

WSR 20-13-017
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed June 5, 2020, 4:35 p.m., effective January 1, 2021]

for John Weisman, DrPH, MPH
 Secretary

Effective Date of Rule: January 1, 2021.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: ESSB 5332 (chapter 148, Laws of 2019), which replaces existing chapter 70.58 RCW governing vital records, becomes effective on January 1, 2021. This rule is necessary to implement the law.

Purpose: Chapter 246-491 WAC, Certificates, the department of health (department) adopted new sections of rule to prescribe the information displayed on certifications and informational copies of birth and death records and establish a formalized procedure with required documentation for individuals requesting certifications and informational copies. In chapter 246-491 WAC, Certificates, the department amended sections of rule to add a nonbinary sex designation option on a certification of death and make technical updates. WAC 246-491-990 is amended to establish new fees associated with the issuance of certifications and informational copies. In chapter 246-490 WAC, Vital statistics, department amended sections of rule to make technical updates and repealed obsolete sections of rule.

Citation of Rules Affected by this Order: New WAC 246-491-159, 246-491-300, 246-491-310, 246-491-320, 246-491-330, 246-491-340, 246-491-350, 246-491-360 and 246-491-370; repealing WAC 246-491-001, 246-490-055 and 246-490-065; and amending WAC 246-491-010, 246-491-039, 246-491-149, 246-491-990, and 246-490-305.

Statutory Authority for Adoption: ESSB 5332 (chapter 148, Laws of 2019).

Adopted under notice filed as WSR 20-08-126 on April 1, 2020.

A final cost-benefit analysis is available by contacting Katitza Holthaus, Department of Health, Center for Health Statistics, P.O. Box 47814, Olympia, WA 98504, phone 360-236-4311, TTY 711, email vitalrecordsrules@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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 9, Amended 5, Repealed 3.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.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 9, Amended 5, Repealed 3.

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 9, Amended 5, Repealed 3.

Date Adopted: June 5, 2020.

Jessica Todorovich
 Chief of Staff

AMENDATORY SECTION (Amending WSR 19-02-087, filed 1/2/19, effective 1/2/19)

WAC 246-490-305 Establishing parentage with a voluntary acknowledgment of parentage or denial of parentage. (1) The individual who gave birth and an alleged genetic parent, an intended parent through assisted reproduction, or a presumed parent may use an acknowledgment of parentage that complies with RCW 26.26A.200 through 26.26A.265 to establish parentage. When the completed acknowledgment of parentage form is filed with the department and a denial of parentage is not required, the parent's name will be added to the child's birth record.

(2) If a presumed parent or an alleged genetic parent will not be the parent listed on the child's birth record, the presumed parent or an alleged genetic parent may sign a denial of parentage that complies with RCW 26.26A.200 through 26.26A.265. If the presumed parent or an alleged genetic parent does not sign a denial of parentage, the department shall require a court ordered establishment of parentage to change the birth record. Submission of the court order to the department must comply with the requirements of WAC 246-490-310.

(a) The acknowledgment of parentage and denial of parentage forms are considered completed when both forms are filed with the department.

(b) After both forms are filed, the department will change the child's birth record in accordance with the forms. The individual seeking to establish parentage will be listed as a parent.

(3) An individual who signed an acknowledgment of parentage or denial of parentage form may file a rescission of parentage form on or before sixty days from the time the acknowledgment or denial of parentage forms were filed with the department or the date of the first court proceeding relating to parentage of the child, whichever occurs first. Once a complete rescission that meets the time requirements has been filed with the department, the department will:

(a) Notify the individuals who signed an acknowledgment of parentage or denial of parentage form in writing to the individuals' address listed on the acknowledgment of parentage or denial of parentage form that a rescission was filed with the department. Failure to give the notice does not affect the validity of the rescission; and

(b) Change the child's record to the prior record information before the acknowledgment or denial of parentage form was filed.

(4) After a rescission is filed as described in subsection (3) of this section, a new acknowledgment of parentage form may be filed with the department.

(5) After sixty days, a challenge of parentage requires a court proceeding, consistent with chapter 26.26A RCW.

(6) For the purpose of this section, "witnessed" has the same meaning as RCW 26.26A.010. A person signing the witnessed statement must be at least eighteen years of age and not related by blood or marriage to the individuals who

sign an acknowledgment of parentage, denial of parentage, or rescission of parentage form.

(7) An acknowledgment of parentage, denial of parentage, or rescission of parentage form must be completed, signed, witnessed or notarized, and submitted to the department with the applicable fee required by WAC 246-491-990. Incomplete forms will not be filed and will be returned.

(8) To receive a certification of birth (~~(certificate)~~) reflecting the change, a (~~(certificate)~~) certification order form must be sent to the department along with the applicable fees required by RCW (~~(70.58.107)~~) 70.58A.560 and WAC 246-491-990.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-490-055 Obtaining a birth certificate.

WAC 246-490-065 Notification when the record is not found.

AMENDATORY SECTION (Amending WSR 02-20-092, filed 10/1/02, effective 11/1/02)

WAC 246-491-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Authorized representative" means a person permitted to receive a certification who is:

(a) Identified in a notarized statement signed by a qualified applicant; or

(b) An agency identified in a power of attorney as defined in chapter 11.125 RCW.

(2) "Board" means the state board of health.

(~~(2)~~) (3) "Certification" means the document, in either paper or electronic format, containing all or part of the information contained in the original vital records from which the document is derived, and is issued from the central vital records system. A certification includes an attestation by the state or local registrar to the accuracy of information, and has the full force and effect of the original vital record.

(4) "Department" means the department of health.

(5) "Informational copy" means a birth or death record issued from the central vital records system, containing all or part of the information contained in the original vital record from which the document is derived, and indicating it cannot be used for legal purposes on its face.

(6) "Legal guardian" means a person who serves as a guardian for the purpose of either legal or custodial matters, or both, relating to the person for whom the guardian is appointed. The term legal guardian includes, but is not limited to, guardians appointed pursuant to chapters 11.88 and 13.36 RCW.

(7) "Legal representative" means a licensed attorney representing either the subject of the record or qualified applicant.

(8) "Qualified applicant" means a person who is eligible to receive a certification of a vital record based on the standards established by chapter 70.58A RCW and this chapter.

(9) "Report" means an electronic or paper document containing information related to a vital life event for the purpose of registering the vital life event.

(10) "Vital life event" means a birth, death, fetal death, marriage, dissolution of marriage, dissolution of domestic partnership, declaration of invalidity of marriage, declaration of invalidity of domestic partnership, and legal separation.

(11) "Vital record" or "record" means a report of a vital life event that has been registered and supporting documentation.

(12) "Vital records system" means the statewide system created, operated, and maintained by the department.

AMENDATORY SECTION (Amending WSR 10-10-041, filed 4/27/10, effective 5/28/10)

WAC 246-491-039 Obtaining confidential information on ((state of Washington live)) birth and fetal death ((certificates under chapter 70.58 RCW)) records. (1) The confidential sections of ~~((the certificate of live))~~ birth and ~~((the certificate of))~~ fetal death ~~((are not subject to public inspection and may not be included on certified copies of the record))~~ records shall not be released except upon order of a court ~~((:))~~ with jurisdiction over the department or as specified in subsection (2) of this section.

~~((An individual who is the subject of the birth certificate may request the confidential information from that individual's birth certificate.~~

~~((a) All requests are to be made to the department on a form provided by the department.~~

~~((b) In order to obtain the confidential information:~~

~~((i) The individual and the subject of the birth certificate must be the same person.~~

~~((ii) The individual must have proof of identity as specified in (c) of this subsection.~~

~~((c) Proof of identity includes:~~

~~((i) A current document issued by a federal or state government with the individual's name, date of birth, photograph, signature, and physical description.)) The individual who is the subject of a birth record may request the confidential information as described in (c) of this subsection related to their own birth record if they comply with the following requirements:~~

(a) An individual must submit a request to the department on the required form and provide proper identity documentation as described in (b) of this subsection.

(b) Any person requesting confidential information contained in their own birth record must provide the department with valid proof of identity. For the purpose of this section, proof of identity means:

(i) A current and valid government issued identification that contains a photograph.

(ii) A legal record documenting any name change, if needed, to verify that the individual and the subject of the birth ~~((certificate))~~ record are the same person.

(iii) If the individual making the request is not applying in person, a notarized signature of the individual making the request must be included with the proof of identity.

~~((c)) (c) The department shall, upon receipt of a request ~~((in compliance))~~ that complies with (a) ~~((through (c)))~~ and~~

(b) of this subsection to the satisfaction of the state registrar, provide ((~~to~~)) the individual with only the following items, ((as)) if available, from their birth ((certificate)) record:

- (i) Newborn medical record number;
- (ii) Birth weight;
- (iii) Infant head circumference;
- (iv) Obstetric estimate of gestation;
- (v) Apgar scores;
- (vi) Infant transferred within twenty-four hours of delivery;
- (vii) Abnormal conditions of the newborn; and
- (viii) Congenital anomalies of the newborn.

AMENDATORY SECTION (Amending WSR 14-04-092, filed 2/4/14, effective 3/7/14)

WAC 246-491-149 Information collected on the legal or public section of ((certificates; modifications to the United States standard certificates and report forms)) vital records. ((1) Effective January 1, 2003,) The department shall ((use the 2003 revisions of the United States standard forms for live birth and fetal death.

(2) Effective January 1, 2004, the department shall use the 2003 standard form for death.

(3) Effective January 1, 1992, the department shall use the 1988 revisions of the United States standard forms for marriage and certificate of divorce, dissolution of marriage or annulment.

(4) These forms are developed by the United States Department of Health and Human Services, National Center for Health Statistics. Copies of these forms may be obtained by contacting the department's center for vital statistics.

(5) With the exception of the confidential section, the department may modify any part of these forms.

(a) Table 3 identifies the modifications to the United States standard form for live birth.

(b) Table 4 identifies the modifications to the United States standard form for fetal death.

(c) Table 5 identifies the modifications to the United States standard form for death.

(d) Table 6 identifies modifications to the United States standard form for marriage.

(e) Table 7 identifies modifications to the United States standard form for certificate of divorce, dissolution of marriage, or annulment.

(6) Table 8 lists items to be collected on the certificate of dissolution of Washington state domestic partnership. This is a Washington state form not addressed in the United States standard forms.

(7) Modification to the United States standard form for marriage for parties who previously had a state-registered domestic partnership. Parties who previously had a state-registered domestic partnership and become married in Washington may obtain an amended marriage certificate from the state registrar that includes the legal date of marriage. Marriage certificates issued to parties who have a state-registered domestic partnership and who are deemed married under RCW 26.60.100 shall include the legal date of marriage of the parties. The legal date of marriage is defined in RCW 26.60.100(4) as the date of the original state-registered

~~domestic partnership~~) collect the following items on the legal or public section of reports for registration into the statewide vital records system in accordance with chapter 70.58A RCW and this section.

((U.S. STANDARD CERTIFICATE)) REPORT OF LIVE BIRTH

Table 3:

Legal or Public Birth ((Certificate)) Record Items

((Item-Number))	Item Name	Difference from U.S. Standard, if any
((1))	Child's name	
((2))	Child's date of birth	
((3))	Time of birth	
((4))	Type of birthplace	Add "En route," Add "Planned birthplace if different"
((5))	Child's sex	
((6))	Name of facility	
((7))	City, town or location of birth	
((8))	County of birth	
((9))	((Mother's)) <u>Mother/Parent's</u> name before first marriage	
((10))	((Mother's)) <u>Mother/Parent's</u> date of birth	
((11))	((Mother's)) <u>Mother/Parent's</u> birthplace	
((12))	((Mother's)) <u>Mother/Parent's</u> Social Security number	
((13))	((Mother's)) <u>Mother/Parent's</u> current legal last name	
((14))	Social Security number requested for child?	
((16a))	((Mother's)) <u>Mother/Parent's</u> residence - Number, street, and Apt. No.	
((16b))	((Mother's)) <u>Mother/Parent's</u> residence - City or town	
((16e))	((Mother's)) <u>Mother/Parent's</u> residence - County	
((16d))	Tribal reservation name (if applicable)	Added

((Item-Number))	Item Name	Difference from U.S. Standard, if any	((Item-Number))	Item Name	Difference from U.S. Standard, if any
((16e))	((Mother's)) <u>Mother/Parent's residence - State or foreign country</u>		((5))	Type of birthplace	Add "En route," Add "Planned birthplace if different"
((16f))	((Mother's)) <u>Mother/Parent's residence - Zip code + 4</u>		((6))	Name of facility	
((16g))	((Mother's)) <u>Mother/Parent's residence - Inside city limits?</u>		((7))	Facility ID (NPI)	
((17))	Telephone number	Added	((8))	City, town or location of birth	
((18))	How long at current residence?	Added	((9))	Zip code of delivery	
((19))	((Mother's)) <u>Mother/Parent's mailing address, if different</u>		((10))	County of birth	
((25))	((Father's)) <u>Father/Parent's current legal name</u>		((11))	((Mother's)) <u>Mother/Parent's name before first marriage</u>	
((26))	((Father's)) <u>Father/Parent's date of birth</u>		((12))	((Mother's)) <u>Mother/Parent's date of birth</u>	
((27))	((Father's)) <u>Father/Parent's birthplace</u>		((13))	((Mother's)) <u>Mother/Parent's current legal last name</u>	
((28))	((Father's)) <u>Father/Parent's Social Security number</u>		((14))	((Mother's)) <u>Mother/Parent's birthplace</u>	
((66))	Certifier name and title	Delete check boxes	((15a))	((Mother's)) <u>Mother/Parent's residence - Number, street, and Apt. No.</u>	
((67))	Date certified		((15b))	((Mother's)) <u>Mother/Parent's residence - City or town</u>	
((68))	Attendant name and title	Delete check boxes	((15c))	((Mother's)) <u>Mother/Parent's residence - County</u>	
((69))	NPI of person delivering the baby		((15d))	Tribal reservation name (if applicable)	Added
((—))	Date filed by registrar	Deleted)	((15e))	((Mother's)) <u>Mother/Parent's residence - State or foreign country</u>	
((U.S. STANDARD)) REPORT OF FETAL DEATH					
Table 4:					
Legal or Public Fetal Death ((Certificate)) <u>Record</u> Items					
((Item-Number))	Item Name	Difference from U.S. Standard, if any	((Item-Number))	Item Name	Difference from U.S. Standard, if any
((1))	Name of fetus		((15f))	((Mother's)) <u>Mother/Parent's residence - Zip code + 4</u>	
((2))	Sex		((15g))	((Mother's)) <u>Mother/Parent's residence - Inside city limits?</u>	
((3))	Date of delivery		((16))	How long at current residence?	Added
((4))	Time of delivery		((17))	((Father's)) <u>Father/Parent's current legal name</u>	

((U.S. STANDARD CERTIFICATE)) REPORT OF DEATH

Difference from U.S. Standard, if any

Table 5: Death ((Certificate)) Record Items

((Item-Number))

Item Name

- ((18)) ((Father's)) Father/ Parent's date of birth
- ((19)) ((Father's)) Father/ Parent's birthplace
- ((20)) Name and title of person completing the report
- ((21)) Date report completed
- ((22)) Attendant name and title
- ((23)) NPI of person delivering the baby
- ((24)) Method of disposition
- ((25)) Date of disposition
- ((26)) Place of disposition
- ((27)) Location of disposition - City/town and state
- ((28)) Name and complete address of funeral facility
- ((29)) Funeral director signature
- ((30)) Initiating cause/condition (cause of death)
- ((31)) Other significant causes or conditions
- ((32)) Estimated time of fetal death
- ((33)) Was an autopsy performed?
- ((34)) Was a histological placental examination performed?
- ((35)) Were autopsy or histological placental examination results used in determining the cause of death?
- ((36)) Registrar signature
- ((37)) Date received

Delete check boxes

Added

Added

Added

Added

Added

((Item-Number))

Item Name

- ((1)) Legal name (include a.k.a. if any)
- ((2)) Death date
- ((3)) Sex
- ((4a)) Age - Years
- ((4b)) Age - Under 1 year
- ((4c)) Age - Under 1 day
- ((5)) Social Security number
- ((6)) County of death
- ((7)) Birth date
- ((8a)) Birth place - City, town or county
- ((8b)) Birth place - State or foreign country
- ((9)) Decedent's education
- ((10)) Decedent's Hispanic origin
- ((11)) Decedent's race
- ((12)) Was decedent ever in U.S. Armed Forces?
- ((13a)) Residence - Number and street
- ((13b)) Residence - City or town
- ((13c)) Residence - County
- ((13d)) Tribal reservation name (if applicable)
- ((13e)) Residence - State or foreign country
- ((13f)) Residence - Zip code
- ((13g)) Inside city limits?
- ((14)) Estimated length of time at residence
- ((15)) Marital status at time of death
- ((16)) Surviving spouse's name
- ((17)) Occupation

Difference from U.S. Standard, if any

Add "X" as non-binary option

Add "Specify": next to box for "8th Grade or less"

Added

Added

((Item- Number))	Item Name	Difference from U.S. Standard, if any	((Item- Number))	Item Name	Difference from U.S. Standard, if any
((18))	Kind of business/ industry		((42))	Hour of injury	
((19))	((Father's)) <u>Father/</u> <u>Parent's</u> name		((43))	Place of injury	
((20))	((Mother's)) <u>Mother/</u> <u>Parent's</u> name before first marriage		((44))	Injury at work?	
((21))	Informant - Name		((45))	Injury location - Street, city, county, state, zip	County Added
((22))	Informant - Relationship to decedent		((46))	Describe how injury occurred	
((23))	Informant - Address		((47))	Transport injury type	
((24))	Place of death		((48a))	Certifying physician signature	
((25))	Facility name (if not a facility, give number and street)		((48b))	Medical examiner/ coroner signature	
((26a))	City, town, or location of death		((49))	Name and address of certifier	
((26b))	State of death		((50))	Hour of death	
((27))	Zip code of death		((51))	Name and title of attend- ing physician if other than certifier	Added
((28))	Method of disposition		((52))	Date certified	
((29))	Place of disposition (name of cemetery, crematory, other place)		((53))	Title of certifier	
((30))	Disposition - City/town, and state		((54))	License number of certifier	
((31))	Name and complete address of funeral facility		((55))	ME/coroner file number	Added
((32))	Date of disposition	Added	((56))	Was case referred to medical examiner?	
((33))	Funeral director signature		((57))	County registrar signa- ture	Added
((34))	Causes of death and intervals between onset and death		((58))	County date received	Added
((35))	Other significant condi- tions contributing to death		((59))	Record amendment	Added
((36))	Autopsy?		((—))	License number of funeral director	Deleted
((37))	Were autopsy findings available to complete the cause of death?		—	Date pronounced dead	Deleted
((38))	Manner of death		—	Time pronounced dead	Deleted
((39))	Pregnancy status		—	Signature of person pronouncing death	Deleted
((40))	Did tobacco use contrib- ute to death?		—	License number of per- son pronouncing death	Deleted
((41))	Date of injury		—	Date person pronouncing death signed	Deleted))

((U.S. STANDARD LICENSE AND CERTIFICATE))
REPORT OF MARRIAGE

Table 6:
((Certificate)) Certification of Marriage

((Item-Number))	Item Name	Difference from U.S. Standard, if any	((Item-Number))	Item Name	Difference from U.S. Standard, if any
			((7g))	State of residence	
			((7h))	Date of birth	
			((7i))	Birth state (if not USA, provide country)	
	Certificate name	Modified	((7j))	((Mother/parent)) <u>Mother/Parent's</u> birth name	Modified
((1))	County of license	Added			
((2))	Date valid		((7k))	((Father/parent)) <u>Father/Parent's</u> birth name	Modified
((3))	Not valid after (date)				
((4))	County auditor signature				
((5))	Date received (by county auditor)		((7l))	((Mother/parent)) <u>Mother/Parent's</u> birth state (or country)	Modified
((6a))	Person A - Bride/groom/spouse	Added	((7m))	((Father/parent)) <u>Father/Parent's</u> birth state (or country)	Modified
((6b))	Legal name before marriage	Modified			
((6c))	Birth name, if different	Added	((8))	Date of marriage	
((6d))	Sex (((Male/female)))	Added	((9))	County of ceremony	
((6e))	Current residence (street, city/town)		((10))	Type of ceremony	Added
((6f))	County of residence		((11))	Date signed (by officiant)	Added
((6g))	State of residence		((12))	Officiant's address	
((6h))	Date of birth		((13))	Officiant's daytime phone	Added
((6i))	Birth state (if not USA, provide country)		((14))	Officiant's name	
((6j))	((Mother/parent)) <u>Mother/Parent's</u> birth name	Modified	((15))	Officiant's signature	
			((16))	Witness signature	
			((17))	Witness signature	
((6k))	((Father/parent)) <u>Father/Parent's</u> birth name	Modified	((18))	Person A signature	Modified
			((19))	Date signed (by person A)	Added
((6l))	((Mother/parent)) <u>Mother/Parent's</u> birth state (or country)	Modified	((20))	Person B signature	Modified
			((21))	Date signed (by person B)	Added
((6m))	((Father/parent)) <u>Father/Parent's</u> birth state (or country)	Modified	((22))	Person A - Social Security number	Added
((7a))	Person B - Bride/groom/spouse	Added	((23))	Person A - Name	Added
			((24))	Person B - Social Security number	Added
((7b))	Legal name before marriage				
			((25))	Person B - Name	Added
((7c))	Birth name, if different	Modified	((26))	Person A signature - Declaration in absence of a Social Security number	Added
((7d))	Sex (((Male/female)))	Added			
((7e))	Current residence (street, city/town)				
((7f))	County of residence				

((Item-Number))	Item Name	Difference from U.S. Standard, if any	((Item-Number))	Item Name	Difference from U.S. Standard, if any
((27))	Person A date - Declaration in absence of a Social Security number	Added	((6g))	Residence - County	
((28))	Person B signature - Declaration in absence of a Social Security number	Added	((6h))	Residence - State	
((29))	Person B date - Declaration in absence of a Social Security number	Added	((7a))	Spouse B - Name	Added
	((Groom's) age last birthday	Deleted	((7b))	Birth name, if different	Modify
	(Bride's) age last birthday	Deleted	((7c))	Date of birth	
	Signature of (license) issuing official	Deleted	((7d))	Place of birth (state or country)	
	Title of (license) issuing official	Deleted	((7e))	Residence - Street	Added
	Where married - City, town or location	Deleted	((7f))	Residence - City	
	Title (of officiant)	Deleted	((7g))	Residence - County	
	Confidential information	Deleted))	((7h))	Residence - State	
			((8))	Place of marriage - County	
			((9))	Place of marriage - State	
			((10))	Date of marriage	
			((11))	Number of children born alive of this marriage	Added
			((12))	Petitioner	
			((13))	Name of petitioner's attorney or pro se	
			((14))	Petitioner's attorney's address	
			((15))	Spouse A Social Security number	Added
			((16))	Spouse B Social Security number	Added
			((Date (decree) recorded		Deleted
			Number of children under 18 whose physical custody was awarded to (husband, wife, joint, other)		Deleted
			Number of children under 18 in household		Deleted
			Title of court		Deleted
			Title of certifying official		Deleted
			Date (certifying official) signed		Deleted
			Date couple last resided in same household		Deleted
			Confidential items		Deleted))

((U.S. STANDARD CERTIFICATE)) REPORT OF DIVORCE, DISSOLUTION OF MARRIAGE, OR ANNULMENT

Table 7:
Certification of Dissolution, Declaration of Invalidity of Marriage, or Legal Separation

((Item-Number))	Item Name	Difference from U.S. Standard, if any
	Certificate name	Modified
((1))	Court file number	Added
((2))	Type of decree	
((3))	Date of decree	
((4))	County where decree filed	
((5))	Signature of superior court clerk	
((6a))	Spouse A - Name	Added
((6b))	Birth name, if different	Added
((6c))	Date of birth	
((6d))	Place of birth (state or country)	
((6e))	Residence - Street	Added
((6f))	Residence - City	

**Table 8:
Certification of Dissolution of Washington State Domestic Partnership**

((Item- Number))	Item Name	((Item- Number))	Item Name
	Certificate name	((11))	First partner's residence - County
	Court file number	((12))	First partner's residence - State
((1))	Type of decree	((13a))	Second partner's name
((2))	Date of decree	((13b))	Second partner's name at birth
((3))	County where decree filed	((14))	Second partner's date of birth
((4))	Signature of superior court clerk	((15))	Second partner's place of birth
((5a))	First partner's name	((16))	Second partner's residence - Street
((5b))	First partner's name at birth	((17))	Second partner's residence - City
((6))	First partner's date of birth	((18))	Second partner's residence - Inside city limits
((7))	First partner's place of birth	((19))	Second partner's residence - County
((8))	First partner's residence - Street	((20))	Second partner's residence - State
((9))	First partner's residence - City	((21))	Date of this partnership
((10))	First partner's residence - Inside city limits	((22))	Domestic partnership certificate number
		((23))	Petitioner
		((24))	Name of petitioner's attorney/pro se
		((25))	Petitioner's address

NEW SECTION

WAC 246-491-159 Items on birth and death certifications and informational copies. Certifications and informational copies of birth and death records issued from the state vital records system must contain only items in accordance with this section.

(1) Unless the items are not available or were not collected at the time of birth registration, certifications of birth, certifications of delayed birth, and informational copies of birth and delayed births will display only the following items:

Vital Record Item	Certification of Birth and Informational Birth Copy	Certification of Delayed Birth and Informational Delayed Birth Copy
State file number	Yes	Yes
Date certificate issued	Yes	Yes
First and middle name(s) of subject of the record	Yes	Yes
Last name(s) of subject of the record	Yes	Yes
Date of birth of subject of the record	Yes	Yes
Facility born	Yes	Yes
Place of birth (city, county, state)	Yes	Yes
Time of birth	Yes	Yes
Sex	Yes	Yes
Mother/parent's name prior to first marriage	Yes	Yes
Mother/parent's place of birth	Yes	Yes
Mother/parent's date of birth or age at the time of child's birth	Yes	Yes
Father/parent's current legal name	Yes	Yes
Father/parent's place of birth	Yes	Yes
Father/parent's date of birth or age at the time of child's birth	Yes	Yes

Vital Record Item	Certification of Birth and Informational Birth Copy	Certification of Delayed Birth and Informational Delayed Birth Copy
Evidence required by RCW 70.58A.120, 70.58A.130, and WAC 246-490-081	No	Yes
Date record filed	Yes	Yes
Fee number	Yes	Yes
Signature of applicant	No	Yes

(2)(a) For deaths registered starting January 1, 2018, long form certifications of death, short form certifications of death, and informational copies of death will display only the following items:

Vital Record Item	Long Form Certification of Death	Short Form Certification of Death	Informational Copy of Death
State file number	Yes	Yes	Yes
Date certificate issued	Yes	Yes	Yes
Fee number	Yes	Yes	Yes
Decedent's legal first and middle name(s)	Yes	Yes	Yes
Decedent's last name(s)	Yes	Yes	Yes
County of death	Yes	Yes	Yes
Date of death	Yes	Yes	Yes
Hour of death	Yes	Yes	Yes
Sex	Yes	Yes	Yes
Age	Yes	Yes	Yes
Social Security number	Yes	No	No
Place of death	Yes	Yes	Yes
Facility or address of death	Yes	Yes	Yes
City, state, zip	Yes	Yes	Yes
Hispanic origin	Yes	Yes	Yes
Race	Yes	Yes	Yes
Residence street	Yes	Yes	Yes
Residence city, state, zip	Yes	Yes	Yes
Residence county	Yes	Yes	Yes
Is residence inside city limits?	Yes	Yes	Yes
Tribal reservation	Yes	Yes	Yes
Length of time at residence	Yes	Yes	Yes
Birth date	Yes	Yes	Yes
Birthplace	Yes	Yes	Yes
Father/parent name	Yes	Yes	Yes
Mother/parent name	Yes	Yes	Yes
Marital status	Yes	Yes	Yes
Spouse	Yes	Yes	Yes
Method of disposition of remains	Yes	Yes	Yes
Place of disposition of remains	Yes	Yes	Yes
City, state of disposition of remains	Yes	Yes	Yes
Disposition date of remains	Yes	Yes	Yes
Occupation	Yes	Yes	Yes
Industry	Yes	Yes	Yes

Vital Record Item	Long Form Certification of Death	Short Form Certification of Death	Informational Copy of Death
Education	Yes	Yes	Yes
U.S. Armed Forces	Yes	Yes	Yes
Informant name	Yes	Yes	Yes
Informant's relationship to decedent	Yes	Yes	Yes
Informant's address	Yes	Yes	Yes
Funeral facility	Yes	Yes	Yes
Funeral facility address	Yes	Yes	Yes
Funeral facility city, state, zip	Yes	Yes	Yes
Funeral director name	Yes	Yes	Yes
Cause of death (A, B, C, and D)	Yes	No	No
Other conditions contributing to death	Yes	No	No
Date of injury	Yes	No	No
Hour of injury	Yes	No	No
Injury at work	Yes	No	No
Place of injury	Yes	No	No
Location of injury	Yes	No	No
City, state, zip of injury	Yes	No	No
County of injury	Yes	No	No
Describe how the injury occurred	Yes	No	No
If transportation injury, specify	Yes	No	No
Manner of death	Yes	No	No
Autopsy	Yes	No	No
Were autopsy findings available to complete cause of death?	Yes	No	No
Did tobacco use contribute to death?	Yes	No	No
Pregnancy status if female	Yes	No	No
Certifier name	Yes	No	No
Certifier title	Yes	No	No
Certifier address	Yes	No	No
Certifier city, state, zip	Yes	No	No
Date signed by certifier	Yes	No	No
Case referred to ME/coroner?	Yes	No	No
File number	Yes	No	No
Attending physician	Yes	No	No
Local deputy registrar	Yes	Yes	Yes
Date received by local deputy registrar	Yes	Yes	Yes

(b) For deaths registered before January 1, 2018, long form certifications of death will contain only the vital record items as indicated for long form certification in (a) of this subsection if such vital record items are available or were collected at the time of death registration.

(c) For deaths registered before January 1, 2018, informational copies of death will contain only the vital record items as indicated for informational death copy in (a) of this subsection if such vital record items are available or were collected at the time of death registration.

(d) The short form certification of death is not available for deaths registered before January 1, 2018.

(3) Certification of fetal death will display only the following items:

Vital Record Item
Local file number
State file number
Name of fetus (first, middle, last, suffix)
Sex
Date of delivery
Time of delivery
Type of birthplace
Planned birthplace, if different
Name of facility
Facility I.D.
City, town, or location of delivery
Zip code of delivery
County of delivery
Mother's name before first marriage (first, middle, last)
Mother's date of birth
Mother's current legal last name, if different
Mother's birthplace (state, territory, or foreign country)
Mother's residence - Number and street
Mother's residence - Apt no.
Mother's residence - City or town
Mother's residence - County
If you live on tribal reservation, give name
State or foreign country
Zip code +4
Mother's residence inside city limits
How long at current residence?
Name and title of person completing cause of death
Signature of person completing cause of death
Date signed by person completing cause of death
Name and title of person delivering the fetus
NPI of person delivering the fetus
Method of disposition
Date of disposition
Place of disposition
Disposition location - City/town, and state
Name and complete address of funeral facility
Funeral director signature
Initiating cause/condition
Other significant causes or conditions
Estimated time of fetal death
Was an autopsy performed?
Was a histological placental examination performed?
Registrar signature

Vital Record Item
Date received by local registrar

NEW SECTION

WAC 246-491-300 Requirements for ordering certifications of birth, death, and fetal death. (1) For certifications of birth, death, and fetal death, the state or local registrar shall release certifications only to qualified applicants as permitted by chapter 70.58A RCW.

(2) For each application, the qualified applicant must submit all of the following:

(a) Information to correctly identify the record consistent with the requirements of WAC 246-491-310;

(b) Identity documentation consistent with the requirements of WAC 246-491-320;

(c) Evidence of eligibility consistent with the requirements of WAC 246-491-330; and

(d) Fees required by RCW 70.58A.560 and WAC 246-491-990, or evidence that the qualified applicant is eligible to receive certifications of a vital record at no charge as required by WAC 246-491-350.

(3) All identity documentation and evidence of eligibility documentation submitted to the state or local registrar from the applicant must originate from a source which the state or local registrar can reasonably verify the authenticity of the documentation.

