dates in the C&N or CNR.
  - (f) Factors preventing correction of violations by the date required.
  - (g) The means that will be used to protect employees while the violation is being corrected.
  - (h) Certification that the request for correction date extension has been posted, and if appropriate, certification that a copy was delivered to affected employees or their representatives.
  - (i) Employer's signature or the signature of the employer's representative.
  - (j) Date.
- (2) ~~((You))~~ The employer must submit requests by one of the following methods:
- (a) First class mail, postage prepaid to any L&I office.
  - (b) Take to any L&I office.
  - ~~((c) Fax to the number shown in the C&N.))~~

**Reference:** For a list of the local offices, see the resources section of the Safety and health core rules, chapter 296-800 WAC.

**What to expect from ((WISHA)) DOSH:**

- (3) ((WISHA)) DOSH may accept late requests if they are both:
  - (a) Received within five days following the related correction date; and
  - (b) Accompanied by ~~((your))~~ a written statement explaining the exceptional circumstances that caused the delay.

**Note:** ((WISHA)) DOSH does not accept late requests when compliance activity has already started.

- (4) ((WISHA)) DOSH may respond to telephone requests or personal conversations asking for more time to comply if timely, and followed up in writing within ~~((twenty-four))~~ 24 hours.
- (5) ((WISHA)) DOSH may conduct an investigation before making a decision whether to grant a request for more time.
- (6) ((WISHA)) DOSH will make a decision whether or not to grant the employer more time. Once made, the decision remains in effect unless an employee or employee representative requests a hearing.
- (7) ((WISHA)) DOSH will keep the original correction date in effect unless a notice granting more time is sent.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

**WAC 296-900-16010 Post ((WISHA's)) DOSH's response to requests for more time.** (1) ~~((You))~~ The employer must post notices from ((WISHA)) DOSH approving additional time to correct citations, with the related citation, immediately upon receipt.

- (2) ~~((You))~~ The employer must keep the notices posted until one of the following occur:
  - (a) The correction date has passed.
  - (b) A hearing notice is requested and posted.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

**WAC 296-900-16015 Correction date hearing requests.**

**IMPORTANT :**

1. Affected employees or their designated representatives may request a hearing if they disagree with ((WISHA's)) DOSH's decision to grant an employer more time to correct a violation.

2. Employers may request a hearing if ((WISHA)) DOSH denies their request for more time to correct a violation.

((You, your)) Employers, employees, or their representatives must send requests for hearings, if desired, in writing no later than ((ten)) 10 calendar days after the issue date of the notice granting more time to correct a violation to:

Mail to:

((Assistant Director for WISHA Services))

Department of Labor & Industries

Attn: ((WISHA)) DOSH Appeals

P.O. Box 44604

Olympia, WA 98504-4604

Fax to: 360-902-5581

Email to: DOSHAppeals@Lni.wa.gov

Take to any department service location.

**Reference:** For a list of the local offices, see the resources section of the Safety and health core rules, chapter 296-800 WAC.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

**WAC 296-900-16020 Post ((WISHA's)) DOSH's violation correction hearing notice.** ((You)) The employer must post ((WISHA's)) DOSH's hearing notice or a complete copy until the hearing is held, along with the:

(1) Citation containing the correction date for which more time was requested.

(2) ((Department)) DOSH notices issued in response to the employer's request for more time.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

**WAC 296-900-16025 Violation correction hearing procedures.**

**What to expect from ((WISHA)) DOSH:**

(1) After receiving a hearing request, the assistant director for ((WISHA)) DOSH services will appoint someone from ((WISHA)) DOSH to act as a hearings officer.

(2) The hearings officer:

(a) Will send a hearing notice to the employer and employee at least ((twenty)) 20 days before the hearing date that includes all of the following:

(i) A statement that all interested parties can participate in the hearing.

- (ii) The time, date, and place of the hearing.
- (iii) A short and clear explanation why a hearing was requested.
- (iv) The nature of the proceeding, including the specific sections of the statute or rule involved.
- (v) The legal authority and jurisdiction under which the hearing will be held.
- (b) May discuss the material to be presented to determine how the hearing will proceed.
- (3) An assistant attorney general may be present at the hearing to give legal advice to the hearings officer.
- (4) The hearing will be conducted by either:
  - (a) The hearings officer; or
  - (b) The assistant attorney general, if requested by the hearings officer.
- (5) After the hearing, ((WISHA)) DOSH will issue an order that either affirms or modifies the correction date that caused the hearing.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

**WAC 296-900-16030 Post the violation correction hearing decision.** ((You)) The employer must post a complete, unedited copy of the order affirming or modifying the correction date as soon as it is received, along with the applicable citation.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

**WAC 296-900-170 Appeals.**

**Summary:**

**Employer responsibility:**

To post information regarding appeals in a conspicuous area where notices to employees are normally posted.

<b>((You)) Employer must meet the requirements...</b>	<b>in this section:</b>
Appealing a citation and notice (C&N)	WAC 296-900-17005
Stay of abatement date request	WAC 296-900-17006
Appealing a corrective notice of redetermination (CNR)	WAC 296-900-17010
Posting appeals	WAC 296-900-17015

AMENDATORY SECTION (Amending WSR 17-22-117, filed 10/31/17, effective 1/1/18)

**WAC 296-900-17005 Appealing a citation and notice (C&N).**

**IMPORTANT:**

1. Employers may appeal C&Ns.

2. Employees of the cited employer, or their designated representatives, may only appeal abatement dates.

3. The filing of an appeal does not stay the abatement date for violations classified as serious, willful, repeat serious, or failure to abate serious. Employers may request a stay of abatement date for these classifications of violations when they appeal a C&N.

(1) ~~((You))~~ The employer must, when appealing, submit a written appeal to DOSH within ~~((fifteen working))~~ 15 business days after receiving the C&N. Include the following information:

(a) Business name, address, and telephone number.

(b) Name, address, and telephone number of any employer representative.

(c) C&N number.

(d) What you believe is wrong with the C&N and any related facts.

(e) What you believe should be changed, and why.

(f) Requests for stay of abatement date according to WAC 296-900-17006.

(g) A signature and date.

(2) ~~((You))~~ The employer must send appeals in any of the following ways:

- Mail to:

~~((Assistant Director for DOSH Services))~~

Department of Labor & Industries

Attn: DOSH Appeals

P.O. Box 44604

Olympia, WA 98504-4604

~~((Fax to: 360-902-5581))~~

- Electronically to: [DOSHAppeals@Lni.wa.gov](mailto:DOSHAppeals@Lni.wa.gov)

- Take to any department service location.

**Reference:** See the resources section of the Safety and health core rules, chapter 296-800 WAC, for a list of the local offices.

**Note:** The postmark is considered the submission date of a mailed request.

(3) Employees or their designated representatives must, when appealing C&N abatement dates, submit a written request to DOSH within ~~((fifteen))~~ 15 working days after the C&N is received. Include the following information:

(a) Name of employee, address, telephone number.

(b) Name, address, and telephone number of any designated representative.

(c) C&N number.

(d) What is believed to be wrong with the abatement date.

(e) A signature and date.

(4) Employees or their designated representatives must send appeals in any of the following ways:

- Mail to:

~~((Assistant Director for DOSH Services))~~

Department of Labor & Industries

Attn: DOSH Appeals

P.O. Box 44604

Olympia, WA 98504-4604

~~((Fax to: 360-902-5581))~~

- Electronically to: [DOSHAppeals@Lni.wa.gov](mailto:DOSHAppeals@Lni.wa.gov)

- Take to any L&I service location.

**Reference:** See the resources section of the Safety and health core rules, chapter 296-800 WAC, for a list of the local offices.

**Note:** The postmark is considered the submission date of a mailed request.

What to expect from DOSH:

(5) After receiving an appeal, DOSH will do one of the following:

(a) Reassume jurisdiction over the C&N, and notify the person who submitted the appeal.

(b) Forward the appeal to the board of industrial insurance appeals. The board will send the person submitting the appeal a notice with the time and location of any board proceedings.

**Definition:**

**Reassume jurisdiction.** DOSH has decided to provide the employer with an informal conference to discuss their appeal.

(6) When reassuming jurisdiction over a C&N, DOSH has ~~((thirty))~~ 30 working days after receiving the appeal to review it, gather more information, and decide whether to make changes to the C&N. The review period:

(a) Begins the first working day after the appeal is received. For example, if an appeal is received on Friday, the ~~((thirty))~~ 30 days will begin on the following Monday unless it's a state holiday.

(b) May be extended up to ~~((forty-five))~~ 45 additional working days, if everyone involved agrees and signs an extension agreement within the initial ~~((thirty))~~ 30-day period.

(c) Will include an informal conference about the appeal that is an opportunity for interested parties to:

(i) Briefly explain their positions.

(ii) Provide any additional information they would like DOSH to consider when reviewing the C&N.

(iii) Provide any additional information they would like DOSH to consider when reviewing stay of abatement date requests.

**Note:**

DOSH might reassume jurisdiction over a C&N to do any of the following:

1. Provide an employer and affected employees an opportunity to present relevant information, facts, and opinions during an informal conference.
2. Give an employer, affected employees, and the department an opportunity to resolve appeals rapidly and without further contest, especially in routine compliance cases.
3. Educate employers about the C&N, the DOSH appeals process, and DOSH compliance.
4. Review citations, penalties, and abatement dates. Although informal, the conference is an official meeting and it may be either partially or totally recorded. Participants will be told if the conference is recorded.
5. Review requests to stay abatement dates.

(7) On or before the end of the ~~((thirty-working))~~ 30 business day review period, or up to ~~((seventy-five-working))~~ 75 business days if everyone involved agrees to the extension of up to ~~((forty-five))~~ 45 additional ~~((working))~~ business days, DOSH will issue and send a corrective notice to the employer, employees, and employee representatives participating in the appeal process of redetermination that:

(a) Reflects any changes made to the C&N.

(b) Grants or denies requests to stay abatement dates and includes the basis of the decision.

~~((c) Is sent to the employer, employees, and employee representatives participating in the appeal process.))~~

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

**WAC 296-900-17010 Appealing a corrective notice of redetermination (CNR).**

**IMPORTANT:**

1. Employers may appeal CNRs.

2. Employees who could be affected by a CNR, or their designated representatives, may appeal abatement dates.

3. Employers must renew requests to stay abatement dates if a stay request is denied when they appeal CNRs.

(1) You must appeal a CNR, if desired, in writing within (~~fifteen~~) 15 working days after it was received (~~to the~~):

Electronically to: BIIA.wa.gov

Via mail to:

Board of Industrial Insurance Appeals  
2430 Chandler Court S.W.  
P.O. Box 42401  
Olympia, WA 98504-2401

(2) You must send a copy of the appeal to the CNR to the:

(~~Assistant Director for DOSH Services~~)

Department of Labor & Industries

Attn: DOSH Appeals

P.O. Box 44604

Olympia, WA 98504-4604

(~~Fax to: 360-902-5581~~)

Email to: DOSHAppeals@Lni.wa.gov

Take to any department service location.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

**WAC 296-900-17015 Posting appeals.** (~~You~~) The employer must immediately post notices and information related to any appeal or stay of abatement date request in the same place where DOSH citation and notices (C&Ns) are posted. These notices and information include:

(1) The notice of appeal, until the appeal is resolved.

(2) Notices about DOSH reassuming jurisdiction, and any extension of the review period until the end of review period.

(3) A notice of an informal conference until after the conference is held.

(4) A corrective notice of redetermination for as long as C&Ns are to be posted.

**Reference:** For C&N posting requirements, see Posting citation and notices, WAC 296-900-13015.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

**WAC 296-900-17505 Scope and purpose.** (1) The program for safety and health investment projects (SHIP) was established during the 2011 legislative session to provide funding for safety and health projects for workplaces insured for workers' compensation through the department's state fund. The purpose of these projects shall be to: Prevent workplace injuries, illnesses, and fatalities; create early return to work programs; and reduce long-term disability through the cooperation of employers and employees or their representatives.

(2) Funds for awards shall be distributed as follows:

(a) At least (~~twenty-five~~) 25 percent for projects designed to develop and implement innovative and effective return-to-work programs for injured workers;



(b) At least (~~twenty-five~~) 25 percent for projects that specifically address the needs of small businesses; and

(c) At least (~~fifty~~) 50 percent for projects that foster workplace injury and illness prevention by addressing priorities identified by the department in cooperation with the (~~Washington Industrial Safety and Health Act~~) WISHA advisory committee and the workers' compensation advisory committee.

AMENDATORY SECTION (Amending WSR 12-03-090, filed 1/17/12, effective 3/1/12)

**WAC 296-900-17520 Advisory committee.** (1) The department will create a SHIP advisory committee (SAC) that will be a subcommittee of the WISHA advisory committee and will advise the department on program policy issues and participate in the grant application review process. The SAC will have eight to (~~ten~~) 10 members, including equal numbers of employer and employee representatives, and others with relevant experience and expertise. Members will be appointed to serve three-year renewable terms by the assistant director of (~~the division of occupational safety and health~~) DOSH(~~(+)~~). The initial term for half of the first group of appointees will be (~~eighteen~~) 18 months. SAC membership will include:

(a) At least one employer representative from the WISHA advisory committee or an employer representative recommended by the WISHA advisory committee employer representatives; and

(b) At least one employee representative from the WISHA advisory committee or an employee representative recommended by the WISHA advisory committee employee representatives.

