

WSR 24-07-008

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed March 7, 2024, 7:40 a.m., effective April 7, 2024]

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

Purpose: The department of social and health services is adopting rules to identify the requirements in place during the COVID-19 pandemic in Washington state. The purpose of the rule change is to ensure consistent implementation and enforcement of rule requirements in effect during the COVID-19 pandemic in Washington state.

Citation of Rules Affected by this Order: New WAC 388-97-03001, 388-97-10001, 388-97-10201, 388-97-12601, 388-97-13801, 388-97-15801, 388-97-17401, 388-97-17601 and 388-97-24001; and amending WAC 388-97-0300, 388-97-0920, 388-97-1000, 388-97-1020, 388-97-1260, 388-97-1380, 388-97-1580, 388-97-1740, 388-97-1760, and 388-97-2400.

Statutory Authority for Adoption: RCW 74.42.620.

Other Authority: Chapter 18.51 RCW.

Adopted under notice filed as WSR 23-06-063 and 24-01-015 on February 28, 2023, and December 7, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 9, Amended 10, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 9, Amended 10, Repealed 0.

Date Adopted: March 6, 2024.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 24-08 issue of the Register.

WSR 24-07-012
PERMANENT RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Docket PG-230896, General Order R-608—Filed March 7, 2024, 3:50 p.m., effective March 7, 2024, 3:50 p.m.]

In the matter of amending WAC 480-93-015 relating to odorization and sniff test requirements.

1 STATUTORY OR OTHER AUTHORITY: The Washington utilities and transportation commission (commission) takes this action under Notice No. WSR 24-03-143, filed with the code reviser on January 23, 2024. The commission has authority to take this action pursuant to RCW 80.01.040, 80.04.160, and 34.05.310.

2 STATEMENT OF COMPLIANCE: This proceeding complies with the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

3 DATE OF ADOPTION: The commission adopts this rule on the date this order is entered.

4 CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE: RCW 34.05.325(6) requires the commission to prepare and publish a concise explanatory statement about an adopted rule. The statement must identify the commission's reasons for adopting the rule, describe the differences between the version of the proposed rules published in the register and the rules adopted (other than editing changes), summarize the comments received regarding the proposed rule changes, and state the commission's responses to the comments reflecting the commission's consideration of them.

5 To avoid unnecessary duplication in the record of this docket, the commission designates the discussion in this order as its concise explanatory statement. This order provides a complete but concise explanation of the commission's actions and its reasons for taking those actions.

6 REFERENCE TO AFFECTED RULES: This order amends WAC 480-93-015 Odorization of gas.

7 PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER: The commission filed a preproposal statement of inquiry (CR-101) on December 13, 2023, at WSR 24-01-063.

8 The statement advised interested persons that the commission was considering entering a rule making to permanently incorporate exemptions to odorization and sniff test requirements for WAC 480-93-015 for operators of class 1 and 2 renewable natural gas (RNG) transmission facilities (pipelines) with hydrogen sulfide (H₂S) present in the gas. These exemptions were added by emergency rule making at WSR 23-23-059. WAC 480-93-015(2) previously required all gas pipeline operators, without exception, to odorize their lines and perform a sniff test to detect odorization. The commission also informed persons of this inquiry by providing notice of the subject and the CR 101 to everyone on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending notice to all registered pipeline operators in Washington and to the commission's list of known utility company attorneys. Pursuant to the notice, the commission invited comments on the exemptions. The commission received one comment from Puget Sound Energy that did not oppose the rule change.

9 NOTICE OF PROPOSED RULE MAKING: The commission filed a notice of proposed rule making (CR-102) on January 25, 2024, at WSR 24-03-143. The com-

mission scheduled this matter for oral comment and adoption under notice No. WSR 24-03-143 at 1:30 p.m. on March 1, 2024, in the commission's Richard Hemstad Hearing Room, 621 Woodland Square Loop S.E., Lacey, WA. The notice provided interested persons the opportunity to submit written comments to the commission. The commission received no comments in response to this notice.

10 SMALL BUSINESS ECONOMIC IMPACT STATEMENT (SBEIS): The proposed rule adds an exemption to the odorization and sniff test requirements for pipelines where such tests would be hazardous to human health. The exemption does not impose new or additional obligations on pipeline operators. Accordingly, no SBEIS is required. The commission nevertheless undertook an analysis of the proposed rules' economic impact on small businesses. On December 13, 2023, the commission mailed a notice to all persons interested in or affected by the rule making, providing a copy of the draft rules and an opportunity to respond to an SBEIS questionnaire. The notice requested that entities affected by the proposed rules provide information about possible cost impacts of the rules with specific information for each rule that the entity identified as causing an impact. The commission did not receive any information in response to the questionnaire. Based on the information available to it, the commission determined that the proposed rule does not impose additional costs on businesses.