(4) The applicant must submit all required information and documentation to the state or local registrar within thirty days of the state or local registrar requesting additional information. After thirty days, the application is considered denied.

(5) When the applicant cannot submit the required information or documentation, the applicant will be given an opportunity through an exception process to explain the circumstances to the state or local registrar. If the circumstances presented would have prevented the applicant from providing items required by this section, the state or local registrar may grant an exception and issue the record.

(6) The state or local registrar may deny an application if the applicant fails to meet the requirements of this section or chapter 70.58A RCW. If the state registrar denies an application for failing to meet the requirements, the applicant may appeal the decision by requesting a brief adjudicative proceeding pursuant to WAC 246-10-501 through 246-10-505, and RCW 70.58A.550.

(7) For the purpose of this section:

(a) "Application" means a documented request for certifications of birth, death, and fetal death, including short form certifications of death where applicable.

(b) "Birth" includes delayed birth.

NEW SECTION

WAC 246-491-310 Information required to order certifications of birth, death, and fetal death. (1) A qualified applicant requesting a certification of birth must submit the following information as it appears on the birth record on a form provided by the state or local registrar:

(a) First, middle, and last name of the subject of the record;

(b) First and last name of all parents listed on the record;

(c) Date of birth; and

(d) City or county where the birth occurred.

(2) A qualified applicant requesting a certification of death must submit the following information on a form provided by the state or local registrar:

(a) First and last name of the decedent as it appears on the record;

(b) Approximate date of death; and

(c) City or county where the death occurred.

(3) For the purpose of this section:

(a) "Birth" includes delayed birth.

(b) "Death" includes fetal death.

NEW SECTION

WAC 246-491-320 Identity documentation required to obtain certifications of birth, death, and fetal death. (1) The qualified applicant must submit identity documentation to the state or local registrar to receive a certification of birth, death, or fetal death in accordance with this section.

(2)(a) The qualified applicant must submit to the state or local registrar one of the following pieces of identity documentation, valid or expired no more than sixty days that contains the applicant's full name, photograph, and date of birth:

(i) Enhanced driver's license, driver's license, or instruction permit issued by a state or territory of the United States, or the District of Columbia;

(ii) A Washington state identification card or an identification card issued by another state;

(iii) A military identification card;

(iv) A United States passport or passport card; or

(v) An identification document issued by local, state, federal, or foreign government, or federally recognized Indian tribe.

(b) A qualified applicant requesting on behalf of a government agency or courts to conduct official duties may use an identification card issued by their government agency or courts that contains the full name and photograph of the applicant.

(3) If a qualified applicant is unable to submit one identity documentation listed in subsection (2) of this section, they must provide at least two alternate forms of identification. Alternate forms of identification may include, but are not limited to, government issued identifications listed in subsection (2)(a) of this section if expired more than sixty days, letters from government or social agencies, pay statements, utility bills, student identification with photo, or other items acceptable to the state registrar. Alternate forms of identification must at least contain matching first and last names and addresses, or provide the full name, photograph, and date of birth.

(4) For applications received by telephone or internet, the qualified applicant may choose to take an authentication quiz in lieu of submitting identity documents. The authentication quiz must contain or ask information requiring personal knowledge not available from reviewing current information typically found in their wallet or personal possession. If the

authentication quiz is not successfully completed, the applicant must submit identity documentation listed in subsection (1) or (2) of this section.

(5) Proof of citizenship is not required information to receive a certification of birth, death, or fetal death.

(6) For the purpose of this section, "birth" includes delayed birth.

NEW SECTION

WAC 246-491-330 Evidence of eligibility. (1) The qualified applicant must submit evidence of eligibility documents to the state or local registrar to prove they are eligible to receive a certification of birth, death, or fetal death.

(2) If the qualified applicant is listed as a party on the record, and their identity documentation provided in WAC 246-491-320 sufficiently links the applicant to the record, then evidence of eligibility is met.

(3) If the qualified applicant is not listed as a party on the record or the identity documentation does not sufficiently link the qualified applicant to the record, the following documentation may serve as evidence of eligibility:

(a) Copies of vital records such as certifications of birth, death, marriage, and divorce from this or another jurisdiction that link the applicant to the requested record;

(b) Copies of certified court orders from a court of competent jurisdiction linking the applicant to the record;

(c) Document or letter from title insurer or title insurance agent handling a transaction on behalf of the decedent;

(d) Document or letter from a government agency or courts stating the certification will be used in the conduct of official duties; or

(e) Other documents that link the applicant to the record as determined by the state registrar.

(4) For the purpose of this section, "birth" includes delayed birth.

NEW SECTION

WAC 246-491-340 Requirements for ordering certifications of marriage, dissolution of marriage, and dissolution of domestic partnership. (1) To receive a certification of marriage, dissolution of marriage, or dissolution of domestic partnership, the applicant must submit to the state registrar:

(a) Information to correctly identify the record requested consistent with the requirements of (c) of this subsection;

(b) Fees required by RCW 70.58A.560 and WAC 246-491-990; and

(c) The following information on a form provided by the state registrar:

(i) First and last name of one of the parties on the record;

(ii) Approximate date the event occurred; and

(iii) City or county where the event was filed.

(2) The state registrar may require the first and last name of the second party on the record to ensure the correct record was located.

NEW SECTION

WAC 246-491-350 Requirements for certifications of vital records at no charge. (1) Qualified applicants requesting a certification at no charge per RCW 70.58A.560 (2) and (3) must provide identity documentation, eligibility documentation, and required information to the state or local registrar in accordance with RCW 70.58A.530 and this chapter, in addition to the requirements of this section.

(2) To qualify for a certification of death at no charge per RCW 70.58A.560(2):

(a) A law enforcement agency must submit a letter on official letterhead to the state or local registrar stating the certification will be used to maintain a registered sex offender database; or

(b) A county clerk or court in the state must submit a letter on official letterhead to the state or local registrar stating the certification will be used to extinguish an offender's legal financial obligation.

(3) To qualify for a certification at no charge pending a veterans administration claim per RCW 70.58A.560 (2)(a), the state or local registrar must receive:

(a) A letter on official letterhead from the veterans administration stating the certification will be used in connection with a claim for compensation or pension;

(b) A letter on official letterhead from the veterans administration stating an agency is working on behalf of the veterans administration, authorized to represent the veteran, provides the claim type currently pending before the veterans administration, and identifies the type of certification needed;

(c) A letter on official letterhead from the veterans administration stating there is currently a claim pending before the veterans administration, identifies the type of certification needed, and is submitted by a spouse or dependent of the eligible veteran; or

(d) A letter on official letterhead from the veterans administration stating the decedent is eligible for veterans administration burial benefits or approved to be buried in a national cemetery and is submitted by a funeral home or director.

(4) To qualify for a certification of birth at no charge for a homeless person living in state per RCW 70.58A.560(3), a government agency or homeless services provider working on behalf of the homeless individual must submit a letter on official letterhead to the state registrar asserting the individual meets the definition of homeless and lives in the state.

NEW SECTION

WAC 246-491-360 Requirements for ordering informational copies of birth and death records. (1) To receive an informational copy of a birth or death record, the applicant must submit to the state or local registrar:

(a) Information to correctly identify the record on a form provided by the state or local registrar consistent with the requirements of (c) or (d) of this subsection; and

(b) Fees required by RCW 70.58A.560 and WAC 246-491-990;

(c) For an informational copy of a birth record, the following information as it appears on the record:

(i) First, middle, and last name of the subject of the record;

(ii) First and last name of all parents listed on the record;

(iii) Date of birth; and

(iv) City or county where the birth occurred.

(d) For an informational copy of a death record, the following information:

(i) First and last name of the decedent;

(ii) Approximate date of death; and

(iii) City or county where the death occurred.

(2) For the purpose of this section, "birth" includes delayed birth.

NEW SECTION

WAC 246-491-370 Notification of no record. (1) The applicant will receive a written notice of no record found if the state or local registrar cannot find a record based on information provided by the applicant. The application request will be considered closed after the written notice is sent. Following such notice, the applicant may do any of the following:

(a) Submit a new application providing different information and pay the fees required by RCW 70.58A.560 and WAC 246-491-990 on this new application; or

(b) If requesting a certification of birth, begin the process to obtain a delayed registration of live birth pursuant to RCW 70.58A.120 and WAC 246-490-080.

(2) Written notification by the state registrar of no record found does not constitute a denial or withholding of a request for the purpose of RCW 70.58A.550.

AMENDATORY SECTION (Amending WSR 19-02-087, filed 1/2/19, effective 1/2/19)

WAC 246-491-990 Vital records fees. (1) The department shall collect nonrefundable fees to cover program costs as follows:

~~((+))~~ To prepare a sealed record following an adoption or to search the vital records system for adoption record information. \$15.00

~~((=))~~ To file an assertion of parentage, an acknowledgment or denial of parentage, or a rescission of parentage. \$18.00

~~((3))~~ Fee for hospital filed acknowledgments or denials of parentage. \$5.00

~~((4))~~ To prepare a certificate of birth record information (CBRI) letter or to provide a copy of an assertion of parentage, an acknowledgment or denial of parentage, or a rescission of parentage. \$15.00

Priority processing fee for applications of certifications and informational copies received by telephone or internet. \$7.00

Priority processing fee for applications of certifications and informational copies received in person. \$13.50

~~((5))~~ (2) The secretary of health may enter into agreements with state and local government agencies to establish alternate fee schedules and payment arrangements for reimbursement of these program costs.

(3) The fee for each electronic verification of a vital event through the electronic verification of vital events system must be in accordance with the national pricing model.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-491-001 Purpose.

WSR 20-13-026

PERMANENT RULES

DAIRY PRODUCTS COMMISSION

[Filed June 9, 2020, 10:26 a.m., effective July 10, 2020]

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

Purpose: The purpose of this rule making is to update the dairy products commission's promotional hosting rules and to define requirements for business meals and travel expense reimbursements. Under RCW 15.44.038, unless otherwise defined in rule, each commission member or employee shall be reimbursed at the rates allowed by RCW 43.03.050 and 43.03.060. Placing commission travel requirements in rule will allow the commission greater flexibility in approving and reimbursing for travel expenses incurred in carrying out the commission's mission.

Citation of Rules Affected by this Order: New WAC 142-40-040 and 142-40-050; and amending WAC 142-40-010, 142-40-020, and 142-40-030.

Statutory Authority for Adoption: RCW 15.44.038 and 15.44.060.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 20-08-132 on April 1, 2020.

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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 3, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 2, Repealed 0.

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

Date Adopted: June 3, 2020.

Steve Seppi
Executive Director

Chapter 142-40 WAC

PROMOTIONAL HOSTING, TRAVEL, AND BUSINESS EXPENSES

AMENDATORY SECTION (Amending WSR 92-14-035, filed 6/24/92, effective 7/25/92)

WAC 142-40-010 Purpose. Section 1, chapter 26, Laws of 1985 (RCW 15.04.200) enacted under the authority of Article VIII of the Washington state Constitution as amended, authorized the expenditure of agricultural commodity commission assessments for agricultural development or trade promotion and promotional hosting and provides that agricultural commodity commissions shall adopt rules governing promotional hosting expenditures by agricultural commodity commission employees, agents, or commissioners.

The purpose of these rules is to set forth the parameters governing promotional hosting, travel, and meal expenditures for the Washington dairy products commission.

AMENDATORY SECTION (Amending WSR 92-14-035, filed 6/24/92, effective 7/25/92)

WAC 142-40-020 Definitions. (~~("Promotional hosting" as used in these rules means the hosting of individuals and groups of individuals at meetings, meals, and gatherings for the purpose of cultivating trade relations and promoting sales of milk and other dairy products.~~) The definitions in this section apply throughout the chapter unless the context clearly requires otherwise.

"Commission" means the Washington dairy products commission.

"GSA" means the general services administration, an independent agency of the United States government.

"Hosting" may include providing meals, refreshments, lodging, transportation, gifts of a nominal value, reasonable and customary entertainment and normal incidental expenses at meetings or gatherings.

"Promotional hosting" means the hosting of individuals or groups of individuals at meetings, meals, events, tours, or other gatherings for the purpose of agricultural development, trade promotion, cultivating trade relations, or in the aid of the marketing, advertising, or sale of Washington dairy products.

"SAAM" means the state administrative and accounting manual.

AMENDATORY SECTION (Amending WSR 92-14-035, filed 6/24/92, effective 7/25/92)

WAC 142-40-030 ((Implementation)) Promotional hosting. The implementation of the rules governing promotional hosting expenditures for the Washington dairy products commission shall be as follows:

(1) Budget approval. Commission expenditures for agricultural development ~~((or))~~ trade promotion, and promotional hosting shall be pursuant to specific budget items in the commission's annual budget as approved by the commission

~~((at regular meetings held to review such matters))~~ and the director.

(2) Officials and agents authorized to make expenditures. The following officials and agents are authorized to make expenditures for agricultural development ~~((and)),~~ trade promotion, and promotional hosting in accordance with the provisions of these rules:

- (a) Commissioners;
- (b) Administrators;
- (c) Executive management staff.

Individual commissioners shall make promotional hosting expenditures, or seek reimbursements for those expenditures, only in those instances where the expenditures have been approved by the commission.

(3) Payment and reimbursement. All payments and reimbursements shall be identified and supported by ~~((vouchers to which receipts are attached. Voucher forms will be supplied by the commission, and))~~ receipts in accordance with the reimbursement policies of the commission. Advance payment of expenses is not permitted. In the event that a vendor requests advance payment for goods or services, commission members should engage a staff supervisor for proper handling of funds. Expense reports and reimbursement requests shall require the following information:

- (a) Name and position of each person hosted, provided that in case of a group of ~~((twenty-five))~~ ten or more persons, then only the name of the group hosted shall be required;
- (b) General purpose of the hosting;
- (c) Date of hosting;
- (d) Location of the hosting;
- (e) To whom payment was or will be made;
- (f) ~~((Signature of))~~ Authentication by person seeking payment or reimbursement.

(4) The ~~((chairperson))~~ chair of the commission ~~((and/or the manager are)),~~ executive director, and commission staff, as authorized in writing by the executive director, are authorized to approve direct payment or reimbursements submitted in accordance with these rules, provided that the chair, executive director, and commission staff are not authorized to approve their own direct promotional hosting payments or promotional hosting reimbursements.

(5) The following persons may be hosted when it is reasonably believed such hosting will promote agriculture development, promote trade, cultivate trade relations ~~((and promote)),~~ or aid in the marketing, advertising, or sales of milk and other dairy products, provided that such hosting shall not violate federal or state laws including, but not limited to, state or federal ethics or conflicts of interest laws:

- (a) Individuals from private business, associations, commissions, and accompanying staff and interpreter(s);
- (b) Members of the media and accompanying staff and interpreter(s);
- (c) Foreign government officials and accompanying staff and interpreter(s);

~~((and)),~~ state, or local officials, provided that lodging, meals, and transportation will not be provided when such officials may obtain reimbursement for these expenses from their government employer;

~~((and))~~ (e) The general public, at meetings and gatherings open to the general public;

~~((and))~~ (f) Commissioners and employees of the commission when their attendance at meetings, meals, and gatherings at which the persons described in (a) through ~~((and))~~ (e) of this subsection are being hosted, will promote agricultural development, promote trade, cultivate trade relations ~~((and promote sales of)),~~ or aid in the marketing, advertising, or sales of Washington milk and other dairy products.

~~((and))~~ (g) Spouses, partners, or significant others of the persons listed in (a) ~~((, (b), (e)))~~ through (d), and ((e)) (f) of this subsection when attendance of such spouse, partner, or significant other is customary and expected or will serve to promote agricultural business development, promote trade, cultivate trade relations, or ~~((promote the))~~ aid in the marketing, advertising, or sale of Washington milk or other dairy products.

NEW SECTION

WAC 142-40-040 Travel. (1) Except as provided in subsections (7) and (8) of this section, all overnight or out-of-state travel by commissioners and by commission staff must be approved in accordance with commission policy in advance of departure to be eligible for travel expense reimbursement.

(2) All travel expenses must be within the preapproved budget limits as provided for in WAC 142-40-030(1).

(3) Reimbursement for transportation expenses shall be at actual cost subject to the following limitations:

(a) If an employee chooses not to use the state's travel services, travel must be booked at the lowest commercially reasonable cost and exclude any fees due to personal preference or convenience not necessary or critical to commission business.

(b) If an employee chooses not to use the state's travel services, coach airfare will be reimbursed with the expectation that the lowest commercially reasonable fare is found.

(c) If a commissioner or commission employee uses his or her automobile for transportation, mileage shall be reimbursed at the current rate set by the GSA for business travel.

(d) Car rentals up to full-size cars and related fuel expenses. Larger or different types of vehicles require prior approval.

(e) Other transport, including public transit, taxi, and rideshare services, related to commission business travel shall be reimbursed.

(f) Customary tips for transport and meals shall be reimbursed in accordance with commission policy.

(4) Reimbursement for lodging expenses shall be at actual costs and travelers should adhere to the GSA per diem rates as closely as possible. Accommodations should be standard rooms and must be the lowest commercially reasonable cost and exclude any fees due to personal preference or convenience not necessary or critical to commission business.

(5) Reimbursement for meals shall be at actual costs, plus tip, provided that such costs are reasonable for the particular market in which the expense is incurred.

(6) Each person traveling on official commission business shall submit request for reimbursement in accordance with commission policy. Receipts for each expense for which reimbursement is requested must accompany the reimburse-

ment request. Expenses will not be reimbursed unless such a request, accompanied by receipts where required, is timely submitted. Receipts may not be required for expenses under a certain dollar threshold as stated by the Washington dairy products commission policies, which are to be reviewed annually.

(7) No advance approval of travel and related expenses is required for attendance at regular or special meetings of the commission or a committee thereof within the state of Washington.

(8) Day trips by commissioners and commission staff, as well as overnight travel within Washington state by commission staff for commission business, do not require approval in advance of departure and travel-related costs for day trips are reimbursable under WAC 142-40-040(5).

NEW SECTION

WAC 142-40-050 Other business meals. (1) The commission shall pay for or reimburse employees for meals, coffee, and light refreshments for certain meetings, industry activities, and training regardless of travel status when:

(a) The purpose of the meeting is to conduct official commission business or provide training to employees or board members;

(b) The meals are an integral part of the meeting, conference, convention, or training session and separating the meeting from the meal would be otherwise disruptive to commission business;

(c) The meeting or training session takes place away from the employee's or official's regular workplace ("regular workplace" excludes meeting and conference rooms); and

(d) The agency obtains an itemized receipt for the actual costs of the meals with meetings.

(2) Meals will be reimbursed at actual cost incurred. Meetings to be incurred under this section include those in which attendance is advantageous in achieving the goals of the commission including, but not limited to: Strategic planning meetings, employee review and evaluation meetings, board meetings, continuing education and professional development training sessions, information and research meetings, events or conferences.

(3) To be eligible for reimbursement, employees must submit the following to their direct supervisor on their expense reimbursement request: Itemized receipt, name(s) of the organization or persons attending the meeting, and the purpose or accomplishments expected.

(4) Consistent with SAAM 70.15.10, recurring meals with meetings may receive one-time approval annually. To be eligible for reimbursement, the expense must fall within the preapproved budget and definition for recurring meals with meetings for the year, itemized receipts must be provided, and the meeting attendees must be identified.

WSR 20-13-027 PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed June 9, 2020, 10:48 a.m., effective July 10, 2020]

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

Purpose: The department is amending WAC 388-106-0715 to provide PACE clients, PACE organizations, and other stakeholders information about how clients can end their enrollment in the PACE program. This rule making will give guidance [on] how to disenroll and the specific timelines. The amendment updates the WAC language to align with recent Centers for Medicare and Medicaid [Services] (CMS) changes to C.F.R. 460.162 and 460.164.

The department filed a CR-102 Proposed rule making as WSR 20-08-042 on March 25, 2020, and a Continuation CR-102 Proposed rule making as WSR 20-09-075 on April 14, 2020.

Citation of Rules Affected by this Order: Amending WAC 388-106-0715.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, 74.39A.010, 74.39A.020.

Adopted under notice filed as WSR 20-09-075 on April 14, 2020.

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

Number of Sections Adopted at the Request of a Non-governmental 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: June 9, 2020.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-05-022, filed 2/6/06, effective 3/9/06)

WAC 388-106-0715 How do I end my enrollment in the PACE program? (1) You may choose to voluntarily end your enrollment in the PACE program without cause at any time. To do so, you must give the PACE provider written notice. ~~((If you give notice:~~

~~(a) Before the fifteenth of the month, the department will end your enrollment effective at the end of the month; or~~

~~(b) After the fifteenth, the department will end your enrollment effective until the end of the following month))~~ A PACE participant's voluntary disenrollment is effective on the first day of the month following the date the PACE orga-

nization receives the participant's notice of voluntary disenrollment.

(2) Your enrollment may also end involuntarily if you:

(a) Move out of the designated service area or are out of the service area for more than thirty consecutive days, unless the PACE provider agrees to a longer absence due to extenuating circumstances;

(b) Engage in disruptive or threatening behavior such that the behavior jeopardizes your health or safety, or the safety of others;

(c) Fail to comply with your plan of care or the terms of the PACE enrollment agreement;

(d) Fail to pay or make arrangements to pay your part of the costs after the thirty-day grace period;

(e) Become financially ineligible for medicaid services, unless you choose to pay privately;

(f) Are enrolled with a provider that loses its license ~~((and/or))~~ or contract, or both; or

(g) No longer meet the nursing facility level of care requirement as defined in WAC 388-106-0205.

(3) For any of the above reasons, the PACE provider must give you written notice, including your appeal rights, explaining that they are terminating benefits. ~~((If the provider gives you notice:~~

~~(a) Before the fifteenth of the month, then the department will end your enrollment at the end of the month; or~~

~~(b) After the fifteenth, then the department will end your enrollment at the end of the following month))~~ A PACE participant's involuntary disenrollment is effective on the first day of the next month that begins thirty days after the day the PACE organization sends notice of the disenrollment to the participant.

(4) Before the PACE provider can involuntarily end your enrollment in the PACE program, the department must review and approve it.

WSR 20-13-035

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed June 10, 2020, 6:11 a.m., effective July 11, 2020]

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

Purpose: This rule-making order amends chapter 16-470 WAC, Quarantine—Agricultural pests, by:

1. Adding soil and growing medium in pots and on root balls of apple maggot host plants originating from the quarantine area, to the list of regulated commodities;

2. Adding soil and growing medium in pots and on root balls of nonhost plants originating from the quarantine area that were grown within the drip line of host plants that have produced fruit, to the list of regulated commodities;

3. Specifying the criteria for how these plants may enter the pest free area if risk is mitigated;

4. Specifying the documentation that must accompany these plants when shipping to or through a pest free area and when receiving these plants from a quarantine area; and

5. Specifying the fees associated with inspection and certification services.

Citation of Rules Affected by this Order: Amending WAC 16-470-101, 16-470-103, 16-470-111, 16-470-113, and 16-470-115.

Statutory Authority for Adoption: RCW 17.24.011, 17.24.041, 17.24.051.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 20-08-130 on April 1, 2020.

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 Non-governmental Entity: New 0, Amended 5, 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 5, Repealed 0.

Date Adopted: June 10, 2020.

Derek I. Sandison
Director

AMENDATORY SECTION (Amending WSR 16-24-028, filed 11/30/16, effective 1/1/17)

WAC 16-470-101 Establishing quarantines for apple maggot and plum curculio. Apple maggot (*Rhagoletis pomonella*) and plum curculio (*Conotrachelus nenuphar*) are insects with a larval (worm) stage that develops within fruit. These insects are capable of attacking many fruit crops grown in Washington. Apple maggot is not established in significant portions of the major fruit production areas east of the Cascade Mountains, and plum curculio is not established anywhere in the state. An increased range for either insect would cause decreased environmental quality and economic loss to the agricultural industries of the state by increasing production inputs and jeopardizing foreign and domestic markets.

(1) The director, pursuant to chapter 17.24 RCW, has determined that the regulation and/or exclusion of fresh fruits grown or originating from areas infested with apple maggot or plum curculio is necessary to protect the environment and agricultural crops of the state.

(2) The director, pursuant to chapter 17.24 RCW, has determined that municipal solid waste originating from areas infested with apple maggot is a host medium for apple maggot and is a "regulated commodity" as provided in WAC 16-470-111. The exclusion of such municipal solid waste from the pest free area is necessary to protect the environment and agricultural crops of the state. The transport into and disposition of such municipal solid waste in the pest free area may be allowed by a special permit as provided in WAC 16-470-124 (1).

(3) The director, pursuant to chapter 17.24 RCW, has determined that yard debris, organic feedstocks, organic

materials, and agricultural wastes as defined in WAC 173-350-100 originating from areas infested with apple maggot is a host medium for apple maggot and is a "regulated commodity" as provided in WAC 16-470-111. The exclusion of such waste from the pest free area is necessary to protect the environment and agricultural crops of the state. The transport into and disposition of yard debris, organic feedstocks, organic materials, and agricultural wastes in the pest free area may be allowed by a special permit as provided in WAC 16-470-124(2).

(4) The director, pursuant to chapter 17.24 RCW, has determined that soil and growing medium in pots or on root balls of host plants or any plants (host or nonhost) that were within the drip line of host plants that have produced fruit, originating from areas infested with apple maggot are a host medium for apple maggot and are "regulated commodities" as provided in WAC 16-470-111. The exclusion of such soil or growing medium from the pest free area is necessary to protect the environment and agricultural crops of the state. The transport of such soil or growing medium into the pest free area may be allowed if accompanied by an official inspection certificate issued by the plant protection organization of the state of origin as provided in WAC 16-470-113 and 16-470-115.

AMENDATORY SECTION (Amending WSR 05-09-005, filed 4/7/05, effective 8/15/05)

WAC 16-470-103 Definitions. The following definitions shall apply to WAC 16-470-101 through 16-470-130:

(1) "Established" means present in a country, state, county or other area, multiplying and expected to continue.

(2) "Host plant" means all species in the genera of Malus, Crataegus, Prunus, Pyrus and Cydonia (including, but not limited to, apples, crab apples, hawthorn, cherries, plums, prunes, pears, and quince).

(3) "Soil" and "growing medium" as regulated commodities means only that soil or growing medium in pots or on root balls of plants originating from a quarantined area being shipped under this quarantine.

(4) "Threatened with infestation" means that any life stage of apple maggot or plum curculio has been found within one-half mile of an orchard or other production site, including any portion of an orchard outside or beyond the one-half mile area. Orchards or production sites in a quarantined area, which are not surveyed by a plant protection organization, are considered to be threatened with infestation. An orchard or other production site will be removed from threatened with infestation status, if control measures are performed at the detection site, and survey by the department shows no further detection(s) within the one-half mile area around the orchard or other production site throughout the subsequent full growing season.

AMENDATORY SECTION (Amending WSR 16-24-028, filed 11/30/16, effective 1/1/17)

WAC 16-470-111 Commodities regulated for apple maggot. (1) All fresh fruit of apple (including crab apple), cherry (except cherries that are commercial fruit), hawthorn (haw), pear (except pears that are commercial fruit from Cal-

ifornia, Idaho, Oregon, Utah, and Washington), plum, prune, and quince are regulated under quarantine for apple maggot. Fresh fruit also includes fruit attached to host plants.

(2) Municipal solid waste as defined in WAC 173-350-100 is regulated under quarantine for apple maggot. Municipal solid waste from the quarantine area is a host medium for apple maggot containing or likely to contain those fruits listed under subsection (1) of this section.

(3) Yard debris, organic feedstocks, organic materials, and agricultural wastes as defined in WAC 173-350-100 are regulated under quarantine for apple maggot. Yard debris, organic feedstocks, organic materials, and agricultural wastes from quarantine areas are host mediums for apple maggot containing or likely to contain those fruits listed under subsection (1) of this section.

(4) Soil or growing medium in pots or on root balls of host plants originating from a quarantined area are regulated commodities under quarantine for apple maggot.

(5) Soil or growing medium in pots or on root balls of nonhost plants that fall within the drip line of host plants that have produced fruit originating from a quarantined area are regulated commodities under quarantine for apple maggot.

(6) Any host plants shipped bare root and without fruit attached are not regulated commodities under quarantine for apple maggot.

(7) Soil or growing medium in pots or on root balls of plants originating in the pest free area, as specified in WAC 16-470-105(1), are not regulated commodities under quarantine for apple maggot.

AMENDATORY SECTION (Amending WSR 16-24-028, filed 11/30/16, effective 1/1/17)

WAC 16-470-113 Requirements to ship commodities regulated for apple maggot from a state under quarantine into the pest free area for apple maggot. (1) Shipment of fresh fruit, as specified in WAC 16-470-111(1), from an area under quarantine, as specified in WAC 16-470-105(3), into the pest free area for apple maggot, as specified in WAC 16-470-105(1), is prohibited, unless at least one of the following conditions is met:

~~((+))~~ (a) The shipment is accompanied by an official certificate issued by the plant protection organization of the state of origin ~~((evidencing))~~ stating at least one of the following:

~~((a))~~ (i) The shipment is composed of apples, which has undergone cold treatment for a continuous period of at least ninety days. During this ninety days, the temperature within the storage room must be maintained at thirty-seven and nine-tenths degrees Fahrenheit or less.

~~((b))~~ (ii) The shipment is composed of fresh fruit specified in WAC 16-470-111(1) other than apples, which has undergone cold treatment for a continuous period of forty days or more. During this forty days, the temperature within the storage room must be maintained at thirty-two degrees Fahrenheit or less.

~~((c))~~ (iii) The shipment is composed of fresh fruit specified in WAC 16-470-111(1) from Oregon, Idaho, or Utah, meeting the requirements under WAC 16-470-122.

~~((iv))~~ (iv) Each lot or shipment consists of repacked fruit, which was grown outside the area under quarantine and has been identified and maintained separately from any fruit specified in WAC 16-470-111(1) grown within the area under quarantine. For repacked fruit, the certificate must show the following information:

~~((i))~~ (A) The state in which the fruit was grown;

~~((ii))~~ (B) The point of repacking and reshipment;

~~((iii))~~ (C) The amount and kind of commodities comprising the lot or shipment; and

~~((iv))~~ (D) The names and addresses of the shipper and consignee.

~~((2))~~ (b) The fruit originated outside the area under quarantine for apple maggot and is a reshipment in original, unopened containers. The containers must each bear labels or other identifying marks ~~((evidencing))~~ stating origin outside the area under quarantine.

~~((3))~~ (c) The fruit is frozen solid.

(2) The shipment of soil or growing medium in pots or on root balls of host plants from the area under quarantine, as specified in WAC 16-470-105(3), into the pest free area for apple maggot, as specified in WAC 16-470-105(1), is prohibited unless accompanied by a certificate issued by the plant protection organization of the state of origin stating the following:

(a) The soil or growing medium supports host plants that have not produced fruit, and did not fall within the drip line of host plants that have produced fruit; or

(b) The host plants originated in an area where apple maggot is not considered established, based on official survey and were grown in a commercial nursery; or

(c) The soil or growing medium of the plants has been treated with a pesticide treatment approved by the director just prior to shipment and was safeguarded from reinfestation.

(3) The shipment of soil or growing medium in pots and on root balls of nonhost plants that were grown within the drip line of host plants that have produced fruit, may only be shipped from the area under quarantine, as specified in WAC 16-470-105(3), to the pest free area for apple maggot, as specified in WAC 16-470-105(1), if accompanied by a certificate issued by the plant protection organization of the state of origin stating the following:

(a) The nonhost plants originated in an area where apple maggot is not considered established, based on official survey, and were grown in a commercial nursery; or

(b) The soil or growing medium of the plants has been treated with a pesticide treatment approved by the director just prior to shipment and was safeguarded from reinfestation.

AMENDATORY SECTION (Amending WSR 16-24-028, filed 11/30/16, effective 1/1/17)

WAC 16-470-115 Requirements for shipment of regulated commodities from the quarantine area for apple maggot into the pest free area within Washington state. Shipment of regulated commodities, as specified in WAC 16-470-111, from an area under quarantine, as specified in WAC 16-470-105(2), into the pest free area for apple maggot, as

specified in WAC 16-470-105(1), is prohibited, unless one of the following applicable conditions is met:

(1) The shipment of fresh fruit is accompanied by a permit for movement of fruit issued by the department verifying one of the following:

(a) The fresh fruit came from orchards and production sites that are not threatened with infestation; or

(b) The fresh fruit has completed treatment as specified in WAC 16-470-118(3). If records of treatment verifying compliance with conditions specified in WAC 16-470-118(3) are made available to the department, no reinspection is required by the department.