(2) The SAC will be supplemented by ad hoc grant review committees consisting of selected members of the SAC together with other individuals with experience and expertise in the specific topic areas under review. Members of such ad hoc grant review committees will be appointed by the assistant director for DOSH, taking into consideration recommendations from the SAC and WISHA advisory committee.

(3) All meetings of the SAC will be convened and chaired by the assistant director for DOSH or designee.

(4) The SAC will provide the following assistance:

(a) Advice on SHIP policy issues to DOSH and the WISHA advisory committee;

(b) Make recommendations to DOSH and the WISHA advisory committee regarding funding priority areas;

(c) Review and comment on funding recommendations made by grant review committees to the assistant director of DOSH;

(d) Keep records of the SACs decisions;

(e) Develop and maintain communication networks in the community.

(5) SAC and grant review committee members will disclose to the department any potential conflicts of interest with specific project applications, whether direct or indirect. The department will determine whether a member's connection to a project should result in recusal from voting on the project. The department's decision and reasons supporting the decision will be documented in the meeting minutes.

(6) SAC and grant review committee members will not disclose any information about applications to anyone not authorized access to the information by law or regulation.

AMENDATORY SECTION (Amending WSR 12-03-090, filed 1/17/12, effective 3/1/12)

**WAC 296-900-17525 Application.** (1) The department will periodically prepare grant application packets that will be available on the department's website.

(2) Applicants must complete the entire application to be considered for project funding. Incomplete applications or those submitted after a posted deadline will not be considered for funding.

(3) Some funding cycles may include limitations on the maximum amount that will be awarded for any proposal. Limitations, if any, will be posted on the department's website or in current application packets.

(4) All products developed as a result of an approved SHIP project belong in the public domain and their dissemination and use shall not be restricted in any way. Such products may not be copyrighted, patented, claimed as trade secrets, or otherwise restricted in any other way. The department retains the right to publish or otherwise disseminate these products as the department in its sole discretion deems appropriate.

(5) The department will not use information contained in submitted application packets as the basis for the initiation of compliance inspections or the issuance of citations and/or penalties to applicants, (~~under WISHA,~~) chapter 49.17 RCW. However, employers are not exempt from compliance inspections initiated for other reasons because they submitted an application packet.

(6) Projects may include, but are not limited to:

(a) The development and implementation of innovative and effective return-to-work programs for injured workers;

(b) The development of technical innovation and engineering controls for the recognition and control of workplace hazards;

(c) Best practices for workplace safety and health programs;

(d) Education and training;

(e) Efforts that address the needs of small businesses;

(f) Priorities identified by DOSH in cooperation with the WISHA advisory committee and the workers' compensation advisory committee;

(g) Initiatives intended to build organizational capacity in workplace safety and health; and

(h) Other projects that foster injury and illness prevention through cooperation between employers and employees or their representatives.

AMENDATORY SECTION (Amending WSR 12-03-090, filed 1/17/12, effective 3/1/12)

**WAC 296-900-17535 Monitoring.** DOSH staff will monitor projects for compliance with award terms and achievement of approved project milestones and (~~to~~) outcomes.

(1) Milestones are intermediate targets or goals that are defined in the project applications. Ongoing funding will be tied to the achievement of approved milestones (including, but not limited to, accounting for grant funds).

(2) Outcomes are the final products that will be produced by the project.

## WSR 25-03-095

## PERMANENT RULES

## DEPARTMENT OF HEALTH

(Board of Physical Therapy)

[Filed January 17, 2025, 8:19 a.m., effective February 17, 2025]

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

Purpose: Physical therapy licensure compact (PTLC); updating the reference date to match the most recent PTLC commission rules. The board of physical therapy has adopted an updated effective date in WAC 246-915A-010 to match the date of the most recent PTLC rules to comply with RCW 18.74.500, Article IX(2).

The purpose of the adopted amendment is to update the effective date in rule to June 17, 2024, which is the most recent version of the PTLC rules. The PTLC rules, effective June 17, 2024, made the following minor changes to the compact rules: (1) Clarified the expiration date of the home state license and compact privilege; and (2) changed the time frame of how long a compact privilege holder must report a change in home state from 30 days to 60 days.

The adopted change to WAC 246-915A-010 complies with the RCW 18.75.500, Article IX(2) by incorporating by reference the PTLC rules as of June 17, 2024.

Citation of Rules Affected by this Order: Amending WAC 246-915A-010.

Statutory Authority for Adoption: RCW 18.74.023 and 18.74.500, Article IX(2).

Adopted under notice filed as WSR 24-20-033 on September 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 0, Repealed 0.

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

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

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

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

Date Adopted: December 9, 2024.

Kathryn Dale, PT, Chair  
Physical Therapy Board

**OTS-5791.1**

AMENDATORY SECTION (Amending WSR 24-11-116, filed 5/20/24, effective 5/20/24)

**WAC 246-915A-010 Physical therapy licensure compact—Compact commission rules.** (1) The physical therapy licensure compact (compact) is established in Washington under RCW 18.74.500. Its pur-

pose is to facilitate interstate practice of physical therapy with the goal of improving public access to physical therapy services.

(2) The rules of the physical therapy compact commission, in effect as of June (~~(27, 2023)~~) 17, 2024, are adopted and incorporated by reference.

(3) A copy of the rules is available for public inspection from the department of health at <https://www.doh.wa.gov/LicensesPermitsandCertificates/ProfessionsNewReneworUpdate/PhysicalTherapyLicensureCompact> or by calling the department of health's office of customer service at 360-236-4700.

(4) A licensee may exercise a compact privilege as provided in RCW 18.74.500, Article IV. Applicable fees are set forth in WAC 246-915A-990.

**WSR 25-03-113**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed January 21, 2025, 8:37 a.m., effective April 1, 2025]

Effective Date of Rule: April 1, 2025.

Purpose: The purpose of this rule making is to lower the pension discount rate (PDR) to better align with the rate of return for long term treasuries for self-insured pensions. PDR is the interest rate used to account for the time value of money when evaluating the present value of future pension payments. This rule lowers PDR for self-insured employers from 5.5 percent to 5.4 percent, effective April 1, 2025.

Citation of Rules Affected by this Order: Amending WAC 296-14-8810.

Statutory Authority for Adoption: RCW 51.04.020, 51.44.070(1), and 51.44.080.

Adopted under notice filed as WSR 24-21-132 on October 22, 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 0, Repealed 0.

Date Adopted: January 21, 2025.

Joel Sacks  
Director

**OTS-5865.1**

AMENDATORY SECTION (Amending WSR 24-02-069, filed 1/2/24, effective 4/1/24)

**WAC 296-14-8810 Pension tables, pension discount rate and mortality tables.** (1) The department uses actuarially determined pension tables for calculating pension annuity values, required pension reserves, and actuarial adjustments to monthly benefit amounts.

(a) The department's actuaries calculate the pension tables based on:

- (i) Mortality tables from nationally recognized sources;
- (ii) The department's experience with rates of mortality, disability, and remarriage for annuity recipients;
- (iii) A pension discount rate of 4.0 percent for state fund pensions;

(iv) A pension discount rate of (~~5.5~~) 5.4 percent for self-insured pensions, including the United States Department of Energy pensions; and

(v) The higher of the two pension discount rates so that pension benefits for both state fund and self-insured recipients use the same reduction factors for the calculation of death benefit options under RCW 51.32.067.

(b) The department's actuaries periodically investigate whether updates to the mortality tables relied on or the department's experience with rates of mortality, disability, and remarriage by its annuity recipients warrant updating the department's pension tables.

(2) To obtain a copy of any of the department's pension tables, contact the department of labor and industries actuarial services.

**WSR 25-03-114**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed January 21, 2025, 8:47 a.m., effective March 1, 2025]

Effective Date of Rule: March 1, 2025.

Purpose: This rule making repeals WAC 296-20-12501 in its entirety. This change will allow the department of labor and industries (L&I) to pay physician assistants at parity with other providers.

Citation of Rules Affected by this Order: Repealing WAC 296-20-12501.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030, and 51.16.035.

Adopted under notice filed as WSR 24-21-133 on October 22, 2024.

A final cost-benefit analysis is available by contacting Marc Hobbs, L&I, Insurance Services, Health Services Analysis, P.O. Box 44322, Olympia, WA 98504-4322, phone 360-902-4244, fax 360-902-4249, email Marc.Hobbs@Lni.wa.gov.

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

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

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

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: January 21, 2025.

Joel Sacks  
Director

**OTS-5632.1**

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-20-12501 Physician assistant billing procedure.

## WSR 25-03-131

## PERMANENT RULES

## WASHINGTON STATE LOTTERY

[Filed January 21, 2025, 3:01 p.m., effective April 5, 2025]

Effective Date of Rule: April 5, 2025.

Purpose: Washington's lottery is revising chapter 315-38 WAC, Mega Millions. The current rules will not be consistent with the rules of the Mega Millions Consortium, which controls the operation of this multistate game, after April 4, 2025.

Citation of Rules Affected by this Order: Amending chapter 315-38 WAC.

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

Adopted under notice filed as WSR 24-22-017 on October 25, 2024.

Changes Other than Editing from Proposed to Adopted Version: (1) A definition of "exchange ticket" was added to WAC 315-38-020; and (2) the game odds and percentages listed in WAC 315-38-080 were expanded from two decimal points to four (e.g., 1.0000 rather than 1.00).

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 11, 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 11, Repealed 0.

Date Adopted: January 21, 2025.

Kristi Weeks  
Director of Legal Services

## OTS-5955.2

AMENDATORY SECTION (Amending WSR 14-06-048, filed 2/26/14, effective 3/29/14)

**WAC 315-38-010 General description.** Mega Millions is a game conducted by the Washington state lottery, pursuant to chapter 67.70 RCW and Title 315 WAC and pursuant to the requirements of the multi-state agreement, Mega Millions official game rules, Mega Millions finance and operation procedures, and Mega Millions (~~line~~) online drawing procedures, all of which are incorporated by this rule pursuant to WAC 315-30-010. The Mega Millions game awards prizes to ticket holders matching specified combinations of numbers randomly selected in regularly scheduled drawings. Chapter 315-38 WAC applies only to Mega Millions tickets purchased and redeemed in Washington state. Players who purchase Mega Millions tickets in other party lottery states must comply with the rules of the party lottery state in which the ticket was purchased.



AMENDATORY SECTION (Amending WSR 19-16-015, filed 7/25/19, effective 8/25/19)

**WAC 315-38-020 Definitions.** Words and terms set forth below, when used herein, shall have the following meaning unless otherwise indicated:

- (1) Annual/annuitized/annuity option: The manner in which the Mega Millions jackpot prize may be paid in (~~(thirty)~~) 30 consecutive graduated annual installments. Payments shall escalate by a factor of five percent annually, and annual payments shall be rounded to the nearest even \$1,000 increment to facilitate the purchase of securities.
- (2) Authorized claim center: Any Mega Millions agent or retailer, or party lottery office, in the state where the winning official Mega Millions ticket was purchased.
- (3) Cash option: The manner in which the Mega Millions jackpot prize may be paid in a single payment.
- (4) Claimant: Any person or entity submitting a claim form within the required time period to collect a prize for an official Mega Millions ticket. A claimant may be the purchaser, the person or entity named on a signed official Mega Millions ticket, the bearer of an unsigned official Mega Millions ticket, or any other person or entity who may seek entitlement to a Mega Millions prize payment in accordance with the Mega Millions rules and party lottery governing laws, policies, and rules. No claimant may assert rights different from the rights acquired by the original purchaser at the time of purchase.
- (5) Director(s): The chief (~~(officers)~~) executives of the party lotteries or any other persons to whom the directors' authority is lawfully delegated.
- (6) Multistate agreement: The amended and restated multistate agreement regarding the Mega Millions game, or any subsequent amended agreement, signed by the party lotteries and including the Mega Millions official game rules, finance and operations procedures for Mega Millions, and online drawing procedures for Mega Millions.
- (7) Official Mega Millions ticket: A game ticket, produced on official paper (~~(stock)~~) with certain security controls by a Mega Millions agent or retailer in an authorized manner, bearing player or computer selected numbers, game name, drawing date, amount of wager, participation in any add-on game(s), and validation data.
- (8) Party lottery or lotteries: One or more of the state lotteries (~~(authorized to become a member of Mega Millions)~~) that is a current signatory on the then-current multistate agreement.
- (9) Parimutuel: Total amount of sales allocated to pay prize claimants, at the designated prize level, divided among the number of winning official Mega Millions (~~(tickets at the designated prize level)~~) plays.
- (10) Prize fund: That portion of Mega Millions gross sales set aside for the payment of Mega Millions prizes. The prize fund for any drawing is expected to be (~~(fifty)~~) 50 percent of Mega Millions sales, but may be higher or lower based upon the number of winners at each set prize level, as well as the funding required to (~~(meet the advertised)~~) contribute to the jackpot.
- (11) Purchaser(s): Player(s) of Mega Millions who purchase tickets in accordance with Mega Millions rules and party lottery governing laws, policies, and rules.
- (12) Quick-pick, auto-pick, or easy pick: (~~(A player option in which Mega Millions number selections are determined at random by com-~~

puter software)) The random selection of game play number indicia by the selling party lottery's gaming system for an official Mega Millions ticket transaction.

(13) Total prize liability: The liability of the participating states in any Mega Millions game prize, or any Mega Millions add-on game prize, will be in accordance with the finance and operations procedures for Mega Millions.