11 RULE-MAKING HEARING: The commission considered the proposed rules for adoption at a rule-making hearing on Friday, March 1, 2024, before Chairman David W. Danner, Commissioner Ann E. Rendahl, and Commissioner Milton H. Doumit. The commission heard oral comments from Scott Rukke, representing commission staff.

12 COMMISSION ACTION: After considering all of the information regarding this proposal, the commission finds and concludes that it should amend and adopt the rule as proposed in the CR-102 at WSR 24-03-143.

13 STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE: After reviewing the entire record, the commission determines that WAC 480-93-015 should be amended and adopted to read as set forth in Appendix A, as a rule of the Washington utilities and transportation commission, to take effect immediately.

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 Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

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

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

Number of Sections Adopted using Negotiated Rulemaking: New 0, amended 0, repealed 0; Pilot Rule making: New 0, amended 0, repealed 0; or Other Alternative Rulemaking: New 0, amended 1, repealed 0.

ORDER

THE COMMISSION ORDERS:

14 The commission amends and adopts WAC 480-93-015 to read as set forth in Appendix A, as a rule of the Washington utilities and transportation commission, to take effect immediately.

15 This order and the rule set out below, after being recorded in the register of the Washington utilities and transportation commis-

sion, shall be forwarded to the code reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, March 7, 2024.

Washington Utilities and Transportation Commission
David W. Danner, Chairman
Ann E. Rendahl, Commissioner

Appendix A

[REVISED RULES]

OTS-5067.3

AMENDATORY SECTION (Amending WSR 08-12-046, filed 5/30/08, effective 6/30/08)

WAC 480-93-015 Odorization of gas. (1) Each gas pipeline company must odorize the gas in its pipeline at a concentration in air of at least one-fifth of the lower explosive limit, so that the gas is readily detectable by a person with a normal sense of smell.

(2) Each gas pipeline company must use an odorant testing instrument when conducting sniff tests. Sniff tests must be performed at least once monthly. Master meter systems that comply with 49 C.F.R. § 192.625(f) are exempt from this requirement.

(3) Each gas pipeline company must take prompt action to investigate and remediate odorant concentrations that do not meet the minimum requirements of subsection (1) of this section.

(4) Each gas pipeline company must follow the odorant testing instrument manufacturer's recommendations for maintaining, testing for accuracy, calibrating and operating such instruments. When the manufacturer does not provide a recommendation, each gas pipeline company must conduct accuracy checks and calibrate such instruments at least once annually, if the instrument is outside specified tolerances.

(5) Each gas pipeline company must keep all records of odorant usage, sniff tests performed, and odorant testing instrument calibration for five years.

(6) Exceptions. This rule does not apply to gas pipelines where the odorant would make the gas unfit for its intended purpose or where sniff tests would be hazardous to human health due to impurities in the gas stream such as hydrogen sulfide. Operators must be able to demonstrate the level of impurity through tests or records. Nothing in this section is intended to preclude the application of federal regulatory requirements applicable to any facility.

WSR 24-07-015

PERMANENT RULES

STATE BOARD OF EDUCATION

[Filed March 7, 2024, 4:49 p.m., effective April 7, 2024]

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

Purpose: The proposed rules help to implement ESHB 1744 from the 2023 legislative session. ESHB 1744 Clarifying the responsibilities and accountability for the effective delivery and oversight of public education services to charter school students, makes various changes to provisions governing the administration and oversight of charter schools, including new and modified duties for charter schools, charter school boards, charter school authorizers, the charter school commission, and the state board of education (board) that required changes to the current rules.

Specifically, the proposed rule:

- Clarifies and defines a number of definitions that were lacking in previous rules.
- Adds dates and timelines for the board to oversee certain activities of the charter school authorizers and the charter school commission.
- Addresses the administrative burden that was confusing in the previous rules. For example, the timeline for approval of new authorizers was leaving little flexibility by inserting a number of steps and deadlines that are not called out in the underlying statute.
- Clarifies that the board oversees the performance of the charter school commission as it relates to their role as an authorizer.