(2) The shipment of fresh fruit is in compliance with the applicable conditions under WAC 16-470-118 (2) and (3).

(3) The shipment of municipal solid waste from the quarantine area to the pest free area for purposes of disposal in a municipal solid waste landfill or appropriate disposal or treatment facility is accompanied by a special permit issued by the department as provided in WAC 16-470-124(1).

(4) The shipment of yard debris, organic feedstocks, organic materials, or agricultural wastes from the quarantine area to the pest free area for purposes of disposal in a municipal solid waste landfill or appropriate treatment or composting facility is accompanied by a special permit issued by the department as provided in WAC 16-470-124(2).

(5) The shipment of soil or growing medium in pots or on root balls of host plants is accompanied by either an official phytosanitary certificate or inspection tag associated with a compliance agreement issued by the department stating the following:

(a) The soil or growing medium supports host plants that have not produced fruit and did not fall within the drip line of host plants that have produced fruit; or

(b) The soil or growing medium supports host plants that were grown in a commercial nursery and the production site is not considered threatened with infestation as defined in WAC 16-470-103(4); or

(c) The soil or growing medium of the host plants has been treated with a pesticide treatment approved by the director just prior to shipment and safeguarded from reinfestation.

(6) The shipment of soil or growing medium in pots or on root balls of nonhost plants that were grown within the drip line of host plants that have produced fruit is accompanied by either an official phytosanitary certificate or inspection tag associated with a compliance agreement issued by the department stating the following:

(a) The soil or growing medium supports nonhost plants that were grown in a commercial nursery and the production site is not considered threatened with infestation as defined in WAC 16-470-103(4); or

(b) The soil or growing medium of the nonhost plants has been treated with a pesticide treatment approved by the director just prior to shipment and safeguarded from reinfestation.

(7) Phytosanitary certificates and inspection tags associated with a compliance agreement described in subsections (5) and (6) of this section shall be issued by the department in accordance with chapters 16-401 WAC and 15.13 RCW.

(8) Fees for inspection services related to the issuance of phytosanitary certificates, inspection tags associated with a

compliance agreement, and requests to remove threatened with infestation status, shall be charged in accordance with WAC 16-401-027.

WSR 20-13-043
PERMANENT RULES
SECRETARY OF STATE

[Filed June 10, 2020, 2:47 p.m., effective July 11, 2020]

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

Purpose: Permanent adoption of WAC changes related to addressing voter error of returning two ballots in a single envelope when one of the ballots is blank, adding clarification for the future voter program, updating voter registration WAC to the new voter registration database, and updating the Voter Registration form in WAC.

Citation of Rules Affected by this Order: New WAC 434-324-1065, 434-324-107; repealing WAC 434-324-118; and amending WAC 434-262-031, 434-324-026, 434-324-005, 434-324-008, 434-324-010, 434-324-031, 434-324-036, 434-324-040, 434-324-045, 434-324-055, 434-324-076, 434-324-085, 434-324-087, 434-324-090, 434-324-103, 434-324-106, 434-324-108, 434-324-111, 434-324-113, and 434-324-125.

Statutory Authority for Adoption: RCW 29A.04.611.

Adopted under notice filed as WSR 20-10-093 on May 5, 2020.

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 6.

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

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 20, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 20, Repealed 1.

Number of Sections Adopted using Negotiated Rule Making: New 2, Amended 20, Repealed 1; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 10, 2020.

Mark Neary
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 19-12-115, filed 6/5/19, effective 7/6/19)

WAC 434-262-031 Rejection of ballots or parts of ballots. (1) The disposition of provisional ballots is governed by WAC 434-262-032. The county canvassing board must reject any ballot cast by a voter who was not qualified to vote, or for other reasons required by law or administrative rule. A log must be kept of all voted ballots rejected, and must be included in the minutes of each county canvassing board meeting.

(2) Ballots or parts of ballots shall be rejected by the canvassing board in the following instances:

(a) Where two voted ballots are returned together:

(i) If the two ballots are returned with only one valid signature on the ballot declaration, the races and measures voted the same on both ballots may be counted once;

(ii) If the two ballots are returned with two valid signatures on the ballot declaration, both ballots may be counted in their entirety;

(iii) If two ballots are returned with one valid signature on the ballot declaration, one voted ballot and one blank ballot without marked votes, the voted ballot may be counted in its entirety.

(b) Where a ballot or parts of a ballot are marked in such a way that it is not possible to determine the voter's intent consistent with WAC 434-261-086;

(c) Where the voter has voted for candidates or issues for whom he or she is not entitled to vote;

(d) Where the voter has overvoted;

(e) Where the ballot was created for a prior election.

AMENDATORY SECTION (Amending WSR 19-12-115, filed 6/5/19, effective 7/6/19)

WAC 434-324-005 Definitions. As used in this chapter:

(1) "Accepted" means the voter's ballot has been signature verified and is ready for initial processing.

(2) "Active status" means a designation assigned to voters with complete voter registration records signifying that the voter is eligible to vote.

(3) "Applicant" means a person who has applied, or is applying, to become a registered voter in the state of Washington.

(4) "Auditor" or "county auditor" means (~~"county auditor" and means~~) the county auditor in a noncharter county or the officer in a charter county, irrespective of title, having the overall responsibility to maintain voter registration to conduct state and local elections.

(5) "Conditional registration" means an in-person voter registration application submitted when the voter registration system is unable to process applications. Conditionally registered voters are issued a current ballot for their precinct whenever possible; they are not issued a provisional ballot.

(6) "Current ballot" means the ballot which matches the precinct, precinct portion or split in which the voter is currently registered to vote. This is the most recently issued ballot type or style.

(7) "Electronic registration" means the electronic submission of voter registration applications.

(8) "Extraction," as used in this chapter, means the creation of an electronic list of specific information from the entire official statewide voter registration database.

(9) "New county" means a county in Washington state that a registered voter is moving to from another county within Washington state.

(10) "Previous county" means a county in Washington state that a registered voter lived in prior to moving to a new county.

(11) "Pending status" means a voter registration record is not yet complete, and the applicant is not yet a registered

voter or the registration is a potential felon, potential duplicate match, or a future voter.

(12) ~~("Pending cancellation" means the registered voter's registration record must be canceled within a specified amount of time and he or she is not eligible to vote.)~~ "Qualified tribal identification" means tribal identification from an issuer of tribal identification that has agreed to make digitized signature information available for the purpose of voter registration.

(13) "Received" means the voter's ballot has been returned to the county and entered into the system, but not yet accepted.

(14) "Registered voter" means any elector who has completed the statutory registration procedures established by Title 29A RCW.

(15) "Registration number" means a unique identifier assigned to each registered voter, pursuant to RCW 29A.08.-125.

(16) "Reissued ballot" means a new ballot issued to a voter due to an address update within the state that changes the voter's ballot type or style. A reissued ballot becomes the current ballot and all other ballots are suspended.

(17) "Replacement ballot" means a ballot that is the same type or style as the most recently issued. The request for a replacement ballot does not update the voter's current ballot type or style.

(18) "Secretary" means secretary of state or any other person authorized by the secretary of state to act on ~~(his or her)~~ the secretary's behalf.

(19) "Suspended ballot" means any ballot that is not the current ballot. The suspended ballot may be accepted when the current ballot is not received or accepted.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-324-008 (~~(Review of county)~~) Election management system~~((s)). ((1) Each auditor must notify the secretary of the intent to purchase or install a new county election management system. The county election management system must be approved by the secretary to ensure it meets the technical specifications promulgated by the secretary to interface with the official statewide voter registration database. This approval must be obtained prior to the purchase or installation of the system.~~

~~(2) A county))~~ The secretary of state shall provide an election management system ~~((must have))~~ that has the capability to:

~~((a))~~ (1) Store information required in WAC 434-324-010;

~~((b))~~ (2) Generate a list of registered voters in a county and their registration statuses;

~~((c))~~ (3) Track information specific to single elections, including the issuance and return of ballots;

~~((d))~~ (4) Scan voter registration forms; and

~~((e))~~ (5) Store and provide access to images of signatures of registered voters.

~~((3) A county's))~~ The election management system must conform to all of the requirements of state law and of these regulations~~(, and if it does not, the secretary must notify the~~

~~auditor of the nature of the nonconformity. The auditor must correct the nonconforming aspects of the county election management system and provide to the secretary such evidence of the change or changes in the system as the secretary may deem appropriate).~~

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-324-010 (~~(County)~~) Election management system—Applications for voter registration. (1) Each auditor must enter and maintain voter registration records in the official statewide voter registration database by using ~~((a county))~~ the election management system. Each record must contain at least the following information from the voter registration application in a format compatible with the official statewide voter registration database:

(a) Name;

(b) Complete residential address;

(c) Complete mailing address;

(d) ~~((County registration number;~~ Voter registration number;

~~((f))~~ (e) Gender;

~~((g))~~ (f) Date of birth;

~~((h))~~ (g) Date of original registration;

~~((i))~~ (h) Applicable district and precinct codes;

~~((j))~~ (i) Elections in which the individual ~~(has)~~ was eligible to vote and if the voter voted, if available;

~~((k))~~ (j) Washington state driver license number, Washington state identification card number, valid tribal identification card, and/or the last four digits of the applicant's Social Security number; and

~~((l-A))~~ (k) An electronic scanned image file ~~((format .tiff))~~ of the applicant's signature.

(2) In the case of an applicant who provides a copy of one of the alternative forms of identification listed in RCW 29A.08.107 for registration purposes, the auditor must either maintain a scanned image of the identifying document or make a notation in the registration record indicating which alternative form of identification was provided to the auditor. Pursuant to RCW 29A.08.710, a scanned image of the identification is not available for public inspection or copying.

(3)(a) If a voter registration application is incomplete, the county auditor may use other government resources and public records to confirm the missing information, except if the missing information is the applicant's signature or confirmation of United States citizenship. The county auditor may also attempt to contact the applicant by phone, email or other means to obtain identification information.

(b) If, after these attempts, the county auditor is still unable to obtain the incomplete information, the county auditor must send the applicant a verification notice as defined by RCW 29A.08.030.

(4) ~~((Upon entry of an applicant's information, the auditor must check for duplicate entries.))~~ When the county auditor enters an applicant's information into the secretary of state's voter registration database, the auditor must check for potential duplicate registrations found by the system.

(5) Each auditor must ~~((have a))~~ use quality assurance ~~((program))~~ procedures to maintain accurate data entry into the statewide voter registration database.

AMENDATORY SECTION (Amending WSR 19-12-115, filed 6/5/19, effective 7/6/19)

WAC 434-324-031 Electronic voter registration. (1)

The secretary of state's electronic voter registration web page must have the capability to:

(a) Reject applicants without a Washington state driver's license, state identification card, or valid tribal identification as defined by RCW 29A.08.123 and 29A.40.160;

(b) Require the applicant to affirmatively assent to the use of ~~((his or her))~~ the applicant's driver's license, state identification card, or valid tribal identification card signature for voter registration purposes;

(c) Require the applicant to attest to the truth of the information provided on the application;

(d) Retrieve a digital copy of each applicant's driver's license or state identification card signature from the department of licensing or from an issuer of tribal identification that has agreed to make digitized signature information available for this purpose, and include it with the other information required for each applicant's voter registration; and

(e) Electronically transfer all information required for each applicant's voter registration to ~~((his or her))~~ their county auditor for entry into the statewide voter registration database ~~((through the county election management system))~~.

(2) ~~((Once election registration information is entered into county election management systems,))~~ The same timelines and processes used for registration by mail apply to electronic registration. A county auditor shall accept online and by mail applications no later than eight days before an election, and in-person applications at locations designated by the county auditor until 8:00 p.m. on election day.

AMENDATORY SECTION (Amending WSR 19-12-115, filed 6/5/19, effective 7/6/19)

WAC 434-324-036 County-to-county transfers. (1)

A registered voter may transfer ~~((his or her))~~ their registration to another county by submitting a new voter registration application, or returning a signed confirmation notice that provides the ~~((new address))~~ minimum information required for a county-to-county transfer: Name, residential address, date of birth or voter registration number, and signature on the voter registration declaration.

(2) The county auditor shall expedite the mailing of a confirmation notice to complete the county-to-county transfer.

The minimum information necessary to complete the transfer to the new county is:

~~((1))~~ (a) Name;

~~((2))~~ (b) Residential address;

~~((3))~~ (c) A signature on the oath in RCW 29A.08.230; and

~~((4))~~ (d) Either date of birth or voter ID number.

(3) The new county may request additional information to confirm that the registration application is a transfer.

If the voter provides the required information, the county shall forward the confirmation notice by mail or electronically to the county auditor of the voter's new county of residence.

(4) If the voter provides a mailing address, but no residence address, the county auditor shall update the mailing address and keep the voter on active status. The county auditor may contact the voter to verify they still reside in the county of registration.

(5) If the request is missing information other than a residence address, the county auditor must send the request to the county where the voter currently resides. The receiving county will process the request and contact the voter as is necessary to transfer the registration in the same manner as other incomplete voter registration applications.

When ~~((a voter requests to))~~ the county auditor receives a transfer request after ballots have been mailed, the county auditor shall verify that ~~((a))~~ no ballot has ~~((not))~~ been accepted for that voter. If a ballot has not been accepted, the county auditor shall complete the transfer and issue the voter a current ballot.

AMENDATORY SECTION (Amending WSR 09-18-098, filed 9/1/09, effective 10/2/09)

WAC 434-324-040 ~~((Data transfer to secretary and registration status))~~ Processing voter registrations. (1)

~~((Following entry into the county election management system, all information in the application for voter registration must be transferred electronically to the secretary for identity verification. The secretary must assign the application a state identification number))~~ Upon entry of a new voter registration, the statewide voter registration database must assign a registration identification number to the registration.

(2) If the applicant provided a Washington driver's license number ~~((or))~~, state identification card number or valid tribal identification card, the applicant's identity is verified with the department of licensing. If the applicant provided the last four digits of ~~((his or her))~~ their Social Security number, the applicant's identity is verified with the Social Security Administration through the department of licensing.

(3) If the applicant's identity is not verified or cannot be verified in the ~~((computerized))~~ automated verification process, ~~((the secretary must notify the county election management system accordingly.))~~ the county auditor must ~~((first))~~ confirm the accuracy of the information entered ~~((in the county election management system))~~ from the voter registration application. The county auditor must correct any errors and again attempt to verify the applicant's identity automatically.

(4) If the applicant provided a Washington driver's license number ~~((or))~~, state identification number, or valid tribal identification number and the identity is not verified in the ~~((computerized))~~ automated verification process, the county auditor may check department of licensing records to verify the applicant's identity. If the county auditor has the voter's Washington driver's license number, state identification number, or valid tribal identification card number, information on the application may be considered a "match" if ~~((the number on the application exactly matches a number~~

issued by the department of licensing, and)) it is clear to the county auditor that the information on the application describes the person on the department of licensing record. Reasons that the county auditor may conclude that the information on the application describes the person on the department of licensing record include, but are not limited to, the following:

(a) The first, middle, or last name on the application is a variation of the first, middle, or last name in the department of licensing record;

(b) The first, middle, or last name has transposed letters or another typographical error on the application or in the department of licensing record;

(c) The first and last names are transposed on the application or in the department of licensing record;

(d) The first and middle names are transposed on the application or in the department of licensing record;

(e) The applicant has a compound or hyphenated name which is not accurately or completely set forth on the application or in the department of licensing record;

(f) The first or middle name is abbreviated with initials on the application or in the department of licensing record;

(g) The last name on the application and the last name in the department of licensing record are not the same but, based on other information, the county auditor concludes that one of the names is a maiden name or a former name of the same person; or

(h) The month and day of the applicant's date of birth are transposed on the application or in the department of licensing record.

If the county auditor concludes that the information on the application describes the person on the department of licensing record, the county auditor must override the (~~computerized~~) failure to verify through the automated verification process and must note the reason it is considered a match. The county auditor must place the applicant on the official list of registered voters in active status.

~~((5))~~ (i) If the applicant's identity is not verified in the (~~computerized~~) automated verification process (~~either because the information did not match or because the applicant claimed he or she did not have a driver's license or Social Security number~~) and the voter's identification could not be confirmed through the department of licensing, the applicant must be provisionally registered pursuant to RCW 29A.08.107. The registration record must be flagged as still requiring verification of the applicant's identity before the applicant's ballot may be counted.

AMENDATORY SECTION (Amending WSR 14-06-040, filed 2/26/14, effective 3/29/14)

WAC 434-324-045 Verification of applicant's identity. (1) If the applicant is provisionally registered pursuant to WAC 434-324-040(5), the county auditor may use other government resources and public records to confirm the applicant's driver's license or state identification card number, valid tribal identification card, or the last four digits of the applicant's Social Security number. The county auditor may also attempt to contact the applicant by phone, email or other means to obtain identification information.

(2) If, after these attempts, the county auditor is still unable to verify the applicant's identity, the county auditor must send the applicant an identification notice at the time of registration that includes a postage prepaid, preaddressed form by which the applicant may verify or send additional information. The identification notice must include:

(a) A statement explaining that because the applicant's identity cannot be verified with the information provided on the application, (~~he or she is~~) they have been provisionally registered to vote.

(b) A statement explaining that if this additional information is not provided, the applicant's ballot will not be counted.

(c) A statement explaining that federal law requires the applicant to provide (~~his or her~~) their driver's license number, state identification card number, valid tribal identification card number or the last four digits of (~~his or her~~) their Social Security number, or a copy of one of the following forms of identification, either before or when (~~he or she votes~~) they vote:

(i) Valid photo identification;

(ii) A valid enrollment card of a federally recognized tribe in Washington;

(iii) A current utility bill, or a current bank statement;

(iv) A current government check;

(v) A current paycheck; or

(vi) A government document, other than a voter registration card, (~~that~~) which shows both the registrant's name and current address.

(3) If the applicant responds with updated driver's license, state (~~ID~~) identification card, valid tribal identification card, or Social Security information, or with a copy of one of the alternative forms of identification, the flag on the voter registration record must be removed, allowing the applicant's ballot to otherwise be counted the first time (~~he or she votes~~) they vote after registering.

(4) If the applicant fails to respond with adequate documentation to verify (~~his or her~~) the applicant's identity, the applicant's voter registration record must remain flagged. The applicant must be notified at the time of each election that the ballot will not be counted unless (~~he or she provides~~) adequate verification of identity is provided.

(5) A provisional registration must remain on the official list of registered voters for at least two general elections for federal office. If, after two general elections for federal office, the voter still has not verified (~~his or her~~) or provided information to verify identity, the provisional registration shall be canceled.

(6) The county auditor shall not mail an identification notice to a participant in the future voter program established under RCW 29A.08.170 until the participant becomes a registered voter.

AMENDATORY SECTION (Amending WSR 07-02-100, filed 1/3/07, effective 2/3/07)

WAC 434-324-055 Duplicate voter registration search conducted by secretary. Upon receipt of an applicant's electronic voter registration record from the auditor, and on a (~~monthly~~) daily basis, the secretary must search for

potential duplicate registration records in the official state-wide voter registration database by comparing the applicant's name and date of birth or other identifying information provided by the applicant on the voter registration form. Duplicates will be determined by comparing the signatures on all available records. If a voter is transferring ~~((his or her))~~ their registration to a new county or if any other information on the application has been updated, the auditor of the new county must update the registration record in the state database. ~~((A duplicate registration record must not be maintained as a new registration record.))~~

AMENDATORY SECTION (Amending WSR 19-12-115, filed 6/5/19, effective 7/6/19)

WAC 434-324-076 Voter registration updates. (1) Pursuant to RCW 29A.08.140, a person already registered to vote in Washington may update their registration by submitting an address change using a registration application or making notification via any non-in-person method that is physically received by an election official no later than eight days before election day, or by appearing in person no later than 8:00 p.m. on election day.

(2) The county auditor may request additional identifying information before processing a voter registration update submitted on behalf of a family or household member.

(3) If a voter submits a registration transfer to a new county by the statutory deadline, but the voter's previous county issued the voter a ballot before the transfer is processed and the voter's ballot issued by the previous county was received but not yet accepted, the previous county must mail the suspended ballot to the voter's new county. If any races or issues on the suspended ballot from the previous county are applicable to the voter's residential address in the new county, the votes on those races and issues should be counted by the new county only when the voter does not vote and return a current ballot, or when the current ballot ~~((is not accepted))~~ cannot be processed due to incorrect or incomplete information on the ballot envelope.

(4) If a participant in the future voter program established under RCW 29A.08.170 submits an address change, the county auditor must change the address listed on the application.

AMENDATORY SECTION (Amending WSR 09-18-098, filed 9/1/09, effective 10/2/09)

WAC 434-324-085 Acknowledgment notice. (1) The auditor must send an acknowledgment notice to an individual by nonforwardable, address correction requested mail if an individual:

- (a) Registers to vote;
- (b) Transfers ~~((his or her))~~ their registration record within the county;
- (c) Transfers ~~((his or her))~~ their registration record from another county within Washington state; or
- (d) Changes from one precinct to another because of a change in precinct boundaries.

(2) The acknowledgment notice must include:

- (a) Voter's full name;
- (b) Mailing address;

- (c) County name;
- (d) Precinct name and/or number; and
- (e) The date the voter registered.

(3) The county auditor shall not mail an acknowledgment notice to a participant in the future voter program established under RCW 29A.08.170 until the participant becomes a registered voter.

AMENDATORY SECTION (Amending WSR 12-14-074, filed 7/2/12, effective 8/2/12)

WAC 434-324-087 Confirmation notice. (1) When a voter is placed on inactive status, the county auditor must send a confirmation notice ~~((sent))~~ to ~~((an inactive))~~ the voter ~~((must be sent))~~ by first-class forwardable mail, and must include a response form that:

- (a) Is preaddressed and postage prepaid;
- (b) Includes either the voter's date of birth ~~((county voter ID number, or state voter ID))~~ or voter registration number;
- (c) Asks the voter to verify ~~((his or her))~~ their current address; and
- (d) Asks the voter to sign the oath in RCW 29A.08.230. ~~((County auditors may use an existing stock of confirmation notices until December 31, 2012.))~~

(2) When the voter sends the county auditor a response to the confirmation notice, the auditor must:

(a) Transfer the voter's registration and send the voter an acknowledgment notice if the response indicates that the voter has moved within the county ~~((the auditor must transfer the voter's registration and send the voter an acknowledgment notice)).~~

~~((3)(a)-(f))~~ (b) Forward the confirmation notice to the voter's new county by mail or electronically if the response indicates that the voter has moved to another county within Washington and the confirmation notice contains the minimum information required by WAC 434-324-036 ~~((the county auditor shall not cancel the voter but must immediately forward the confirmation notice to the county auditor in the voter's new county)).~~

The county auditor in the voter's new county must register the voter using the information and signature on the confirmation notice. The new county must transfer the registration from the old county to the new county and send the voter an acknowledgment notice.

~~((b))~~ (c) Send the voter a voter registration application if the response indicates that the voter has moved to another county within Washington but the confirmation notice does not contain the minimum information required by WAC 434-324-036 ~~((the county auditor shall not cancel the voter but must send the voter a registration application)).~~ The voter shall remain on inactive status according to RCW 29A.08.-635.

~~((4)(a))~~ (d) Cancel the voter's registration if the response indicates that the voter has moved out-of-state and the response is signed ~~((the county auditor must cancel the voter)).~~

~~((b)-(f))~~ (e) Keep the voter on inactive status according to RCW 29A.08.635 if the response indicates that the voter

has moved out-of-state but is not signed ~~((the county auditor shall not cancel the voter))~~.

(3) The county auditor shall not mail a confirmation notice to a participant in the future voter program established under RCW 29A.08.170 until the participant becomes a registered voter.

AMENDATORY SECTION (Amending WSR 09-18-098, filed 9/1/09, effective 10/2/09)

WAC 434-324-090 Cancellation due to death—Process. (1) An auditor must cancel the voter registration records of a deceased voter as authorized by RCW 29A.08.510.

(2) In addition to comparing a list of deceased persons prepared by the registrar of vital statistics with voter registration records pursuant to RCW 29A.08.510, the secretary may also compare voter registration records with deceased persons' information from the Social Security Administration. Comparisons must be conducted on a monthly basis. For any potential matches identified through the registrar of vital statistics or Social Security Administration, the secretary must confirm that the dates of birth are identical. The secretary must generate a county list of matching names, identified as potentially deceased voters, and provide the names to each auditor electronically. The auditor must review the list ~~((within five days))~~ and approve or reject the proposed cancellations. The secretary may assist the auditor with this review.

(3) The county auditor must remove a participant from the future voter program established under RCW 29A.08.170 upon receipt of documentation from Vital Statistics, Social Security Administration or written confirmation from another registered voter that the participant is deceased.

AMENDATORY SECTION (Amending WSR 16-13-063, filed 6/13/16, effective 7/14/16)

WAC 434-324-103 Verification notices. A verification notice must be sent when a voter registration application does not contain all the minimum information required in RCW 29A.08.010. The notice must be sent by first-class forwardable mail and must include a response form that:

(1) Is preaddressed and postage paid or is accompanied by a preaddressed and postage paid return envelope.

(2) Requests that the applicant provide the missing information only.

(3) Requests that the applicant provide the missing information within forty-five days from the date the verification notice was mailed.

If the applicant does not respond by the forty-five day deadline, the voter registration application is considered void.

The county auditor shall not mail a verification notice to a participant in the future voter program established under RCW 29A.08.170 until the participant becomes a registered voter.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-324-106 Felony screening process—Potential match check. (1) The law on when the right to vote is

restored following a felony conviction is established in RCW 29A.08.520. ~~((Three times a year))~~ Upon receiving new data from the department of corrections or at least on a monthly basis, the secretary must compare the voter registration records to lists of ~~((felons))~~ persons who are either incarcerated or on community supervision with the Washington state department of corrections, and to lists of ~~((felons))~~ persons convicted in federal district courts with a sentence of at least fifteen months incarceration. The secretary must create a list of ~~((felon))~~ voters potentially under authority of DOC by matching the first name, last name, date of birth, and other identifying information.

(2) For each ~~((felon))~~ voter, the secretary must change the voter's registration status to "pending ~~((cancellation.~~ This change of status must be entered prior to the first extraction or pull of mail ballots. The official statewide voter registration database must automatically notify the county election management system of the change)) status" with a status reason that indicates the record is a potential felon. Voters with pending ~~((cancellation))~~ status must not be issued a ballot.

~~((3))~~ The secretary must mail a notification letter to each felon whose status is pending cancellation. The notification letter must be sent to the felon's last known registration mailing address and, if the person is incarcerated or on community supervision with the department of corrections, to the offender's department of corrections address indicating that his or her voter registration is about to be canceled. The letter must contain language notifying the felon that he or she must contact the auditor's office to contest the pending cancellation. The letter must also inform the felon that he or she may request a provisional ballot for any pending elections. The notification letter must include:

(a) An explanation that a felon loses the right to vote until the right is restored;

(b) For a conviction in a Washington state court, the right to vote is restored as long as the felon is not serving a sentence of confinement or subject to community custody with the department of corrections. For a conviction in another state or federal court, the right to vote is restored as long as the felon is no longer incarcerated;

(c) The reason the felon has been identified as ineligible to vote;

(d) An explanation that the felon's voter registration will be canceled due to the felony conviction; and

(e) How to contest the pending cancellation. The secretary must send to each auditor the voter registration and conviction information for each matched felon registered in that county.

(4) ~~If the felon fails to contact the auditor within thirty days, the felon's voter registration must be canceled. If an election in which the felon would otherwise be eligible to vote is scheduled to occur during the thirty days, the felon must be allowed to vote a provisional ballot.~~

(5) ~~The felon's eligibility status may be resolved and the pending cancellation status reversed without scheduling a hearing if the felon provides satisfactory documentation that the felon's voting rights have been restored, the conviction is not a felony, the person convicted is not the registered voter, or the felon is otherwise eligible to vote. The auditor must~~

notify the voter, retain a scanned copy of all documentation provided, and notify the secretary. The secretary must flag the voter registration record to prevent future cancellation on the same basis.

(6) If the felon requests a hearing, the auditor must schedule a public hearing to provide the felon an opportunity to dispute the finding. In scheduling the hearing, the auditor may take into account whether an election in which the felon would otherwise be eligible to vote is scheduled. The notice must be mailed to the felon's last known registration mailing address and must be postmarked at least seven calendar days prior to the hearing date. Notice of the hearing must also be provided to the prosecuting attorney.

(7) The auditor must provide the prosecuting attorney a copy of all relevant registration and felony conviction information. The prosecuting attorney must obtain documentation, such as a copy of the judgment and sentence or custody or supervision information from the Washington department of corrections, the out-of-state court or prison, or the federal court or Bureau of Prisons, sufficient to prove by clear and convincing evidence that the felon is ineligible to vote. It is not necessary that the copy of the document be certified.

(8) If the prosecuting attorney is unable to obtain sufficient documentation to ascertain the felon's voting eligibility in time to hold a hearing prior to certification of an election in which the felon would otherwise be eligible to vote, the prosecuting attorney must request that the auditor dismiss the current cancellation proceedings. The auditor must reverse the voter's pending cancellation status, cancel the hearing, and notify the voter. A provisional ballot voted in the pending election must be counted if otherwise valid. The prosecuting attorney must continue to research the felon's voting eligibility. If the prosecuting attorney is unable to obtain sufficient documentation to ascertain the felon's voting eligibility prior to the next election in which the felon would otherwise be eligible to vote, the prosecuting attorney must notify the auditor. The auditor must notify the secretary, who must flag the voter registration record to prevent future cancellation on the same basis.

(9) A hearing to determine voting eligibility is an open public hearing pursuant to chapter 42.30 RCW. If the hearing occurs within thirty days before, or during the certification period of, an election in which the felon would otherwise be eligible to vote, the hearing must be conducted by the county canvassing board. If the hearing occurs at any other time, the county auditor conducts the hearing. Before a final determination is made that the felon is ineligible to vote, the prosecuting attorney must show by clear and convincing evidence that the voter is ineligible to vote due to a felony conviction. The felon must be provided a reasonable opportunity to respond. The hearing may be continued to a later date if continuance is likely to result in additional information regarding the felon's voting eligibility. If the felon is determined to be ineligible to vote due to felony conviction and lack of rights restoration, the voter registration must be canceled. If the voter is determined to be eligible to vote, the voter's pending cancellation status must be reversed and the secretary must flag the voter registration record to prevent future cancellation on the same basis. The felon must be notified of the out-

come of the hearing and the final determination is subject to judicial review pursuant to chapter 34.05 RCW.

(10) If the felon's voter registration is canceled after the felon fails to contact the auditor within the thirty day period, the felon may contact the auditor at a later date to request a hearing to dispute the cancellation. The auditor must schedule a hearing in substantially the same manner as provided in subsections (6) through (9) of this section.)

NEW SECTION

WAC 434-324-1065 Felony screening process—Mailing to potential matches. The secretary must mail a notification letter to each person under authority of DOC whose status is pending cancellation. The notification letter must be sent to the person's last known registration mailing address and, if the person is incarcerated or on community supervision with the department of corrections, to the person's department of corrections address indicating that their voter registration is about to be canceled. The letter must contain language notifying the person that they must contact the auditor's office to contest the pending cancellation. The letter must also inform the person that they may request a provisional ballot for any pending elections. The notification letter must include:

- (1) An explanation that a person under authority of DOC loses the right to vote until the right is restored;
- (2) For a conviction in a Washington state court, the right to vote is restored as long as the person is not serving a sentence of confinement or subject to community custody with the department of corrections. For a conviction in another state or federal court, the right to vote is restored as long as the person is no longer incarcerated;
- (3) The reason the person has been identified as ineligible to vote;
- (4) An explanation that the person's voter registration will be canceled due to the felony conviction if they do not respond within thirty days from the date of the letter; and
- (5) How to contest the pending cancellation. The secretary must send to each auditor the voter registration and conviction information for each matched person under authority of DOC registered in that county.