(14) Subscription/season ticket: An extended, multidraw purchase option, which may be offered in Washington state at the discretion of the director of the Washington state lottery, wherein the same set(s) of numbers may be played for a specified number of consecutive drawings (for example, 26, 52 or 104), effective on a future date. Subscription/season tickets are distinguished from multidraw tickets, which are effective for specified future drawings and are sold at the retailer level.

(15) Mega Millions agent, sales agent or retailer: A location in one of the states which are party lotteries and which is licensed or contracted and equipped by its respective state lottery to sell official Mega Millions tickets.

(16) Mega Millions panel, play board, or play area: That area of an official Mega Millions ticket identified by an alpha character and containing one field of five one-digit or two-digit player or computer selected numbers, and a second field of one one-digit or two-digit player or computer selected number, and one multiplier number that is computer selected.

(17) Mega Millions play/bet slip: A computer-readable form, printed and issued by each party lottery, used in purchasing an official Mega Millions ticket, with each play area consisting of two fields. One field contains ~~((seventy))~~ 70 areas/spaces numbered one through ~~((seventy))~~ 70; and one field contains ~~((twenty-five))~~ 24 areas/spaces numbered one through ~~((twenty-five))~~ 24.

(18) Mega Millions winning numbers - Five one or two digit numbers from one through ~~((seventy))~~ 70, and one or two digit number from one to ~~((twenty-five))~~ 24, randomly selected at each Mega Millions drawing, which shall be used to determine winning Mega Millions plays contained on official Mega Millions tickets.

(19) Add-on game: A game that may provide prize amounts in addition to the Mega Millions prizes, other than the Mega Millions jackpot prize.

(20) Exchange ticket: A ticket provided to a player when a multidraw ticket with outstanding draws is validated. An exchange ticket will be valid for the remaining draws purchased by the player, have a serial number distinct from the original ticket, and be labeled as an exchange ticket.

AMENDATORY SECTION (Amending WSR 02-15-122, filed 7/19/02, effective 8/19/02)

**WAC 315-38-030 Ticket sales.** (1) The sale of official Mega Millions tickets may be conducted only by such locations as the directors shall contract with and/or license pursuant to the governing laws, policies, and rules of the party lotteries and the Mega Millions rules.

(2) Internet sales and lottery courier services are not authorized in Washington state.

(3) The director of the Washington state lottery shall have the discretion to take steps to improve the efficiency of ticket sales when the Mega Millions jackpot prize reaches what ~~((he or she))~~ the director considers a high enough level to warrant action. Steps include, but are not limited to, allowing retailers to restrict ticket purchases to quick pick only.

AMENDATORY SECTION (Amending WSR 19-16-015, filed 7/25/19, effective 8/25/19)

**WAC 315-38-040 Ticket price.** ~~((1))~~ Official Mega Millions tickets may be purchased for ~~((two))~~ five dollars per play, or multiples thereof, at the discretion of the purchaser, in accordance with the number of game panels and inclusive drawings. The purchaser receives one play for every ~~((two))~~ five dollars wagered in Mega Millions. The multiplier feature is included in the five dollar price and is not an add-on game.

~~((2) Subject to the laws and regulations governing each party lottery, the directors may collectively authorize the sale of official Mega Millions tickets at a discount for promotional purposes.~~

~~(3) Individual directors may authorize sale of official Mega Millions tickets at a discount for promotional purposes within their respective jurisdictions, provided that such discounted sales shall be reported to the party lotteries at full gross sales value.)~~

AMENDATORY SECTION (Amending WSR 19-16-015, filed 7/25/19, effective 8/25/19)

**WAC 315-38-050 Play characteristics and restrictions.** (1) Official Mega Millions tickets may only be sold to persons ~~((eighteen))~~ 18 years of age or older, ~~((providing))~~ provided such persons are not prohibited from playing Mega Millions in a party lottery state by the governing law, policies, or rules of that party lottery, or any contract executed by that party lottery.

(2) Official Mega Millions tickets may not be purchased in any other party lottery state by any party lottery board member or commissioner; or any officer or employee; or any spouse, child, brother, sister or parent residing as a member of the same household in the principal place of residence of any such person.

(3) Under no circumstances will a claim be paid without an official Mega Millions ticket matching all game play, serial number, and other validation data residing in the selling party lottery's online gaming system computer, and such ticket shall be the only valid proof of the wager placed and the only valid receipt for claiming or redeeming any prize.

(4) Official Mega Millions tickets cannot be canceled.

(5) Purchasers may submit a manually completed Mega Millions play slip to a Mega Millions agent or retailer to have issued an official Mega Millions ticket. Mega Millions play slips shall be available at no cost to the purchaser and shall have no pecuniary or prize value, and shall not constitute evidence of purchase or number selections. The use of mechanical, electronic, computer generated or any other nonmanual method of marking play slips is prohibited.

(6) Purchasers may orally convey their selections to a Mega Millions agent or retailer to have issued an official Mega Millions ticket. Such selections shall be manually entered into the computer terminal by the Mega Millions agent or retailer.

(7) If player operated sales terminals or self-service terminals are available, purchasers may use such terminals for the purchase of official Mega Millions tickets.

AMENDATORY SECTION (Amending WSR 19-16-015, filed 7/25/19, effective 8/25/19)

**WAC 315-38-080 Prize structure and odds.** (1) Winning number matches shall win prizes as set forth below, based on an estimated anticipated prize fund of ((fifty)) 50 percent of gross sales and estimated percents of prize fund, as defined in WAC 315-38-020(10) and the Mega Millions multistate agreement:

<b>((PRIZE LEVEL</b>	<b>MATCH (Field 1 + Field 2)</b>	<b>ODDS</b>	<b>PRIZE</b>
Jackpot	5 numbers + mega ball	1 in 302,575,350	Jackpot
Second	5 numbers	1 in 12,607,306	\$1,000,000
Third	4 numbers + mega ball	1 in 931,001	\$10,000
Fourth	4 numbers	1 in 38,792	\$500
Fifth	3 numbers + mega ball	1 in 14,547	\$200
Sixth	3 numbers	1 in 606	\$10
Seventh	2 numbers + mega ball	1 in 693	\$10
Eighth	1 number + mega ball	1 in 89	\$4
Ninth	Mega ball only	1 in 37	(\$2))

<u>Match Field 1</u>	<u>Match Field 2</u>	<u>Odds</u>	<u>Prize Level</u>	<u>Base Prize</u>	<u>% of Sales</u>	<u>% of Payout</u>
<u>5</u>	<u>1</u>	<u>290,472,336.0000</u>	<u>Grand</u>	<u>Jackpot</u>	<u>27.6305%</u>	<u>55.2610%</u>
<u>5</u>	<u>0</u>	<u>12,629,232.0000</u>	<u>Second</u>	<u>\$1,000,000</u>	<u>4.7509%</u>	<u>9.5018%</u>
<u>4</u>	<u>1</u>	<u>893,7610.0338</u>	<u>Third</u>	<u>\$10,000</u>	<u>0.6713%</u>	<u>1.3426%</u>
<u>4</u>	<u>0</u>	<u>38,859.1754</u>	<u>Fourth</u>	<u>\$500</u>	<u>0.7720%</u>	<u>1.5440%</u>
<u>3</u>	<u>1</u>	<u>13,965.0162</u>	<u>Fifth</u>	<u>\$200</u>	<u>0.8593%</u>	<u>1.7186%</u>
<u>3</u>	<u>0</u>	<u>607.1746</u>	<u>Sixth</u>	<u>\$10</u>	<u>0.9882%</u>	<u>1.9764%</u>
<u>2</u>	<u>1</u>	<u>665.0008</u>	<u>Seventh</u>	<u>\$10</u>	<u>0.9023%</u>	<u>1.8046%</u>
<u>1</u>	<u>1</u>	<u>85.8066</u>	<u>Eighth</u>	<u>\$7</u>	<u>4.8947%</u>	<u>9.7894%</u>
<u>0</u>	<u>1</u>	<u>35.1666</u>	<u>Ninth</u>	<u>\$5</u>	<u>8.5308%</u>	<u>17.0616%</u>
<u>TOTAL</u>		<u>23.0737</u>			<u>50.0000%</u>	<u>100.0000%</u>

(2) The multiplier shall print directly on, or be applied to, official Mega Millions tickets for each play board. Each Mega Millions play board will have one multiplier. If any official Mega Millions ticket contains multiple play boards, each play board will have its own multiplier. Multipliers apply only to the play board that they

were printed on or applied to. However, on official Mega Millions tickets with multiple play boards, the multipliers may repeat due to the frequency and limited multiplier levels. Exchange tickets, if any, shall print or apply the multiplier(s) from the ticket being exchanged. The multiplier shall apply to all prize levels except the jackpot. The multiplier frequency and odds are as follows:

<u>Multiplier</u>	<u>Frequency</u>	<u>Odds</u>
<u>10X</u>	<u>1</u>	<u>32.0000</u>
<u>5X</u>	<u>2</u>	<u>16.0000</u>
<u>4X</u>	<u>4</u>	<u>8.0000</u>
<u>3X</u>	<u>10</u>	<u>3.2000</u>
<u>2X</u>	<u>15</u>	<u>2.1333</u>
	<u>32*</u>	<u>3.0000**</u>

\* Total of frequencies

\*\* Average multiplier value

AMENDATORY SECTION (Amending WSR 19-16-015, filed 7/25/19, effective 8/25/19)

**WAC 315-38-090 Jackpot prize payments.** (1) Prior to each drawing, the directors shall determine the estimated annuitized jackpot prize amount to be advertised. The jackpot prize amount shall be estimated and established based upon sales and the annuity factor established for the drawing. The advertised jackpot prize amount shall be the basis for determining the amount to be awarded for each Mega Millions panel matching all five of the five Mega Millions winning numbers drawn for Field 1 and the one Mega Millions winning number drawn for Field 2. (~~No annuitized jackpot prize, when there is only one jackpot prize winning ticket, shall be less than \$12 million.~~)

(2) If, in any Mega Millions drawing, there are no Mega Millions panels that qualify for the jackpot prize category, the portion of the prize fund allocated to such jackpot prize category shall remain in the jackpot prize category and be added to the amount allocated for the jackpot prize category in the next consecutive Mega Millions drawing.

(3) If the annuitized jackpot prize divided by the number of Mega Millions panels matching all five of the five Mega Millions winning numbers for Field 1 and the one Mega Millions winning number for Field 2, is equal to or greater than \$1,000,000, the jackpot prize(s) will be paid under the annuity option unless a cash option was selected by the winner(s), as follows:

(a) **Cash option:** When a player claims a jackpot prize or a share of a jackpot prize, the player may elect to be paid a one-time single cash option payment as defined by WAC 315-38-020(3), provided:

(i) The player must elect this cash option within (~~sixty~~) 60 days of the presentation of his or her winning ticket, by following the procedure required by the lottery;

(ii) If the federal tax code is interpreted by federal authorities to require that this cash option be exercised within (~~sixty~~) 60 days of the drawing for the prize, then (a)(i) of this subsection will not apply and instead, the player must elect this cash option within (~~sixty~~) 60 days of the date of the drawing for the prize;

(iii) The player's choice of payment method as designated by signing the appropriate lottery form is final and may not be changed by the player at a later date;

(iv) Cash option jackpot prizes shall be paid in a single payment in accordance with the internal validation procedures and settlement procedures pursuant to the multistate agreement and the Washington state lottery. At the director's discretion, an initial payment of a portion of the cash option prize may be paid to the winner at the time the prize is claimed.

(b) **Annuity:** A player who chooses not to elect the cash option or who does not elect the cash option within the (~~sixty~~) 60-day limit will be paid (~~his or her prize~~) in (~~thirty~~) 30 graduated annual installment payments. The initial payment shall be paid in accordance with the internal validation procedures and settlement procedures established by the multistate agreement and the Washington state lottery. The subsequent (~~twenty-nine~~) 29 payments shall be paid annually to coincide with the month of the federal auction date at which the bonds were purchased to fund the annuity. All such payments shall be made within seven days of the anniversary of the actual auction date. This date of payment of the subsequent payments is subject to the discretion of the director of the Washington state lottery, acting in the best interest of the lottery.

(4) After the player has made (~~his or her~~) the choice of payment method, the lottery will validate the claim, including a debt check pursuant to WAC 315-06-125, and pay the prize as appropriate.

(5) In the event multiple Mega Millions panels match all five of the five Mega Millions winning numbers for Field 1 and the one Mega Millions winning number for Field 2, and the annuitized Mega Millions jackpot prize divided by the number of winning game panels is less than \$1,000,000, each Mega Millions jackpot prize winner shall be paid an amount equal to the "cash equivalent grand/jackpot prize," as defined by the multistate agreement, divided equally by the number of jackpot prize winners. Each such jackpot prize winner will be paid in a single cash payment.

AMENDATORY SECTION (Amending WSR 02-15-122, filed 7/19/02, effective 8/19/02)

**WAC 315-38-150 Ticket responsibility.** (1) A winning official Mega Millions ticket is a bearer instrument and is deemed to be owned by the person or entity named on the ticket or, in the case of a ticket not completed with name, the ticket is deemed to be owned by the claimant.

(2) The Washington state lottery shall not be responsible for lost or stolen official Mega Millions tickets, including tickets lost in the mail, unless otherwise provided in the laws and regulations governing the lottery.

(3) The purchaser of an official Mega Millions ticket has the sole responsibility for verifying the accuracy and condition of the data printed on the ticket at the time of purchase.