Citation of Rules Affected by this Order: New WAC 180-19-035 Content of authorizer application; and amending WAC 180-19-010 Definitions, 180-19-030 Submission of authorizer application, 180-19-040 Evaluation and approval or denial of authorizer application, 180-19-060 Authorizer oversight fee, 180-19-210 Annual report by authorizer, 180-19-220 Oversight of authorizers, 180-19-230 Oversight of district authorizers—Special review, 180-19-250 Oversight of authorizers—Revocation of authorizing contract, and 180-19-260 Authorizer oversight—Transfer of charter contract.

Statutory Authority for Adoption: Chapter 28A.710 RCW.

Adopted under notice filed as WSR 23-22-125 on November 1, 2023.

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 9, Repealed 0.

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

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

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

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

Date Adopted: February 15, 2024.

Randy Spalding
Executive Director

OTS-5040.2

AMENDATORY SECTION (Amending WSR 17-20-070, filed 10/2/17, effective 11/2/17)

WAC 180-19-010 Definitions. (1) "At-risk student" or "systemically marginalized student" means a student who has an academic or economic disadvantage that requires assistance or special services to succeed in educational programs. The term includes, but is not limited to, students who do not meet minimum standards of academic proficiency, students who are at risk of dropping out of high school, students in chronically low-performing schools, students with higher than average disciplinary sanctions, students with lower participation rates in advanced or gifted programs, students who are limited in English proficiency, students who are members of economically disadvantaged families, and students who are identified as having special educational needs.

(2) "Authorizer" means a school district board of directors that has been approved to be a charter school authorizer under RCW 28A.710.090 and the charter school commission established under RCW 28A.710.070.

(3) "Board" means the state board of education.

~~((2))~~ (4) "Charter contract" means a fixed term, renewable contract between a charter school and an authorizer that outlines the roles, powers, responsibilities, and performance expectations for each party to the contract.

(5) "School district" or "district" means a school district board of directors.

~~((3))~~ (6) "Charter school" or "charter public school" means a public school that is established in accordance with chapter 28A.710 RCW, governed by a charter school board, and operated according to the terms of a charter contract executed under this chapter.

(7) "Charter school board" means the board of directors appointed or selected under the terms of a charter application to manage and operate the charter school.

(8) "Commission" means the Washington state charter school commission established in RCW 28A.710.070.

(9) "NACSA Principles and Standards" means the "Principles and Standards for Quality Charter Authorizing (2015 Edition or most current edition)" developed by the National Association of Charter School Authorizers (NACSA).

(10) "High percentage of charter school closures" means a higher percentage of closures than the national charter school closure rate as reported by NACSA.

(11) "Parent" means a parent, guardian, or other person or entity having legal custody of a child.

(12) "Student" means a child eligible to attend a public school in the state.

(13) "Undeveloped" means that the application response is wholly inadequate in that the applicant has not considered or anticipated the well-developed practice at all, or proposes to carry out its authorizing duties in a way that is not recognizably connected to the expectations established by the board and the NACSA Principles and Standards.

(14) "Partially developed" means that the application response contains some aspects of a well-developed practice, is limited in its

execution, or otherwise falls short of satisfying the expectations established by the board and the NACSA Principles and Standards.

(15) "Well-developed" means that the application response meets the expectations established by the board and the NACSA Principles and Standards in material respects and warrants approval subject to execution of an authorizing contract with the board.

(16) "Persistently unsatisfactory performance of an authorizer's portfolio of charter schools" shall consist, for any school or schools, of:

(a) Repeated failure during a contract term, or consecutive contract terms, to meet the expectations for academic performance set forth in the charter contract including, but not limited to, applicable state and federal accountability requirements, without evidence of a trend indicating the school will meet those expectations;

(b) Repeated failure during a contract term, or consecutive contract terms, to meet the financial performance targets within the charter contract;

(c) Repeated failure during a contract term, or consecutive contract terms, to meet the targets for organizational performance within the charter contract.

(17) "A pattern of well-founded complaints" means multiple complaints that are found by the board to be supported by sufficient factual information that:

(a) An authorizer is not in compliance with its authorizing contract, or its authorizer duties, including the failure to develop and follow nationally recognized principles and standards for charter authorizing; or

(b) Schools in the authorizer's portfolio that are not in compliance with a charter contract or applicable law.

(18) "Other objective circumstances" include, but are not limited to, failure of the authorizer or its charter schools to comply with an applicable state or federal law or regulation, or evidence that a charter school is not operating in a manner that fulfills the requirements of its charter contract or has a substantial risk of becoming operationally unable to fulfill those requirements.