NEW SECTION

WAC 434-324-107 Felony screening process—Contesting cancellation or canceling. (1) If a person under authority of DOC fails to contact the auditor within thirty days of the date of the letter, that person's voter registration must be canceled. If an election in which the person would otherwise be eligible to vote is scheduled to occur during the thirty days, the person must be allowed to vote a provisional ballot.

(2) The person's eligibility status may be resolved and the pending status reversed without scheduling a hearing if the person provides satisfactory documentation that the person's voting rights have been restored, the conviction is not a felony, the person convicted is not the registered voter, or the person is otherwise eligible to vote. The auditor must notify the voter, retain a scanned copy of all documentation provided, and notify the secretary. The secretary must flag the

voter registration record to prevent future cancellation on the same basis.

(3) If the person under the authority of DOC requests a hearing, the auditor must schedule a public hearing to provide the person an opportunity to dispute the finding. In scheduling the hearing, the auditor may take into account whether an election in which the person would otherwise be eligible to vote is scheduled. The notice must be mailed to the person's last known registration mailing address and must be post-marked at least seven calendar days prior to the hearing date. Notice of the hearing must also be provided to the prosecuting attorney.

(4) The auditor must provide the prosecuting attorney a copy of all relevant registration and felony conviction information. The prosecuting attorney must obtain documentation, such as a copy of the judgment and sentence or custody or supervision information from the Washington department of corrections, the out-of-state court or prison, or the federal court or Bureau of Prisons, sufficient to prove by clear and convincing evidence that the person is ineligible to vote. It is not necessary that the copy of the document be certified.

(5) If the prosecuting attorney is unable to obtain sufficient documentation to ascertain the person's voting eligibility in time to hold a hearing prior to certification of an election in which the person would otherwise be eligible to vote, the prosecuting attorney must request that the auditor dismiss the current cancellation proceedings. The auditor must reverse the voter's pending status, cancel the hearing, and notify the voter. A provisional ballot voted in the pending election must be counted if otherwise valid. The prosecuting attorney must continue to research the person's voting eligibility. If the prosecuting attorney is unable to obtain sufficient documentation to ascertain the person's voting eligibility prior to the next election in which the person would otherwise be eligible to vote, the prosecuting attorney must notify the auditor. The auditor must notify the secretary, who must flag the voter registration record to prevent future cancellation on the same basis.

(6) A hearing to determine voting eligibility is an open public hearing pursuant to chapter 42.30 RCW. If the hearing occurs within thirty days before, or during the certification period of, an election in which the person would otherwise be eligible to vote, the hearing must be conducted by the county canvassing board. If the hearing occurs at any other time, the county auditor conducts the hearing. Before a final determination is made that the person is ineligible to vote, the prosecuting attorney must show by clear and convincing evidence that the voter is ineligible to vote due to a felony conviction. The person must be provided a reasonable opportunity to respond. The hearing may be continued to a later date if continuance is likely to result in additional information regarding the person's voting eligibility. If the person is determined to be ineligible to vote due to felony conviction and lack of rights restoration, the voter registration must be canceled. If the voter is determined to be eligible to vote, the voter's pending status must be reversed and the secretary must flag the voter registration record to prevent future cancellation on the same basis. The person must be notified of the outcome of the hearing and the final determination is subject to judicial review pursuant to chapter 34.05 RCW.

(7) If the person's voter registration is canceled after the person fails to contact the auditor within the thirty day period, the person may contact the auditor at a later date to request a hearing to dispute the cancellation. The auditor must schedule a hearing in substantially the same manner as provided in subsections (3) through (6) of this section.

AMENDATORY SECTION (Amending WSR 12-14-074, filed 7/2/12, effective 8/2/12)

WAC 434-324-108 Incapacitated persons lacking voting rights—Notice from court. Upon receipt of a court order declaring an incapacitated person does not retain voting rights as outlined in RCW 11.88.010, the auditor must search ~~((his or her county))~~ the state election management system to determine whether the person is a registered voter. If the auditor determines the incapacitated person's name and other identifying information match, ~~((he or she))~~ they must cancel the incapacitated person's voter registration and send ~~((notification to the secretary through the county election management system. After canceling an incapacitated person's registration, the auditor must send))~~ a cancellation notice to the incapacitated person using the last known address.

AMENDATORY SECTION (Amending WSR 14-06-040, filed 2/26/14, effective 3/29/14)

WAC 434-324-111 Voluntary cancellation of voter registration. A voter may cancel ~~((his or her))~~ their own voter registration by submitting a signed written notification to the auditor for the county in which ~~((he or she))~~ the voter is registered to vote. Prior to cancellation of such a registration record, the auditor must ensure the signature on the notification matches the signature in the voter registration file by utilizing criteria outlined in WAC 434-379-020. A county auditor may not process a voluntary cancellation between the deadline in RCW 29A.08.140 for updating a registration and certification of the primary or election.

A participant in the future voter program established under RCW 29A.08.170 may be removed from the program by submitting a signed written notification to the auditor for the county in which they live. The auditor shall process the notification in the same manner as other voluntary cancellations.

AMENDATORY SECTION (Amending WSR 09-18-098, filed 9/1/09, effective 10/2/09)

WAC 434-324-113 Lacking the qualifications necessary to vote. (1) If, at any time, the secretary finds that a registered voter does not possess the qualifications required by state law to exercise ~~((his or her))~~ their right to vote for reasons not listed in this chapter, the secretary must refer such information to the appropriate county auditor and county prosecutor.

(2) If, at any time, the auditor finds that a registered voter does not possess the qualifications required by state law to exercise ~~((his or her))~~ their right to vote for reasons not listed in this chapter, the auditor must notify the county prosecutor.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-324-125 Voter registration database manual. The secretary of state and each county auditor must conduct voter registration list maintenance, process online voter registrations, motor voter registrations and agency-based registrations, and update registrations according to procedures and instructions in the statewide voter registration database (~~(online help)~~) manual.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-324-118 Data auditing of county voter election management system with the official statewide voter registration database.

AMENDATORY SECTION (Amending WSR 19-12-115, filed 6/5/19, effective 7/6/19)

WAC 434-324-026 Voter registration form.

((

Fold and seal, or use an envelope

Instructions

Use this form to register to vote or update your current registration.

Print all information clearly using black or blue pen. Mail this completed form to your county elections office (address on back).

Deadline

This registration will be in effect for the next election if received by the elections office no later than eight days before Election Day.

Voting

You will receive your ballot in the mail. Contact your county elections office for accessible voting options.

Public Information

Your name, address, gender, and date of birth will be public information if you are at least eighteen years of age.

Notice

Knowingly providing false information about yourself or your qualifications for voter registration is a class C felony punishable by imprisonment for up to five years, a fine of up to \$10,000, or both.

Public Benefits Offices

If you received this form from a public benefits office, where you received the form will remain confidential and will be used for voter registration purposes only.

Registering or declining to register will not affect the assistance provided to you by any public benefits office. If you decline to register, your decision will remain confidential.

If you believe someone interfered with your right to register, or your right to privacy in deciding whether to register, you may file a complaint with the Washington State Elections Division.

Contact Information

If you would like help with this form, contact the Washington State Elections Division.

- web www.votewa.gov
call (800) 448-4881
email elections@sos.wa.gov
mail PO Box 40229 Olympia, WA 98504-0229

For official use:

fold in half ->

3/2019

Washington State Voter Registration Form

Register online at www.votewa.gov.

1 Personal Information

last first middle suffix

date of birth (mm/dd/yyyy) gender

residential address in Washington apt #

city ZIP

mailing address, if different

city state and ZIP

phone number (optional) email address (optional)

2 Qualifications

If you answer no, do not complete this form.

- I am a citizen of the United States of America.
I am at least eighteen years old, or at least sixteen years old and will vote only after I turn eighteen.

3 Military / Overseas Status

- I am currently serving in the military.
I live outside the United States.

4 Identification - Washington Driver License, Permit, or ID

Grid for driver license/ID and Social Security number (xx-x-xx-xxxx).

5 Change of Name or Address

This information will be used to update your current registration, if applicable.

former last name first middle

former residential address city state and ZIP

6 Declaration

I declare that the facts on this voter registration form are true. I am a citizen of the United States, I will have lived at this address in Washington for at least thirty days immediately before the next election at which I vote, I will be at least eighteen years old when I vote, I am not disqualified from voting due to a court order, and I am not under Department of Corrections supervision for a Washington felony conviction.

sign here

date here

))

Fold and seal, or use an envelope

Instructions

Use this form to register to vote or update your current registration.

Print all information clearly using black or blue pen. Mail this completed form to your county elections office (address on back).

Deadline

This registration will be in effect for the next election if received by the elections office no later than eight days before Election Day.

Voting

You will receive your ballot in the mail. Contact your county elections office for accessible voting options.

Future Voters

If you are at least 16 years old, use this form to sign up. You'll be automatically registered when you turn 18.

Public Information

Your name, address, gender, and date of birth will be public information if you are at least eighteen years of age.

Notice

Knowingly providing false information about yourself or your qualifications for voter registration is a class C felony punishable by imprisonment for up to five years, a fine of up to \$10,000, or both.

Public Benefits Offices

If you received this form from a public benefits office, where you received the form will remain confidential and will be used for voter registration purposes only.

Registering or declining to register will not affect the assistance provided to you by any public benefits office. If you decline to register, your decision will remain confidential.

If you believe someone interfered with your right to register, or your right to privacy in deciding whether to register, you may file a complaint with the Washington State Elections Division.

Contact Information

If you would like help with this form, contact the Washington State Elections Division.

- web www.votewa.gov
call (800) 448-4881
email elections@sos.wa.gov
mail PO Box 40229 Olympia, WA 98504-0229

For official use:

fold in half

4/2020

Washington State Voter Registration Form

Register online at www.votewa.gov.

1 Personal Information

last first middle suffix
date of birth (mm/dd/yyyy) gender
residential address in Washington apt #
city ZIP
mailing address, if different
city state and ZIP
phone number (optional) email address (optional)

2 Qualifications

If you answer no, do not complete this form.
I am a citizen of the United States of America.
I am at least eighteen years old, or at least sixteen years old and will vote only after I turn eighteen.

3 Military / Overseas Status

I am currently serving in the military. Includes National Guard and Reserves, and spouses or dependents away from home due to service.
I live outside the United States.

4 Identification - Washington Driver License, Permit, or ID

Grid for driver license/ID number and Social Security number (xx-xx-xxxx).

5 Change of Name or Address

This information will be used to update your current registration, if applicable.
former last name first middle
former residential address city state and ZIP

6 Declaration

I declare that the facts on this voter registration form are true. I am a citizen of the United States, I will have lived at this address in Washington for at least thirty days immediately before the next election at which I vote, I am at least sixteen years old, I am not disqualified from voting due to a court order, and I am not under department of corrections supervision for a Washington felony conviction.

sign here [] date here []

return address: PO Box 40229, Olympia, WA 98504-0229



first class postage required



Please write your county elections office address below:

[Empty box for county elections office address]

↑ fold in half

Adams County
210 W Broadway, Ste 200
Ritzville, WA 99169
(509) 659-3249

Asotin County
PO Box 129
Asotin, WA 99402
(509) 243-2084

Benton County
PO Box 1440
Prosser, WA 99350
(509) 736-3085

Chelan County
350 Orondo Ave Ste. 306
Wenatchee, WA 98801-2885
(509) 667-6808

Clallam County
223 E 4th St, Ste 1
Port Angeles, WA 98362
(360) 417-2221

Clark County
PO Box 8815
Vancouver, WA 98666-8815
(564) 397-2345

Columbia County
341 E Main St, Ste 3
Dayton, WA 99328
(509) 382-4541

Cowlitz County
207 4th Ave N, Rm 107
Kelso, WA 98626-4124
(360) 577-3005

Douglas County
PO Box 456
Waterville, WA 98858
(509) 888-6402

Ferry County
350 E Delaware Ave, Ste 2
Republic, WA 99166
(509) 775-5200

Franklin County
PO Box 1451
Pasco, WA 99301
(509) 545-3538

Garfield County
PO Box 278
Pomeroy, WA 99347-0278
(509) 843-1411

Grant County
PO Box 37
Ephrata, WA 98823
(509) 754-2011 ext. 2704

Grays Harbor County
100 W Broadway, Ste 2
Montesano, WA 98563
(360) 964-1556

Island County
PO Box 1410
Coupeville, WA 98239
(360) 679-7366

Jefferson County
PO Box 563
Port Townsend, WA 98368-0563
(360) 385-9119

King County
919 SW Grady Way
Renton, WA 98057
(206) 296-8683

Kitsap County
614 Division St, MS 31
Port Orchard, WA 98366
(360) 337-7128

Kittitas County
205 W 5th Ave, Ste 105
Ellensburg, WA 98926-2891
(509) 962-7503

Klickitat County
205 S Columbus, Rm 203
Goldendale, WA 98620
(509) 773-4001

Lewis County
PO Box 29
Chehalis, WA 98532-0029
(360) 740-1164

Lincoln County
PO Box 28
Davenport, WA 99122-0028
(509) 725-4971

Mason County
PO Box 400
Shelton, WA 98584
(360) 427-9670 ext 469

Okanogan County
PO Box 1010
Okanogan, WA 98840-1010
(509) 422-7240

Pacific County
PO Box 97
South Bend, WA 98586-0097
(360) 875-9317

Pend Oreille County
PO Box 5015
Newport, WA 99156
(509) 447-6472

Pierce County
2501 S 35th St, Ste C
Tacoma, WA 98409
(253) 798-VOTE

San Juan County
PO Box 638
Friday Harbor, WA 98250-0638
(360) 378-3357

Skagit County
PO Box 1306
Mount Vernon, WA 98273-1306
(360) 416-1702

Skamania County
PO Box 790, Elections Dept
Stevenson, WA 98648-0790
(509) 427-3730

Snohomish County
3000 Rockefeller Ave, MS 505
Everett, WA 98201-4060
(425) 388-3444

Spokane County
1033 W Gardner Ave
Spokane, WA 99260
(509) 477-2320

Stevens County
215 S Oak St, Rm 106
Colville, WA 99114-2836
(509) 684-7514

Thurston County
2000 Lakeridge Dr SW
Olympia, WA 98502-6090
(360) 786-5408

Wahkiakum County
PO Box 543
Cathlamet, WA 98612
(360) 795-3219

Walla Walla County
PO Box 2176
Walla Walla, WA 99362-0356
(509) 524-2530

Whatcom County
PO Box 369
Bellingham, WA 98227-0369
(360) 778-5102

Whitman County
PO Box 191
Colfax, WA 99111
(509) 397-5284

Yakima County
PO Box 12570
Yakima, WA 98909-2570
(509) 574-1340

WA State Elections Division
PO Box 40229
Olympia, WA 98504-0229
(800) 448-4881

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WSR 20-13-048
PERMANENT RULES
DEPARTMENT OF LICENSING

[Filed June 11, 2020, 3:16 p.m., effective July 12, 2020]

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

Purpose: The Washington state department of licensing is adopting new rules regarding professional licensure for military service members and military spouses. These rules will codify practices around:

- Expedited processing of military service members and military spouse professional license applications;
- Issuance of temporary professional licenses for military spouses awaiting permanent licensure; and
- Changing an active professional license to either military status or inactive status for military service members and military spouses.

Citation of Rules Affected by this Order: New chapter 308-09 WAC, Military service members or spouses—Professional license.

Statutory Authority for Adoption: RCW 18.340.020, 43.24.023, 43.24.130.

Adopted under notice filed as WSR 19-24-042 on November 26, 2019.

A final cost-benefit analysis is available by contacting Lorin Doyle, 405 Black Lake Boulevard S.W., Olympia, WA 98502, phone 360-664-1445, fax 360-664-2551, email LDOYLE@DOL.WA.GOV, website WWW.DOL.WA.GOV.

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

Number of Sections Adopted at the Request of a Non-governmental 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 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: June 11, 2020.

Damon Monroe
Rules Coordinator

Chapter 308-09 WAC

**MILITARY SERVICE MEMBERS OR SPOUSES—
PROFESSIONAL LICENSE**

NEW SECTION

WAC 308-09-005 Purpose. (1) This chapter implements requirements for regulated professional or occupational licenses regarding licensing of military service members and military spouses and registered domestic partners.

(2) In addition to the requirements contained in this rule, there may be requirements unique to a particular profession or occupation. The authorizing statutes and rules for each professional or occupational license may provide additional requirements and information.

(3) These rules apply to professions or occupations listed in the Uniform Regulation of Business and Professions Act, chapter 18.235 RCW, RCW 18.235.020 (2)(a), and to professions or occupations listed in RCW 18.235.020 (2)(b) if adopted by the appropriate board or commission under separate rule, and to the businesses regulated under chapter 46.70 RCW.

NEW SECTION

WAC 308-09-010 Definitions. (1) "Director" means the director of the department of licensing or designee.

(2) "Employment" means self-employment and employment by any other entity.

(3) "Good standing" means the condition of a valid license authorizing a person to engage in a regulated profession or occupation. A license in good standing is not subject to any disciplinary sanctions, terms, conditions, or restrictions by the licensing authority of this state, or the jurisdiction where the licensee is licensed to practice.

(4) "License" means permission to engage in a profession or occupation as defined by chapter 18.235 or 46.70 RCW.

(5) "Licensee" means a person who possesses a license to engage in a regulated profession or occupation.

(6) "Licensing authority" means:

(a) The director of the department of licensing or designee with respect to those occupations or professions identified in chapter 46.70 RCW and RCW 18.235.020 (2)(a); or

(b) A board having licensing authority over those occupations or professions identified in RCW 18.235.020 (2)(b) if the appropriate licensing authority has adopted these rules.

(7) "Military service member" means a person serving in the military.

(8) "Military service" or "serving in the military" means being enlisted or commissioned in the United States Armed Forces (active or reserve components), the United States health service commissioned corps, the United States National Guard, or the Merchant Marines of the United States or a veteran of these branches.

(9) "Military spouse" means any person currently or previously married to or in a registered domestic partnership with a military service member during the military service member's period of active, reserve, or National Guard service.

(10) "Regulated profession or occupation" means a profession or occupation identified in chapter 46.70 RCW or RCW 18.235.020 (2)(a) or (b) if the appropriate board or commission has adopted these rules.

(11) "Standard license" means a license of standard duration and renewal requirements, as established by that program's governing statute.

(12) "Status" means the condition of a license, wherein:

(a) An "active license" status means the licensee is authorized to engage in a regulated profession or occupation;

(b) An "inactive license" status means the licensee has qualified for the license but is not currently authorized to engage in a regulated profession or occupation for nondisciplinary reasons, for example because the licensee has left Washington state as a result of their spouse or partner being deployed or stationed to a location outside of Washington state;

(c) A licensee may place their license in "military status" if they are serving in the military. A license in military status is an active license.

(13) "Substantially equivalent" means the requirements to qualify for the same or similar license in another state are materially similar to Washington requirements in terms of quality, quantity of training, or experience.

(14) "Temporary license" is a license that authorizes the licensee to engage in a regulated profession or occupation for a defined period of time during which the licensee completes additional requirements for Washington licensure that are not related to training or practice standards of the profession as noted in RCW 18.340.020 (2)(c).

(15) "Training or practice standards" means education, experience, Washington specific examination, or a combination thereof, directly relating to the state's interest in regulating a specific profession or occupation to protect the public health, safety, or welfare.

NEW SECTION

WAC 308-09-015 Military spouse requesting expedited processing. (1) A military spouse may request expedited processing when the military spouse:

(a) Holds an active license in good standing issued by another jurisdiction;

(b) Is moving to Washington as a result of their spouse's permanent change of duty station based on military orders; and

(c) Is leaving employment in another state to accompany their spouse to Washington.

(2) To request expedited processing, the military spouse applicant must:

(a) Submit the appropriate license application indicating the applicant is a military spouse, with the appropriate fee(s);

(b) Submit documentation that shows the applicant had an applicable license in good standing issued by another jurisdiction and that shows the applicant is not subject to any disciplinary action by the licensing authority of that jurisdiction;

(c) Upon request, submit any of the following:

(i) A copy of the military service member's service orders;

(ii) A letter from the military service member's commanding officer explaining the military service member's transfer of duty stations;

(iii) A copy of the DD Form 1172-2 DEERS Enrollment;

(iv) Other supporting U.S. Department of Defense or Department of Veterans Affairs documentation.

(d) Upon request, submit a copy of the marriage certificate or evidence of the registered domestic partnership with the military service member.

NEW SECTION

WAC 308-09-020 Military spouse licensing—Equivalency to Washington standards and temporary licensing.

(1) The licensing authority must process a request for temporary license as soon as practical after receipt of a completed application. The licensing authority must compare the profession or occupation requirements of the jurisdiction where the applicant held a license to the requirements associated with the most similar license issued by the licensing authority in Washington. The licensing authority will determine whether the requirements of the jurisdiction where the applicant holds a license meet or are substantially equivalent to the requirements for the requested profession or occupation in Washington.

(2) If the licensing authority determines the Washington requirements are substantially equivalent and have been met, and that the applicant is otherwise eligible for the requested license, the licensing authority may issue a standard license.

(3) If the licensing authority determines the training and practice standards of the state where the applicant holds a license are substantially equivalent and the applicant is otherwise eligible for the requested license, the licensing authority may issue a temporary license to allow the applicant time to complete additional requirements not related to training or practice standards that are necessary to qualify for a standard license in Washington.

(4) A temporary license issued under these rules becomes null and void when any of the following occur:

(a) A standard license is issued;

(b) A denial of the standard license application becomes final;

(c) The temporary license expires.

(5) Prior to the expiration date of the temporary license the temporary license holder may ask the licensing authority in writing to extend the expiration date. The licensing authority will consider extension of the expiration date based on the temporary license holder's need and documented progress toward meeting standard license requirements.

NEW SECTION

WAC 308-09-025 Converting a military spouse's active license to an inactive license. (1) The licensing authority will convert a military spouse's active license in good standing to an inactive license when the licensee:

(a) Submits a written request for the license status to be changed from active to inactive due to the licensee's spouse or registered domestic partner being deployed or stationed in a location outside Washington state.

(b) Submits, upon request, the following:

(i) A copy of service orders verifying the licensee's spouse or domestic partner is a member of the military service areas defined in WAC 308-09-010(8) and has been, or will be deployed or stationed to a location outside Washington state.

(ii) A copy of the marriage certificate or evidence of the registered domestic partnership with the military service member.

(2) The licensee must not practice in Washington while the license is in an inactive status.

NEW SECTION

WAC 308-09-030 Military spouses—Inactive licenses. (1) A military spouse may maintain an inactive license as long as the military service member is stationed or deployed in a location outside the state of Washington. Upon return to Washington, the military spouse has six months to request their license return to active.

(2) To change their license from inactive to active, the military spouse licensee must, within six months of returning to Washington state:

(a) Submit a written request for the change to an active license;

(b) Pay the current renewal fee, if applicable. The licensee should contact the regulatory program directly to determine whether a renewal fee is due; and

(c) Complete any continuing education requirements or other requirements necessary to make the license active and compliant with current program requirements. The continuing education requirements will be determined by the regulatory program's licensing authority, but will not exceed the requirements needed for the current renewal cycle unless required by the regulatory program's authorizing statute or federal guidelines. The licensee should contact the regulatory program directly to determine what requirements must be met.

(3) The director may defer completion of continuing education for the holder of an inactive license and place the license in an active status for a period of ninety days, pending completion of education. If the holder of a license fails to comply with the continuing education requirement within the ninety-day time frame, the license will expire and the licensing authority will follow standard late renewal or cancellation processes.

NEW SECTION

WAC 308-09-040 Licensee with active licenses who enter the military. (1) A person who already holds a license issued by the licensing authority who then enters active military service may notify the department to request their license be assigned military status. This allows the licensee to maintain their license in full force and effect while in military service.

(2) The licensing authority will convert an active licensee whose license is in good standing to military status when the licensee submits all of the following:

(a) A written request for military status due to entering active military service, including the expected duration of their deployment; and

(b) A copy of service orders verifying the licensee is an active duty member of the armed forces of the United States or the other services described in WAC 308-09-010(8).

(3) The licensee may obtain military status at any time the criteria in subsection (2) of this section are met. There is no fee required for military status. Portions of the current renewal fee will not be prorated or refunded.

(4) A military status license remains in full force and effect so long as the service continues and allows practice throughout the state of Washington unless sooner suspended, canceled, or revoked by the licensing authority.

(5) A military spouse or registered domestic partner with power of attorney can act as an agent for the military service member.

NEW SECTION

WAC 308-09-045 Maintaining a military status license. (1) As long as a military service member licensee's military service continues, the licensee is not required to renew their license, but should maintain the license in military status. To maintain a military status license, the licensee should submit to the department an official copy of service orders verifying that they are an active duty member of the United States Armed Forces or other services described in WAC 308-09-010(8).

(2) The department will provide courtesy notices to the licensee's address on file using the license renewal cycles.

(3) A licensee should return the courtesy notice to the department with an official copy of their service orders.

(4) Military status license maintenance requests are accepted by the department no sooner than ninety days prior to the date the license would expire if not in military status.

(5) Continuing education is not required while the license is in military status.

NEW SECTION

WAC 308-09-050 Changing a military status license at completion of active military duty. (1) To change a military status license to an active license, the licensee must:

(a) Provide a written notice of the change in their service status;

(b) Pay the current renewal fee, if applicable. The licensee should contact the regulatory program directly prior to making the request to determine whether a renewal fee is due;

(c) Upon request, provide a copy of the orders showing active duty status has changed within the last six months, or discharge papers or DD-214 issued within the last six months.

(2) The licensee must request the military status be changed to active status within six months of honorable discharge by meeting the requirements of subsection (1) of this section.

(3) Continuing education requirements will apply after the first post-discharge renewal. These requirements will be determined by the regulatory program's licensing authority, but will not exceed the requirements needed for the current renewal cycle unless required by the program's authorizing statute or federal guidelines. The licensee should contact the regulatory program directly prior to making the request to determine what requirements must be met.

(4) If the holder of a license fails to comply with subsection (2) of this section, the licensing authority will follow standard late renewal or cancellation processes.

WSR 20-13-054
PERMANENT RULES
DEPARTMENT OF CORRECTIONS

[Filed June 12, 2020, 2:06 p.m., effective July 13, 2020]

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

Purpose: The primary purpose of this rule revision is to remove liability for the medical and other costs associated with offender work place injury from the recipients of work crew services and place such liability back onto the department of corrections.

Citation of Rules Affected by this Order: Amending 15.

Statutory Authority for Adoption: RCW 72.01.090 and 72.09.100.

Adopted under notice filed as WSR 20-01-129 on December 17, 2019.

Changes Other than Editing from Proposed to Adopted Version: Changes were made for consistency and streamlining throughout the document. Definitions of words not previously defined were added.

A final cost-benefit analysis is available by contacting Jennifer D. Williams, P.O. Box 41114, Olympia, WA 98504-1114, phone 360-725-8364, email jennifer.williams1@doc1.wa.gov, website www.doc.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 Non-governmental 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 13, 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 15, Repealed 0.

Date Adopted: June 12, 2020.

Stephen Sinclair
Secretary

AMENDATORY SECTION (Amending WSR 15-20-010, filed 9/24/15, effective 1/1/16)

WAC 137-80-010 Purpose. (1) These rules and regulations are adopted pursuant to and in accordance with chapter 34.05 RCW. The purpose is to provide standards and procedures necessary to ensure the implementation of a comprehensive (~~offender~~) work program. (See RCW 72.09.015 (32).) The headings and captions for the above classes are used for convenience only and do not constitute a part hereof. The use of the term "class" to identify a work program does not restrict the department to a singular description of (~~an offender~~) a work program within that class or the use of other (~~offender~~) work programs authorized by separate statute.

(2) The secretary may adopt policies providing further guidance for establishing, among other things, (~~offender~~) worker participation eligibility and security requirements for each class of work program. The secretary may pilot temporary changes to correctional industries' Class IV and V work crew programs for the preservation of public health, safety or general welfare and in response to other community service needs that also promote public health, safety and general welfare. The benefits of such changes will be assessed through a limited number of work crew agreements that may not be subject to all of the current provisions of this chapter.

AMENDATORY SECTION (Amending WSR 15-20-010, filed 9/24/15, effective 1/1/16)

WAC 137-80-020 Definitions. (~~(1) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time, or imposed as part of a sentence, and served in the community subject to controls placed on the offender's movement and activities by the department. (See RCW 9.94A.030.)~~)

(2) "~~Community restitution" means compulsory service, without compensation, performed for the benefit of the community by the offender.~~"

(3) "~~Community supervision" means a period of time during which a convicted offender, while living in the community, is subject to crime related prohibitions and other sentence conditions imposed by a court. (See RCW 9.94B.020 (2).)~~"

(4) "~~Contracting entity" means a for-profit corporation, a public benefit nonprofit corporation, or public agency, as these terms are defined herein.~~"

(5) "~~Correctional facility" means a facility, prison, or institution operated directly or by contract by the secretary for the purposes of incarcerating adults in total or partial confinement, as defined in RCW 9.94A.030.~~"

(6) "~~Correctional industries advisory committee" or "committee" means the committee created under RCW 72.09.070 to make recommendations to the secretary regarding the implementation of RCW 72.09.100.~~"

(7) "~~Crew supervisor" means a department or other public agency employee who provides security and custody supervision of offenders and coordinates offender transportation to offender work program sites.~~"

(8) "~~Department" means the department of corrections.~~"

(9) "~~DOSH" means the division of occupational safety and health, the part of the Washington state department of labor and industries (L&I) that develops and enforces safety and health rules.~~"

(10) "~~For-profit corporation" means a corporation of two or more persons having a joint or common economic interest and is engaged in any lawful business under RCW 23B.03-010.~~"

(11) "~~Good-will project" means a type of Class IV project, the cost of which is paid by the department of corrections and the criteria for which is determined by the secretary or designee.~~"

(12) "~~Gratuity" means the sum of money paid to an offender, in accordance with an hourly rate scale approved by~~"

the department, when the offender works in an eligible class industry.

(13) "Not for profit corporation" or "nonprofit corporation" means a corporation or organization, no part of the income of which is distributable to its members, directors, or officers.

(14) "Offender" (formerly "inmate") means a person committed to the custody of the department including, but not limited to, persons residing in a correctional institution or facility and persons released from such facility on furlough, work release, or community custody, and persons received from another state, state agency, county, or federal jurisdiction. (See RCW 72.09.015(17).)

(15) "Offender work program" means comprehensive work programs designed to provide work skills, work experience and exposure to the work ethic for offenders.

(16) "Program director (director)" means the administrator of the correctional industries program appointed by the secretary.

(17) "Project agreement" means the written agreement required between a prison and a public benefit nonprofit corporation or a public agency for offenders to perform Class IV good-will projects.

(18) "Public agency" means any agency, political subdivision, or unit of local government of this state including, but not limited to, municipal corporations, quasi-municipal corporations, special purpose districts, and local service districts; any agency of the state government; any agency of the United States; any Indian tribe recognized as such by the federal government; and any political subdivision of another state. (See RCW 39.34.020(1).)

(19) "Public benefit nonprofit corporation" means a corporation or an organization no part of the income of which is distributable to its members, directors, or officers and that holds a current tax exempt status as provided under 26 U.S.C. Sec. 501 (e)(3) or is specifically exempted from the requirement to apply for its tax exempt status under 26 U.S.C. Sec. 501 (e)(3). (See RCW 24.03.005.)

(20) "Secretary" means the secretary of the department of corrections or his/her designee.

(21) "Work location" means the location where offenders perform the services or create the products requested by the contracting entity; over which the contracting entity has the right of access or control and includes, but is not limited to, all workplaces covered by industrial insurance under Title 51 RCW, as now adopted or hereafter amended.

(22) "Work project description" means a localized agreement that operates under a master Class IV or Class V contract to detail the responsibilities of each party for each distinct project.

(23) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school.

(24) "Worker" means an offender who provides his or her personal labor, whether manual labor or otherwise, to the department or to another entity contracting with the department for such labor, as permitted by law. (1) "Community custody" means that portion of an individual's sentence of confinement in lieu of earned release time, or imposed as part of a sentence, and served in the community subject to con-

trols placed on the individual's movement and activities by the department. (See RCW 9.94A.030.)