(4) The Washington state lottery shall not be responsible to the claimant for official Mega Millions tickets redeemed in error by a Mega Millions agent or retailer.

(5) Winners are determined by the numbers drawn and not the numbers reported. The party lotteries shall not be responsible for Mega Millions winning numbers reported in error.

AMENDATORY SECTION (Amending WSR 02-15-122, filed 7/19/02, effective 8/19/02)

**WAC 315-38-170 Validations.** An official Mega Millions ticket submitted for validation that fails any of the preceding validation conditions shall be considered void, subject to the following determinations:

(1) In all cases of doubt, the determination of the director of the party lottery which sold the official Mega Millions ticket shall be final and binding; however, the director may, at ~~((his/her))~~ the director's option, replace an invalid ticket with an official Mega Millions ticket of equivalent sales price;

(2) In the event a defective ticket is purchased or in the event the director determines to adjust an error, the sole and exclusive remedy shall be the replacement of such defective or erroneous ticket(s) with an official Mega Millions ticket of equivalent sales price;

(3) In the event an official Mega Millions ticket is not paid by the Washington state lottery and a dispute occurs as to whether the ticket is a winning ticket, the Washington state lottery may, at its option, replace the ticket as provided in WAC 315-06-120(~~((17))~~) (18).

AMENDATORY SECTION (Amending WSR 02-15-122, filed 7/19/02, effective 8/19/02)

**WAC 315-38-180 Procedures for claiming and payment of prizes.**

(1) Prizes shall be redeemed or claimed only in the state where the official Mega Millions ticket was purchased and only through Mega Millions agents or retailers or other authorized claim centers, effective upon determination of prize payouts.

(2) A Mega Millions prize claimed in Washington state must be claimed no later than ~~((one hundred eighty))~~ 180 days after the Mega Millions drawing for which the ticket was purchased. Pursuant to WAC 315-02-230 a "claim" means the actual physical receipt of a ticket, and claim form, if necessary under these rules, by a location authorized to pay the prize sought. Placement of the ticket, and claim form, if necessary, in the United States mail or another mail service does not constitute receipt.

(3) Claimants of a winning official Mega Millions ticket must comply with the prize claim requirements of the party lottery which issued the winning ticket.

(4) In the event that a single official Mega Millions ticket contains two or more winning game panels, the cumulative prize amount shall be claimed or redeemed in accordance with the specified prize payment limits for the party lottery (~~((which))~~) that issued the winning ticket.

(5) Federal withholding taxes, and any other applicable taxes, shall be withheld from Mega Millions prizes in such amounts as may be required by law.

(6) Mega Millions prizes shall not be paid to any persons prohibited from playing Mega Millions in a particular party lottery state by Mega Millions rules or by the governing law or rules of that party lottery or any contract executed by that party lottery.

(7) Mega Millions prizes shall not be paid to any person who purchased or acquired the winning ticket through an unauthorized source including, but not limited to, internet sales or lottery courier services.

(8) The name and city or other location of the winner of a jackpot prize, or second prize, will be disclosed in a news conference or in a news release and the winner may be requested to participate in a news conference.

~~((8))~~ (9) If the winner claims a Mega Millions jackpot or second prize as a legal entity pursuant to WAC 315-06-120, the entity shall provide the name of a natural person who is a principal of the legal entity. This natural person shall be available for appearance at any news conference regarding the prize and shall be featured in any lottery's news releases.

AMENDATORY SECTION (Amending WSR 02-15-122, filed 7/19/02, effective 8/19/02)

**WAC 315-38-200 Governing law.** (1) In purchasing a ticket issued for Mega Millions, the purchaser agrees to comply with and be bound by all applicable statutes, administrative rules and regulations, and procedures of the individual state in which the ticket is issued, and by directives, instructions, conditions, policies, and determinations of the director of that state's lottery. The purchaser agrees, as ~~((its))~~ the sole and exclusive remedy, that claims arising out of this ticket can be pursued only against the state of ticket purchase. Litigation, if any, shall only be maintained against the party lottery of the state of ticket purchase and within the state of ticket purchase.

(2) In the event of conflict between the multistate agreement and the statutes, rules, or regulations of any party lottery, the party lottery's statutes, rules, and regulations shall control.

(3) All decisions made by ~~((the directors of the party lotter-ies))~~ a director of a party lottery, including the declaration of prizes and the payment thereof and the interpretation of Mega Millions rules, shall be final and binding on all purchasers and on every person making a claim in respect thereof in the state where the official Mega Millions ticket was issued.



**WSR 25-03-132**  
**PERMANENT RULES**  
**CASCADIA COLLEGE**

[Filed January 21, 2025, 3:45 p.m., effective February 21, 2025]

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

Purpose: To add WAC 132Z-115-028, update existing student conduct code sections related to jurisdiction and definitions, and to add chapter 132Z-119 WAC as a supplement to the student conduct code specifically addressing sex discrimination. The effect is to bring Cascadia College's student conduct code into compliance with RCW 28B.10.900 - [28B.10].902, Washington's antihazing laws, and the Department of Education's 2024 Title IX updates.

Citation of Rules Affected by this Order: New WAC 132Z-119-010, 132Z-119-020, 132Z-119-030, 132Z-119-040, 132Z-119-050, 132Z-119-060, 132Z-119-070 and 132Z-119-080; and amending WAC 132Z-115-006, 132Z-115-015, 132Z-115-025, and 132Z-115-028.

Statutory Authority for Adoption: RCW 28B.50.140(13).

Adopted under notice filed as WSR 24-22-002 on October 23, 2024.

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

Date Adopted: January 15, 2025.

Susan Thomas  
Rules Coordinator

**OTS-5667.1**

AMENDATORY SECTION (Amending WSR 15-14-013, filed 6/19/15, effective 7/20/15)

**WAC 132Z-115-006 Authority—Jurisdiction.** (1) This student conduct code is adopted by the governing board of Cascadia College as authorized under RCW 28B.50.140. Authority is hereby delegated to the college president and administrative officers to administer and enforce the provisions of this code.

(2) ~~((The student conduct code shall apply to student conduct that occurs on college premises and to conduct that occurs at or in connection with college sponsored events, programs, or activities. This code may also apply to other student conduct occurring off campus or in noncollege electronic environments when the college deems such conduct to threaten safety or security or otherwise adversely impact the college community. Students shall be responsible for their conduct~~

~~from the time of acceptance for admission or registration through the actual awarding of a degree or other certificate of completion. The college shall have authority to revoke a degree or other certificate of completion based on prohibited student conduct that is found to have occurred before the award of such degree or certificate. Student organizations affiliated with the college may also be sanctioned under this code for the conduct of their student members.~~

~~(3) The college shall not be required to stay disciplinary action under this student code pending any criminal or civil proceeding arising from the same conduct that would constitute a violation of this code. Nor shall the disposition of any such criminal or civil proceeding control the outcome of any student disciplinary proceeding.~~

~~(4)) The student conduct code shall apply to conduct by students and student groups that occurs:~~

~~(a) On college premises; or~~

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

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

~~(3) Jurisdiction extends to, but is not limited to, locations in which students or student groups are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, on-line education, practicums, supervised work experiences, or any other college-sanctioned social or club activities and college-sanctioned housing.~~

~~(4) Students are responsible for their conduct from notification of admission to the college through the actual receipt of a certificate or degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.~~

~~(5) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.~~

~~(6) The student conduct officer has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct by students or student groups that occurs off-campus.~~

~~(7) In addition to initiating disciplinary proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.~~

~~(8) Nothing in this student code shall be construed as authorizing the college to prohibit or to discipline speech or other conduct that is protected by law or constitutional right.~~

AMENDATORY SECTION (Amending WSR 15-14-013, filed 6/19/15, effective 7/20/15)

**WAC 132Z-115-015 Definitions.** The following definitions shall apply for purposes of this student conduct code:

(1) **College premises.** "College premises" shall include all campuses and electronic presences of the college, wherever located, and

includes all land, buildings, facilities, vehicles, equipment, computer systems, websites, and other property owned, used, or controlled by the college.

(2) **Complainant.** A "complainant" for purposes of this student code means any person who is the alleged victim of prohibited student conduct, whether or not such person has made an actual complaint.

(3) **Conduct officer.** The "conduct officer" or "student conduct officer" is the college official designated by the college to be responsible for initiating disciplinary action for alleged violations of this code.

(4) **Conduct review officer.** The "conduct review officer" is the college official designated by the college to hear appeals of disciplinary action conducted as brief adjudicative proceedings and to enter final decisions in proceedings heard by the student conduct committee.

(5) **Day.** The term "day," unless otherwise qualified, means "calendar day." The qualified term "instructional day" means any day within an academic term that the college is open for business, excluding weekends and holidays.

(6) **Disciplinary action.** The term "disciplinary action" means the decision of the designated college official regarding alleged violations of the student code and includes any disciplinary sanction imposed for such violations. Disciplinary action does not include a summary suspension.

(7) **Filing and service.**

(a) **Filing.** The term "filing" means the delivery to the designated college official of any document that is required to be filed under this code. A document is filed by hand-delivering it or by mailing it to the college official (or the official's assistant) at the official's office address. Filing is complete upon actual receipt during office hours at the office of the designated official.

(b) **Service.** The term "service" means the delivery to a party of any document that is required to be served under this code. A document is served by hand-delivering it to the party or by mailing it to the party's address of record. Service is complete when the document is hand-delivered or actually deposited in the mail.

(c) **Electronic filing and service.** Unless otherwise provided, filing or service may be accomplished by electronic mail.

(8) **Party.** A "party" to a disciplinary proceeding under this code includes the student conduct officer and the student respondent, as well as any complainant in a proceeding involving allegations of sexual misconduct.

(9) **Preponderance of evidence.** The term "preponderance of the evidence" is a standard of proof requiring that facts alleged as constituting a violation of this code must be proved on a more likely than not basis.

(10) **Respondent.** A "respondent" is a student against whom disciplinary action is initiated.

(11) **Service.** See "Filing and service."

(12) **Student.** The term "student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. The term includes prospective students who have been accepted for admission or registration, currently enrolled students who withdraw before the end of a term, and students, including former students, who engage in prohibited conduct between

terms of actual enrollment or before the awarding of a degree or other certificate of completion.

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

(14) **Vice president.** The term "vice president" means the chief student affairs officer of the college and includes any acting or interim vice president and any other college official designated by the president to perform the functions and duties of the vice president under this student code.

AMENDATORY SECTION (Amending WSR 15-14-013, filed 6/19/15, effective 7/20/15)

**WAC 132Z-115-025 Prohibited student conduct.** Prohibited student conduct includes engaging in, attempting to engage in, or encouraging or assisting another person to engage in, any of the conduct set forth in this section. As applicable, the term "conduct" includes acts performed by electronic means. The term "includes" or "including" as used in this section means "without limitation."

(1) **Academic dishonesty.** The term "academic dishonesty" includes cheating, plagiarism, and fabrication.

(a) **Cheating.** Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment, including collaboration without authority.

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

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

(2) **Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** An "alcohol violation" includes using, possessing, delivering, selling, or being under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **((Marijuana)) Cannabis.** A "~~((marijuana))~~ cannabis violation" includes using, possessing, delivering, selling, or being under the influence of ~~((marijuana))~~ cannabis or the psychoactive compounds found in ~~((marijuana))~~ cannabis and intended for human consumption, regardless of form. While state law permits the recreational use of ~~((marijuana))~~ cannabis, federal law prohibits any possession or use of ~~((marijuana))~~ cannabis on college premises or in connection with college activities.

(c) **Drug.** A "drug violation" includes using, possessing, delivering, selling, or being under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner. The abuse, misuse, or unlawful sale or distribution of

prescription or over-the-counter medications may also constitute a drug violation.

(d) **Tobacco.** A "tobacco violation" means smoking or using tobacco products, electronic smoking devices (including e-cigarettes or vape pens), or other smoking devices in any area of college premises where smoking or tobacco use is prohibited in accordance with public law and college policy.

(3) **College policy violations.** The term "policy violation" means the violation of any applicable law or college policy governing the conduct of students as members of the college community, including college policies governing nondiscrimination, alcohol and drugs, computer use, copyright, and parking and traffic.

(4) **Disruptive or obstructive conduct.** The term "disruptive" or "obstructive conduct" means conduct, not protected by law, that interferes with, impedes, or otherwise unreasonably hinders the normal teaching, learning, research, administrative, or other functions, procedures, services, programs, or activities of the college. The term includes disorderly conduct, breach of the peace, violation of local or college noise policies, lewd or obscene conduct, obstruction of pedestrian or vehicular traffic, tampering with student election processes, or interfering with the orderly conduct of college investigations or disciplinary proceedings, including interfering with or retaliating against any complainant, witness, or other participant.

(5) **Ethics violations.** An "ethics violation" includes the breach of any applicable code of ethics or standard of professional practice governing the conduct of a profession for which the student is studying to be licensed or certified. The term also includes the violation of any state law or college policy relating to the ethical use of college resources.

(6) **Failure to comply.** The term "failure to comply" means refusing to obey the lawful directive of a college official or authorized college body, including a failure to identify oneself upon request, refusing to comply with a disciplinary sanction, or violating any no-contact or other protective order.

(7) **False or deceptive conduct.** The term "false" or "deceptive conduct" means dishonest conduct (other than academic dishonesty) that includes forgery, altering or falsifying of college records, furnishing false or misleading information to the college, falsely claiming an academic credential, or falsely accusing any person of misconduct.