AMENDATORY SECTION (Amending WSR 21-05-017, filed 2/5/21, effective 3/8/21)

WAC 180-19-030 Submission of authorizer application. (1) The state board of education shall develop and make available on its website, no later than May 15th of each year, an "authorizer application" that must be used by school districts seeking to be approved as a charter school authorizer. The application may include such attachments as deemed required by the board to support and complete the application.

(2) A school district seeking approval to be a charter school authorizer must submit an "authorizer application" to the state board of education ((by October 15th of the year prior to the year the district seeks approval as an authorizer)). The district's completed application must be submitted according to instructions posted by the board with the application. Completed applications must be received no less than 30 days prior to the board meeting at which they will be considered. The board shall post on its website each application received from a school district.

(3) ~~((A school district must provide sufficient and detailed information regarding all of the following in the authorizer application submitted to the board:~~

~~(a) **The district's strategic vision for chartering.** The district must state the purposes that it expects to fulfill in being an authorizer of charter schools, with reference to the findings and interests set forth in RCW 28A.710.005, as well as any district-specific purposes that are a priority for the district; the educational goals it wishes to achieve; how it will give priority to serving at-risk students, as defined in RCW 28A.710.010(2), or students from low-performing schools; and how it will respect the autonomy and ensure the accountability of the charter schools it oversees.~~

~~(b) **A plan to support the vision presented,** including explanations and evidence of the applicant's budget and personnel capacity and commitment to execute the responsibilities of quality charter authorizing. "Budget and personnel capacity" means the district's capability of providing sufficient oversight, monitoring, and assistance to ensure that the charter schools it authorizes will meet all fiscal, academic and operational requirements under chapter 28A.710 RCW and comply with all applicable state and federal laws. A district's evidence of budget and personnel capacity shall consist, at a minimum, of a detailed description of the following:~~

~~(i) Staff resources to be devoted to charter authorizing and oversight under chapter 28A.710 RCW, in full-time equivalent employees, at a level sufficient to fulfill its authorizing responsibilities in accordance with the *NACSA Principles and Standards* and the provisions of chapter 28A.710 RCW; and~~

~~(ii) An estimate, supported by verifiable data, of the financial needs of the authorizer and a projection, to the extent feasible, of sufficient financial resources, supported by the authorizer oversight fee under RCW 28A.710.110 and any other resources, to carry out its authorizing responsibilities in accordance with the *NACSA Principles and Standards* and the provisions of chapter 28A.710 RCW.~~

~~(c) **A draft or preliminary outline of the request for proposal** that the district would, if approved as an authorizer, issue to solicit charter school applications. The draft or preliminary outline of the request for proposal(s) shall meet all of the requirements set forth in RCW 28A.710.130 (1)(b) and demonstrate that the district will implement a comprehensive charter application process that follows fair procedures and rigorous criteria, and an evaluation and oversight process based on a performance framework meeting the requirements of RCW 28A.710.170.~~

~~(d) **A draft of the performance framework** that the district would, if approved as an authorizer, use to guide the execution of a charter contract and for ongoing oversight and performance evaluation of charter schools. The draft of the performance framework shall, at a minimum, meet the requirements of RCW 28A.710.170(2) including descriptions of each indicator, measure and metric enumerated therein, and shall provide that student academic proficiency, student academic growth, achievement gaps in both proficiency and growth, graduation rates, and postsecondary readiness are measured and reported in conformance with the achievement index developed by the state board of education under RCW 28A.657.110.~~

~~(e) **A draft of the district's proposed renewal, revocation, and nonrenewal processes,** consistent with RCW 28A.710.190 and 28A.710.200. The draft provided must, at a minimum, provide for the implementation of transparent and rigorous processes that:~~

~~(i) Establish clear standards for renewal, nonrenewal, and revocation of charters it may authorize under RCW 28A.710.100;~~

~~(ii) Set reasonable and effective timelines for actions that may be taken under RCW 28A.710.190 and 28A.710.200;~~

~~(iii) Describe how academic, financial and operational performance data will be used in making decisions under RCW 28A.710.190 and 28A.710.200;~~

~~(iv) Outline a plan to take appropriate corrective actions, or exercise sanctions short of revocation, in response to identified deficiencies in charter school performance or legal compliance, in accordance with the charter contract and the provisions of RCW 28A.710.180.~~

~~(4) A district must sign a statement of assurances submitted with its application, which shall be included as an attachment to the authorizing contract executed between the approved district and the state board of education, stating that it seeks to serve as an authorizer in fulfillment of the expectations, spirit, and intent of chapter 28A.710 RCW, and that if approved as an authorizer it will:~~