(2) "Community restitution" means compulsory service, without compensation, performed for the benefit of the community by an individual under the jurisdiction of the department.

(3) "Community supervision" means a period of time during which an individual convicted of a crime, is living in the community under the jurisdiction of the department, and is subject to crime-related prohibitions and other sentence conditions imposed by a court. (See RCW 9.94B.020(2).)

(4) "Community work crew" means a crew comprised of incarcerated individuals who, with correctional officer supervision, leave prison to go into the community to provide services to eligible recipients. Community work crew services are Class IV services.

(5) "Contracting entity" means an eligible for-profit corporation, an eligible nonprofit corporation, or a public agency, as these terms are defined herein.

(6) "Correctional facility" means a facility, prison, or institution operated directly, or by contract, by the secretary for the purposes of incarcerating adults in total or partial confinement, as defined in RCW 9.94A.030.

(7) "Correctional industries advisory committee" or "committee" means the committee created under RCW 72.09.070 to make recommendations to the secretary regarding the implementation of RCW 72.09.100.

(8) "Crew supervisor" means a department or other public agency employee who provides security and custody supervision of workers and coordinates worker transportation to work locations.

(9) "Department" means the department of corrections.

(10) "DOSH" means the division of occupational safety and health, the part of the Washington state department of labor and industries (L&I) that develops and enforces safety and health rules.

(11) "For-profit corporation" means a corporation of two or more persons having a joint or common economic interest and is engaged in any lawful business under RCW 23B.03.-010.

(12) "Goodwill services" means a type of Class IV (prisons) or Class V (community corrections) work, the cost of which is paid for by the department of corrections and the criteria for which is determined by the secretary or designee.

(13) "Gratuity" means a sum of money paid to an incarcerated individual, in accordance with an hourly rate scale approved by the secretary or designee, when the individual works in an eligible class industry.

(14) "Incarcerated individual" (formerly "offender") means an individual committed to the custody of the department including, but not limited to, individuals residing in a correctional institution or facility and individuals released from such facility on furlough, work release, or community custody, and individuals received from another state, state agency, county, or federal jurisdiction. (See RCW 72.09.015 (17).)

(15) "Master agreement" means the main, multiyear agreement between the department and the recipient containing the terms and conditions for the provision of work crew services.

(16) "Not-for-profit corporation" or "nonprofit corporation" means a corporation or organization, certified by the federal Internal Revenue Service as such and for which no part of its income is distributable to its members, directors, or officers.

(17) "Program director (director)" means the correctional industries program administrator appointed by the secretary.

(18) "Project Matrix" means the Class IV and Class V charts developed by the department that contain the types of services, grouped into Levels 1, 2, and 3 based upon risk and difficulty, that can be provided to eligible recipients.

(19) "Public agency" means any agency, political subdivision, or unit of local government of this state including, but not limited to, municipal corporations, quasi-municipal corporations, special purpose districts, and local service districts; any agency of the state government; any agency of the United States; any Indian tribe recognized as such by the federal government; and any political subdivision of another state. (See RCW 39.34.020(1).)

(20) "Public charity" means an organization, usually nonprofit, that holds federal 501(c)(3) tax exempt status. Public charities are generally recognized as those organizations with broad based public support and active programs, for example, houses of worship, benevolence organizations, animal welfare agencies, and educational organizations.

(21) "Recipient of the services" or "recipient" means an eligible nonprofit corporation, an eligible for-profit corporation, or a public agency, as these terms are defined herein, eligible to receive one or more types of work crew services.

(22) "Secretary" means the secretary of the department of corrections or his or her designee.

(23) "Service agreement" means the written and fully signed agreement required between a prison or community corrections location and a recipient, that is necessary before workers may perform goodwill services for the recipient.

(24) "Social welfare organization" means a civic 501 (c) (4) organization, considered by the federal IRS to be operated exclusively for the promotion of social welfare, that is primarily engaged in actively promoting the common good in ways related to the organization's purpose.

(25) "Worker" means an individual under department jurisdiction who is incarcerated, in work release, or under community supervision or community custody who performs work crew services for eligible recipients.

(26) "Work location" means the location where workers perform the services or create the products requested by the recipient or contracting entity and over which such entity has the right of access or control.

(27) "Work program" means a comprehensive work program designed to provide individuals under department jurisdiction with work skills, work experience, and exposure to the work ethic.

(28) "Work project description" means a localized agreement, for up to one year, that operates under a Class IV or Class V master agreement to detail the responsibilities of the recipient and the community or community restitution work crew for each distinct work project.

(29) "Work release" means a program of partial confinement in which eligible individuals under department jurisdic-

tion are employed or engaged as students in a regular course of study at school.

AMENDATORY SECTION (Amending WSR 15-20-010, filed 9/24/15, effective 1/1/16)

WAC 137-80-030 Establishment of ((offender)) work programs. In order to provide a comprehensive work program the department, in following the recommendation of the legislature, has adopted the following classes of work programs and made variations thereof:

- (1) Class I: Free venture industries;
- (2) Class II: Tax reduction industries;
- (3) Class III: Institutional support industries;
- (4) Class IV: Community work crews; and
- (5) Class V: Community restitution, work release and community supervision or custody.

AMENDATORY SECTION (Amending WSR 15-20-010, filed 9/24/15, effective 1/1/16)

WAC 137-80-031 Class I: Free venture industries.

(1) The employer model industries in this class shall be operated and managed in total or in part by any for-profit or nonprofit corporation pursuant to an agreement between the corporation and the department. The corporation shall produce goods or services for sale to both the public and private sector.

(2) The customer model industries in this class shall be operated and managed by the department to provide Washington state manufacturers or businesses with products or services currently produced or provided by out-of-state or foreign suppliers.

(3) The department shall review these proposed industries, including any potential new Class I industries work program or the significant expansion of an existing Class I industries work program, before the department contracts to provide such products or services. The review shall include the analysis required under RCW 72.09.115 to determine if the proposed correctional industries work program will compete with any Washington business. An agreement for a new Class I correctional industries work program, or an agreement for a significant expansion of an existing Class I correctional industries work program, that unfairly competes with any Washington business is prohibited.

(4) The department shall supply appropriate security and custody services without charge to the participating firms.

(5) ((Offenders)) Incarcerated individuals who work in free venture industries shall do so at their own choice. They shall be paid a wage comparable to the wage paid for work of a similar nature in the locality in which the industry is located, as determined by the program director of correctional industries. If the program director cannot reasonably determine the comparable wage, then the pay shall not be less than the federal minimum wage.

(6) An ((offender)) incarcerated individual who is employed in the Class I program of correctional industries

shall not be eligible for unemployment compensation benefits pursuant to any of the provisions of Title 50 RCW until released on parole or discharged.

AMENDATORY SECTION (Amending WSR 15-20-010, filed 9/24/15, effective 1/1/16)

WAC 137-80-032 Class II: Tax reduction industries.

(1) The department may establish Class II industry work programs that are closely patterned after private sector industries but are designed primarily to reduce the cost of goods and services. Goods produced and services provided by Class II work programs shall be provided at a reduced cost and only be available to the department, other tax-supported agencies and nonprofit corporations.

(a) The industries selected for development within this class shall, as much as possible, match the available pool of ~~((offender work))~~ worker skills and aptitudes with the work opportunities in the free community. ~~((Offenders))~~ Incarcerated individuals working in Class II work programs do so ~~((at))~~ of their own free choice.

(b) Except as provided in RCW 39.26.251 and this section, the products and services of this class, including purchased products and services necessary for a complete product line, may be sold by the department to the following:

- (i) Public agencies;
- (ii) Nonprofit corporations;
- (iii) Private contractors when the goods purchased will be ultimately used by a public agency or a nonprofit corporation;
- (iv) An employee and immediate family members of an employee of the department;
- (v) ~~((A person))~~ An individual under the supervision of the department and his or her immediate family members; and

(vi) A licensed health professional for the sole purpose of providing eyeglasses to enrollees of the state medical program at no more than the health professional's cost of acquisition.

(c) The secretary may issue guidance governing the type and quantity of items that may be purchased for other than resale purpose and sold under (b)(iv) and (v) of this subsection.

(d) Clothing manufactured by an industry in this class may be donated to public benefit nonprofit corporations that provide clothing free of charge to low-income persons, but under no circumstance shall uniforms to be worn by correctional officers employed with the department be made or assembled by ~~((offenders))~~ workers under the custody of the department.

(2) Security and custody services shall be provided at state expense by the department.

(3) The department may establish Class II work programs operated and managed in partnership with a public benefit nonprofit corporation pursuant to a contract between the corporation and the department to provide goods and/or services. The work programs may provide job training to ~~((offenders))~~ incarcerated individuals and may allow those ~~((offenders))~~ who have successfully completed a public ben-

efit nonprofit corporation's job training program to request work assignment to the work program.

AMENDATORY SECTION (Amending WSR 15-20-010, filed 9/24/15, effective 1/1/16)

WAC 137-80-033 Class III: Institutional work programs. (1) Class III work programs are operated by the department to support internal prison operation and maintenance needs and if possible, offset tax and other public support costs. ~~((Offenders))~~ Incarcerated individuals are assigned to Class III work programs.

(2) A contract is not required for Class III programs.

(3) Each prison will determine its own Class III work programs.

(4) Whenever possible, Class III programs will provide forty hours per week of basic work, or work training and experience, to help ~~((offenders))~~ participants to qualify for better ~~((offender))~~ prison work programs and/or work in the community upon release.

(5) With approval of the secretary, a facility may, by written contract, partner with a public benefit nonprofit corporation to provide job specific training and work to ~~((offenders))~~ incarcerated individuals within the prison. Work performed ~~((by the offenders))~~ must be designed to produce goods or services for public agencies and/or public benefit nonprofit corporations at a reduced cost.

After completion of training, ~~((offenders))~~ individuals may request assignment to the Class III program in the prison in which they received job specific training. ~~((Offenders))~~ Individuals assigned to such Class III programs may be required by the program to fulfill occasional job related work requirements outside of the prison. ~~((Offenders))~~ Individuals approved for such occasional off-site Class III work will be:

(a) Approved, in advance, by the prison superintendent or designee, to leave the prison grounds;

(b) Escorted by, and under the supervision of, a correctional officer at all times;

(c) Required to return to the prison the same day. Overnight absences will not be permitted; and

(d) Covered by the department offender health plan in the event of illness or injury while away from the prison.

(6) The department will:

(a) Screen and select ~~((the offenders to work))~~ individuals in Class III programs based upon eligibility criteria developed by the department;

(b) At state expense, provide the management, work supervision, security and custody services required for all Class III programs; and

(c) Compensate ~~((offenders))~~ individuals for Class III work ~~((in Class III programs))~~;

~~((i) The compensation paid to offenders working under Class III job descriptions shall be the same);~~

(i) In accordance with a payment scale established by the department for Class III work; and

(ii) At the same rates across all prisons for work that utilizes the same or similar job descriptions~~((; and~~

~~((ii) Compensation will be paid to offenders in accordance with a payment scale established by the department for Class III work)).~~

(7) ~~((Offenders))~~ Incarcerated individuals working in Class III work programs are not eligible for industrial insurance benefits. (See RCW 72.60.102.)

AMENDATORY SECTION (Amending WSR 15-20-010, filed 9/24/15, effective 1/1/16)

WAC 137-80-034 Class IV: Community work crews. ~~((Offenders))~~ Incarcerated individuals in Class IV work status reside in facilities contracted for, owned or licensed by the department, and participate in programs that have both education and work components.

(1) ~~((Prisons may provide))~~ Class IV services may be provided to both 501(c)(3) public charity and 501(c)(4) social welfare nonprofit organizations and to public agencies. Two types of Class IV services are available. The first or standard type (standard), will constitute the majority of Class IV work and ~~((be))~~ is paid for by the recipient of the services. The second ~~((and far less frequent))~~ type of Class IV service, a "~~((good will project))~~ (project, will be) goodwill service," is paid for by the department.

(2) ~~((The secretary or designee will determine the criteria for Class IV good will projects.~~

~~((3))~~ Class IV services may be initiated by the department or provided at the request of ~~((a public agency or a public benefit nonprofit corporation))~~ an eligible recipient. Allowable Class IV services are limited to those included in the Class IV Project Matrix, as now existing or hereafter revised.

~~((4))~~ (3) Class IV services are performed in the community, generally in the county in which the ~~((prison))~~ facility is located.

~~((5) Offenders in the same facility,))~~ (4) Incarcerated individuals who perform Class IV work ~~((utilizing the same or similar job descriptions, shall be compensated equally for the services that they provide))~~ will be compensated at gratuity rates specifically established for the type of work performed. Class IV gratuity rates will be established by the department and contained in the Class IV Project Matrix as now existing or hereafter revised.

~~((6))~~ (5) Class IV services do not require skilled labor, are not performed on private property, unless owned or operated by ~~((a public benefit))~~ an eligible nonprofit corporation, and have minimal negative impact on existing private industries or the labor force in the county where the service is provided.

~~((7))~~ (6) For standard Class IV services:

(a) The department ~~((will))~~ requires:

(i) A master ~~((contract))~~ agreement, written with program input ~~((;))~~ in the department's office of contracts and legal affairs and signed by the department secretary or contracts administrator and an authorized representative of the ~~((public agency or public benefit nonprofit corporation requesting the work; and))~~ recipient;

(ii) ~~((The master contract must be signed by both parties before))~~ A work project description ~~((, which))~~ that is signed by the authorized representative of each party. The work project description operates under the master ~~((contract))~~ agreement to detail the responsibilities of each party for each project ~~((, is signed and services may begin)).~~ Work may not

begin until both a fully signed master agreement and a work project description for the particular project are signed by the parties.

(b) The ~~((public agency or public benefit nonprofit corporation that requests/receives the services will:~~

~~((i) Sign a Class IV master contract and, for each distinct project, sign a work project description under that master contract))~~ recipient of work crew services will:

(i) Not request work determined by the department to be unsafe and thus included on its Class IV prohibited work list as now existing or hereafter revised;

(ii) Provide ~~((offenders))~~ workers with relevant job specific and ~~((site))~~ location specific safety training as well as instruction in the use of any specialized equipment necessary for the particular work;

~~((At no cost to the department, supervise the project and direct the work performed;))~~ Provide all workers with any specialized personal protective equipment (PPE) necessary for the particular work;

(iv) Pay the ~~((department directly:~~

~~((A) At the then current state mileage rate, for transporting offenders to and from the worksite each day; and~~

~~((B) Offender compensation for the work performed.~~

~~((v) At the start of each calendar quarter, pay the cost of worker's compensation insurance coverage directly to the Washington state department of labor and industries, for each hour of offender services received during the previous quarter;~~

~~((vi) At the start of each calendar quarter, report the total number of offender service hours received during the previous quarter, directly to the department of labor and industries))~~ department's invoiced charges including, but not limited to:

~~((A) The cost of all workers' compensation premiums payable by the department to L&I on the recipient's behalf;~~

~~((B) Worker gratuities at the rate specified in the Class IV Project Matrix for the specific services provided;~~

~~((C) Mileage at the then current state mileage rate, for transporting workers to and from the work location;~~

~~((D) The salary and benefits of any additional correctional officer(s), needed by the department at the work location.~~

~~((c) The department will:~~

~~((i) Provide one correctional officer to supervise workers for safety and security;~~

~~((ii) Pay workers' compensation premiums directly to L&I on behalf of the recipient, at the rates assigned to the department by L&I;~~

~~((iii) Provide an invoice to the recipient monthly for all costs incurred during the previous month.~~

~~((d) Supervision of the work:~~

~~((i) For Level 1 and 2 projects. At the recipient's request, the department will supervise workers to complete the requested work. Depending upon the project scope and working conditions, DOC at its own discretion, may determine that additional officers are necessary at the work location. DOC may also collaborate with the recipient to determine whether constant and continuous or periodic on-site supervision of the work is required.~~

(ii) For Level 3 projects, which are more complex and may involve additional risk, the recipient will supervise workers to completion of the requested work. The recipient will determine, whether constant and continuous or periodic on-site supervision of the work is required.

((8) For good-will projects the department will) (7) For Class IV goodwill services:

(a) ((Require a written and signed "project agreement" before offenders may begin work:

(i) The project)) The secretary or designee will determine the goodwill criteria.

(b) The goodwill criteria, applications and service agreements ((template is available from DOC contracts and legal affairs for customization and completion at the facility;

(ii) The customized project)) will be available at prison facilities for distribution to eligible nonprofit recipients. Those recipients will sign and submit their completed applications to the facility from which services, if approved, will be provided.

(c) Every facility will:

(i) Assess applications based upon the Class IV goodwill services criteria developed by the department;

(ii) Have all approved goodwill service agreements ((must be)) signed by the prison superintendent or designee and ((an)) the recipient's authorized representative ((of the public benefit nonprofit or public agency)) before starting any work; ((and

(iii) Must be sent to DOC))

(ii) Email a copy of each signed goodwill service agreement to the department's office of contracts and legal affairs((-)) within two calendar days after ((it is signed by)) signature by the second of both parties((-)

(b) At state expense, provide the management, work supervision, security and custody services required;

(c) Compensate offenders for work performed;

(d) At the start of each calendar quarter, pay the cost of offender worker's compensation insurance coverage directly to the Washington state department of labor and industries, for each hour of offender good-will services provided during the previous quarter;

(e) At the start of each calendar quarter, report the total number of offender good-will service hours provided during the previous quarter, directly to the department of labor and industries; and

(f) Have the option)); and

(iv) Pay all costs associated with approved goodwill services including worker gratuities and workers' compensation premiums. Recipients will not reimburse the department for such costs.

(d) For goodwill services a facility may, at its own discretion ((for a specific project, to)) conduct the advance hazardous conditions and/or materials inspection itself or waive the requirement. Any waiver of the requirement will be based upon facility experience with the ((project site)) work location or the work to be performed.

((9)) (8) For all Class IV services:

(a) The department will:

(i) Screen and select the ((offenders for work crews)) workers based upon eligibility criteria developed by the department;

(ii) ((Review the public agency or public benefit nonprofit's hazardous conditions/materials report to assess whether or not to provide the requested services, require specific personal protective equipment (PPE) for offenders or require site remediation by the agency or nonprofit before offenders can begin the work;

(iii) Suspend offender work where/if)) Immediately suspend work when/if hazardous materials or conditions are discovered ((and)) at a work location and inform the recipient so that it can make appropriate notifications for further assessment;

((iv)) (iii) Transport ((offenders)) workers to and from ((worksites)) work locations;

((v)) (iv) Provide custody and security supervision of the ((offenders)) workers; ((and

(vi))

(v) Provide or coordinate the educational components of the program((-

(b) The department will not reimburse any public agency or public benefit nonprofit corporation that uses offender services, for liability insurance costs associated with the services provided by offenders to the public agency or public benefit nonprofit corporation;

(e) The public agency or public benefit nonprofit corporation that requests/receives the offender services will, in accordance with WAC 296-800-160, conduct an advance hazardous conditions and materials assessment, for each distinct project and report the results using DOC Form 03-247 or other similar hazard assessment and PPE selection worksheet, to the department));

(vi) Not reimburse any recipient, for any liability insurance costs associated with services provided by incarcerated individuals;

(vii) Adhere to the Class IV Project Matrix Level 1 through 3 designations, gratuity rates and types of work as now existing or hereafter revised.

(b) The parties will jointly, except at the department's discretion for goodwill services, conduct a hazardous conditions and materials assessment of the work location. Based upon the written assessment, the recipient will determine, with department concurrence, the specific personal protective equipment that must be provided to workers to perform the requested services. The department will determine whether the recipient must perform site remediation before workers can begin to work at any given location.

((10)) (9) Class IV correctional industries programs operated in work camps established pursuant to RCW 72.64.050 are managed under separate intergovernmental and local agreements and are exempt from these requirements.

AMENDATORY SECTION (Amending WSR 15-20-010, filed 9/24/15, effective 1/1/16)

WAC 137-80-035 Class V: Community restitution, work release, and community supervision or custody. (1) ((Participants)) Individuals in this class reside in the community. They are ((offenders who are)):

(a) In court ordered community restitution programs;

(b) In work release status; or

(c) Under community supervision or custody.

(2) Class V services may be initiated by the department or provided at the request of an eligible recipient; a 501(c)(3) public charity, a 501(c)(4) social welfare nonprofit organization, a public agency or a cemetery registered and authorized by the IRS as 501(c)(13) Cemetery Companies. Allowable Class V services are limited to those included in the Class V Project Matrix, as now existing or hereafter revised.

(3) Two types of Class V services are available. The first or standard (standard) service is paid for by the recipient. The second, a "goodwill service," (service) is paid for by the department.

(4) Class V services are performed in the community, generally in the county in which the workers reside.

(5) Standard Class V ((programs)) services:

(a) Require a master ((contract)) agreement, written in the department's office of contracts and legal affairs and signed by the department secretary or contracts administrator and ((and) the recipient's authorized representative ((of the public agency or public benefit nonprofit corporation requesting the work)). The master ((contract)) agreement must be signed by both parties before a work project description, which operates under the master ((contract)) agreement to detail the responsibilities of each party for each project, is signed and services may begin.

~~((3) Class V programs)) (b) May be operated by the department or by another public agency. ((Services in this class may only be provided to public agencies or to public benefit nonprofit corporations.)) The department may, by written contract, operate Class V crews that include ((offenders)) individuals under the jurisdiction of other governmental entities. The department's temporary authority over ((offenders under the jurisdiction of other governmental entities will be)) such individuals is limited to that which is necessary for those ((offenders)) individuals to participate on department Class V community restitution crews.~~

~~((4)) (c) When Class V ((programs)) community restitution crews are operated by the department, the department will:~~

~~((a)) (i) Transport ((offenders)) workers to and from ((worksites)) work locations;~~

~~((b) Provide custody and security supervision of the offenders;~~

~~(c) Review the public agency or public benefit nonprofit's hazardous conditions/materials report to assess whether or not to provide the requested services; require specific personal protective equipment (PPE) for offenders or require site remediation by the agency or nonprofit before offenders can begin the work; and~~

~~(d) Suspend offender work where/if hazardous materials or conditions are discovered and make appropriate notifications for further assessment.~~

~~(5) The public agency or public benefit nonprofit corporation that receives the services will:~~

~~(a) In accordance with WAC 296-800-160, conduct an advance hazardous conditions and materials assessment for each distinct project and report the results using DOC Form 03-247 or other similar hazard assessment and PPE selection worksheet, to the department;~~

~~((b) Provide offenders)) (ii) Provide one correctional officer to supervise workers for security and public safety;~~

~~(ii) Provide supervision of the work for Level 1 and Level 2 work projects and determine, at its own discretion, whether additional officers are necessary at the work location to supervise;~~

~~(iv) Immediately suspend work when/if hazardous materials or conditions are discovered at a work location and inform the recipient so that it can make appropriate notifications for further assessment;~~

~~(v) Pay L&I workers' compensation premiums on behalf of the recipient at the rates assigned to the department by L&I;~~

~~(vi) Invoice the recipient monthly for all costs associated with each project.~~

~~(6) The recipient of standard Class V services will:~~

~~(a) Provide workers with relevant job specific and site specific safety training ((as well as)), instruction in the use of any specialized equipment and instruction in the proper use of personal protective equipment;~~

~~((e)) (b) At no cost to the department, supervise the ((project)) work and direct the ((work performed by the offenders)) workers performing Project Matrix - Level 3 work which is more complex and may involve additional risk;~~

~~((d)) (c) Pay the department((s)) monthly for the services provided during the previous month. Invoiced costs include, but may not be limited to, mileage at the then current state mileage rate, for transporting ((offenders)) workers to and from the ((project site each day);~~

~~(e) At the start of each calendar quarter, pay the cost of worker's compensation insurance coverage directly to the Washington state department of labor and industries, for each hour of offender services received during the previous quarter; and~~

~~(f) At the start of each calendar quarter, report the total number of offender service hours received during the previous quarter, directly to the department of labor and industries. (See WAC 137-80-080 and RCW 51.12.045.)) work location; L&I workers' compensation premiums; supplies and materials; and other costs negotiated between the parties which may include the salary and benefits of additional correctional officer(s) needed by the department at the work location;~~

~~(d) Not request any type of work determined by the department to be unsafe and included on its Class V prohibited work list as now existing or hereafter revised.~~

~~(7) Jointly, both parties to the agreement will conduct a hazardous conditions and materials assessment of the work location. Based upon the written assessment, the recipient will determine, with department concurrence, the specific personal protective equipment that must be provided to workers to perform the requested services or whether the recipient must perform site remediation before work can begin.~~

~~(8) For Class V goodwill services:~~

~~(a) The secretary or designee will determine the goodwill criteria. The criteria, applications and service agreements will be provided to each community corrections location which will: Require eligible nonprofit recipients to sign and submit a completed application to the location from which services,~~

if approved, will be provided. Every location will assess applications based upon the Class V goodwill services criteria developed by the secretary or designee;

(b) Approved goodwill service agreements must be signed by the authorized DOC signatory or designee and the recipient's authorized representative before work may begin;

(c) A copy of each signed goodwill service agreement will be emailed to the department contracts and legal affairs office within two calendar days after signature by the second of both parties;

(d) The department will pay for all costs associated with approved goodwill services including mileage, equipment, staff time and workers' compensation premiums. Recipients will not reimburse the department for such costs; and

(e) A community corrections location may, at its own discretion, conduct the advance hazardous conditions and/or materials inspection itself or waive the requirement. Any waiver of the requirement will be based upon experience with the work location or the work to be performed.

(9) For all Class V services:

(a) The department will:

(i) Screen and select the workers for crews based upon eligibility criteria developed by the department;

(ii) Immediately suspend work if hazardous materials or conditions are discovered at a work location and inform the recipient so that it can make appropriate notifications for further assessment and remediation;

(iii) Transport workers to and from work location;

(iv) Provide custody and security supervision of the workers;

(v) Provide or coordinate any educational components of the program;

(vi) Except at the department's discretion for goodwill services, the parties will jointly conduct a hazardous conditions and materials assessment of the work location. Based upon the written assessment, the recipient will determine, with department concurrence, the specific personal protective equipment that must be provided to workers to perform the requested services. The department will determine whether the recipient must perform site remediation before workers can begin to work at a given work location.

(b) The department will not reimburse any recipient, for liability insurance costs associated with the services provided.

(c) The department will adhere to the Class V Project Matrix level designations and limit the types of work performed to those included in the Class V Project Matrix as now existing or hereafter revised.

AMENDATORY SECTION (Amending WSR 15-20-010, filed 9/24/15, effective 1/1/16)

WAC 137-80-060 Inmate job opportunities. (See RCW 72.09.120.) The director shall cause to be periodically prepared and distributed to a central location in each ((~~institution~~)) facility a list of correctional industries' and programs' job opportunities. This list shall include, but not be limited to, job descriptions and the educational and skill requirements of each job and shall be made available to ((~~institution~~)) facility

personnel, institutional industries and ((~~offenders~~)) incarcerated individuals.

AMENDATORY SECTION (Amending WSR 15-20-010, filed 9/24/15, effective 1/1/16)

WAC 137-80-070 Safety and health. (1) As required by the state division of occupational safety and health (DOSH), ((~~participants~~)) individuals in ((~~offender~~)) work programs will be provided a safe and healthy workplace free from recognized hazards.

(2) All correctional industries and programs will adhere to relevant federal and state safety laws as well as to departmental safety policies and requirements.

(3) The department, as the custodial authority, will determine whether or not it is safe for ((~~offenders~~)) individuals to perform the requested services in Classes IV and V. The department's determination ((~~will~~)) may be based upon previous experience with the work location, the work requested and the recipient, or the results of a hazardous conditions and materials assessment((;)) performed ((~~in accordance with WAC 296-800-160 by the recipient of the offender services and provided to the department, using DOC Form 03-247 or other similar hazard assessment and PPE selection worksheet~~)) by the department and the recipient together or at the department's discretion, by the department alone.

(4) ((~~Offenders~~)) Workers in Classes ((~~I~~)) IV((;)) and V shall receive work and safety training and any necessary personal protective equipment ((~~PPE~~)), in accordance with the ((~~contract scope of work, the~~)) master agreement, associated work project descriptions, goodwill service agreement and chapter 296-800 WAC, Safety and health core rules.

(5) ((~~Offenders~~)) Incarcerated individuals participating in Class III programs are not considered "employees" for DOSH purposes.

(6) For DOSH purposes, ((~~offenders~~)) incarcerated individuals participating in Class V programs may be considered "employees" or "workers." ((~~of the public agency or public benefit nonprofit corporation for which the services are performed. (See RCW 51.12.045.)~~))

AMENDATORY SECTION (Amending WSR 15-20-010, filed 9/24/15, effective 1/1/16)

WAC 137-80-080 Industrial insurance. (1) No ((~~offender~~)) incarcerated individual compensated for work in correctional industries shall be considered as an employee, or to be employed by the state or the department.

(2) ((~~Offenders~~)) Incarcerated individuals working in Classes I, II, and IV of correctional industries are eligible for industrial insurance benefits as provided by Title 51 RCW.

(3) ((~~Offenders~~)) Incarcerated individuals performing Class V community restitution work will be made eligible for industrial insurance benefits as provided for by RCW 51.12.-045.

(4) Incarcerated individuals working in Class III industries are ineligible for industrial insurance benefits.

((~~4~~)) For offenders working in Class V, the cost to provide offenders with industrial insurance medical aid coverage will be paid for by the entity for which the offenders perform the work. To initiate coverage, the entity will complete, sign

and submit directly to L&I, the L&I application for elective coverage of excluded workers (application), before the occurrence of an injury or contraction of an occupational disease, by offenders to be covered. Entities will check application box number 10 (community service workers, 7203) of L&I Form F213-112-000 to initiate coverage.

~~(5) Any~~ (5) The department will pay the department of labor and industries all workers' compensation premiums (~~or assessments~~) due under Title 51 RCW for (~~an offender's~~ coverage shall be the obligation of the entity for which the offender is performing the work, and shall be paid directly to the department of labor and industries by that entity. Except that, L&I premiums due for offenders performing Class IV good will projects shall be paid directly to L&I by the department of corrections)) workers providing services in classes IV and V. Recipients must reimburse the department for all such workers' compensation premiums under Title 51 RCW. Except that, recipients will not pay the department for any L&I premiums paid for workers providing goodwill services.

AMENDATORY SECTION (Amending WSR 15-20-010, filed 9/24/15, effective 1/1/16)

WAC 137-80-090 Work crew costs and responsibilities. (1) Nothing in this chapter shall be construed as limiting the regulatory authority of the department of labor and industries in determining health and safety compliance and employer status for purposes of DOSH and Title 51 RCW, the issuance or review of citations or corrective actions related to health and safety compliance in the workplace provided the (~~offender~~) community or community restitution work crew, or in determining responsibility for payment of fees due under Title 51 RCW.

It is understood that the responsible divisions within the department of labor and industries shall act independently in any review of claims or citations. Public agencies and public benefit nonprofit corporations that contract with the department for (~~offender~~) work crew services will be responsible for safety and health conditions at the (~~worksite~~) work location, will have the responsibility and the authority for ensuring that any hazardous condition is corrected, and as applicable, (~~pay~~) reimburse the department for the cost of (~~offender~~) worker industrial insurance coverage. For standard Class IV services only, (~~public agencies and public benefit nonprofit corporations~~) recipients will also be responsible for paying (~~offender~~) worker gratuities.

(2) The department will provide at least one correctional officer for the security and custody supervision of (~~offenders~~) workers at all work crew locations to fulfill its mission to improve public safety and to maintain custody as required by state law.

(3) Any specific (~~offender~~) worker personal protective equipment that is required will be detailed in the work project description (~~(WPD)~~) for each (~~distinct~~) Class IV or Class V work crew project (~~as well as~~) or in the (~~project~~) services agreement for any (~~Class IV good will project~~) goodwill service. The party(ies) responsible for providing such (~~PPE~~) personal protective equipment will also be designated in the (~~WPD~~) work project description.

AMENDATORY SECTION (Amending WSR 15-20-010, filed 9/24/15, effective 1/1/16)

WAC 137-80-100 Application limited to this chapter. The powers and authority conferred by this chapter shall be construed as limited to this chapter and nothing herein shall be construed as applying to any other (~~offender~~) incarcerated individuals' work programs authorized by federal law or Washington state law. Neither shall anything contained herein be construed as limiting any other powers or authority of any public agency.