(8) **Harassment.** The term "harassment" means unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit the ability of a student to participate in or benefit from the college's educational program, or that creates an intimidating, hostile, or offensive environment for any campus community member(s). Protected status includes a person's actual or perceived race, color, national origin, gender, disability, or other status protected by law. See "sexual misconduct" for the definition of "sexual harassment."

(9) **Hazing.** (~~"Hazing" includes any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes or is likely to cause the destruction or removal of public or private property or that causes or is likely to cause bodily danger or physical harm, or serious mental or emotional harm, to any student or other person.~~)

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

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

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

(b) Any act that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student.

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

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

(ii) Humiliation by ritual act;

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

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

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

(d) **Hazing** does not include customary athletic events or other similar contests or competitions.

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

(10) **Personal offenses.** The term "personal offense" is an offense against the safety or security of any person and includes physical assault, reckless endangerment, physical or verbal abuse, threats, intimidation, harassment, bullying, stalking, invasion of privacy, or other similar conduct that harms any person, or that is reasonably perceived as threatening the health or safety of any person, or that has the purpose or effect of unlawfully interfering with any person's rights. The term includes personal offenses committed by electronic means.

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

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

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

(14) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program, or that creates an in-

timidating, hostile, or offensive environment for any campus community member(s).

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex, including stalking (or cyberstalking), voyeurism, indecent exposure, or the nonconsensual recording of sexual activity or distribution of such recording. Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for such person's safety or the safety of others, or to suffer substantial emotional distress.

(c) **Sexual violence.** The term "sexual violence" incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated against a person's will or where the person is incapable of giving consent, including rape, sexual assault, sexual battery, and sexual coercion. The term further includes acts of dating or domestic violence. A person may be incapable of giving consent by reason of age, threat or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, unconsciousness, or other cause.

(15) **Unauthorized access.** The term "unauthorized access" means gaining entry without permission to any restricted area or property of the college or the property of another person, including any facility, computer system, email account, or electronic or paper files. Unauthorized access includes computer hacking and the unauthorized possession or sharing of any restricted means of gaining access, including keys, keyboards, passwords, or access codes.

(16) **Weapons violations.** A "weapons violation" includes the possession, display, or use of any firearm, explosive, dangerous chemical, knife, or other instrument capable of inflicting serious bodily harm in circumstances that are reasonably perceived as causing alarm for the safety of any person. The term "weapons violation" includes any threat to use a weapon to harm any person and the use of any fake weapon or replica to cause the apprehension of harm. The term further includes the possession on college premises of any firearm or other dangerous weapon in violation of public law or college policy, but does not include the lawful possession of any personal protection spray device authorized under RCW 9.91.160.

#### NEW SECTION

**WAC 132Z-115-028 Hazing prohibited—Sanctions.** (1) Hazing by a student or a student group is prohibited pursuant to WAC 132Z-115-025(9).

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

(3) Washington state law provides that:

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

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

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

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

OTS-5666.2

### Chapter 132Z-119 WAC

#### SUPPLEMENTAL SEX DISCRIMINATION STUDENT CONDUCT CODE AND PROCEDURES

#### NEW SECTION

**WAC 132Z-119-010 Sex discrimination—Supplemental student conduct code and procedures—Order of precedence.** This supplemental student conduct code and procedure applies to allegations of sex discrimination arising on or after August 1, 2024, subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the college's standard student conduct code and procedure, WAC 132Z-115-006 through 132Z-115-105, these supplemental student conduct code and procedures shall take precedence.

#### NEW SECTION

**WAC 132Z-119-020 Sex discrimination—Prohibited conduct and definitions.** Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student or student group who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sex discrimination."

For purposes of this supplemental procedure, the following definitions apply:

(1) "Complainant" means the following individuals who are alleged to have been subjected to conduct that would constitute sex discrimination:

(a) A student or employee;



(b) A person other than a student or employee who was participating or attempting to participate in the college's education program or activity at the time of the alleged discrimination.

(2) "Pregnancy or related conditions" means:

(a) Pregnancy, childbirth, termination of pregnancy, or lactation;

(b) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or

(c) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

(3) "Program" or "programs and activities" means all operations of the college.

(4) "Relevant" means related to the allegations of sex discrimination under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged sex discrimination occurred.

(5) "Remedies" means measures provided to a complainant or other person whose equal access to the college's educational programs and activities has been limited or denied by sex discrimination. These measures are intended to restore or preserve that person's access to educational programs and activities after a determination that sex discrimination has occurred.

(6) "Respondent" is a student who is alleged to have violated the student conduct code.

(7) "Sex Discrimination" includes sex-based harassment, and may occur when a respondent causes more than de minimis (insignificant) harm to an individual by treating them different from a similarly situated individual on the basis of: Sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Conduct that prevents an individual from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex.

(a) Sex-based harassment. "Sex-based harassment" is a form of sex discrimination and means sexual harassment or other harassment on the basis of sex, including the following conduct:

(i) Quid pro quo harassment. A student, employee, agent, or other person authorized by the college to provide an aid, benefit, or service under the college's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

(ii) Hostile environment. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(A) The degree to which the conduct affected the complainant's ability to access the college's education program or activity;

(B) The type, frequency, and duration of the conduct;

(C) The parties' ages, roles within the college's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(D) The location of the conduct and the context in which the conduct occurred; and

(E) Other sex-based harassment in the college's education program or activity.

(iii) Sexual violence. "Sexual violence" includes nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, incest, statutory rape, domestic violence, dating violence, and stalking.

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

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

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

(D) Statutory rape (rape of a child) is nonforcible sexual intercourse with a person who is under the statutory age of consent.

(E) Domestic violence is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal property, stalking or any other conduct prohibited under RCW 10.99.020, committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington.

(F) Dating violence is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

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

(G) Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or to suffer substantial emotional distress.

(b) "Consent." For purposes of this code, "consent" means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.

(i) Each party has the responsibility to make certain that the other has consented before engaging in the activity.

(ii) For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct

indicating freely given agreement to have sexual intercourse or sexual contact.

(iii) A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

(iv) Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(c) "Title IX retaliation" means intimidation, threats, coercion, or discrimination against any person by a student, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in a sex discrimination investigation, proceeding, or hearing under this part, including during an informal resolution process, during a Title IX investigation, or during any disciplinary proceeding involving allegations of sex discrimination.

(8) "Student employee" means an individual who is both a student and an employee of the college. When a complainant or respondent is a student employee, the college must make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education and whether any alleged student conduct code violation including, but not limited to, sex-based harassment, occurred while the individual was performing employment-related work.

(9) "Student group" is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups.

(10) "Supportive measures" means reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college to the complainant or respondent without unreasonably burdening either party, and without fee or charge for purposes of:

(a) Restoring or preserving a party's access to the college's educational program or activity, including measures that are designed to protect the safety of the parties or the college's educational environment; or providing support during the college's investigation and disciplinary procedures, or during any informal resolution process; or

(b) Supportive measures may include, but are not limited to: Counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of campus; restriction on contact applied to one or more parties; a leave of absence; change in class, work, housing, or extra-curricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

(11) "Title IX coordinator" is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, overseeing investigations and informal resolution processes, and coordinating supportive measures, in accordance with college policy.

NEW SECTION

**WAC 132Z-119-030 Sex discrimination—Jurisdiction.** This supplemental procedure applies only if the alleged misconduct meets the definition of "sex discrimination" as that term is defined in WAC 132Z-119-020(7) and occurs:

- (1) On college premises;
- (2) At or in connection with college programs or activities; or
- (3) Off college premises, if in the judgment of the college, the conduct has an adverse impact on the college community, the pursuit of its objectives, or the ability of a student or staff to participate in the college's programs and activities.

NEW SECTION

**WAC 132Z-119-040 Sex discrimination—Dismissal and initiation of discipline.** (1) Any member of the college community may file a complaint against a student or student group for conduct which may constitute sex discrimination.

(2) The college's Title IX coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of sex discrimination, including sex-based harassment. The disciplinary process for allegations of sex discrimination, including sex-based harassment, against a student shall be addressed through the student conduct code.

(3) Both the respondent and the complainant in cases involving allegations of sex discrimination shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the disciplinary process and to appeal any disciplinary decision.

(4) When a summary suspension is imposed pursuant to WAC 132Z-115-105, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

(5) The student conduct officer shall review the investigation report provided by the Title IX coordinator, and determine whether, by a preponderance of the evidence, there was a violation of the student conduct code; and if so, what disciplinary sanction(s) and/or remedies will be recommended. The student conduct officer shall, within five business days of receiving the investigation report, serve respondent, complainant, and the Title IX coordinator with a written recommendation, setting forth the facts and conclusions supporting their recommendation. The time for serving a written recommendation may be extended by the student conduct officer for good cause.

(a) The complainant and respondent may either accept the student conduct officer's recommended finding and disciplinary sanction(s) or request a hearing before a student conduct committee.

(b) The complainant and respondent shall have 21 calendar days from the date of the written recommendation to request a hearing before a student conduct committee.

(c) The request for a hearing may be verbal or written, but must be clearly communicated to the student conduct officer.

(d) The student conduct officer shall promptly notify the other party of the request.

(e) The student conduct officer may recommend dismissal of the complaint if:

(i) The college is unable to identify respondent after taking reasonable steps to do so;

(ii) The respondent is not participating in the college's educational programs or activities;

(iii) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has declined to initiate their own complaint. In cases involving allegations of sex-based harassment, the complainant must withdraw their complaint in writing;

(iv) The college determines that, even if proven, the conduct alleged by the complainant would not constitute sex discrimination; or

(v) The conduct alleged by the complainant falls outside the college's disciplinary jurisdiction.

(f) If no request for a full hearing is provided to the student conduct officer, the student conduct officer's written recommendation shall be final and implemented immediately following the expiration of 21 calendar days from the service of the written recommendation.

(g) Upon receipt of the student conduct officer's written recommendation, the Title IX Coordinator or their designee shall review all supportive measures and, within five business days, provide written direction to the complainant and respondent as to any supportive measures that will be implemented, continued, modified, or terminated. If either party is dissatisfied with the supportive measures, the party may seek review in accordance with the college's Title IX investigation procedure.

(h) If the respondent is found responsible for engaging in sex discrimination, the Title IX coordinator shall also take prompt steps to coordinate and implement any necessary remedies to ensure that sex discrimination does not recur and that complainant has equal access to the college's programs and activities.

(i) If the respondent is found responsible for engaging in sex discrimination, the Title IX coordinator shall also take prompt steps to coordinate and implement any necessary remedies to ensure that sex discrimination does not recur and that complainant has equal access to the college's programs and activities.

#### NEW SECTION

##### **WAC 132Z-119-050 Sex discrimination—Prehearing procedure.** (1)

For cases involving allegations of sex discrimination, including sex-based harassment, members of the student conduct committee must receive training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias. The chair must also receive training on the student conduct process for sex discrimination cases, as well as the meaning and application of the term "relevant," in relations to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. §§ 106.45 and 106.46.

(2) In sex discrimination cases, the college may, in its sole and exclusive discretion, contract with an administrative law judge or

other qualified person to act as the presiding officer, authorized to exercise any or all duties of the student conduct committee and/or committee chair.

(3) In cases involving allegations of sex discrimination, the complainant has a right to participate equally in any part of the disciplinary process, including appeals. Respondent and complainant both have the following rights:

(a) Notice. The college must provide a notice that includes all information required in WAC 132Z-115-075, as well as a statement that the parties are entitled to an equal opportunity to access relevant and permissible evidence, or a description of the evidence upon request.

(b) Advisors. The complainant and respondent are both entitled to have an advisor present, who may be an attorney retained at the party's expense.

(c) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date, in accordance with the procedures set forth in subsection (4)(b) of this section.

(d) Evidence. In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) Confidentiality. The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(4) In cases involving allegations of sex-based harassment, the following additional procedures apply:

(a) Notice. In addition to all information required to be provided in a prehearing notice pursuant to WAC 132Z-115-075, the prehearing notice must also inform the parties that:

(i) The respondent is presumed not responsible for the alleged sex-based harassment;

(ii) The parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decision maker;

(iii) They may have an advisor of their choice, who may be an attorney, to assist them during the hearing;

(iv) They are entitled to an equal opportunity to access relevant and not otherwise impermissible evidence in advance of the hearing; and

(v) The student conduct code prohibits knowingly making false statements or knowingly submitting false information during a student conduct proceeding.

(b) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date. The party requesting an extension must do so no later than 48 hours before any date specified in the notice of hearing or by the chair in any prehearing conference. The written request must be served simultaneously by email to all parties and the chair. Any party may respond and object to the request for an extension of time no lat-

er than 24 hours after service of the request for an extension. The chair will serve a written decision upon all parties, to include the reasons for granting or denying any request. The chair's decision shall be final. In exceptional circumstances, for good cause shown, the chair may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.

(c) Advisors. The college shall provide an advisor to the respondent and any complainant, if the respondent or complainant have not otherwise identified an advisor to assist during the hearing.

(d) Evidence. In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) Confidentiality. The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(f) Separate locations. The chair may, or upon the request of any party, must conduct the hearing with the parties physically present in separate locations, with technology enabling the committee and parties to simultaneously see and hear the party or the witness while that person is speaking.

(g) Withdrawal of complaint. If a complainant wants to voluntarily withdraw a complaint, they must provide notice to the college in writing before a case can be dismissed.