~~(a) Seek opportunities for authorizer professional development, and assure that personnel with significant responsibilities for authorizing and oversight of charter schools will participate in any authorizer training provided or required by the state;~~

~~(b) Provide public accountability and transparency in all matters concerning charter authorizing practices, decisions, and expenditures;~~

~~(c) Ensure that any charter school it oversees shall have a fully independent governing board and exercise autonomy in all matters, to the extent authorized by chapter 28A.710 RCW, in such areas as budgeting, personnel and instructional programming and design;~~

~~(d) Ensure that any contract it may execute with the charter school board of an approved charter school under RCW 28A.710.160 provides that the school will provide educational services to students with disabilities, students who are limited-English proficient, and any other special populations of students as required by state and federal laws;~~

~~(e) Include in any charter contract it may execute with the charter school board of an approved charter school, in accordance with RCW 28A.710.040 (2)(b), that the charter school must provide a program of basic education that at a minimum meets the requirements of RCW 28A.150.200 and 28A.150.220, and meets the goals in RCW 28A.150.210, including instruction in the essential learning requirements and participation in the statewide student assessment system as developed under RCW 28A.655.070.) A district seeking renewal of authorization shall submit a "renewal application" to the state board of education no less than 30 days prior to the board meeting at which they will be considered and no less than 90 days prior to expiration of the current authorization.~~

NEW SECTION

WAC 180-19-035 Content of authorizer application. (1) A school district must provide sufficient and detailed information regarding all of the following in the authorizer application submitted to the board:

(a) **The district's strategic vision for chartering.** The district must state the purposes that it expects to fulfill in being an author-

izer of charter schools, with reference to any district-specific purposes that are a priority for the district; the educational goals it wishes to achieve; how it will give priority to serving at-risk students, as defined in RCW 28A.710.010(2), or students from low-performing schools; and how it will respect the autonomy and ensure the accountability of the charter schools it oversees.

(b) **A plan to support the vision presented**, including explanations and evidence of the district's budget and personnel capacity and commitment to execute the responsibilities of quality charter authorizing. "Budget and personnel capacity" means the district's capability of providing sufficient oversight, monitoring, and assistance to ensure that the charter schools it authorizes will meet all fiscal, academic and operational requirements under chapter 28A.710 RCW and comply with all applicable state and federal laws. A district's evidence of budget and personnel capacity shall consist, at a minimum, of a detailed description of the following:

(i) Staff resources to be devoted to charter authorizing and oversight under chapter 28A.710 RCW, in full-time equivalent employees, at a level sufficient to fulfill its authorizing responsibilities in accordance with the *NACSA Principles and Standards* and the provisions of chapter 28A.710 RCW; and

(ii) An estimate, supported by verifiable data, of the financial needs of the authorizer and a projection, to the extent feasible, of sufficient financial resources, supported by the authorizer oversight fee under RCW 28A.710.110 and any other resources, to carry out its authorizing responsibilities in accordance with the *NACSA Principles and Standards* and the provisions of chapter 28A.710 RCW.

(c) **A draft or preliminary outline of the request for proposal** that the district would, if approved as an authorizer, issue to solicit charter school applications. The draft or preliminary outline of the request for proposal(s) shall meet all of the requirements set forth in RCW 28A.710.130 (1)(b) and demonstrate that the district will implement a comprehensive charter application process that follows fair procedures and rigorous criteria, and an evaluation and oversight process based on a performance framework meeting the requirements of RCW 28A.710.170.

(d) **A draft of the performance framework** that the district would, if approved as an authorizer, use to guide the execution of a charter contract and for ongoing oversight and performance evaluation of charter schools. The draft of the performance framework shall, at a minimum, meet the requirements of RCW 28A.710.170(2) including descriptions of each indicator, measure and metric enumerated therein, and shall provide that student academic proficiency, student academic growth, achievement gaps in both proficiency and growth, graduation rates, and postsecondary readiness are measured and reported in conformance with the achievement index developed by the state board of education under RCW 28A.657.110.

(e) **A draft of the district's proposed renewal, revocation, non-renewal, and transfer processes for charter schools**, consistent with RCW 28A.710.190, 28A.710.200, and 28A.710.210. The draft provided must, at a minimum, provide for the implementation of transparent and rigorous processes that:

(i) Establish clear standards for renewal, nonrenewal, and revocation of charters it may authorize under RCW 28A.710.100;

(ii) Set reasonable and effective timelines for actions that may be taken under RCW 28A.710.190 and 28A.710.200;

(iii) Describe how academic, financial and operational performance data will be used in making decisions under RCW 28A.710.190 and 28A.710.200;

(iv) Outline a plan to take appropriate corrective actions, or exercise sanctions short of revocation, in response to identified deficiencies in charter school performance or legal compliance, in accordance with the charter contract and the provisions of RCW 28A.710.180;

(v) Outline a plan to ensure timely notification to parents, orderly transition of students and student records to new schools, as necessary, and proper disposition of public school funds, property, and assets, in accordance with RCW 28A.710.210.