WSR 20-13-060
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed June 15, 2020, 2:11 p.m., effective July 16, 2020]

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

Purpose: The federal update to apprenticeship equal employment opportunity (EEO) guidelines, 29 C.F.R. 30, requires our state system to make updates to EEO guidelines in our rule.

The apprentice utilization requirements took full effect January 1, 2020. EHB 1849 (chapter 244, Laws of 2018) assigns the duty of verifying compliance to the supervisor of apprenticeship and requires the department to adopt rules to implement this process.

In addition, key language inadvertently omitted during the 2019 revision is clarified or placed back into the rule to be consistent with current agency practice or interpretation of law.

Citation of Rules Affected by this Order: New WAC 296-05-217; and amending WAC 296-05-003, 296-05-011, 296-05-403, 296-05-405, 296-05-407, 296-05-415, 296-05-443, and 296-05-447.

Statutory Authority for Adoption: Chapter 49.04 RCW.

Adopted under notice filed as WSR 19-24-085 on December 3, 2019.

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 8, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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: June 15, 2020.

Joel Sacks
Director

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

WAC 296-05-003 Definitions. The following definitions apply to this chapter:

Adjudicative proceeding: A proceeding before the WSATC in which an opportunity for a hearing before the WSATC is authorized by chapter 49.04 RCW or these rules before or after the entry of an order by the WSATC.

Apprentice: A worker at least sixteen years of age employed to learn an apprenticeable occupation and registered with a sponsor in an approved apprenticeship program under chapter 49.04 RCW and these rules. Building and construction trade occupations require an apprentice to be at least seventeen years of age to register with a sponsor in an approved apprenticeship.

Apprenticeable occupation: A specified occupation which must:

(a) Involve skills customarily learned in a practical way through a structured, systematic program of on-the-job supervised learning;

(b) Be clearly identified and commonly recognized throughout an industry;

(c) Involve the progressive attainment of manual, mechanical, or technical skills and knowledge which, in accordance with the industry standard for the occupation, would require the completion of at least two thousand hours of on-the-job learning to attain;

(d) Require a minimum of one hundred forty-four hours of related instruction per program year to supplement on-the-job work experience;

(e) Involve sufficient skill to establish career sustaining employment;

(f) Not be part of an occupation previously recognized by the registering agency as apprenticeable.

Apprenticeship agreement: A written agreement between an apprentice and either the apprentice's program sponsor, or an apprenticeship committee acting as agent for the program sponsor(s), which contains the terms and conditions of the employment, training and education of the apprentice.

Apprenticeship cohort: The group of individual apprentices registered to a specific program during a one year time frame, not including those whose agreements have been canceled during the initial probationary period.

Apprenticeship committee: A quasi-public entity approved by the WSATC to administer and perform apprenticeship and training services.

Apprenticeship program: A plan for administering an apprenticeship agreement containing all terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices. Apprenticeship programs must include apprenticeship agreements.

Apprenticeship section: The division of the department of labor and industries administering registered apprenticeships for state and federal purposes.

Cancellation: The termination of registration or cancellation of approval for an apprenticeship program at the request of the supervisor or sponsor, or the termination of registration or approval of an apprenticeship agreement at the request of the apprentice, supervisor, or sponsor.

Certificate of completion: A record of the successful completion of a term of apprenticeship issued by the department on behalf of the WSATC. To be eligible for a certificate of completion, an apprentice must have been registered with the department and an active participant of a committee's program for at least six months and have successfully completed their apprenticeship.

Certification: Written approval from the WSATC that:

(a) A set of apprenticeship standards established by an apprenticeship program sponsor substantially complies with standards established by the WSATC; and

(b) An individual is eligible for probationary employment as a registered apprentice as part of an apprenticeship program.

C.F.R.: Code of Federal Regulations.

Competent instructor: An instructor providing related supplemental instruction who has demonstrated satisfactory performance in the occupation for a minimum of three years beyond the customary learning period for that occupation and who:

(a) Meets the requirements of the state board for community and technical colleges for a vocational-technical instructor; or

(b) Is recognized within an industry as having expertise in a specific occupation and is a subject matter expert; and

(c) Has training in teaching techniques and adult learning styles. The training may be acquired before, or within one year after, the competent instructor begins to provide related supplemental instruction.

Competitor: An apprenticeship program providing training in the same or similar occupation as one already existing in a certain geographic area. To determine whether a program provides training in the same or similar occupation, the WSATC may consider:

(a) Approved apprenticeship standards;

(b) Collective bargaining agreements;

(c) Dictionaries of occupational titles;

(d) Experts from organized labor, licensed contractors, and contractors' associations;

(e) Recognized labor and management industry practice;

(f) Scope of work descriptions issued by the department.

Completion rate: The percentage of an apprenticeship cohort receiving a certificate of completion within one year of the projected completion date.

Department: Department of labor and industries.

Employer: Any person or organization with a valid Washington state unified business identifier (UBI) number employing an apprentice.

Federal purposes: Any federal contract, grant, agreement, or arrangement dealing with apprenticeship. Includes any federal financial or other assistance, benefit, contribution, privilege, allowance, exemption, preference, or right pertaining to apprenticeship. See e.g., 29 C.F.R. Part 29.2.

File: To send to:

Supervisor of Apprenticeship and Training
Department of Labor and Industries
Apprenticeship Section
Post Office Box 44530
Olympia, Washington 98504-4530

Or deliver to and receipt at:
 Department of Labor and Industries
 7273 Linderson Way S.E.
 Tumwater, Washington 98501

Filing is complete upon deposit in the United States mail, properly addressed, postage prepaid, or personal service.

First full training cycle: A full training cycle begins with the registration of the first apprentice and continues for one calendar year regardless of completion, cancellation and/or suspension of the apprentice.

Individual agreement: A written agreement between an apprentice and/or trainee and either the apprentice's employer or an apprenticeship committee acting as agent for the employer.

Industry-wide standards: The current, acceptable practices, including technological advancements, being used in the different occupations.

Journey level: An individual having sufficient skills and knowledge of an occupation to be recognized by a state or federal registration agency and/or an industry as being fully qualified to perform the occupation. An individual can be fully qualified either through formal apprenticeship training or practical on-the-job work experience equal to or greater than the term of apprenticeship.

On-the-job training program: A program that is set up in the same manner as an apprenticeship program with any exceptions authorized by the WSATC and as further described in WAC 296-05-013.

Probationary period: A period of time during which the apprentice has not yet reached full status or is subject to corrective action.

(a) Initial probationary period: A period of time in relation to the full apprenticeship term, with full credit given for such period toward completion of apprenticeship, which cannot exceed twenty percent of the apprenticeship term, or one year from the date of registration, whichever is shorter. Apprentices within the initial probationary period may not file apprenticeship complaints with the program sponsor. Apprentices transferring from another program are not subject to additional initial probationary periods.

(b) Disciplinary probationary period: A period of time after the initial probationary period during which the apprentice's progress is not satisfactory. The program sponsor may withhold periodic wage advancements, suspend or cancel the apprenticeship agreement, or take further disciplinary action. Apprentices subject to a disciplinary probationary period may file complaints with the program sponsor.

Provisional registration: Initial one-year approval of a registered program meeting the required standards for registration. After one year, the provisional registration may be made permanent or continued as provisional through the first full training cycle, or rescinded following a compliance review.

RCW: Revised Code of Washington.

Registration: Both apprenticeship agreements and apprenticeship program standards are registered.

(a) Apprenticeship agreement registration: The acceptance and recording of an agreement by the apprenticeship section of the department of labor and industries as evidence

of the apprentice's participation in a particular registered apprenticeship program.

(b) Apprenticeship program registration: The approval and recording of the program standards by the WSATC and the apprenticeship section as meeting the basic standards and requirements for such approval.

Registration agency: The apprenticeship section of the department of labor and industries responsible for registering apprenticeship programs and apprentices, providing technical assistance, and conducting reviews for compliance with chapter 49.04 RCW and these rules.

Related/supplemental instruction (RSI): An organized and systematic form of instruction designed to provide the apprentice with knowledge of the theoretical and technical subjects related to the apprentice's occupation. It may be provided in any form approved in advance by the WSATC. Apprentices must receive not less than one hundred forty-four hours of RSI per program year.

Secretary: The individual appointed by the director of the department according to RCW 49.04.030.

Sponsor: Any person, firm, association, committee, or organization operating as an apprenticeship and training program and in whose name the program is registered.

Standards: A written agreement containing specific provisions for operation and administration of the apprenticeship program and all terms and conditions for the qualifications, recruitment, selection, employment, and training of apprentices, as further defined in WAC 296-05-015.

Supervision: The necessary education, assistance, and control provided by a journey-level employee to an apprentice. Apprentices must be supervised by a journey-level worker on the same job site at least seventy-five percent of each working day, unless otherwise approved by the WSATC.

Supervisor: The individual appointed by the director of the department who acts as the secretary of the WSATC. When these rules create a duty of the supervisor or secretary of the WSATC, the supervisor may designate department of labor and industries' employees to assist in the performance of those duties subject to the supervisor's oversight and direction.

Trainee: An individual enrolled in an on-the-job training program, but who is not registered with a sponsor in an approved apprenticeship program under chapter 49.04 RCW and these rules.

Training agent: Employer of registered apprentices approved by the program sponsor to furnish on-the-job training. The training agent shall use only registered apprentices to perform work processes in accordance with approved program standards.

Training agreement: A written agreement between a training agent and a program sponsor containing the provisions of the apprenticeship program applicable to the training agent and the duties of the training agent in providing on-the-job training.

Transfer: A shift of apprenticeship registration from one sponsor to another with a written agreement between the apprentice and the affected apprenticeship committees or program sponsors.

WAC: Washington Administrative Code.

WSATC: Washington state apprenticeship and training council.

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

WAC 296-05-011 Apprenticeship and training programs—Approval, registration, and objections. (1) The WSATC approves and registers apprenticeship and training programs. At the regular quarterly meeting, the proposed committee and/or standards will be considered by the WSATC. The WSATC will approve provided the sponsor accepts changes recommended by the WSATC, or disapprove.

At the regular quarterly meeting, the WSATC will allow changes to correct clerical errors. The addition of standard language will be allowed if authorized representatives of the sponsor are present and authorized to accept changes. At the regular quarterly meeting, the WSATC will not accept changes to the format, language, or provisions of the submitted program standards which are not reasonably consistent with previously approved program standards.

(a) Approval: The WSATC may approve an apprenticeship program when:

(i) If applicable, an apprenticeship and training committee is organized consistent with WAC 296-05-009;

(ii) Standards are proposed by the committee consistent with WAC 296-05-015;

(iii) Standards are presented to the WSATC consistent with WAC 296-05-008;

(b) The WSATC approves the following types of apprenticeship and training programs:

(i) Group joint: Sponsored by both a group of employers and a labor organization with an equal number of representatives from workers and management on the apprenticeship and training committee.

(ii) Individual joint: Sponsored by an individual employer and a labor organization with an equal number of representatives from workers and management on the apprenticeship and training committee.

(iii) Group nonjoint: A program sponsored only by an employer association and administered only by the employer association.

(iv) Individual nonjoint: A program sponsored and administered by an individual employer with no labor organization.

(v) Group waiver: A program sponsored by an employer association and a labor organization but one group waives participation in administering the program.

(vi) Individual waiver: A program sponsored by an individual person or plant and a labor organization, but one party waives participation in administering the program.

(vii) Plant: A program sponsored by the owner of a plant or plants at a particular location or locations. Plant programs are administered in accordance with chapter 49.04 RCW and these rules.

(c) Registration: If a program is approved, it is registered with the WSATC. An initial registration is provisional and lasts one year.

(i) If a program is not approved, the department will inform the sponsor in writing and explain the reasons for denying approval.

(ii) If a program is not initially approved, the WSATC may ask a sponsor to modify the program. The program may be approved with modifications.

(d) Waiver: A party may seek to waive labor union participation in administering a program when apprentices will be union members.

(i) If a program includes labor union participation, the program sponsor must obtain a written statement, known as a "no objection" statement, from the union in support of the program.

(ii) When a labor union chooses not to participate in administering the program, the employer or employers' association must furnish copies of the registration application and the proposed program standards to the union serving as the collective bargaining agent of the employees to be trained. Before taking a final action on the application, the supervisor must give the union forty-five calendar days to respond before final action is taken on the registration.

(iii) If the union fails to comment within forty-five days, it will have waived its right to participate in the program and the supervisor will grant the waiver.

(e) Nonjoint and waiver committees - Additional requirements.

(i) The WSATC shall only recognize nonjoint and waiver standards for a specific occupation or directly related occupations.

(ii) When multiple related occupations are approved on a single standard, each occupation shall be considered as an individual standard.

(iii) Unrelated occupations shall be submitted under separate standards.

(f) Related/supplemental instruction: The WSATC may approve apprentice related/supplemental instruction for apprenticeable occupations based on recommendations from the state board for community and technical colleges. Program sponsors may allow credit for previously completed related/supplemental instruction under WAC 296-05-015 (11).

(2) Objections: If a competitor objects to the proposed standards, proposed amendments to existing standards, or initial committee, the competitor must:

(a) Provide timely and specific objections in writing to the apprenticeship supervisor twenty calendar days prior to the next regular quarterly WSATC meeting on a form provided by the department;

(b) Upon receipt of a competitor's objections, the apprenticeship supervisor notifies the program sponsor within two business days and forwards the matter to the WSATC.

(c) The WSATC may adjudicate the matter itself or refer the matter to the office of administrative hearings for initial adjudication:

(i) If the WSATC decides to adjudicate all or part of the objections to the apprenticeship program standards, a hearing on the objections shall take place at the regular quarterly WSATC meeting or at a special WSATC meeting convened for purposes of hearing the objections. The department shall notify the competitor making the objections and the program

sponsor that the objection is on the agenda for consideration and shall give its recommendation ten calendar days prior to the WSATC meeting.

(ii) If the WSATC decides to refer all or part of the objections to the office of administrative hearings, the WSATC shall identify the specific matters on which the WSATC is requesting the office of administrative hearings provide findings and conclusions for the initial order.

(d) The department may attempt to facilitate a resolution to any objections during the process identified in this section.

(3) Reciprocity: The WSATC may recognize out-of-state apprenticeship programs when:

(a) The program complies with federal requirements; or

(b) The program is recognized by a recognized state apprenticeship agency; and

(c) The program sponsor agrees to comply with Washington wage and hour laws; and

(d) The program sponsor presents reasonably consistent standards of apprenticeship and asks for recognition from the WSATC.

The WSATC may revoke reciprocity agreements at any time.

NEW SECTION

WAC 296-05-217 Apprentice utilization requirements (AUR) verification on public works projects. The supervisor will verify compliance of apprentice utilization requirements on public works projects as required by RCW 49.04.035.

(1) The apprentice utilization requirement on public works is established in accordance with RCW 39.04.320.

(2) The supervisor must verify compliance in the following manner:

(a) The prevailing wage intents and affidavits system will be the primary method used to verify compliance, however, the supervisor may use any appropriate reporting system or method.

(b) The supervisor may coordinate with any appropriate agency or organization to assist in verification of apprentice labor hours.

(c) The supervisor will compile a compliance report by awarding agencies, contractors, and subcontractors.

(3) Compliance reports on completed projects will be made available to the WSATC each quarter and must be used to determine compliance for the purposes of RCW 39.04.350 and 39.12.055.

(4) The WSATC shall accept or reject the report.

~~((PART D—EQUAL EMPLOYMENT OPPORTUNITY IN APPRENTICESHIP))~~

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

WAC 296-05-403 Definitions ((for Part D)). The following definitions are to be used with this part.

Underutilization: Enrolling minorities and women in a ratio not proportionate to the participation of minorities and

women that is representative of the geographical region served.

Women or female: ((As used in Part D of this chapter)) Refers to minority women and nonminority women.

See 29 C.F.R. 30.2 (December 2016) for definitions of the following:

- Direct threat;
- Disability;
- Genetic information;
- Major life activities;
- Physical or mental impairment;
- Reasonable accommodation;
- Undue hardship.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

WAC 296-05-405 Exceptions to the requirement for adopting an affirmative action plan and a selection procedure. (1) A sponsor is not required to adopt an affirmative action plan or a selection procedure if:

(a) It has fewer than five apprentices; or

(b) The program is determined by the WSATC to be in compliance with an approved equal employment opportunity program. An approved program is one which:

(i) Provides for selection of apprentices;

(ii) Provides for affirmative action in apprenticeship;

(iii) Includes goals and timetables for participation of minorities and women in the labor force in apprenticeship which meet or exceed the requirements of WAC 296-05-415; and

(iv) Meets the requirements of the following laws:

• Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000, et seq.);

• The regulations implementing 42 U.S.C. 2000, et seq.;

• Executive Order 11246 as amended; and

• The regulations (41 C.F.R. Part 60) implementing Executive Order 11246.

• Title I of the Americans with Disabilities Act (ADA);

• 42 U.S.C. 12112 and 12113, as amended;

• Regulation promulgated by the Equal Employment Opportunity Commission (EEOC) (29 C.F.R. Part 1630); and

• The Genetic Information Nondiscrimination Act (GINA), 29 U.S.C. 2000ff et seq.

(2) A program sponsor must submit satisfactory evidence of its qualification for the exception to the WSATC. If the program sponsor designed the apprenticeship program or the equal opportunity program to circumvent the requirements of these rules, the program will not qualify for an exception.

AMENDATORY SECTION (Amending WSR 11-11-002, filed 5/4/11, effective 7/25/11)

WAC 296-05-407 Apprenticeship program sponsor's obligations. (1) A sponsor of an approved apprenticeship program must:

(a) Promote equal opportunity in its apprenticeship program; and

(b) Recruit, select, employ and train apprentices without discrimination based on race, sex, color, religion, national origin, age, disability or as otherwise specified by law.

(2) A sponsor of an approved apprenticeship program with five or more apprentices must uniformly apply all rules related to apprentices. Such rules include, but are not limited to:

- Equality of wages;
- Periodic advancement;
- Promotion;
- Assignment of work;
- Job performance;
- Rotation among all work processes for the occupation;
- Imposition of penalties or other disciplinary action; and
- All other aspects of the apprenticeship program administered by the program sponsors.

(3) Adopt and implement an equal employment opportunity plan and selection procedure as required by chapter 49.04 RCW, 29 C.F.R. Part 30, and these rules unless the approved apprenticeship program qualifies for an exception (see WAC 296-05-405).

(4) Anti-harassment training must be provided to all individuals connected with the administration or operation of the apprenticeship program to include apprentices and journey level workers who work with apprentices.

(a) The training session must be in-person or interactive online training;

(b) The training must include communication of the following at a minimum:

(i) Harassing conduct will not be tolerated;

(ii) The definition of harassment and the types of conduct that constitute unlawful harassment; and

(iii) The right to file a harassment complaint and how to do so.

(c) Orientation and periodic information sessions must be conducted to inform and remind all such individuals of the sponsor's equal employment policy and to provide the anti-harassment training.

AMENDATORY SECTION (Amending WSR 11-11-002, filed 5/4/11, effective 7/25/11)

WAC 296-05-415 Equal employment opportunity goals and timetables. (1) An equal employment opportunity plan must include goals and timetables. The first step in deciding whether goals and timetables are necessary is the completion of an analysis of the sponsor's program to determine whether there is an underutilization of minorities and/or women in the occupations represented by the program. This analysis must be:

(a) Conducted by the sponsor with technical assistance provided by the department;

(b) In writing; and

(c) Included in the sponsor's equal employment opportunity plan.

(2) If the sponsor's analysis demonstrates that minorities and females are underutilized in the program, the program has an enrollment deficiency that must be corrected. Enrollment goals and timetables to correct this deficiency must be

established and they must be included in the sponsor's equal employment opportunity plan. (See WAC 296-05-433.)

(3) If the sponsor's analysis demonstrates that no enrollment deficiencies exist, enrollment goals and timetables are not required. However, where no goals and timetables are established, the equal employment opportunity plan must include a detailed explanation why no goals and timetables have been established.

(4) Utilization goals may not provide a sponsor with a justification to extend a preference to any individual, select an individual, or adversely affect an individual's status as an apprentice on the basis of that person's race, sex, or ethnicity.

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

WAC 296-05-443 Complaint filing. (1) Any apprentice or applicant for apprenticeship who believes they have been discriminated against may file a complaint. The basis of the complaint may be:

(a) Discrimination on the basis of race, sex (including pregnancy and gender identity), sexual orientation, color, religion, national origin, age, disability, genetic information, or as otherwise specified by law by a sponsor or a sponsor's program;

(b) The equal opportunity standards have not been followed; or

(c) The sponsor's equal employment opportunity plan does not comply with the requirements of this chapter.

(2) A complaint may be filed in person or through an authorized representative. The complainant may choose to file a complaint with the WSATC or with a private review panel as established in WAC 296-05-445.

(3) A complaint must be in writing and shall be signed by the complainant. The complaint must include the name, address, and telephone number of the person allegedly discriminated against, the program sponsor involved, and a brief description of the circumstances leading to the complaint.

(4) The complaint must be filed not later than one hundred eighty calendar days from the date of the alleged discrimination or violation of the sponsor's equal employment opportunity plan or the rules of this chapter. If a complaint is initially filed with the private review panel and the complainant later wishes to refer the complaint to the WSATC, the referral must occur within one hundred eighty calendar days of the circumstances leading to the complaint or within thirty calendar days of the private review panel's final decision, whichever is later. ~~((If good cause is shown, the WSATC may extend these time periods.))~~

(5) Sponsors must provide written notice to applicants and apprentices of their right to file discrimination complaints. This notice must be included in the application materials and must also be displayed in a prominent public location where all apprentices will see the notice.

AMENDATORY SECTION (Amending WSR 11-11-002, filed 5/4/11, effective 7/25/11)

WAC 296-05-447 Processing of complaints. (1) All approved programs must establish procedures explaining the program's complaint review process. These procedures must

comply with the requirements of this section. Each sponsor must give a copy of the complaint procedures to each apprenticeship applicant and to all enrolled apprentices.

(2) When the apprenticeship supervisor receives a complaint and the sponsor has a private review panel in place, the complaint must be referred to the panel unless the complainant chooses otherwise or unless the council concludes that the panel will not satisfactorily resolve the complaint.

(3) Once the complaint is referred to the private review panel, the panel has no more than thirty calendar days to resolve it. At the end of the period, the supervisor will obtain the reports from the complainant and the review body as to the disposition of the complaint. If the complaint has been satisfactorily resolved and there is no other indication of failure to apply equal opportunity standards, the case shall be closed and the parties formally notified.

(4) If the private review panel has not satisfactorily resolved the complaint within ninety calendar days, the WSATC may conduct a compliance review and take all necessary steps to resolve the complaint.

(5) If the review panel satisfactorily resolves the complaint but there is evidence that the equal opportunity practices of the sponsor's program are not in compliance with the requirements of this chapter, the council must conduct a compliance review and take all steps necessary to bring the program into compliance.

(6) When a private review panel does not exist, the WSATC may conduct a compliance review to determine the facts of the complaint and any other information necessary to resolve the dispute.

(7) If the WSATC believes that satisfactorily resolving a complaint requires a change in the time limits established in this section, it can modify the time constraints by adopting special processing procedures. However, special processing procedures must only be adopted when circumstances warrant them and only if they will not prejudice any person or party associated with the complaint.

(8) Equal employment opportunity complaints may be referred to the appropriate state or federal entity upon receipt.

WSR 20-13-064

PERMANENT RULES DEPARTMENT OF

RETIREMENT SYSTEMS

[Filed June 15, 2020, 4:53 p.m., effective July 16, 2020]

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

Purpose: PERS, SERS, and TRS default retirement plan, to implement chapter 313, Laws of 2019 (SB 5360), changing the default retirement plan for new members in PERS, SERS, and TRS who do not make a plan choice selection within ninety days of hire, and to clarify provisions for new members with a break in service during their plan choice period.

Citation of Rules Affected by this Order: Amending WAC 415-02-030 and 415-108-425.

Statutory Authority for Adoption: RCW 41.50.050.

Adopted under notice filed as WSR 20-10-097 on May 6, 2020.

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

Number of Sections Adopted at the Request of a Non-governmental 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: June 15, 2020.

Tracy Guerin
Director

AMENDATORY SECTION (Amending WSR 20-01-079, filed 12/11/19, effective 1/11/20)

WAC 415-02-030 Definitions. This section contains definitions of words and phrases commonly used in the department of retirement systems' rules. It also serves as a directory for finding definitions within the RCW and WAC.

(1) **Accumulated contributions** means the sum of all contributions paid into a member's defined benefit account, including interest.

(2) **Appeal** means the proceeding through which a party obtains review of a department action in an adjudicative proceeding conducted under chapter 34.05 RCW (the Administrative Procedure Act) and chapter 415-08 WAC (the department's appeal rules).

(3) **Average final compensation** is defined in RCW 41.32.010(30) (TRS); RCW 41.35.010(14) (SERS); RCW 41.40.010(17) (PERS); and RCW 41.37.010(14) (PSERS).

(4) **Average final salary** for WSPRS is defined in RCW 43.43.120(15).

(5) **Cafeteria plan** means a "qualified" employee benefit program under IRC section 125, such as certain health and welfare plans.

(6) **Calendar month.**

(a) Refers to one of the twelve named months of the year, extending from the first day of the named month through the last day. For example: January 1st through January 31st is a calendar month. February 1st through February 29th is a calendar month in a leap year. March 13th through April 12th is *not* a calendar month.

(b) Exception: For the purpose of administering the break in employment required by RCW 41.32.570, 41.32.-802, 41.32.862, 41.35.060, 41.37.050 and 41.40.037 for retirees returning to work, one calendar month means thirty consecutive calendar days. For example: Kim's retirement date is August 1st. August 31st would be the earliest Kim could return to work and meet the requirement for a one calendar month break in employment.

(7) **Compensation earnable or earnable compensation** definitions can be found in RCW 41.32.010(10) and 41.32.345 (TRS); RCW 41.35.010(6) (SERS); RCW 41.37.010(6) (PSERS); and RCW 41.40.010(8) (PERS).

(8) **Contribution rate** is:

(a) For employees: The fraction (percent) of compensation a member contributes to a retirement system each month.

(b) For employers: The fraction (percent) of payroll a member's employer contributes to a retirement system each month. Contribution rates vary for the different systems and plans.

(9) **Deferred compensation** refers to the amount of the participant's compensation, which the participant voluntarily defers from earnings before taxes to a deferred compensation program.

(10) **Defined benefit plan** is a pension plan in which a lifetime retirement allowance is available, based on the member's service credit and compensation.

(11) **Defined contribution plan** is a plan in which part of members' or participants' earnings are deferred into investment accounts in which tax is deferred until funds are withdrawn. The benefit is based on the contributions and the amount of return from the investment of the contributions. Members or participants receive the full market rate of return minus expenses. There is no guaranteed rate of return and the value of an account will increase or decrease based upon market fluctuations.

(12) **Department** means the department of retirement systems.

(13) **Director** means the director of the department of retirement systems.

(14) **Employee** means a worker who performs labor or services for a retirement systems employer under the control and direction of the employer as determined under WAC 415-02-110(2). An employee may be eligible to participate as a member of one of the state-administered retirement systems according to eligibility requirements specified under the applicable retirement system.

(15) **Employer** is defined in RCW 41.26.030(2) (LEOFF), 41.32.010(11) (TRS), 41.34.020(5) (Plan 3), 41.35.010(4) (SERS), 41.37.010(4) (PSERS) and 41.40.010(4) (PERS).

(16) **Ex-spouse** refers to a person who is a party to a "dissolution order" as defined in RCW 41.50.500(3).

(17) **Final average salary for LEOFF** is defined in RCW 41.26.030(12).

(18) **First employed by an eligible employer in an eligible position** means, for purposes of plan default, first employment with an employer, in an eligible position, with which a member has fully exhausted their plan choice rights.

(19) **HERPs** mean higher education retirement plans described in chapter 28B.10 RCW, which are non-DRS retirement plans offered by institutions of higher education, such as, but not limited to, University of Washington retirement plan (UWRP) and Western Washington University retirement plan (WWURP).

((19)) (20) **Independent contractor** means a contract worker who is not under the direction or control of the employer as determined under WAC 415-02-110 (2) and (3).

((20)) (21) **IRC** means the Federal Internal Revenue Code of 1986, as subsequently amended.

((21)) (22) **Indexed retirement allowance** means a defined benefit retirement allowance from an indexed retirement plan, payable to a member who separates after having completed at least twenty service credit years, that is increased by twenty-five one-hundredths of one percent, compounded for each month from the date of separation to the date that the retirement allowance commences.

((22)) (23) **Indexed retirement plan** means one of the following retirement plans, which are administered by the department of retirement systems and provide an indexed retirement allowance: Law Enforcement Officers' and Firefighters Retirement System Plan 2 (RCW 41.26.530), Public Employees' Retirement System Plan 3 (RCW 41.40.790), School Employees' Retirement System Plan 3 (RCW 41.35.620), and Teachers' Retirement System Plan 3 (RCW 41.32.840).

((23)) (24) **JRF** means the judges' retirement fund created by chapter 2.12 RCW.

((24)) (25) **JRS** means the Washington judicial retirement system created by chapter 2.10 RCW.

((25)) (26) **LEOFF** means the Washington law enforcement officers' and firefighters' retirement system created by chapter 41.26 RCW.

((26)) (27) **Member** means a person who is included in the membership of one of the retirement systems created by chapters 2.10, 2.12, 41.26, 41.32, 41.34, 41.35, 41.37, 41.40, or 43.43 RCW.

((27)) (28) **Nonadministrative position or nonadministrative capacity** refers to retirees returning to work in a position at a school district, charter school, educational service district, state school for the deaf, state school for the blind, or tribal school which:

(a) Does not require an administrative certification, as defined by the office of the superintendent of public instruction, (currently positions requiring the certification include: Principal, vice principal, program administrator, conditional administrator, superintendent or program administrator certifications); or

(b) Does not evaluate staff.

((28)) (29) **Normal retirement** means qualifying for retirement based on the standard age and service credit requirements as specified in RCW 2.10.100 (JRS), 2.12.020 (JRF), 41.26.090 (LEOFF Plan 1), 41.26.430(1) (LEOFF Plan 2), 41.32.470 (TRS Plan 1), 41.32.765(1) (TRS Plan 2), 41.32.875(1) (TRS Plan 3), 41.35.420(1) (SERS Plan 2), 41.35.680(1) (SERS Plan 3), 41.37.210(1) (PSERS), 41.40.180 (PERS Plan 1), 41.40.630(1) (PERS Plan 2), 41.40.820(1) (PERS Plan 3), or 43.43.250 (WSPRS).

((29)) (30) **Participant** means an eligible employee who participates in a deferred compensation plan.

((30)) (31) **Participation agreement** means an agreement that an eligible employee signs to become a participant in a deferred compensation plan.

((31)) (32) **Pension plan** is a plan that provides a life-long post retirement payment of benefits to employees.

((32)) (33) **PERS** means the Washington public employees' retirement system created by chapter 41.40 RCW.

~~((33))~~ **(34) Petition** means the method by which a party requests a review of an administrative determination prior to an appeal to the director. The department's petitions examiner performs the review under chapter 415-04 WAC.

~~((34))~~ **(35) Plan 1** means the retirement plans in existence prior to the enactment of chapters 293, 294 and 295, Laws of 1977 ex. sess.

~~((35))~~ **(36) Plan 2** means the retirement plans established by chapters 293, 294 and 295, Laws of 1977 ex. sess., chapter 341, Laws of 1998, and chapter 329, Laws of 2001.

~~((36))~~ **(37) Plan 3** means the retirement plans established by chapter 239, Laws of 1995, chapter 341, Laws of 1998, and chapter 247, Laws of 2000.

~~((37))~~ **(38) Plan choice rights** refers to a member's right, within a ninety-day period, to make an irrevocable choice to become a member of Plan 2 or Plan 3 or be defaulted into a plan after the full ninety-day period has expired.

(a) A member will be reported in Plan 2 until plan choice rights have been exercised.

(b) A member must make a choice within ninety calendar days (computed as described in RCW 1.12.040) from the first day of employment in an eligible position.

(c) A member will be defaulted into a plan if they continue employment in an eligible position past the ninety-day plan choice period without making a choice.