#### NEW SECTION

##### **WAC 132Z-119-060 Sex discrimination—Presentation of evidence.**

(1) In cases involving allegations of sex-based harassment, the complainant and respondent may not directly question one another or other witnesses. In such circumstances, the chair will determine whether questions will be submitted to the chair, who will then ask questions of the parties and witnesses, or allow questions to be asked directly of any party or witnesses by a party's attorney or advisor. The committee chair may revise this process if, in the chair's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.

(a) Prior to any question being posed to a party or witness, the chair must determine whether the question is relevant and not otherwise impermissible; and must explain any decision to exclude a question that is deemed not relevant, or is otherwise impermissible. The chair will retain for the record copies of any written questions provided by any party.

(b) The chair must not permit questions that are unclear or harassing; but shall give the party an opportunity to clarify or revise such a question.

(c) The chair shall exclude and the committee shall not consider legally privileged information unless the individual holding the privilege has waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(i) Spousal/domestic partner privilege;  
(ii) Attorney-client communications and attorney work product privilege;  
(iii) Clergy privileges;  
(iv) Medical or mental health providers and counselor privileges;  
(v) Sexual assault and domestic violence advocate privileges; and  
(vi) Other legal privileges set forth in RCW 5.60.060 or federal law.

(d) The chair shall exclude and the committee shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such question or evidence is offered to prove someone other than the respondent committed the alleged conduct, or is evidence of specific instances of prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

(e) The committee may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The committee must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

#### NEW SECTION

**WAC 132Z-119-070 Sex discrimination—Initial order.** In cases involving sex-based harassment, the initial decision shall be served on all parties simultaneously, as well as the Title IX coordinator.

#### NEW SECTION

**WAC 132Z-119-080 Sex discrimination—Appeals.** (1) Any party, including a complainant in sex-based harassment cases, may appeal the committee's decision to the president by filing a written appeal with the appropriate vice president's office (appeal authority) within 21 calendar days of service of the committee's decision. Failure to file a timely appeal constitutes a waiver of the right and the decision shall be deemed final.

(2) The written appeal must identify the specific findings of fact and/or conclusions of law in the decision that are challenged and must contain argument why the appeal should be granted. Appeals may be based upon, but are not limited to:

(a) Procedural irregularity that would change the outcome;  
(b) New evidence that would change the outcome and that was not reasonably available when the initial decision was made; and  
(c) The investigator, decision maker, or Title IX coordinator had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.

(3) Upon receiving a timely appeal, the appeal authority will promptly serve a copy of the appeal on all nonappealing parties, who will have 10 business days from the date of service to submit a writ-



ten response addressing the issues raised in the appeal to the president or a designee, and serve it on all parties. Failure to file a timely response constitutes a waiver of the right to participate in the appeal.

(4) If necessary to aid review, the appeal authority may ask for additional briefing from the parties on issues raised on appeal. The appeal authority's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the appeal.

(5) The appeal authority shall serve a written decision on all parties and their attorneys, if any, within 20 calendar days after receipt of the appeal. This decision shall be final and subject to judicial review pursuant to chapter 34.05 RCW, Part V.

(6) In cases involving allegations of sex-based harassment, the appeal decision must be served simultaneously on all parties and the Title IX coordinator.

(7) The appeal authority shall not engage in an ex parte communication with any of the parties regarding an appeal.

## WSR 25-03-141

## PERMANENT RULES

## DEPARTMENT OF AGRICULTURE

[Filed January 22, 2025, 11:34 a.m., effective February 22, 2025]

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

Purpose: In response to a petition for rule making, the department of agriculture is proposing to clarify current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Citation of Rules Affected by this Order: Amending WAC 16-540-010 and 16-540-020.

Statutory Authority for Adoption: RCW 15.24.035, 15.26.060, 15.28.023, 15.44.021, 15.65.240, 15.66.113, 15.88.050, 15.89.050, 15.115.060, and 16.67.060.

Other Authority: RCW 43.01.160 and 43.23.025.

Adopted under notice filed as WSR 24-23-089 on November 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 2, 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: January 22, 2025.

Derek I. Sandison  
Director

## OTS-5972.1

AMENDATORY SECTION (Amending WSR 17-05-034, filed 2/8/17, effective 3/11/17)

**WAC 16-540-010 Definitions.** Definitions for terms used in this chapter are also found in chapter 15.65 RCW, Washington State Agriculture Commodity Boards Act. For the purpose of this marketing order, the following additional definitions shall apply:

"Act" means the Washington State Agricultural Commodity Boards Act or chapter 15.65 RCW.

"Affected area" means the state of Washington.

"Affected handler" means any person who acts as principal or agent or otherwise in buying, selling, marketing or distributing mint oils produced from mint plants not grown by ((him/her)) them. Affected handler does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler.

"Affected producer" or "producer" means any person who produces, or causes to be produced in commercial quantities, in the state of

Washington, any variety of mint plant from which the essential oil is distilled or extracted. "To produce" means to act as a producer. For the purposes of the mint marketing order, "producer" shall include bailees who contract to produce or grow any agricultural product on behalf of a bailor who retains title to the essential oil and its resulting agricultural product or the agricultural product delivered for further production or increase.

"Affected unit" means one pound of mint oil as distilled from mint plants grown by an affected producer.

"Commercial quantity" means all of the mint plants produced in any calendar year by any producer, from which the essential oil is distilled or extracted.

"Department" means the department of agriculture of the state of Washington.

"Director" means the director of agriculture of the state of Washington or ((his/her)) the director's duly appointed representative.

"Disclosure" means inspection or copying.

"Marketing season" or "fiscal year" means the ((twelve)) 12-month period beginning with July 1st of any year and ending with the last day of June, both dates being inclusive.

"Mint commodity board" hereinafter referred to as "board" or "commission" means the commodity board formed under WAC 16-540-020.

"Mint oil" means essential oil that is distilled from any variety of mint plant.

"Person" means any individual, firm, corporation, limited liability company, trust, association, partnership, society or any other organization of individuals, or any unit or agency of local or state government.

"Producer-handler" means any person who acts both as a "producer" and as a "handler" with respect to mint oil. A producer-handler shall be deemed to be a producer with respect to the mint plants and/or oil which ((he/she produces)) they produce, and a handler with respect to the mint oil which ((he/she handles)) they handle, including those produced by ((himself/herself)) themselves.

"Public records" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by the department regardless of physical form or characteristics.

"Sell" includes offer for sale, expose for sale, have in possession for sale, exchange, barter or trade.

AMENDATORY SECTION (Amending WSR 19-12-103, filed 6/5/19, effective 7/6/19)

**WAC 16-540-020 The mint commodity board. (1) Administration.**

The provisions of this order and the applicable provisions of the act shall be administered and enforced by the board as the designee of the director.

**(2) Board membership.**

(a) The board shall consist of eight members. Seven members shall be affected producers appointed or elected as provided in this marketing order. The director shall appoint one member of the board who is neither an affected producer nor an affected handler to represent the

director. The position representing the director shall be a voting member.

(i) Director-appointed affected producer positions on the board shall be designated as position 1, position 2, position 6, and position 7.

(ii) Elected affected producer positions on the board shall be designated as position 3, position 4, and position 5.

(iii) The position representing the director who is neither an affected producer nor an affected handler shall be designated as position 8.

(b) For the purpose of nomination, appointment, and election of affected producer members of the board, the affected area of the state of Washington shall be divided into two representative districts as follows:

(i) District I shall have four board members, being positions 1, 2, 3 and 4 and shall include the counties of Kittitas, Yakima and Benton.

(ii) District II shall have three board members, being positions 5, 6 and 7 and shall include all other counties located in the state of Washington.

**(3) Board membership qualifications.**

(a) The affected producer members of the board must be practical producers of mint plants in the district in and for which they are nominated and appointed or elected and each shall be a citizen and resident of the state of Washington, over the age of (~~eighteen~~) 18 years. Each affected producer board member must be and have been actually engaged in producing mint plants within the state of Washington for a period of five years and has during that time derived a substantial portion of (~~his/her~~) their income therefrom and is not engaged in business, directly or indirectly, as a handler or other dealer.

(b) The qualifications of members of the board must continue during their term of office.

**(4) Term of office.**

(a) The term of office for members of the board shall be three years, and one-third of the membership as nearly as possible shall be appointed or elected each year.

(b) The term of office for the initial board members shall be as follows:

Positions one and two - One year

Positions three, four and eight - Two years

Positions five, six and seven - Three years

(c) Except for the director's representative, no appointed or elected member of the board may serve more than two full consecutive three-year terms.

(d) To accomplish the transition to a commodity board structure where the director appoints a majority of the board members, the names of the currently elected board members in positions one, two, six and seven shall be forwarded to the director for appointment within (~~thirty~~) 30 days of the effective date of this amended marketing order.

**(5) Nomination of elected or director-appointed board members.**

(a) For the purpose of nominating candidates for appointment or election to board membership the director shall call separate meetings of affected producers.

(b) Each year the director shall call a nomination meeting for both elected and director-appointed affected producer board members in those districts whose board members' term are about to expire. The

meeting shall be held at least (~~(thirty)~~) 30 days in advance of the date set by the director for the election or advisory vote of board members.

(c) Notice of a nomination meeting shall be published in a newspaper of general circulation within the affected district not less than (~~(ten)~~) 10 days in advance of the date of the meeting and in addition, written notice of every such meeting shall be given to all affected producers within such affected district according to the list maintained by the board pursuant to RCW 15.65.295.

(d) Nonreceipt of notice by any interested person shall not invalidate the proceedings at such nomination meeting.

(e) Any qualified affected producer may be nominated orally for membership on the board at the nomination meeting. Nominations may also be made within five days after the nomination meeting by written petition filed with the director signed by not less than five affected producers.

(f) When only one nominee is nominated by the affected producers for any position, RCW 15.65.250 shall apply.

**(6) Election or advisory vote of board members.**

(a) An election or advisory vote shall be conducted by secret ballot under the supervision of the director within the month of June. Each affected producer shall be entitled to one vote.

(b) Elected affected producer members of the board shall be elected by a majority of the votes cast by the affected producers within the affected district. If a nominee does not receive a majority of the votes on the first ballot a run-off election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes.

(c) An advisory vote shall be conducted for affected producer board members appointed by the director under the provisions of RCW 15.65.243. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the board. In the event there are only two candidates nominated for a board position, an advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment.

(d) Notice of every election or advisory vote for board membership shall be published in a newspaper of general circulation within the affected district not less than (~~(ten)~~) 10 days in advance of the date of the election or advisory vote. Not less than (~~(ten)~~) 10 days prior to every election or advisory vote for board membership, the director shall mail a ballot of the candidates to each affected producer entitled to vote whose name appears upon the list of such affected producers maintained by the board pursuant to RCW 15.65.295. Any other affected producer entitled to vote may obtain a ballot by application to the director upon establishing (~~(his/her)~~) their qualifications.

(e) Nonreceipt of a ballot by an affected producer shall not invalidate the election or advisory vote of any board member.

**(7) Vacancies.**

(a) In the event of a vacancy on the board in an elected position, the remaining members shall select a qualified person to fill the unexpired term. The appointment shall be made at the board's first or second meeting after the position becomes vacant.

(b) In the event of a vacancy in a director-appointed position, the position shall be filled as specified in RCW 15.65.270.

(8) **Quorum.** A majority of the members shall constitute a quorum for the transaction of all business and the carrying out of all duties of the board.

(9) **Board compensation.** No member of the board shall receive any salary or other compensation, but each member may be compensated in accordance with RCW 43.03.230 and shall be reimbursed for subsistence, lodging, and mileage in accordance with RCW 43.03.050 and 43.03.060, as provided for in RCW 15.65.270. The board may adopt by resolution provisions for reimbursement of actual travel expenses incurred by members and employees of the board in carrying out the provisions of this marketing order pursuant to RCW 15.65.270.

(10) **Powers and duties of the board.** The board shall have the following powers and duties:

(a) To administer, enforce and control the provisions of this order as the designee of the director.

(b) To elect a chairman and such other officers as the board deems advisable.

(c) To employ and discharge at its discretion such personnel, including attorneys engaged in the private practice of law subject to the approval and supervision of the attorney general, as the board determines are necessary and proper to carry out the purpose of the order and effectuate the declared policies of the act.

(d) To pay only from moneys collected as assessments or advances thereon the costs arising in connection with the formulation, issuance, administration and enforcement of the order. Such expenses and costs may be paid by check, draft or voucher in such form and in such manner and upon the signature of the person as the board may prescribe.

(e) To reimburse any applicant who has deposited money with the director in order to defray the costs of formulating the order.

(f) To establish a "mint board revolving fund" and such fund to be deposited in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the board, except as the amount of petty cash for each day's needs, not to exceed (~~one hundred dollars~~) \$100, shall be deposited each day or as often during the day as advisable.

(g) To keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all assessments, collections, receipts, deposits, withdrawals, disbursements, paid outs, moneys and other financial transactions made and done pursuant to this order. Such records, books and accounts shall be audited subject to procedures and methods lawfully prescribed by the state auditor. Such books and accounts shall be closed as of the last day of each fiscal year of the commission. A copy of such audit shall be delivered within (~~thirty~~) 30 days after the completion thereof to the governor, the director, the state auditor and the board.

(h) To require a bond of all board members and employees of the board in a position of trust in the amount the board shall deem necessary. The premium for such bond or bonds shall be paid by the board from assessments collected. Such bond shall not be necessary if any such board member or employee is covered by any blanket bond covering officials or employees of the state of Washington.