(2) A district must sign a statement of assurances submitted with its application, which shall be included as an attachment to the authorizing contract executed between the approved district and the state board of education, stating that it seeks to serve as an authorizer in fulfillment of the expectations, spirit, and intent of chapter 28A.710 RCW, and that if approved as an authorizer it will:

(a) Seek opportunities for authorizer professional development, and assure that personnel with significant responsibilities for authorizing and oversight of charter schools will participate in any authorizer training provided or required by the state;

(b) Provide public accountability and transparency in all matters concerning charter authorizing practices, decisions, and expenditures;

(c) Ensure that any charter school it oversees shall have a fully independent governing board and exercise autonomy in all matters, to the extent authorized by chapter 28A.710 RCW, in such areas as budgeting, personnel and instructional programming and design;

(d) Ensure that any contract it may execute with the charter school board of an approved charter school under RCW 28A.710.160 provides that the school will provide educational services to students with disabilities, students who are limited-English proficient, and any other special populations of students as required by state and federal laws;

(e) Include in any charter contract it may execute with the charter school board of an approved charter school, in accordance with RCW 28A-710-040 (2)(b), that the charter school must provide a program of basic education that at a minimum meets the requirements of RCW 28A.150.200 and 28A.150.220, and meets the goals in RCW 28A.150.210, including instruction in the essential learning requirements and participation in the statewide student assessment system as developed under RCW 28A.655.070.

AMENDATORY SECTION (Amending WSR 21-05-017, filed 2/5/21, effective 3/8/21)

WAC 180-19-040 Evaluation and approval or denial of authorizer applications. (1) The board shall evaluate an application submitted by a school district seeking to be an authorizer and issue a decision (~~((approving or denying))~~) on the application (~~((by February 1st of each year))~~) at their next regularly scheduled meeting.

(2) In evaluating each application, the board will rate each part of the application as set forth in (~~((WAC 180-19-030 (3)(a) through (e))~~) this chapter as well-developed, partially developed, or undeveloped, based on criteria for evaluation included in the authorizer ap-

plication developed and made publicly available pursuant to WAC 180-19-030 ~~((1)-~~

~~(a) "Well-developed" shall mean that the application response meets the expectations established by the board and the NACSA Principles and Standards in material respects and warrants approval subject to execution of an authorizing contract with the board.~~

~~(b) "Partially developed" shall mean that the application response contains some aspects of a well-developed practice, is limited in its execution, or otherwise falls short of satisfying the expectations established by the board and the NACSA Principles and Standards.~~

~~(c) "Undeveloped" shall mean that the application response is wholly inadequate in that the applicant district has not considered or anticipated the well-developed practice at all, or proposes to carry out its authorizing duties in a way that is not recognizably connected to the expectations established by the board and the NACSA Principles and Standards).~~

(3) In its evaluation the board will consider whether the district's proposed policies and practices are consistent with the NACSA Principles and Standards as required by RCW 28A.710.100(3), in at least the following areas:

(a) Organizational capacity: Commit human and financial resources necessary to conduct authorizing duties effectively and efficiently;

(b) Solicitation and evaluation of charter applications: Implement a comprehensive application process that includes clear application questions and rigorous criteria, and grants charters only to applicants who demonstrate strong capacity to establish and operate a charter school;

(c) Performance contracting: Execute contracts with charter schools that articulate the rights and responsibilities of each party regarding school autonomy, funding, administration and oversight, outcomes, measures for evaluating success or failure, performance consequences, and other material terms;

(d) Ongoing charter school oversight and evaluation: Conduct contract oversight that competently evaluates performance and monitors compliance, ensures schools' legally entitled autonomy, protects student rights, informs intervention, revocation and renewal decisions, and provides annual reports as required by chapter 28A.710 RCW; and

(e) Charter renewal and revocation ~~((processes))~~ decision making: Design and implement a transparent and rigorous process that uses comprehensive academic, financial and operational performance data to make merit-based renewal decisions, and revokes charters when necessary to protect student and public interests.