(d) A member may exercise plan choice rights only once per system.

(39) Plan year is the twelve-month period that begins on January 1st and ends on December 31st of the same calendar year.

~~((38))~~ **(40) Portability** is the ability to use membership in more than one Washington state retirement system in order to qualify for retirement benefits. See chapters 41.54 RCW and 415-113 WAC.

~~((39))~~ **(41) PSERS** means the Washington public safety employees' retirement system created by chapter 41.37 RCW.

~~((40))~~ **(42) Public record** is defined in RCW 42.17.-020(41).

~~((41))~~ **(43) Restoration** is the process of restoring a member's service credit for prior periods.

~~((42))~~ **(44) Retirement system employer - See "employer."**

~~((43))~~ **(45) Rollover** means a distribution that is paid to or from an eligible retirement plan within the statutory time limit allowed.

~~((44))~~ **(46) Separation date** is the date a member ends employment in a position eligible for retirement.

~~((45))~~ **(47) SERS** means the Washington school employees' retirement system created by chapter 41.35 RCW.

~~((46))~~ **(48) Split account** is the account the department establishes for a member or retiree's ex-spouse.

~~((47))~~ **(49) Surviving spouse** refers to a person who was married to the member at the time of the member's death and who is receiving or is eligible to receive a survivor benefit.

~~((48))~~ **(50) Survivor beneficiary** means a person designated by the member to receive a monthly benefit allowance after the member dies.

~~((49))~~ **(51) Survivor benefit** is a feature of a retirement plan that provides continuing payments to a designee after the death of a member or retiree.

~~((50))~~ **(52) TRS** means the Washington state teachers' retirement system created by chapter 41.32 RCW.

~~((51))~~ **(53) The Uniform Services Employment and Reemployment Rights Act of 1994 (USERRA)** is the federal law that requires employers to reemploy and preserve job security, pension and welfare benefits for qualified employees who engage in military service.

~~((52))~~ **(54) WSPRS** means the Washington state patrol retirement system created by chapter 43.43 RCW.

AMENDATORY SECTION (Amending WSR 03-15-007, filed 7/3/03, effective 8/1/03)

WAC 415-108-425 How do I determine if I have plan choice rights or transfer rights to PERS Plan 3? (1) Definitions:

(a) **"Concurrently employed"** means you are employed at the same time, in eligible positions, by a Phase 1 employer and by a Phase 2 employer.

(b) **"Exercising plan choice rights"** means choosing Plan 2 or Plan 3 or defaulting into a plan ~~((3))~~.

(c) **"Phase 1 employer"** means state agencies and institutes of higher education.

(d) **"Phase 2 employer"** means all other employers.

(e) **"Phase 1 transfer period"** is the period from March 1, 2002, through and including August 31, 2002.

(f) **"Phase 2 transfer period"** is the period from September 1, 2002, through and including May 31, 2003.

(2) **What determines if I have "plan choice rights" or "transfer rights"?** Your current employment status and your employment history will be used to determine if you have plan choice rights (refer to WAC 415-02-030 for definition) or transfer rights. If your employment status changes, your rights must be reevaluated. A change in your employment status, such as separating from employment or becoming reemployed, may change your rights.

(3) ~~((What are "choice rights" and how are they applied?))~~ "Choice rights" refers to your right, within a ninety-day period, to make an irrevocable choice to become a member of Plan 2 or Plan 3.

~~(a) You will be reported in Plan 2 until you exercise choice rights.~~

~~(b) You must make a choice within ninety days of your first day of employment in an eligible position.~~

~~(c) You will be defaulted into Plan 3 if you continue employment past the ninety day choice period without making a choice.~~

~~(d) You may exercise choice rights only once.~~

~~(4))~~ **Do I have "plan choice rights"?**

(a) You have plan choice rights if your initial PERS membership began on or after March 1, 2002, with a Phase 1 employer in an eligible position.

(i) If you separate from employment and did not exercise your plan choice rights, you retain plan choice rights if you

are reemployed in an eligible position with a Phase 1 employer.

(ii) If you separate from employment and did not exercise your plan choice rights, and you are not employed by a Phase 2 employer during Phase 2, you retain plan choice rights if you begin another period of employment in an eligible position with a Phase 2 employer after May 31, 2003.

(b) You have plan choice rights if your initial PERS membership began on or after September 1, 2002, with a Phase 2 employer in an eligible position. If you separate from employment and did not exercise your plan choice rights, you retain plan choice rights if you begin another period of employment in an eligible position with a Phase 1 or Phase 2 employer.

(c) You have plan choice rights if you transferred from membership in PERS to membership in the school employees' retirement system and then became employed in an eligible PERS position on or after March 1, 2002, with a Phase 1 employer or on or after September 1, 2002, with a Phase 2 employer.

~~((5))~~ **(4) What are "transfer rights" and how are they applied?** "Transfer rights" refers to your right as a Plan 2 member to transfer into Plan 3 during an applicable transfer period to your employment type.

(a) You are not required to exercise transfer rights. If you have transfer rights, you will remain in Plan 2 unless you decide to transfer to Plan 3.

(b) If you do not transfer to Plan 3 during the Phase 1 or the Phase 2 transfer periods, you will not qualify to receive the additional transfer payment under RCW 41.40.795 or retroactive gainsharing payment under RCW 41.31A.040.

~~((6))~~ **(5) Do I have transfer rights?**

(a) You have transfer rights if you:

(i) Are a Plan 2 member;

(ii) Are employed in an eligible position by a Phase 1 employer during the Phase 1 transfer period; and

(iii) Were not eligible for plan choice rights under subsection ~~((4))~~ **(3)**(a) or (c) of this section.

(b) You have transfer rights if you:

(i) Are a Plan 2 member;

(ii) Are employed in an eligible position by a Phase 2 employer during the Phase 2 transfer period; and

(iii) Were not eligible for plan choice rights under subsection ~~((4))~~ **(3)**(b) or (c) of this section.

~~((7))~~ **(6) What are "January transfer rights" and how are they applied?** "January transfer rights" refers to a Plan 2 member's right to transfer to Plan 3 during any January after the close of a transfer period.

(a) If you are employed by a Phase 1 employer, in an eligible position, the first January you can transfer is January 2003.

(b) If you are employed by a Phase 2 employer, in an eligible position, the first January you can transfer is January 2004.

(c) You must earn service credit in the January in which you transfer.

~~((8))~~ **(7) Do I have January transfer rights?**

(a) You have January transfer rights if you were eligible for transfer rights and did not transfer to PERS Plan 3 **during** the transfer period that applied to you.

(b) You have January transfer rights if you:

(i) Were employed in an eligible position with a Phase 1 employer **before** the Phase 1 transfer period, or were employed in an eligible position by a Phase 2 employer **before** the Phase 2 transfer period;

(ii) Were not employed by a Phase 1 employer **during** the Phase 1 transfer period;

(iii) Were not employed by a Phase 2 employer **during** the Phase 2 transfer period; and

(iv) Are employed by a Phase 1 employer in an eligible position that you began **after** the Phase 1 transfer period ended, or are employed by a Phase 2 employer in an eligible position that you began **after** the Phase 2 transfer period ended.

~~((9))~~ **(8) What happens after I become a ~~(Plan 3)~~ member of a plan by choice, transfer or default?** Once you choose ~~(Plan 3 or default to Plan 3 or transfer to Plan 3, you will remain a Plan 3 member)~~, transfer, or default into a plan, you will remain a member of that plan regardless of whether you change employers. You will not have any additional transfer rights or plan choice rights to exercise.

~~((10))~~ **(9) What rules apply to me if I am concurrently employed?** If you are, or become concurrently employed during the Phase 1 transfer period in an eligible position, you will have transfer rights but must wait until the Phase 2 transfer period to transfer. If you separate from one of the employers, your membership rights must be reevaluated.

Examples: *The examples are written, for the most part, for a Phase 1 employer. Use the Phase 2 transfer period (September 1, 2002, through and including May 31, 2003) to apply the rules to a Phase 2 employer.*

Plan Choice Rights:
Example 1: Pat starts working for a state agency in an eligible position (Phase 1 employer) as of:
A. April 1, 2002. Since Pat has not previously been a member of PERS, Pat has ninety days to make a plan choice for Plan 2 or Plan 3. See subsection (3) ((b)) of this section.
B. After forty-five days, Pat leaves service without making a choice, and then returns in an eligible position one year later. Pat has a new ninety day period in which to make (his) a plan choice . See subsection ((4)) (3) (a)(i) of this section.
C. Pat chooses Plan 3 within (his) ninety days. Pat is now a Plan 3 member regardless of future employment. See subsection ((9)) (8) of this section.
D. Instead of choosing Plan 3, Pat lets (his) the ninety day plan choice period go by ((with-out)) without choosing Plan 2 or Plan 3. Pat is defaulted into a plan (3) and is now a (Plan 3) member of that plan regardless of future employment. See subsection ((s-3)(e) and (9)) (8) of this section.

Transfer Rights:
Example 2:
A. Chris has been a Plan 2 member since 1977. Chris is working at a state agency (Phase 1 employer) as of March 1, 2002. Since Chris was a member prior to the start of Plan 3, Chris has the right to transfer to Plan 3 in the transfer period (March 1, 2002, through August 31, 2002). See subsection ((6)) <u>(5)</u> (a) of this section.
B. However, Chris did not make a decision to transfer prior to the close of the Phase 1 transfer period . If Chris remains employed for a Phase 1 employer, the right to transfer to Plan 3 is limited to January of each year. See subsection ((8)) <u>(7)</u> (a) of this section.
C. In this variation, Chris was a Plan 2 member from March 1, 1987, through February 1, 2002. Chris returns on October 15, 2002, for a state agency (Phase 1 employer). Since Chris returned to service after the transfer period (March 1, 2002, through August 31, 2002), Chris only has the right to transfer to Plan 3 in January of each year. See subsection ((8)) <u>(7)</u> (b) of this section.
Irrevocable Choice Rule:
Example 3: Mike starts working for a state agency (Phase 1 employer) as of April 1, 2002. Since Mike has not previously been a member of PERS, ((he)) <u>Mike</u> has ninety days to make a plan choice for Plan 2 or Plan 3. Mike chooses Plan 3 within ((his)) ninety days. Mike is now a Plan 3 member regardless of future employment. See subsection ((9)) <u>(8)</u> of this section.
Example 4: Pat starts working for a state agency (Phase 1 employer) as of April 1, 2002. Since Pat has not previously been a member of PERS, ((he)) <u>Pat</u> has ninety days to make a plan choice for Plan 2 or Plan 3. Pat chooses Plan 2 within ((his)) ninety days. Pat is now a Plan 2 member who can no longer have a plan choice regardless of future employment. See subsection ((3)(d)) <u>(8)</u> of this section.
Concurrent Employment in Phase 1 and 2:
Example 5: Using example 2A, Chris also accepts employment for a county (Phase 2 employer) on April 1, 2002, prior to transferring to Plan 3. Since Chris is concurrently employed at a Phase 1 and a Phase 2 employer, Chris must wait for the Phase 2 window ((before he can)) <u>to</u> transfer to Plan 3. See subsection ((10)) <u>(9)</u> of this section.

WSR 20-13-065
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed June 15, 2020, 4:53 p.m., effective July 16, 2020]

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

Purpose: Notarized signature alternatives, to permit alternatives to requirements for a notarized signature on retirement applications, forms and documents.

Citation of Rules Affected by this Order: Amending WAC 415-100-051, 415-100-055, 415-103-225, 415-104-215, 415-106-600, 415-106-610, 415-108-326, 415-108-434, 415-110-610, 415-112-015, 415-112-504, 415-112-505, and 415-112-507.

Statutory Authority for Adoption: RCW 41.50.050.

Adopted under notice filed as WSR 20-10-098 on May 6, 2020.

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.

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

Date Adopted: June 15, 2020.

Tracy Guerin
 Director

AMENDATORY SECTION (Amending WSR 96-01-047, filed 12/14/95, effective 1/14/96)

WAC 415-100-051 Married member's benefit selection—Spousal consent required. The member, if married, must provide the spouse's ~~((written))~~ consent to the option selected under WAC 415-100-055, verified by a notarized signature or other means acceptable to the department. If a married member does not provide ~~((spousal))~~ verified consent, the department will pay the retired member a joint and one-half survivor benefit allowance and record the member's spouse as the survivor, in compliance with RCW 2.10.146(2). ~~(("Spousal consent" means that the married member's spouse consents to the retirement option selected by the member. (The spouse's notarized signature on a completed retirement application constitutes spousal consent.)))~~

AMENDATORY SECTION (Amending WSR 01-13-009, filed 6/8/01, effective 7/9/01)

WAC 415-100-055 Retirement benefit options. RCW 2.10.146, enables the department to provide retiring members with four retirement benefit options. The member must

choose an option when applying for service or disability retirement.

(1) **Option One: Benefit option without survivor features (standard allowance).** The department pays the retiree a monthly retirement allowance based solely on the single life of the member, in accordance with RCW 2.10.146. When the retiree dies, all benefits cease. Any remaining balance of the retiree's accumulated contributions will be paid to:

(a) Such person or persons, trust, or organization as the judge has nominated by written designation duly executed and filed with the department of retirement systems; or

(b) If there is no such designated person or persons still living at the time of the judge's death, then to the surviving spouse; or

(c) The member's estate; or

(d) If there is neither such designated person or persons still living at the time of death nor a surviving spouse, then to the judge's legal representative.

(2) **Benefit options with a survivor feature.**

(a) A retiring member is allowed to select from several retirement options which create an actuarially equivalent benefit that includes a survivor feature. The survivor feature entitles the survivor to receive a monthly allowance after the retiree dies. If the member chooses one of the survivor options, the monthly benefit the member will receive is actuarially reduced to offset the cost of the survivor feature. After the retiree dies, the department pays the survivor an allowance for the duration of his or her life. If the retiree and the survivor both die before the retiree's accumulated contributions are exhausted, all benefits cease. Any remaining balance of the retiree's accumulated contributions will be paid to:

(i) Such person or persons, trust, or organization as the judge has nominated by written designation duly executed and filed with the department of retirement systems; or

(ii) If there is no such designated person or persons still living at the time of the judge's death, then to the surviving spouse; or

(iii) The member's estate; or

(iv) If there is neither such designated person or persons still living at the time of death nor a surviving spouse, then to the judge's legal representative.

(b) **Option Two (joint and whole allowance).** When the retiree dies, the department pays the survivor a monthly retirement allowance equal to the gross monthly allowance received by the retiree.

(c) **Option Three (joint and one-half allowance).** When the retiree dies, the department pays the survivor one-half of the amount of the retiree's gross monthly retirement allowance.

(d) **Option Four (joint and two-thirds allowance).**

(i) Option Four is available to members retiring on or after January 1, 1996.

(ii) When the retiree dies, the department pays the survivor two-thirds (66.667%) of the member's gross monthly retirement allowance.

(3) **Benefit increases when survivor predeceases retiree (pop-up provision).**

(a) This subsection applies to members retiring on or after January 1, 1996, who selected Option Two, Three, or Four.

(b) If the survivor dies before the retiree, the retiree's monthly retirement allowance will increase, effective the first day of the following month, to:

(i) The amount that would have been received had the retiree chosen Option One described in subsection (1) of this section; plus

(ii) Any cost-of-living adjustments received prior to the survivor's death based on original selection.

(c) **Pop-up recalculation example.**

Agnes retires in 1996 (Year 0). She would like Beatrice, her daughter, to receive a monthly allowance after Agnes dies. Therefore, Agnes selects a retirement benefit option with a survivor feature. As a result her monthly allowance is reduced from \$2,000 (standard allowance) to \$1,750. Unfortunately, Beatrice dies in January 2001 (Year 5). Under the pop-up provision, Agnes' monthly benefit will increase to the amount she would have received had she chosen Option One (standard allowance) plus her accumulated COLA's:

Year	Option One (Standard Allow.)	Survivor Option (2,3,4) plus COLAs	COLA incr. (3% max)	\$ Increase
0 (1996)	2,000.00	1,750.00	(ineligible)	0.00
1 (1997)		1,750.00	.02	35.00
2 (1998)		1,785.00	.03	53.55
3 (1999)		1,838.55	.025	45.96
4 (2000)		1,884.51	.03	56.54
5 (2001)	2,000.00	1,941.05	—	—
			Total COLAs	191.05
Original Option One Benefit Amount	\$2000	+ Total COLAs		= New Benefit Amount
		+ \$191.05		= \$2,191.05*

* In the future (i.e., Year 5), Agnes' COLA will be based on the increased benefit amount (\$2,191.05).

(d) If the survivor dies and the retiree's benefit increases under this subsection, and thereafter the retiree also dies before all contributions are exhausted, all benefits cease. Any remaining balance of the retiree's accumulated contributions will be paid to:

(a) Such person or persons, trust, or organization as the judge has nominated by written designation duly executed and filed with the department of retirement systems; or

(b) If there is no such designated person or persons still living at the time of the judge's death, then to the surviving spouse; or

(c) The member's estate; or

(d) If there is neither such designated person or persons still living at the time of death nor a surviving spouse, then to the judge's legal representative.

(4) **Survivor.** For the purposes of this section, "survivor" means a person nominated by the member to receive a monthly benefit allowance after the member dies. A member nominates the survivor at the time of retirement by filing a completed ((and notarized)) form provided by the depart-

ment, verified by a notarized signature or other means acceptable to the department.

AMENDATORY SECTION (Amending WSR 20-06-040, filed 2/27/20, effective 3/29/20)

WAC 415-103-225 What are my WSPRS Plan 2 retirement benefit options? This section applies to WSPRS Plan 2 members. Upon retirement for service under RCW 43.43.250, you must choose to have your monthly retirement benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly benefit after my death?** Options described in subsection (2)(b) through (d) of this section include a survivor option. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." Upon your death your survivor beneficiary will be entitled to receive a monthly benefit for the duration of his or her life. Your monthly retirement benefit will be actuarially reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit is affected by choosing a survivor option.

(2) **What are my benefit options?**

(a) **Option one: Standard benefit (nonsurvivor option).** The department will pay you a monthly retirement benefit throughout your life. Your monthly benefit will cease upon your death.

(b) **Option two: Joint and one hundred percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

(c) **Option three: Joint and fifty percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to fifty percent of your gross monthly benefit.

(d) **Option four: Joint and two-thirds survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667 percent) of your gross monthly benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must submit your spouse's (~~notarized~~) consent, verified by notarization or other means acceptable to the department. If you do not provide verified spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 43.43.271(2).

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, verified spousal consent is required. If you do not provide (~~notarized~~) spousal consent, verified by notarization or other means acceptable to the department. the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 43.43.271(2).

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least thirty days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What happens if I choose a benefit with a survivor option and my survivor beneficiary dies before I do?** If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(6) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following three exceptions:

(a) **Return to membership.** If you retire and then return to membership, you may choose a different retirement option upon your subsequent retirement.

(b) **Postretirement marriage option.** If you select the standard benefit option at the time of retirement and marry after retirement, you may select a benefit option with a survivor option and name your current spouse as survivor, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a benefit option with a survivor option and name a non-spouse as survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

(7) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(ii) If you have not designated a beneficiary, or if your designated beneficiary is no longer living or in existence, then to your surviving spouse.

(iii) If not paid according to (a)(i) or (ii) of this subsection, then to your estate.

(b) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(ii) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(iii) If not paid according to (b)(i) or (ii) of this subsection, then to your survivor beneficiary's estate.

(8) For more information, see RCW 43.43.271.

AMENDATORY SECTION (Amending WSR 20-06-040, filed 2/27/20, effective 3/29/20)

WAC 415-104-215 What are my LEOFF Plan 2 retirement benefit options? If you retire for service under RCW 41.26.430 or nonduty disability under RCW 41.26.470, or if you choose to receive a monthly benefit for duty disability under RCW 41.26.470, you must choose to have your monthly retirement benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly benefit after my death?** Options described in subsection (2)(b) through (d) of this section will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." After your death, your survivor beneficiary will receive a monthly benefit for the duration of their life. Your monthly retirement benefit will be reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit will be affected if you choose a survivor option.

(2) **What are my benefit options?**

(a) **Option one: Standard benefit (nonsurvivor option).** The department will pay you a monthly retirement benefit throughout your lifetime. Your monthly benefit will cease upon your death.

(b) **Option two: Joint and one hundred percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

(c) **Option three: Joint and fifty percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to fifty percent of your gross monthly benefit.

(d) **Option four: Joint and two-thirds benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor

beneficiary will receive a gross monthly benefit equal to two-thirds (66.667%) of your gross monthly benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's (~~notarized~~) consent, verified by notarization or other means acceptable to the department. If you do not provide verified spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.26.460(2).

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, verified spousal consent is required. If you do not provide (~~notarized~~) spousal consent, verified by notarization or other means acceptable to the department, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.26.460(2).

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least thirty days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What happens if I choose a benefit option with a survivor option and my survivor beneficiary dies before I do?** If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(6) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following three exceptions:

(a) **Return to membership.** If you retire and then return to membership, you may choose a different retirement option upon your subsequent retirement.

(b) **Postretirement marriage option.** If you select the standard benefit option at the time of retirement and marry after retirement, you may select a benefit option with a survivor option and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a benefit option with a survivor option and name a non-spouse as survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

(7) Who will receive the balance of my accumulated contributions, if any, after my death?

(a) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(ii) If you have not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your surviving spouse.

(iii) If not paid according to (a)(i) or (ii) of this subsection, then to your estate.

(b) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(ii) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(iii) If not paid according to (b)(i) or (ii) of this subsection, then to your survivor beneficiary's estate.

(8) For more information, see RCW 41.26.460.

AMENDATORY SECTION (Amending WSR 20-06-040, filed 2/27/20, effective 3/29/20)

WAC 415-106-600 What are my retirement benefit options? Upon retirement for service under RCW 41.37.210 or retirement for disability under RCW 41.37.230, you must choose to have your retirement benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly benefit after my death?** Options described in subsection (2)(b) through (d) of this section will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." After your death, your survivor beneficiary will receive a monthly benefit for the duration of their life. Your monthly retirement benefit will be reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit will be affected if you choose a survivor option.

(2) What are my benefit options?

(a) **Option one: Standard benefit (nonsurvivor option).** The department will pay you a monthly retirement benefit throughout your lifetime. Your monthly benefit will cease upon your death.

(b) **Option two: Joint and one hundred percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

(c) **Option three: Joint and fifty percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to fifty percent of your gross monthly benefit.

(d) **Option four: Joint and two-thirds survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667%) of your gross monthly benefit.

(3) Do I need my spouse's consent on the option I choose? The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's (~~notarized~~) consent, verified by a notarized signature or other means acceptable to the department. If you do not provide verified spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.37.170(2).

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required. If you do not provide (~~notarized~~) spousal consent, verified by a notarized signature or other means acceptable to the department, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.37.170(2).

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least thirty days before your retirement date, spousal consent is not required.

(4) Can a dissolution order require that a former spouse be designated as a survivor beneficiary? Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) What happens if I choose a benefit with a survivor option and my survivor beneficiary dies before I do? If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(6) May I change my benefit option after retirement? Your choice of a benefit option is irrevocable with the following three exceptions:

(a) **Return to membership.** If you retire and then return to membership for at least two years of uninterrupted service, you may choose a different retirement option upon your subsequent retirement. See RCW 41.37.050(3).

(b) **Postretirement marriage option.** If you select the standard benefit option at the time of retirement and marry after retirement, you may select a survivor benefit option and name your current spouse as survivor beneficiary, provided that:

- (i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;
- (ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;
- (iii) You provide a copy of your certified marriage certificate to the department; and
- (iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a survivor benefit option and name a nonspouse as your survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

(7) Who will receive the balance of my accumulated contributions, if any, after my death?

(a) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

- (i) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.
- (ii) If you have not designated a beneficiary, or if your designated beneficiary is no longer living or in existence, then to your surviving spouse.
- (iii) If not paid according to (a)(i) or (ii) of this subsection, then to your estate.

(b) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

- (i) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.
- (ii) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.
- (iii) If not paid according to (b)(i) or (ii) of this subsection, then to your survivor beneficiary's estate. See RCW 41.37.170.

AMENDATORY SECTION (Amending WSR 20-06-040, filed 2/27/20, effective 3/29/20)

WAC 415-106-610 How do I apply for retirement benefits? You should apply for retirement benefits at least thirty days before your intended retirement date. You can apply online at the department's website or by submitting to the department:

- (1) A completed ~~(s)~~ and signed ~~((and notarized))~~ retirement application, verified by notarization or other means acceptable to the department, including:

(a) Your selection of one of the benefit options described in WAC 415-106-600.

(b) Designation of a survivor beneficiary if you selected a benefit option with a survivor feature.

(c) If you are married, your spouse's consent may be required as described in WAC 415-106-600.

(2) Evidence of your birth date, only if requested by the department, such as a photocopy of your birth certificate, passport or passport card, government-issued driver license or identification card, NEXUS card, naturalization certificate, certificate of armed services record U.S. DD-214, or other documentation acceptable to the department. If you are requested to submit evidence, the document you submit must include the month, day, and year of your birth.

(3) If you selected a benefit option with a survivor feature, acceptable evidence of your designated survivor beneficiary's birth date which includes the month, day, and year of birth.

AMENDATORY SECTION (Amending WSR 20-06-040, filed 2/27/20, effective 3/29/20)

WAC 415-108-326 What are my retirement benefit options? Upon retirement for service under RCW 41.40.180, 41.40.630, or 41.40.820, or for disability under RCW 41.40.-210, 41.40.230, 41.40.670, or 41.40.825, you must choose to have the defined benefit portion of your retirement benefit paid to you by one of the options described in this section. If you are a Plan 1 member, you may also select an optional supplemental cost of living adjustment (COLA).

(1) **Which option will pay my beneficiary a monthly benefit after my death?** Options described in subsection (2)(b) through (d) of this section will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." After your death, your survivor beneficiary will receive a monthly benefit for the duration of their life. Your monthly retirement benefit will be reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit will be affected if you choose a survivor option.

(2) What are my benefit options?

(a) **Option one: Standard benefit (nonsurvivor option).** The department will pay you a monthly retirement benefit throughout your lifetime. Your monthly benefit will cease upon your death.

(b) **Option two: Joint and one hundred percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

(c) **Option three: Joint and fifty percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to fifty percent of your gross monthly benefit.

(d) **Option four: Joint and two-thirds survivor benefit.¹** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your

survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667%) of your gross monthly benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's (~~notarized~~) consent, verified by a notarized signature or other means acceptable to the department. If you do not provide spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.40.188, 41.40.660 and 41.40.845.

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required. If you do not provide (~~notarized~~) spousal consent, verified by a notarized signature or other means acceptable to the department, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.40.188, 41.40.660 and 41.40.845.

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least thirty days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What is the supplemental COLA option for Plan 1 members?** If you are a Plan 1 member, in addition to choosing a retirement benefit option described in subsection (2) of this section, you may choose to receive a supplemental annual COLA. If you select this option, your monthly retirement benefit will be actuarially reduced to offset the cost of this benefit.

(6) **What happens if I choose a benefit with a survivor option and my survivor beneficiary dies before I do?** If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(7) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following three exceptions:

(a) **Return to membership.** If you retire and then return to membership for at least two years of uninterrupted service, you may choose a different retirement option upon your subsequent retirement. See RCW 41.40.037.

(b) **Postretirement marriage option.** If you select the standard benefit option at the time of retirement and marry after retirement, you may select a survivor benefit option and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a survivor benefit option and name a nonspouse as your survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

(8) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) **Plan 1 and 2 members:**

(i) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(B) If you have not designated a beneficiary, or if your designated beneficiary is no longer living or in existence, then to your surviving spouse.

(C) If not paid according to (a)(i)(A) or (B) of this subsection, then to your estate.

(ii) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(B) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(C) If not paid according to (a)(ii)(A) or (B) of this subsection, then to your survivor beneficiary's estate.

(b) **Plan 3 members:** The defined benefit stops upon your death or upon the death of your survivor beneficiary, if applicable. As a Plan 3 member, you do not contribute to the defined benefit portion of your retirement benefit. The defined contribution portion of your benefit will be distributed according to WAC 415-111-310.

(9) For more information, see RCW 41.40.188 (Plan 1), RCW 41.40.660 (Plan 2) and RCW 41.40.845 (Plan 3).

¹ Available to members retiring on or after January 1, 1996.

AMENDATORY SECTION (Amending WSR 09-18-051, filed 8/27/09, effective 9/27/09)

WAC 415-108-434 PERS Plan 1 nonduty disability benefits. This section covers benefits provided in RCW 41.40.230 through 41.40.250 for PERS Plan 1 members who

incur a disability outside the performance of duty. You may also be eligible for benefits from the Washington state departments of labor and industries and social and health services, the U.S. Social Security Administration, your employer, and other disability insurers.

(1) Am I eligible for a PERS Plan 1 nonduty disability benefit? You are eligible for a PERS Plan 1 nonduty disability benefit if the department determines that all of the following are true:

(a) You are a PERS Plan 1 member and have been employed with a PERS eligible employer for at least five years;

(b) You separate from PERS employment;

(c) At the time you separated from PERS employment, you were totally incapacitated to perform the duties of your job or any other position for which you are qualified by training or experience;

(d) Your disability is likely to be permanent;

(e) Your disability was not incurred during the performance of your job duties; and

(f) Your disability is not the result of your criminal conduct committed after April 21, 1997. See RCW 41.40.054.

(2) What is the PERS Plan 1 nonduty disability benefit? If you qualify to receive a nonduty disability benefit, you will receive a benefit under RCW 41.40.235 or, if you were a PERS Plan 1 member on February 25, 1972, you may irrevocably choose to receive a benefit under RCW 41.40.250.

If you are eligible to receive a benefit under RCW 41.40.235, your benefit will equal two percent of your average final compensation for each year of service credit, reduced by two percent for every year or fraction of a year that your age is less than fifty-five. For example, if you are fifty years old, your monthly disability benefit will be reduced by ten percent.

(a) Your monthly disability benefit will not exceed sixty percent of your average final compensation.

(b) The degree of your disability or impairment will not affect the amount of your benefit.

(c) Your monthly disability benefit will be reduced by any amounts you receive for the same disability under workers' compensation or similar law. See RCW 41.40.300.

(d) Your monthly disability benefit will be actuarially reduced if you choose a benefit option with a survivor feature. See WAC 415-108-326.

(3) How do I apply? To apply for a nonduty disability benefit the following documents must be submitted to the department:

(a) A properly completed three-part disability retirement application, consisting of:

(i) Part 1: Application for disability retirement. You must complete and sign the application. If you are married, your spouse must sign consenting to the option you choose. Your signature(s) must be ~~((notarized))~~ verified by notarization or other means acceptable to the department.

(ii) Part 2: Employer's statement and report. You must complete the member information portion. The remainder must be completed, signed, and returned directly to the department by your employer.

(iii) Part 3: Medical report. You must complete the member information portion. The remainder must be completed,

signed, and returned directly to the department by a person licensed according to Washington state law to practice medicine and/or surgery (including osteopathic medicine and/or surgery), advanced nursing, or psychology.

(b) Additional information, such as vocational and/or occupational information, requested by the department; and

(c) Any other material you want the department to consider.

(4) Who is responsible for expenses related to my application? You are responsible for all costs associated with your application for benefits.

(5) What is the time limit for filing an application for a nonduty disability benefit? There is no time limit for filing an application for a nonduty disability benefit. However, you must prove that you were totally incapacitated at the time you separated from PERS employment.

(6) What information will the department use to determine whether I am entitled to a nonduty disability benefit? To determine your eligibility for a nonduty disability benefit, the department will consider any relevant information submitted by you, your employer, or your physician, or otherwise available, including:

(a) Information and determinations by the department of labor and industries or a self-insurer;

(b) Medical, vocational, and other information about your disability;

(c) Your job description;

(d) Your membership records, maintained by the department; and

(e) Any other relevant evidence.

(7) If I am eligible for a service retirement under RCW 41.40.180, may I still apply for a disability retirement? Yes, if you are eligible for both you may elect a disability retirement or a service retirement. If you elect a service retirement, you may not later change to a disability retirement.

(8) When will the department evaluate my eligibility for benefits? The department will evaluate your eligibility for a nonduty disability benefit once it receives all three parts of your properly completed application, supporting documentation, and all other information requested by the department.