(i) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of the order during each fiscal year. The board, at least (~~sixty~~) 60 days prior to the beginning of its fiscal year, shall prepare and submit to

the director for approval its research plan, its commodity-related education and training plan, and its budget.

(j) To establish by resolution, a headquarters which shall continue as such unless and until so changed by the board. All records, books and minutes of board meetings shall be kept at such headquarters.

(k) To adopt rules of a technical or administrative nature for the operation of the board, subject to the provisions of chapter 34.04 RCW (Administrative Procedure Act).

(l) To carry out the provisions of RCW 15.65.510 covering the obtaining of information necessary to effectuate the provisions of the order and the act, along with the necessary authority and procedure for obtaining such information.

(m) To bring actions or proceedings upon joining the director as a party for specific performance, restraint, injunction or mandatory injunction against any person who violates or refuses to perform the obligations or duties imposed upon (~~him~~) them by the act or order.

(n) To confer with and cooperate with the legally constituted authorities of other states and of the United States for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, agreements or orders.

(o) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes provided in this order.

(p) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local. Personal service contracts must comply with chapter 39.29 RCW.

(q) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies.

(r) To enter into contract or agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of mint.

(s) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review by the office of the attorney general.

(t) To engage in appropriate fund-raising activities for the purpose of supporting activities authorized by this order.

(u) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation, distribution, sale, or use of mint including activities authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission.

(v) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the provisions of this marketing order and data on the value of each affected producer's production for a minimum three-year period pursuant to RCW 15.65.280.

(w) To maintain a list of the names and addresses of persons who handle mint within the affected area and data on the amount and value of the mint handled for a minimum three-year period by each person pursuant to RCW 15.65.280.

(x) To maintain a list of the names and addresses of all affected persons who produce mint and the amount, by unit, of mint produced during the past three years pursuant to RCW 15.65.295.

(y) To maintain a list of all persons who handle mint and the amount of mint handled by each person during the past three years pursuant to RCW 15.65.295.

(z) To establish a foundation using commission funds as grant money for the purposes established in this marketing order.

(aa) To carry out any other grant of authority or duty provided designees and not specifically set forth in this section.

(11) **Procedures for board.**

(a) The board shall hold regular meetings, at least quarterly, with the time and date thereof to be fixed by resolution of the board and the meetings shall be held in accordance with chapter 42.30 RCW (Open Public Meetings Act). Notice of the time and place of regular meetings shall be published on or before January of each year in the *Washington State Register*. Notice of any change to the meeting schedule shall be published in the state register at least (~~twenty~~) 20 days prior to the rescheduled meeting date.

(b) The board shall hold an annual meeting, at which time an annual report will be presented. The proposed budget shall be presented for discussion at the meeting. Notice of the annual meeting shall be given by the board at least (~~ten~~) 10 days prior to the meeting through regular wire news services and radio-television press.

(c) The board shall establish by resolution, the time, place and manner of calling special meetings with reasonable notice to the members: Provided, That the notice to a member of any special meeting may be waived by a waiver from that member of the board. Notice for special meetings shall be in compliance with chapter 42.30 RCW.



## WSR 25-03-142

## PERMANENT RULES

## DEPARTMENT OF AGRICULTURE

[Filed January 22, 2025, 11:35 a.m., effective February 22, 2025]

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

Purpose: In response to a petition for rule making, the department of agriculture is proposing to clarify current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Citation of Rules Affected by this Order: Amending WAC 16-545-020.

Statutory Authority for Adoption: RCW 15.24.035, 15.26.060, 15.28.023, 15.44.021, 15.65.240, 15.66.113, 15.88.050, 15.89.050, 15.115.060, and 16.67.060.

Other Authority: RCW 43.01.160 and 43.23.025.

Adopted under notice filed as WSR 24-23-088 on November 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 1, 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: January 22, 2025.

Derek I. Sandison  
Director

**OTS-5973.1**

AMENDATORY SECTION (Amending WSR 23-16-119, filed 8/1/23, effective 9/1/23)

**WAC 16-545-020 Turfgrass seed board.** (1) **Administration.** The provisions of this order and the applicable provisions of the act is administered and enforced by the board as the designee of the director.

(2) **Board membership.**

(a) The board consists of seven voting members numbered positions one through seven.

(b) Except as otherwise provided by this chapter, each district has the following positions represented:

District 1 - Positions one and two.

District 2 - Positions three and four.

(c) Position five represents the district with the highest reported value of production of turfgrass seed the previous three years.

(d) Position six is a handler appointed by the appointed or elected producer members of the board.

(e) Position seven represents and is appointed by the director.

**(3) Board membership qualifications.**

(a) Positions one through five.

(i) Except as otherwise provided by this chapter, board members in positions one through five must be practical producers of turfgrass seed in the district in and for which they are nominated, appointed, or elected and each shall be a citizen and resident of the state, over the age of (~~eighteen~~) 18 years. Each producer board member must be and have been actually engaged in producing turfgrass seed within the state of Washington for a period of three years and has during that time derived a substantial portion of (~~his or her~~) their income therefrom and who is not engaged in business as a handler or other dealer.

(ii) If any district has fewer than three practical producers of turfgrass seed or if no nominations are made for a district, that district's position is deemed "at large" for that term of office and may be filled by a producer of turfgrass seed in another district who meets all membership qualifications. This provision does not apply to position five.

(b) The board member in position six must be a practical handler of turfgrass seed and must be a citizen and resident of the state, over the age of (~~eighteen~~) 18 years. The handler board member must be and have been, either individually or as an officer or an employee of a corporation, firm, partnership, association or cooperative actually engaged in handling turfgrass seed within the state of Washington for a period of five years and has during that period derived a substantial portion of (~~his or her~~) their income therefrom.

(c) The board member in position seven must be neither a producer nor a handler.

(d) The qualifications of members of the board must continue during their term of office.

(4) **Term of office.** The term of office for members of the board is three years. One-third of the membership as nearly as possible must be appointed or elected each year.

**(5) Nomination of elected or director-appointed board members.**

(a) Each year the director shall call a nomination meeting for elected and/or director-appointed producer board members in those districts whose board members term is about to expire. The meeting(s) must be held at least (~~thirty~~) 30 days in advance of the date set by the director for the election or advisory vote of board members.

(b) Notice of a nomination meeting must be published in a newspaper of general circulation within the affected district at least (~~ten~~) 10 days in advance of the date of the meeting and in addition, written notice of every meeting must be given to all affected producers within the affected district according to the list maintained by the board pursuant to RCW 15.65.295.

(c) Nonreceipt of notice by any interested person will not invalidate the proceedings at the nomination meeting.

(d) Any qualified affected producer may be nominated orally for membership on the board at the nomination meetings. Nominations may also be made within five days after the meeting by written petition filed with the director, signed by at least five affected producers.

(e) When only one nominee is nominated by the affected producers for an elected and/or director-appointed position, RCW 15.65.250 shall apply.

(f) If the board moves and the director approves that the nomination meeting procedure be deleted, the director shall give notice of the open board position(s) by mail to all affected producers. Nominating petitions for producers must be signed by at least five affected producers of the district from which the candidate will be appointed or elected. The final date for filing nominations must be at least (~~twenty~~) 20 days after the notice was mailed.

(6) **Election or advisory vote of board members.**

(a) An election or advisory vote shall be conducted by secret ballot under the supervision of the director within the month of January. Each affected producer shall be entitled to one vote.

(b) Elected members of the board must be elected by a majority of the votes cast by the affected producers within the affected district. If a nominee does not receive a majority of the votes on the first ballot a runoff election must be held by mail in a similar manner between the two candidates for the position receiving the largest number of votes.

(c) An advisory vote shall be conducted for producer board members appointed by the director under the provision of RCW 15.65.243. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the board. In the event there are only two candidates nominated for a board position, and advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment.

(d) Notice of every election or advisory vote for board membership must be published in a newspaper of general circulation within the affected district at least (~~ten~~) 10 days in advance of the date of the election or advisory vote. At least (~~ten~~) 10 days before every election or advisory vote for board membership, the director shall mail a ballot of the candidates to each affected producer entitled to vote whose name appears upon the list of the affected producers maintained by the board pursuant to RCW 15.65.295. Any other affected producer entitled to vote may obtain a ballot by application to the director upon establishing their qualifications.

(e) Nonreceipt of a ballot by an affected producer will not invalidate the election or advisory vote of any board member.

(7) **Vacancies.**

(a) In the event of a vacancy on the board in an elected or commission-appointed position, the remaining members shall select a qualified person to fill the unexpired term. The appointment shall be made at the board's first or second meeting after the position becomes vacant.

(b) In the event of a vacancy in a director-appointed position, the position shall be filled as specified in RCW 15.65.270.

(8) **Quorum.** A majority of the members is a quorum for the transaction of all business and to execute the duties of the board.

(9) **Board compensation.** No member of the board will receive any salary or other compensation, but each member may be compensated for each day in actual attendance at or traveling to and from meetings of the board or on special assignment for the board, in accordance with RCW 43.03.230 together with travel expenses in accordance with RCW 43.03.050 and 43.03.060. The board may adopt by resolution provisions for reimbursement of actual travel expenses incurred by members and employees of the board in carrying out the provisions of this marketing order pursuant to RCW 15.65.270.

(10) **Powers and duties of the board.** The board shall have the following powers and duties:

(a) To administer, enforce and control the provisions of this order as the designee of the director.

(b) To elect a chairman and other officers as the board deems advisable.

(c) To employ and discharge at its discretion the personnel, including attorneys engaged in the private practice of law subject to the approval and supervision of the attorney general, as the board determines are necessary and proper to execute the purpose of the order and effectuate the declared policies of the act.

(d) To pay only from moneys collected as assessments or advances thereon the costs arising in connection with the formulation, issuance, administration and enforcement of the order. The expenses and costs may be paid by check; draft or voucher in the form and the manner and upon the signature of the person as the board may prescribe.

(e) To reimburse any applicant who has deposited money with the director to defray the costs of formulating the order.

(f) To establish a "turfgrass seed board marketing revolving fund" and to deposit the fund in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the board, except as the amount of petty cash for each day's needs, not to exceed (~~one hundred dollars~~) \$100, shall be deposited each day or as often during the day as advisable.

(g) To keep or cause to be kept in accordance with accepted standards of good accounting practice accurate records of all assessments, collections, receipts, deposits, withdrawals, disbursements, paid outs, moneys and other financial transactions made and done under this order. The records, books and accounts must be audited at least once every five years subject to procedures and methods lawfully prescribed by the state auditor. The books and accounts must be closed as of the last day of each fiscal year of the commission. A copy of the audit shall be delivered within (~~thirty~~) 30 days after completion to the governor, the director, the state auditor and the board.

(h) To require a bond of all board members and employees of the board in a position of trust in the amount the board may deem necessary. The board must pay the premium for the bond or bonds from assessments collected. The bond may not be necessary if any blanket bond covering officials or employees of the state of Washington covers any board member or employee.

(i) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of the order during each fiscal year. The board, at least (~~sixty~~) 60 days prior to the beginning of its fiscal year, shall prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget.

(j) To establish by resolution a headquarters, which shall continue unless, changed by the board. All records, books and minutes of board meetings must be kept at the headquarters.

(k) To adopt rules of a technical or administrative nature for the operation of the board, under chapter 34.05 RCW (Administrative Procedure Act).

(l) To execute RCW 15.65.510 covering the obtaining of information necessary to effectuate the order and the act, along with the necessary authority and procedure for obtaining the information.

(m) To bring actions or proceedings upon joining the director as a party for specific performance, restraint, injunction or mandatory

injunction against any person who violates or refuses to perform the obligations or duties imposed by the act or order.

(n) To confer with and cooperate with the legally constituted authorities of other states and of the United States to obtaining uniformity in the administration of federal and state marketing regulations, licenses, agreements or orders.

(o) To execute any other grant of authority or duty provided designees and not specifically set forth in this section.

(p) To sue or be sued.

(q) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes provided in this order.

(r) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local.

(s) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies.

(t) To enter into contracts or agreements for research in the production, irrigation, and transportation of turfgrass seed.

(u) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review by the office of attorney general.

(v) To engage in appropriate fund-raising activities for the purpose of supporting activities authorized by this order.

(w) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, and transportation of turfgrass seed including activities authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission.

(x) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the provisions of this marketing order and data on the value of each producer's production for a minimum three-year period pursuant to RCW 15.65.280.

(y) To maintain a list of the names and addresses of persons who handle turfgrass seed within the affected area and data on the amount and value of the turfgrass seed handled for a minimum three-year period by each person pursuant to RCW 15.65.280.

(z) To maintain a list of names and addresses of all affected persons who produce turfgrass seed and the amount, by unit, of turfgrass seed produced during the past three years pursuant to RCW 15.65.295.

(aa) To maintain a list of all persons who handle turfgrass seed and the amount of turfgrass seed handled by each person during the past three years pursuant to RCW 15.65.295.

(bb) To establish a foundation using commission funds as grant money for the purposes established in this marketing order.

**(11) Procedures for board.**

(a) The board shall hold regular meetings, at least quarterly, with the time and date fixed by resolution of the board and held in accordance with chapter 42.30 RCW (Open Public Meetings Act). Notice of the time and place of regular meetings shall be published on or before January of each year in the *Washington State Register*. Notice of any change to the meeting schedule shall be published in the state register at least (~~twenty~~) 20 days prior to the rescheduled meeting date.