~~(4) ((The board shall develop and post on its public website rubrics for determination of the extent to which each criterion for evaluation has been met.~~

~~(5))~~ The board may utilize the services of external reviewers with expertise in educational, organizational, or financial matters in evaluating applications.

~~((6))~~ (5) Prior to approving any application, the board may require an interview with district leadership for the purpose of reviewing and evaluating the application. The interview may be used to supplement or clarify information provided by the district in the written application. The information received in the interview may be considered in formulating the overall ratings of the application under subsection (2) of this section.

~~((7))~~ (6) For an application to be approved, the board must find it to be well developed in each part of the application as set

forth in ~~((WAC 180-19-030(3)))~~ this chapter. A determination that an application does not meet standards of quality authorizing in any part shall constitute grounds for disapproval. If the state board disapproves an application, it shall state in writing the reasons for the disapproval, with specific reference to the criteria included in the authorizer application.

~~((8))~~ (7) The board shall post on its public website the applications of all school districts approved as authorizers within 10 business days of approval. A school district approved as an authorizer shall post ~~((its application))~~ an announcement of its approved application and a link to the board's website on a public website within 10 business days of approval.

AMENDATORY SECTION (Amending WSR 21-05-017, filed 2/5/21, effective 3/8/21)

WAC 180-19-060 Authorizer oversight fee. ~~((1))~~ The statewide formula for the authorizer oversight fee transmitted to an authorizer by the superintendent of public instruction, as provided for in RCW 28A.710.110, shall be calculated as a ~~((rate not to exceed four percent of state operating funding allocated))~~ percentage of the state operating funding distributed to charter schools under RCW 28A.710.220 to each charter school under the jurisdiction of an authorizer, but may not exceed four percent of each charter school's annual funding.

(1) The rate shall be determined annually by the state board of education in consultation with the school district authorizer or the commission as applicable.

(2) The determination of the rate shall take into consideration the performance of schools under the authorizer's oversight including, but not limited to, enrollment, financial stability, performance challenges, and other situations as identified by the authorizer or the board.

(3) Changes to the rates must be determined and reported to authorizers and the office of the superintendent of public instruction by ~~((May))~~ April 15th to take effect for the subsequent school year.

~~((2))~~ ~~Authorizers shall report on the adequacy and efficiency of the authorizer oversight fee in the annual report submitted to the board by each authorizer as set forth in RCW 28A.710.100(4). The board shall consider this information to determine whether the formula should be adjusted in order to ensure fulfilling the purposes of chapter 28A.710 RCW.)~~

AMENDATORY SECTION (Amending WSR 21-05-017, filed 2/5/21, effective 3/8/21)

WAC 180-19-210 Annual report by authorizer. (1) Each authorizer must, no later than January 21st of each year ~~((starting in 2021))~~, submit an annual report to the state board of education meeting the requirements of RCW 28A.710.100(4). The board shall develop and post on its website by ~~((September))~~ June 1st of each year a standard form which must be used, and instructions which must be followed by each authorizer in making its report. The completed report must be sent via

electronic mail to sbe@k12.wa.us and shall be posted on the board's website.

(2) The report of district authorizers must include the information in (a) through (k) of this subsection, and the report of the commission must include (d) through (k) of this subsection:

(a) The date of authorizer approval by the board;

(b) The names and job titles of district personnel having principal authorizing responsibilities with contact information for each;

(c) The names and job titles of any employees or contractors to whom the district has delegated responsibilities under RCW 28A.710.100, with contact information for each;

(d) An executive summary including, but not limited to, an overview of authorizing activity during the prior year and the status and performance of the charter schools authorized;

(e) The authorizer's strategic vision for chartering, as submitted to the state board under WAC (~~(180-19-030-(3)(a))~~) 180-19-035 (1)(a), and its assessment of progress toward achieving that vision;

(f) The status of the (~~authorizer's~~) charter school portfolio, identifying all charter schools in each of the following categories:

(i) Approved but not yet open, including for each, the targeted student population and the community the school hopes to serve; the location or geographic area proposed for the school; the projected enrollment; the grades to be operated each year of the term of the charter contract; the names of and contact information for the charter school board, and the planned date for opening;

(ii) Operating, including for each, location; grades operated; enrollment in total and by grade; and for each student subgroup as defined in RCW 28A.300.042 in totals and as percentages of enrollment;

(iii) Charter renewed with date of renewal;

(iv) Charter transferred to another authorizer during the prior year, with date of transfer;

(v) Charter revoked during the prior year with date of and reasons for revocation;

(vi) Voluntarily closed;

(vii) Never opened, with no planned date for opening.