(9) If my application is approved, when will my benefit accrue? If your application for a nonduty disability benefit is approved, your benefit will accrue from the first day of the calendar month following the month you separate from service.

(a) If you separate from service **before** your application is approved, you will be eligible for a retroactive payment of the benefit that accrued between the month following your date of separation from service and the approval of your application.

(b) If you separate from service **after** your application is approved, your disability benefit will not begin to accrue **until** you separate from service. If you are on an approved leave of absence (either paid or unpaid) at the time of your application for a benefit, you have not separated from service.

(i) If you do not separate from service within ninety days of the department's approval of your application, the approval will lapse.

(ii) If your approval for a benefit lapses while you are still on an authorized leave of absence, you may request a reinstatement of approval. The department will reinstate its approval only if your employer verifies that you have been on an authorized leave of absence continuously from the time your application was first approved.

(10) What are my options if my application is denied?

(a) If your application is denied and you continue in or resume PERS employment, you may reapply for a nonduty disability benefit at a later time if your condition worsens. You must submit new information to the department that shows you meet the requirements in subsection (1) of this section.

(b) If your application is denied, you may petition for review of the department's decision under the provisions of chapter 415-04 WAC.

(11) What happens if I die within sixty days of applying for nonduty disability benefits? If you die within sixty days of the date the department receives your application for a nonduty disability benefit, the beneficiary you name on the application may choose to receive either:

(a) A lump sum amount equal to the contributions in your PERS account; or

(b) A monthly benefit calculated according to whichever of the following methods will give your beneficiary the greatest benefit:

(i) A benefit calculated according to subsection (2) of this section and the benefit option indicated on your application; or

(ii) If otherwise qualified, the benefit provided in RCW 41.40.270 (4)(a).

(12) What information must I provide to the department if I am receiving nonduty disability benefits? If you are receiving nonduty disability benefits, you must report the following to the department:

(a) Any compensation you are eligible to receive under workers' compensation or similar law for the same disability;

(b) Any improvement in your condition. Your doctor is also responsible to report any improvements; and

(c) If you resume employment, either public or private, the name of your employer and amount of compensation, regardless of the number of hours you work.

(13) Is my medical condition monitored while I receive disability benefits? The department may require comprehensive medical examinations, pursuant to RCW 41.40.310, to reevaluate your eligibility for disability benefits. The department will pay the medical fees associated with these examinations.

(14) How long will I receive a monthly disability benefit? During your lifetime, you will receive a monthly disability benefit unless one of the following occurs:

(a) If you return to gainful employment, your monthly disability benefit will be recalculated, as set forth in subsection (15) of this section.

(b) If you return to active PERS membership, your disability benefit will be discontinued.

(c) If a doctor determines that you are no longer totally incapacitated, your disability benefit will be discontinued.

(d) If you refuse to submit to medical examinations required by RCW 41.40.310, your disability benefit will be discontinued.

(15) If I return to employment, how will my monthly disability benefit be recalculated? The recalculation of your disability benefit is based on whether your current compensation is greater than your allowable earnings. Your "allowable earnings" are the difference of your compensation at retirement, adjusted for inflation, and your monthly disability benefit.

(a) If your current compensation is **greater** than your allowable earnings your benefit will be reduced or discontinued.

Example of benefit being reduced:

Due to a nonduty-related disability, Joe separated from service and began receiving a disability benefit of \$1,000 per month. Joe became gainfully employed earning \$2,500 per month. Joe's compensation at the time of separation adjusted for inflation is \$3,000. Because Joe's current compensation, \$2,500, is greater than his allowable earnings ($\$3,000 - \$1,000 = \$2,000$) by \$500, his benefit will be reduced by \$500. Joe's reduced disability benefit will be \$500 per month ($\$1,000 - \500).

Example of benefit being discontinued:

Due to a nonduty-related disability, Heidi separated from service and began receiving a disability benefit of \$1,000 per month. Heidi became gainfully employed earning \$4,000 per month. Heidi's compensation at the time of separation adjusted for inflation is \$3,000. Because Heidi's current compensation, \$4,000, is greater than her allowable earnings ($\$3,000 - \$1,000 = \$2,000$) by an amount (\$2,000) that is greater than her disability benefit (\$1,000), her benefit will be discontinued.

(b) If your current compensation is **less** than your allowable earnings, then your benefit will not be reduced or discontinued.

Example:

Due to a nonduty-related disability, you separated from service and began receiving a disability benefit of \$1,000 per month. You become gainfully employed earning \$1,000 per month. Your compensation at the time of separation adjusted for inflation is \$3,000. Because your current compensation, \$1,000, is less than your allowable earnings ($\$3,000 - \$1,000 = \$2,000$), your disability benefit will not be reduced or discontinued.

(16) Is my PERS Plan 1 nonduty disability benefit taxable? You should consult with your tax advisor regarding all payments you receive from the department. The department reports disability benefits to the Internal Revenue Service as required by federal law and does not:

(a) Guarantee that payments are exempt from federal income tax;

(b) Guarantee that it was correct in withholding or not withholding taxes from disability payments;

(c) Represent or guarantee that any particular federal or state income, payroll, personal property, or other tax consequence will occur because of its determination; or

(d) Assume any liability for your compliance with the Internal Revenue Code.

(17) Are disability benefits subject to court or administrative orders? Your nonduty disability benefit may be subject to court or administrative orders. For more information, see RCW 41.40.052(3) or contact the department.

(18) If I am a member of more than one retirement system, does my eligibility for a PERS Plan 1 nonduty disability make me eligible for a benefit from the other system? If you are a member of more than one retirement system, you may be entitled to additional benefits under portability law. See chapters 41.54 RCW and 415-113 WAC.

AMENDATORY SECTION (Amending WSR 20-06-040, filed 2/27/20, effective 3/29/20)

WAC 415-110-610 What are my retirement benefit options? Upon retirement for service under RCW 41.35.420 or 41.35.680, or for disability under RCW 41.35.440 or 41.35.690, you must choose to have the defined benefit portion of your retirement benefit paid to you by one of the options described in this section.

(1) Which option will pay my beneficiary a monthly benefit after my death? Options described in subsection (2)(b) through (d) of this section will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." After your death, your survivor beneficiary will receive a monthly benefit for the duration of their life. Your monthly retirement benefit will be reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit will be affected if you choose a survivor option.

(2) What are my benefit options?

(a) Option one: Standard benefit (nonsurvivor option). The department will pay you a monthly retirement benefit throughout your lifetime. Your monthly benefit will cease upon your death.

(b) Option two: Joint and one hundred percent survivor benefit. The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

(c) Option three: Joint and fifty percent survivor benefit. The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to fifty percent of your gross monthly benefit.

(d) Option four: Joint and two-thirds survivor benefit. The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667%) of your gross monthly benefit.

(3) Do I need my spouse's consent on the option I choose? The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's (~~notarized~~) consent, verified by a notarized signature or other means acceptable to the department. If you do not provide verified spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.35.220.

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required, verified by a notarized signature or other means acceptable to the department. If you do not provide (~~notarized~~) verified spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.35.220.

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least thirty days before your retirement date, spousal consent is not required.

(4) Can a dissolution order require that a former spouse be designated as a survivor beneficiary? Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) What happens if I choose a benefit option with a survivor option and my survivor beneficiary dies before I do? If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(6) May I change my benefit option after retirement? Your choice of a benefit option is irrevocable with the following three exceptions:

(a) **Return to membership.** If you retire and then return to membership for at least two years of uninterrupted service, you may choose a different retirement option upon your subsequent retirement. See RCW 41.35.060.

(b) **Postretirement marriage option.** If you select the standard benefit option at the time of retirement and marry after retirement, you may select a survivor benefit option and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-01-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a survivor benefit option and name a nonspouse as your survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

(7) Who will receive the balance of my accumulated contributions, if any, after my death?

(a) Plan 2 members:

(i) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(B) If you have not designated a beneficiary, or if your designated beneficiary is no longer living or in existence, then to your surviving spouse.

(C) If not paid according to (a)(i)(A) or (B) of this subsection, then to your estate.

(ii) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(B) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(C) If not paid according to (a)(ii)(A) or (B) of this subsection, then to your survivor beneficiary's estate.

(b) **Plan 3 members:** The defined benefit stops upon your death or upon the death of your survivor beneficiary, if applicable. As a Plan 3 member, you do not contribute to the defined benefit portion of your retirement benefit. The defined contribution portion of your benefit will be distributed according to WAC 415-111-310.

(8) For more information, see RCW 41.35.220.

AMENDATORY SECTION (Amending WSR 08-10-025, filed 4/25/08, effective 5/26/08)

WAC 415-112-015 Definitions. All definitions in RCW 41.32.010 and WAC 415-02-030 apply to terms used in this chapter. Other terms relevant to the administration of chapter 41.32 RCW are defined in this chapter.

(1) **Accrual date** means the first date from which a member's or beneficiary's benefit is calculated. See WAC 415-112-520, RCW 41.32.795 and 41.32.855.

(2) **Annual leave** means leave provided by an employer for the purpose of taking regularly scheduled work time off with pay. Annual leave does not usually include leave for illness, personal business if in addition to and different than vacation leave, or other paid time off from work. However, if an employer authorizes only one type of leave, covering paid leave for vacation, illness, and any other excused absence

from work, such leave will be considered annual leave for purposes of RCW 41.50.150.

(3) **Dual member** means a person who:

(a) Is or becomes a member of a retirement system, as defined in RCW 41.50.030 or 41.54.010(6), on or after July 1, 1988;

(b) Has been a member of one or more other systems; and

(c) Has never been retired for service from a retirement system and is not receiving a disability retirement or disability leave benefit from any retirement system listed in RCW 41.50.030 or 41.54.010(6). See WAC 415-113-041.

(4) **Ineligible position** means a position that does not meet the requirements of an eligible position as stated in RCW 41.32.010(37).

(5) **Pension benefit** means that portion of a retiree's monthly retirement allowance that is funded by the state of Washington and the retiree's former employer or employers.

(6) **Public educational institution** means a school district, the state school for the deaf, the state school for the blind, educational service districts, institutions of higher education, or community or technical colleges.

(7)(a) **Public school** as defined in RCW 41.32.010 includes school districts, educational service districts, the state school for the deaf, and the state school for the blind but does not include the office of the superintendent of public instruction.

(b) As applied to TRS employers other than those listed in (a) of this subsection, "public school" means an institution, fifty percent or more of whose employees are "qualified to teach," whose primary function is to educate students. See subsection (8) of this section.

(8) **Qualified to teach** as used under RCW 41.32.010 (29) means:

(a) Having a valid certificate issued by the office of the superintendent of public instruction pursuant to WAC 181-79A-140;

(b) Having a valid permit to teach issued by a lawful authority of this state pursuant to WAC 181-79A-128; or

(c) Being employed under a contract to teach with an institution of higher education as defined in RCW 28B.10-016.

(9) **Service in an administrative or supervisory capacity** as used under RCW 41.32.010 and in this chapter:

(a) Means:

(i) Service in a managerial role relating to the administration of a public school; or

(ii) Service involving the exercise of direction over employees of the public school.

(b) Includes, but is not limited to, service as: Principal, assistant principal, superintendent, assistant superintendent, personnel manager and business manager.

(10) **Spousal consent** requires verified written evidence that the married member's spouse consents to the retirement option selected by the member. The spouse's (~~notarized~~) signature on the retirement application filed with the department, duly executed and (~~filed with~~) verified by notarization or other means acceptable to the department, constitutes "verified written evidence."

(11) **System acronyms** used in this chapter are defined as follows:

- "PERS" means the public employees' retirement system.
- "SERS" means the school employees' retirement system.
- "TRS" means the teachers' retirement system.

AMENDATORY SECTION (Amending WSR 20-06-040, filed 2/27/20, effective 3/29/20)

WAC 415-112-504 What are my TRS Plan 1 retirement benefit options? Upon retirement from Plan 1 for service under RCW 41.32.480 or disability under RCW 41.32.-550 (1)(c), you must choose to have your retirement benefit paid to you by one of the options described in this section. You may also select an optional supplemental cost-of-living (COLA) adjustment.

(1) **May I withdraw any of my contributions?** You may withdraw some or all of your accumulated contributions as follows:

(a) If you retire according to the provisions of RCW 41.32.498, you may withdraw some or all of your accumulated contributions at the time of retirement. Your monthly retirement benefit will be reduced according to the amount you withdraw.

(b) If you terminate service due to a disability under the conditions of RCW 41.32.550 (1)(a), you may withdraw all your accumulated contributions in a lump sum payment. You will receive no monthly retirement benefit.

(2) **Which option will pay my beneficiary a monthly benefit after my death?** Options described in subsection (3) (c) through (e) of this section will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." After your death, your survivor beneficiary will receive a monthly benefit for the duration of their life. Your monthly retirement benefit will be reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit will be affected if you choose a survivor option.

(3) **What are my benefit options?**

(a) **Maximum benefit (nonsurvivor option).** The department will pay you the maximum benefit allowed by statute. Under this option you will receive a monthly retirement benefit throughout your lifetime. Your monthly benefit will cease upon your death, and any remaining balance of accumulated contributions will be:

(i) Retained by the retirement fund if you retired for service under RCW 41.32.497 or 41.32.498; or

(ii) Paid according to subsection (9) of this section if you retired because of disability and were receiving a monthly retirement benefit under RCW 41.32.550 (1)(c).

(b) **Option one: Standard benefit for service retirement (nonsurvivor option).** The department will pay you a monthly retirement benefit throughout your lifetime. Your monthly benefit will cease upon your death, and any remaining balance of accumulated contributions will be paid according to subsection (9) of this section.

(i) This benefit option has a lower monthly benefit than the **maximum benefit** in (a) of this subsection because, with this option, any remaining accumulated contributions will be paid to your beneficiaries upon your death.

(ii) If you are retiring because of disability under RCW 41.32.550 (1)(c), you will not benefit from this option because your beneficiaries will receive any remaining accumulated contributions under the maximum benefit in (a) of this subsection.

(c) **Option two: Joint and one hundred percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

(d) **Option three: Joint and fifty percent benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to fifty percent of your gross monthly benefit.

(e) **Option four: Joint and two-thirds benefit.¹** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667%) of your gross monthly benefit.

(4) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's (~~notarized~~) consent, verified by a notarized signature or other means acceptable to the department. If you do not provide verified spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.32.530(2).

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required. If you do not provide (~~notarized~~) spousal consent, verified by a notarized signature or other means acceptable to the department, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.32.530(2).

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (5) of this section, which was filed with the department at least thirty days before your retirement date, spousal consent is not required.

(5) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(6) **What is the supplemental COLA option?** In addition to choosing a retirement benefit option described in subsection (3) of this section, you may choose a supplemental

annual COLA. If you select this option, your monthly retirement benefit will be reduced to offset the cost of this benefit.

(7) **What happens if I choose a benefit option with a survivor option and my survivor beneficiary dies before I do?** If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(8) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following three exceptions:

(a) **Return to membership.** If you retire and then return to membership, you may choose a different retirement option upon your subsequent retirement. See RCW 41.32.044.

(b) **Postretirement marriage option.** If you select the maximum benefit option or the standard benefit option at the time of retirement and marry after retirement, you may select a benefit option with a survivor option and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a survivor benefit option and name a nonspouse as survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

(9) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid according to this subsection.

(i) Except as provided in (a)(ii) of this subsection, any remaining balance will be paid to the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(ii) If you retired for service and chose the maximum benefit option, any remaining balance will be retained by the retirement fund.

(b) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid to the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(10) For more information, see RCW 41.32.530 and 41.32.550.

¹ Available to members retiring on or after January 1, 1996.

AMENDATORY SECTION (Amending WSR 20-06-040, filed 2/27/20, effective 3/29/20)

WAC 415-112-505 What are my TRS Plan 2 or Plan 3 retirement benefit options? Upon retirement for service under RCW 41.32.765 or 41.32.875, or disability under RCW 41.32.790 or 41.32.880, you must choose to have the defined benefit portion of your retirement benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly benefit after my death?** Options described in subsection (2)(b), (c), and (d) of this section will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." After your death, your survivor beneficiary will receive a monthly benefit for the duration of their life. Your monthly retirement benefit will be reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit will be affected if you choose a survivor option.

(2) **What are my benefit options?**

(a) **Option one: Standard benefit for service retirement (nonsurvivor option).** The department will pay you a monthly retirement benefit throughout your lifetime. Your monthly benefit will cease upon your death, and any remaining balance of accumulated contributions will be paid according to subsection (7) of this section.

(b) **Option two: Joint and one hundred percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

(c) **Option three: Joint and fifty percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to fifty percent of your gross monthly benefit.

(d) **Option four: Joint and two-thirds survivor benefit.¹** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667%) of your gross monthly benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's (~~notarized~~) consent, verified by a notarized signature or other means acceptable to the department. If you do not provide verified spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.32.785(2) and 41.32.851(2).

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required. If you do not provide (~~notarized~~) spousal consent,

verified by a notarized signature or other means acceptable to the department, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.32.785(2) and 41.32.851(2).

(d) If your survivor beneficiary has been designated by a dissolution order under RCW 41.50.790, which was filed with the department at least thirty days before your retirement date, spousal consent is not required.

(4) Can a dissolution order require that a former spouse be designated as a survivor beneficiary? Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) What happens if I choose a benefit option with a survivor option and my survivor beneficiary dies before I do? If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(6) May I change my benefit option after retirement? Your choice of a benefit option is irrevocable with the following three exceptions:

(a) **Return to membership.** If you retire and then return to membership, you may choose a different retirement option upon your subsequent retirement. See RCW 41.32.044.

(b) **Postretirement marriage option.** If you select the standard benefit option at the time of retirement and marry after retirement, you may select a benefit option with a survivor option and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department;

(iv) You provide proof of your current spouse's birth date; and

(v) You exercise this option one time only.

(c) **Removal of a nonspouse survivor option.** If you select a benefit option with a survivor option and name a non-spouse as survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

(7) Who will receive the balance of my accumulated contributions, if any, after my death?

(a) **Plan 2:**

(i) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(B) If you have not designated a beneficiary, or if your designated beneficiary is no longer living, then to your surviving spouse.

(C) If not paid according to (a)(i)(A) or (B) of this subsection, then to your estate.

(ii) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(B) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living, then to your survivor beneficiary's spouse.

(C) If not paid according to (a)(ii)(A) or (B) of this subsection, then to your survivor beneficiary's estate.

(b) **Plan 3:** The defined benefit stops upon your death or upon the death of your survivor beneficiary, if applicable. As a Plan 3 member, you do not contribute to the defined benefit portion of your retirement benefit. The defined contribution portion of your benefit will be distributed according to WAC 415-111-310.

(8) For more information, see RCW 41.32.785 and 41.32.790 (Plan 2) and RCW 41.32.851 (Plan 3).

¹ Available to members retiring on or after January 1, 1996.

AMENDATORY SECTION (Amending WSR 20-06-040, filed 2/27/20, effective 3/29/20)

WAC 415-112-507 How do I apply for TRS retirement benefits? You should apply for retirement benefits at least thirty days before your intended retirement date. You can apply online at the department's website or by submitting to the department:

(1) A completed ~~(,)~~ and signed ~~(, and notarized)~~ retirement application, verified by a notarized signature or other means acceptable to the department, including:

(a) Your selection of one of the benefit options described in WAC 415-112-493.

(b) Designation of a survivor beneficiary if you selected a benefit option with a survivor feature.

(c) If you are married, your spouse's consent may be required as described in WAC 415-112-504 (Plan 1) or WAC 415-112-505 (Plan 2 or Plan 3).

(2) Evidence of your birth date, only if requested by the department, such as a photocopy of your birth certificate, passport or passport card, government-issued driver license or identification card, NEXUS card, naturalization certificate, certificate of armed services record U.S. DD-214, or other documentation acceptable to the department. If you are requested to submit evidence, the document you submit must include the month, day, and year of your birth.

(3) If you selected a benefit option with a survivor feature, acceptable evidence of your designated survivor beneficiary's birth date which includes the month, day, and year of birth.

WSR 20-13-090
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed June 16, 2020, 4:15 p.m., effective August 1, 2020]

Effective Date of Rule: August 1, 2020.

Purpose: Amendments to WAC 388-446-0015 What is an intentional program violation (IPV) and administrative disqualification hearing (ADH) for basic food?, and 388-446-0020 What penalties will I receive if I break a food assistance rule on purpose?, will clarify that the waiver of administrative hearing and the disqualification consent agreement are separate documents.

Citation of Rules Affected by this Order: Amending WAC 388-446-0015 and 388-446-0020.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.770, 74.08.090, 74.08.580, 74.12.260, 9.91.14.

Other Authority: 7 C.F.R. § 271.2, and 7 C.F.R. § 273.16.

Adopted under notice filed as WSR 20-09-129 on April 21, 2020.

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

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

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

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

Date Adopted: June 16, 2020.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-03-054, filed 1/10/19, effective 2/10/19)

WAC 388-446-0015 What is an intentional program violation (IPV) and administrative disqualification hearing (ADH) for basic food? (1) An intentional program violation (IPV) is an act in which someone intentionally:

(a) Misrepresents, conceals, or withholds facts in order to be found eligible for benefits or to receive more benefits than their actual circumstances would allow including making a false statement regarding household circumstances;

(b) Acts in violation of the Food Nutrition Act of 2008, regulations for the supplemental nutrition assistance program (SNAP) under Title 7 of the Code of Federal Regulations, any state statute, or WAC relating to the use, presentation,

transfer, acquisition, receipt, trafficking, or possession of food assistance benefits including; or

(c) Attempts to buy, sell, steal, or trade food assistance benefits issued and accessed via electronic benefit transfer (EBT) cards, EBT card numbers or personal identification numbers (PINs), for cash or anything other than eligible food, alone or acting with others.

(2) If we suspect someone has committed an IPV we refer their case for an administrative disqualification hearing (ADH), unless:

(a) The case is currently referred for prosecution; or

(b) A court or prosecutor already took action against the person for the same or related facts.

(3) An administrative disqualification hearing (ADH) is a formal hearing to determine if a person committed an IPV. ADHs are governed by the rules found in chapter 388-02 WAC. However, rules in this section are the overriding authority if there is a conflict.

(4) A person suspected of an IPV (~~can~~) may choose to waive their right to an ADH by signing a waiver of administrative disqualification hearing or a disqualification consent agreement that waives their right to the hearing and (~~accepts~~) accept the IPV penalty under WAC 388-446-0020.

(5) If someone commits one or more IPV's and is suspected of committing another, we refer them for an ADH when the act of suspected violation occurred:

(a) After we mailed the disqualification notice to the client for the most recent IPV; or

(b) After criminal proceedings for the most recent IPV are concluded.

(6) When we refer a case for an administrative disqualification hearing (ADH), the office of administrative hearings (OAH) sends the person notice of the ADH at least thirty days in advance of the hearing date. OAH sends the notice by certified mail, or personal service. The notice will contain the following information:

(a) The date, time, and place of the hearing;

(b) The charges against the person;

(c) A summary of the evidence, and how and where they may examine the evidence;

(d) A warning that a decision will be based entirely on the evidence the department provides if they fail to appear at the hearing;

(e) A statement that the person has ten days from the date of the scheduled hearing to show good cause for failing to attend the hearing and to ask for a new hearing date;

(f) A warning that a determination of IPV will result in a disqualification period; and

(g) A statement that if we schedule a telephone hearing, they may request an in-person hearing by filing a request with the administrative law judge one week or more prior to the date of the hearing.

(7) The department may combine an ADH and a regular hearing when the reason for both hearings is related.

(8) The person or a representative has the right to one continuance of up to thirty days if a request is filed ten days or more prior to the hearing date.

(9) The administrative law judge (ALJ) will conduct the ADH and render a decision even if the person or representa-

tive fails to appear, unless within ten days from the date of the scheduled hearing:

(a) The person can show good cause for failing to appear; and

(b) The person or representative requests the hearing be reinstated.

(10) We may change a scheduled telephone hearing to an in-person hearing if this is requested by the person or department representative at least one week in advance. The person requesting a change less than one week in advance must show good cause for the requested change.

(11) The ALJ issues a final decision as specified in WAC 388-02-0215 through 388-02-0525. The decision determines whether the department had established with clear and convincing evidence that the person committed and intended to commit an IPV.

(12) The department and the client each have the right to request a reconsideration of the decision as specified in WAC 388-02-0610 through 388-02-0635. The final order or the reconsideration decision is the final agency decision.

(13) We will not implement a disqualification and continue benefits at the current amount if:

(a) The client can show good cause for not attending the hearing within thirty days from the date the disqualification notice was mailed; and

(b) An administrative law judge determines the client had good cause; or

(c) The client requests reconsideration or files a petition for judicial review to appeal the disqualification as specified in WAC 388-02-0530 (1) or (4).

AMENDATORY SECTION (Amending WSR 14-03-027, filed 1/8/14, effective 2/8/14)

WAC 388-446-0020 What penalties will I receive if I break a food assistance rule on purpose? (1) Breaking a rule on purpose for food assistance is known as an intentional program violation (IPV) under WAC 388-446-0015. These rules apply to all DSHS food assistance programs including:

(a) Washington Basic Food program or Basic Food;

(b) The Washington combined application project (WASHCAP) under chapter 388-492 WAC;

(c) Transitional food assistance (TFA) under chapter 388-489 WAC; and

(d) The state-funded food assistance program (FAP) for legal immigrants.

(2) You will have a disqualification period if we have shown that you have committed an IPV in any of the following three ways:

(a) We establish that you committed an IPV through an administrative disqualification hearing (ADH) under WAC 388-446-0015;

(b) You signed a waiver of administrative disqualification hearing or a disqualification consent agreement that waives your right to an administrative disqualification hearing and states you accept the IPV penalty; or

(c) A federal, state or local court found that you committed an IPV or found you guilty of a crime that breaks food assistance rules.

(3) **Special penalties for certain crimes** - If you are convicted in a court of law for crimes that are an intentional program violation, we disqualify you for the period of time set in the court order. If the court order does not state a disqualification period, we set a disqualification period based on the crime you were convicted of committing:

(a) **Drugs** - If you are convicted in a federal, state, or local court of trading or receiving food benefits for a controlled substance, we disqualify you:

(i) For a period of twenty-four months for a first offense; and

(ii) Permanently for a second offense.

(b) **Weapons** - If you are convicted in a federal, state, or local court of trading your food assistance benefits for firearms, ammunition, or explosives, we permanently disqualify you from receiving food assistance on the first offense.

(c) **Trafficking** - If you are convicted in a federal, state, or local court of knowingly buying, selling, trading, or presenting for redemption food assistance benefits totaling five hundred dollars or more, we permanently disqualify you from receiving food assistance on the first offense.

(d) **False identification** - If you are found to have provided false identification to receive benefits in more than one assistance unit, we disqualify you from receiving food assistance:

(i) For ten years on the first offense.

(ii) For ten years on the second offense.

(iii) Permanently for the third offense.

(e) **Receiving benefits in more than one state** - If you are found to have provided false residency information to receive benefits in more than one household or state, we disqualify you from receiving food assistance:

(i) For ten years on the first offense.

(ii) For ten years on the second offense.

(iii) Permanently for the third offense.

(4) In addition to penalties for crimes described in subsection (3), if you commit an IPV you will not be eligible for food assistance:

(a) For a period of twelve months for any first intentional program violation;

(b) For a period of twenty-four months for any second intentional program violation; and

(c) Permanently for any third intentional program violation.

(5) We only apply a disqualification penalty to the person or persons who have committed an intentional program violation.

(6) Start date of a disqualification. The date of a disqualification depends on how a person was disqualified. We will send you a letter telling you when your disqualification period will start((:)).

(a) **ADH or consent agreement** - If you were found to have committed an IPV in an administrative disqualification hearing or you signed ((#)) an ADH or consent agreement waiving this hearing and accepting the disqualification, we start the disqualification period by the second month after we sent you a letter informing you of the disqualification.

(b) **Conviction in court** - If you are convicted in court of a crime that is an intentional program violation, your disqualification period in subsection (4) is in addition to any civil or

criminal penalties. We disqualify you from food assistance within forty-five days of the court order unless this timing conflicts with the court order.

(7) **Disqualifications apply in all states** - If you have an IPV disqualification, this stays with you until the penalty period is over, even if you move to another state:

(a) If we disqualify you from food assistance, you are also disqualified from receiving supplemental nutrition assistance program (SNAP) benefits in another state during the disqualification period.

(b) If you are disqualified from receiving SNAP benefits for an IPV from another state, you can't receive food assistance in Washington during the disqualification period.

(8) Even though we only disqualify the persons who have committed an IPV from receiving food assistance benefits, all adults in the assistance unit are responsible to repay any benefits you were overpaid as described under WAC 388-410-0020 and 388-410-0025.

Date Adopted: June 16, 2020.

Cheryl Strange
Secretary

AMENDATORY SECTION (Amending WSR 18-22-106, filed 11/6/18, effective 12/7/18)

WAC 388-829C-131 How does DDA determine the daily rate? (1) A companion home daily rate equals the sum of the client's support assessment scale scores multiplied by ~~((+2.5))~~ 14.2.

(2) The residential algorithm under chapter 388-828 WAC determines the level of services and supports a companion home client may receive.

(3) The CARE assessment assigns support levels of "none," "low," "medium," or "high" to each support assessment scale that correspond to the values below:

Category	None	Low	Medium	High
Activities of daily living	0	1	2	3
Behavior	0	1	2	3
Interpersonal support	0	1	2	3
Medical	0	1	2	3
Mobility	0	1	2	3
Protective supervision	0	1	2	3

(4) DDA assigns a behavior score of four if the client has a:

(a) Behavior score of three on ~~((their))~~ the support assessment scale;

(b) Challenging behavior documented on form DSHS 10-234; and

(c) Current positive behavior support plan.

(5) DDA reviews a companion home daily rate annually and if a significant change assessment occurs during the plan year.

(6) DDA may adjust a companion home daily rate if:

(a) Any of the client's support assessment scale levels change;

(b) The multiplier changes due to a vendor rate change; or

(c) The annual cost of respite services increased because DDA approved additional respite hours under WAC 388-829C-234(3) and the client's assessed support needs remain unchanged since the most recent CARE assessment.

**WSR 20-13-091
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

(Developmental Disabilities Administration)
[Filed June 16, 2020, 4:54 p.m., effective July 17, 2020]

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

Purpose: The developmental disabilities administration amended this rule to implement a 13.5 percent daily rate increase for companion home providers as approved in the 2019 operating budget under ESHB 1109 (section 203, chapter 415, Laws of 2019).

Citation of Rules Affected by this Order: Amending WAC 388-829C-131.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 71A.12.040.

Adopted under notice filed as WSR 20-09-058 on April 10, 2020.

A final cost-benefit analysis is available by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1589, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

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

Number of Sections Adopted at the Request of a Non-governmental 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 1, Repealed 0.

WSR 20-13-092

PERMANENT RULES

DEPARTMENT OF TRANSPORTATION

[Filed June 16, 2020, 5:21 p.m., effective September 14, 2020]

Effective Date of Rule: September 14, 2020.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: At the request of the transportation commission, the definition of the transportation commission has been edited in WAC 468-305-001 reflecting its statutory authority.

Purpose: The effective date for this rule making is changed to September 14, 2020.

Rules are needed to define customer requirements to use toll facilities and the Washington state department of transportation procedures for processing transactions and penalties. This rule making is required to update specific requirements and procedures that will change when a new toll back office system becomes operational.

Citation of Rules Affected by this Order: Amending WAC 468-305-001, 468-305-100, 468-305-105, 468-305-125, 468-305-131, 468-305-133, 468-305-150, 468-305-160, 468-305-210, 468-305-220, 468-305-300, 468-305-315, 468-305-316, 468-305-320, 468-305-330, 468-305-340, 468-305-400, 468-305-526, 468-305-527, 468-305-528, 468-305-529, 468-305-540, 468-305-570, and 468-305-580.

Statutory Authority for Adoption: RCW 46.63.160(5), 47.01.101(5), 47.56.030(1), and 47.56.795.

Adopted under notice filed as WSR 19-09-069 on April 16, 2019.

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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 24, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 24, Repealed 0.

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

Date Adopted: June 16, 2020.

Shannon Gill, Interim Director
Risk Management and Legal Services