(b) The board shall hold an annual meeting, at which time an annual report will be presented. The proposed budget must be presented for discussion at the meeting. Notice of the annual meeting must be filed in accordance with chapter 42.30 RCW (Open Public Meetings Act). Notice of the annual meeting must be given at least (~~ten~~) 10 days prior to the meeting by written notice to each producer and by notifying the regular news media.

(c) The board shall establish by resolution the time, place, and manner of calling special meetings of the board with (~~twenty-four~~) 24 hours written notice to the members. A board member may waive in writing (~~his or her~~) their notice of any special meeting. Notice for special meetings shall be in compliance with chapter 42.30 RCW.

## WSR 25-03-143

## PERMANENT RULES

## DEPARTMENT OF AGRICULTURE

[Filed January 22, 2025, 11:37 a.m., effective February 22, 2025]

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

Purpose: In response to a petition for rule making, the department of agriculture is proposing to clarify current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Citation of Rules Affected by this Order: Amending WAC 16-550-010 and 16-550-020.

Statutory Authority for Adoption: RCW 15.24.035, 15.26.060, 15.28.023, 15.44.021, 15.65.240, 15.66.113, 15.88.050, 15.89.050, 15.115.060, and 16.67.060.

Other Authority: RCW 43.01.160 and 43.23.025.

Adopted under notice filed as WSR 24-23-090 on November 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 2, 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: January 22, 2025.

Derek I. Sandison  
Director

## OTS-5974.1

AMENDATORY SECTION (Amending WSR 06-17-078, filed 8/14/06, effective 9/14/06)

**WAC 16-550-010 Definitions of terms.** Definitions for terms used in this chapter are also found in chapter 15.65 RCW, Washington State Agricultural Commodity Boards Act. For the purpose of this marketing order, the following additional definitions shall apply:

(1) "Director" means the director of agriculture of the state of Washington or (~~his or her~~) the director's duly appointed representative.

(2) "Department" means the department of agriculture of the state of Washington.

(3) "Act" means the Washington State Agricultural Commodity Boards Act or chapter 15.65 RCW.

(4) "Person" means any individual, firm, corporation, limited liability company, trust, association, partnership, society or any other

organization of individuals, or any unit or agency of local or state government.

(5) "Affected producer" or "producer" means any person who produces blueberries in commercial quantities in the state of Washington, or who sells or stores blueberries in the state of Washington for fresh market or for processing. "To produce" means to act as a producer. For the purposes of the blueberry marketing order, "producer" shall include bailees who contract to produce or grow any agricultural product on behalf of a bailor who retains title to the seed and its resulting agricultural product or the agricultural product delivered for further production or increase.

(6) "Commercial quantity" means any blueberries produced, or stored, for a market by a producer in any calendar year.

(7) "Handler" means any person who acts as principal or agent or otherwise in processing, selling, marketing, storing, or distributing blueberries not produced by ~~((him/her))~~ them. "Handler" does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler.

(8) "Blueberry commodity board" hereinafter referred to as "board" or "commission" means the commodity board formed under the provisions of WAC 16-550-020 of this blueberry order.

(9) "Blueberries" means and includes all kinds, varieties, and hybrids of "vaccinium corym bosum" and "vaccinium australe" grown and marketed in the state of Washington.

(10) "Marketing season" or "fiscal year" means the ~~((twelve))~~ 12-month period beginning January 1st and ending December 31st, both dates being inclusive.

(11) "Producer-handler" means any person who acts both as a producer and as a handler with respect to blueberries. A producer-handler shall be deemed to be a producer with respect to the blueberries which ~~((he/she produces))~~ they produce and a handler with respect to the blueberries which ~~((he/she handles))~~ they handle, including those produced by ~~((himself/herself))~~ themselves.

(12) "Affected area" means the state of Washington.

(13) "Sell" includes offer for sale, expose for sale, have in possession for sale, exchange, barter or trade.

(14) "Affected unit" means one pound net of blueberries.

AMENDATORY SECTION (Amending WSR 06-17-078, filed 8/14/06, effective 9/14/06)

**WAC 16-550-020 Blueberry commodity board. (1) Administration.**

The provisions of this order and the applicable provisions of the act shall be administered and enforced by the board as the designee of the director.

**(2) Board membership.**

(a) The board shall consist of seven members. Six members shall be affected producers appointed or elected as provided in this section. The director shall appoint one member of the board who is neither an affected producer nor a handler to represent the director. The position representing the director shall be a voting member.

(i) Director-appointed affected producer positions on the board shall be designated as positions two, four and six.

(ii) Elected affected producer positions on the board shall be designated as positions one, three and five.



(iii) The position representing the director who is neither an affected producer nor a handler shall be designated as position seven.

(b) For the purpose of nomination, appointment, and election of producer members of the board, the affected area shall be the entire state of Washington.

(3) **Board membership qualifications.** The producer members of the board must be practical producers of blueberries and each must be a citizen and resident of this state, over the age of (~~eighteen~~) 18 years. Each producer board member must be and have been actually engaged in producing blueberries within the state of Washington for a period of five years and has, during that time, derived a substantial portion of (~~his/her~~) their income therefrom and is not engaged in business, directly or indirectly, as a handler or other dealer.

(4) **Term of office.**

(a) The term of office for members of the board shall be three years and one-third of the membership as nearly as possible shall be elected each year.

(b) Membership positions on the board shall be designated numerically; affected producers shall have positions one through six and the member representing the director position seven.

(c) The term of office for the initial board members shall be as follows:

Positions one and two - Until June 30, 1970

Positions three and four - Until June 30, 1971

Positions five, six and seven - Until June 30, 1972

(d) To accomplish the transition to a commodity board structure where the director appoints a majority of the board members, the names of the currently elected board members in positions two, four and six shall be forwarded to the director for appointment within (~~thirty~~) 30 days of the effective date of this amended marketing order.

(5) **Nomination of elected or director-appointed board members.**

(a) Each year the director shall call a nomination meeting for elected and/or director-appointed producer board members. The meeting(s) shall be held at least (~~thirty~~) 30 days in advance of the date set by the director for the election or advisory vote of board members.

(b) Notice of a nomination meeting shall be published in a newspaper of general circulation within the major production area not less than (~~ten~~) 10 days in advance of the date of the meeting and, in addition, written notice of every meeting shall be given to all affected producers according to the list maintained by the board pursuant to RCW 15.65.295.

(c) Nonreceipt of notice by any interested person shall not invalidate the proceedings at the nomination meeting.

(d) Any qualified affected producer may be nominated orally for membership on the board at the nomination meeting(s). Nominations may also be made within five days after the nomination meeting by written petition filed with the director, signed by not less than five affected producers.

(e) When only one nominee is nominated by the affected producers for any position, RCW 15.65.250 shall apply.

(6) **Election or advisory vote of board members.**

(a) An election or advisory vote shall be conducted by secret ballot under the supervision of the director within the month of May. Each affected producer shall be entitled to one vote. Elected members

of the board shall be elected by a majority of the votes cast by the affected producers.

(b) If a nominee does not receive a majority of the votes on the first ballot, a run-off election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes.

(c) An advisory vote shall be conducted for producer board members appointed by the director under the provisions of RCW 15.65.243. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the board. In the event there are only two candidates nominated for a board position, an advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment.

(d) Notice of every election or advisory vote for board membership shall be published in a newspaper of general circulation within the major production area not less than (~~ten~~) 10 days in advance of the date of the election or advisory vote. Not less than (~~ten~~) 10 days prior to every election or advisory vote for board membership, the director shall mail a ballot of the candidates to each affected producer entitled to vote whose name appears upon the list of such affected producers maintained by the board pursuant to RCW 15.65.295. Any other affected producer entitled to vote may obtain a ballot by application to the director upon establishing (~~his/her~~) their qualifications.

(e) Nonreceipt of a ballot by any affected producer shall not invalidate the election or advisory vote of any board member.

(7) **Vacancies.**

(a) In the event of a vacancy on the board in an elected position, the remaining members shall select a qualified person to fill the unexpired term. The appointment shall be made at the board's first or second meeting after the position became vacant.

(b) In the event of a vacancy in a director-appointed position, the position shall be filled as specified in RCW 15.65.270.

(8) **Quorum.** A majority of the members shall constitute a quorum for the transaction of all business and the carrying out of all duties of the board.

(9) **Board compensation.** No member of the board shall receive any salary except that each member may be compensated in accordance with RCW 43.03.230 and shall be reimbursed for subsistence, lodging, and mileage in accordance with RCW 43.03.050 and 43.03.060, as provided for in RCW 15.65.270. The board may adopt, by resolution, provisions for reimbursement of actual travel expenses incurred by members and employees of the board in carrying out the provisions of this market-order pursuant to RCW 15.65.270.

(10) **Powers and duties of the board.** The board shall have the following powers and duties:

(a) To administer, enforce and control the provisions of this order as the designee of the director.

(b) To elect a chairman and such other officers as the board deems advisable.

(c) To employ and discharge at its discretion such personnel, including attorneys engaged in the private practice of law subject to the approval and supervision of the attorney general, as the board determines are necessary and proper to carry out the purpose of the order and effectuate the declared policies of the act.

(d) To pay only from moneys collected as assessments or advances thereon the costs arising in connection with the formulation, issu-

ance, administration and enforcement of the order. Such expenses and costs may be paid by check, draft or voucher in such form and in such manner and upon the signature of the person as the board may prescribe.

(e) To reimburse any applicant who has deposited with the director in order to defray the costs of formulating the order.

(f) To establish a "blueberry board marketing revolving fund" and the fund to be deposited in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the board except as the amount of petty cash for each day's needs, not to exceed (~~one hundred dollars~~) \$100, shall be deposited each day or as often during the day as advisable.

(g) To keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all assessments, paid outs, moneys and other financial transactions made and done pursuant to this order. Records, books and accounts shall be audited at least every five years subject to procedures and methods lawfully prescribed by the state auditor. Books and accounts shall be closed as of the last day of each fiscal year of the state of Washington. A copy of such audit shall be delivered within (~~thirty~~) 30 days after the completion thereof to the governor, the director, the state auditor and the board.

(h) To require a bond of all board members and employees of the board in a position of trust in the amount the board shall deem necessary. The premium for a bond or bonds shall be paid by the board from assessments collected. A bond shall not be necessary if any board member or employee is covered by any blanket bond covering officials or employees of the state of Washington.

(i) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of the order during each fiscal year. At least (~~thirty~~) 30 days prior to the beginning of its fiscal year, the board shall prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget.

(j) To establish by resolution, a headquarters which shall continue as such unless and until so changed by the board. All records, books and minutes of board meetings shall be kept at such headquarters.

(k) To adopt rules of a technical or administrative nature for the operation of the board, subject to the provisions of chapter 34.04 RCW (Administrative Procedure Act).

(l) To carry out the provisions of RCW 15.65.510 covering the obtaining of information necessary to effectuate the provisions of the order and the act, along with the necessary authority and procedure for obtaining such information.

(m) To bring actions or proceedings upon joining the director as a party for specific performance, restraint, injunction or mandatory injunction against any person who violates or refuses to perform the obligations or duties imposed upon (~~him~~) them by the act or order.

(n) To confer with and cooperate with the legally constituted authorities of other states and of the United States for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, agreements or orders.

(o) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes provided in this order.

(p) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local. Personal service contracts must comply with chapter 39.29 RCW.

(q) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies.

(r) To enter into contracts or agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of blueberries.

(s) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review by the office of the attorney general.

(t) To engage in appropriate fund-raising activities for the purpose of supporting activities authorized by this order.

(u) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation, distribution, sale, or use of blueberries including activities authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission.

(v) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the provisions of this marketing order and data on the value of each affected producer's production for a minimum three-year period pursuant to RCW 15.65.280.

(w) To maintain a list of the names and addresses of persons who handle blueberries within the affected area and data on the amount and value of the blueberries handled for a minimum three-year period by each person pursuant to RCW 15.65.280.

(x) To maintain a list of names and addresses of all affected persons who produce blueberries and the amount, by unit, of blueberries produced during the past three years pursuant to RCW 15.65.295.

(y) To maintain a list of all persons who handle blueberries and the amount of blueberries handled by each person during the past three years pursuant to RCW 15.65.295.

(z) To establish a foundation using commission funds as grant money for the purposes established in this marketing order.

(aa) To carry out any other grant of authority or duty provided designees and not specifically set forth in this section.

**(11) Procedures for board.**

(a) The board shall hold regular meetings, at least quarterly, with the time and date thereof to be fixed by resolution of the board and the meetings shall be held in accordance with chapter 42.30 RCW (Open Public Meetings Act). Notice of the time and place of regular meetings shall be published on or before January of each year in the *Washington State Register*. Notice of any change to the meeting schedule shall be published in the state register at least (~~twenty~~) 20 days prior to the rescheduled meeting date.

(b) The board shall hold an annual meeting, at which time an annual report will be presented. The proposed budget shall be presented for discussion at the meeting. Notice of the annual meeting shall be given by the board at least (~~ten~~) 10 days prior to the meeting by written notice to each producer and by regular wire news services and radio-television press.

(c) The board shall establish by resolution, the time, place and manner of calling special meetings of the board with reasonable notice to the members: Provided, That the notice to a member of any special

meeting may be waived by a waiver thereof from that member of the board. Notice for special meetings shall be in compliance with chapter 42.30 RCW.