(g) The academic performance of each operating charter school overseen by the authorizer, based on the authorizer's performance framework, including:

(i) Student achievement on each of the required indicators of academic performance in RCW 28A.710.170 (2)(a) through (f), as applicable by grade, in absolute values and in comparison to the annual performance targets set by the charter school under RCW 28A.710.170(3). Student academic proficiency, student academic growth, achievement gaps, graduation rates and postsecondary readiness must be included as reported in the achievement index developed by the state board of education under RCW 28A.657.110.

(ii) Student achievement on each additional indicator of academic performance the authorizer has chosen to include in its performance framework to augment external evaluations of performance, in absolute values and in comparison to the annual performance targets set by the authorizer under RCW 28A.710.170.

(iii) Student achievement on each indicator must be disaggregated by major student subgroups including gender, race and ethnicity, poverty status, special education status, English language learner status, and highly capable status as required of performance frameworks in RCW 28A.710.170.

(h) The financial performance of each operating charter school overseen by the authorizer, based on the indicators and measures of financial performance and sustainability in the authorizer's performance framework, in absolute values and in comparison to the annual performance targets set by the authorizer under RCW 28A.710.170;

(i) The organizational performance of the charter school board of each operating charter school overseen by the authorizer, based on the indicators and measures of organizational performance in the authorizer's performance framework, including compliance with all applicable laws, rules and terms of the charter contract;

(j) ~~((The authorizer's))~~ Assessment of the adequacy of the authorizer oversight fee, operating costs and expenses for the prior year for fulfilling the responsibilities ~~((of an authorizer as))~~ enumerated in RCW 28A.710.100(1) and provided under the terms of each charter contract, detailed in annual financial statements that conform with generally accepted accounting principles and applicable reporting and accounting requirements of the office of the superintendent of public instruction;

(k) The contracted, fee-based services purchased from the authorizer by the charter schools under its jurisdiction under RCW 28A.710.110, including a brief description of each service purchased, an itemized accounting of the revenue received from the schools for the services, and the actual costs of these services to the authorizer.

AMENDATORY SECTION (Amending WSR 14-08-033, filed 3/25/14, effective 4/25/14)

WAC 180-19-220 Oversight of authorizers—General provisions.

(1) The state board of education is responsible under RCW 28A.710.120 for ~~((oversight of the performance and effectiveness of all authorizers approved under RCW 28A.710.090))~~ overseeing the effectiveness and the performance of authorizers. This oversight is ongoing and is not limited to the specific actions and procedures described in these rules. ~~((For the purposes of the board's rules governing the oversight of authorizers, the term "authorizer" means a school district board of directors that has been approved to be a charter school authorizer under RCW 28A.710.090.))~~

(2) In reviewing or evaluating the performance of authorizers against nationally recognized principles and standards for quality authorizing, the board will compare the authorizer's performance to the standards for quality set forth in the *Principles and Standards for Quality Charter School Authorizing* ~~((, 2012 edition, published by the National Association of Charter School Authorizers. A link to this publication shall be posted on the board's public website))~~.

(3) In carrying out its responsibilities for overseeing the performance and effectiveness of authorizers under RCW 28A.710.120, the board shall utilize information including, but not limited to, the annual authorizer reports submitted to the board under RCW 28A.710.100, all reports and data submitted to the office of the superintendent of public instruction under chapter 28A.710 RCW, charter contracts, and the findings of any special review conducted under RCW 28A.710.120(2). The board will require submission of, or access to, materials or data

from the authorizer deemed reasonably necessary to evaluate the performance and effectiveness of the authorizer.

(4) The board may contract for services with persons or entities having relevant expertise in the performance of its duties under RCW 28A.710.120.

(5) The board may conduct site visits to charter schools in an authorizer's portfolio for the purpose of conducting oversight of the performance of an authorizer under these rules. The board shall provide reasonable notice to the authorizer and the charter governing board prior to a site visit.

(6) In carrying out its duties for oversight of the performance and effectiveness of authorizers under RCW 28A.710.120, the board shall respect the principal role and responsibility of the authorizer for monitoring and oversight of the charter school under RCW 28A.710.100, and the authority of the charter school board to manage and operate the charter school under RCW 28A.710.030 and the terms of its charter contract.

AMENDATORY SECTION (Amending WSR 14-08-033, filed 3/25/14, effective 4/25/14)

WAC 180-19-230 Oversight of authorizers—Special review. (1)

The board is authorized, upon a determination of persistently unsatisfactory performance of an authorizer's portfolio of charter schools, a pattern of well-founded complaints about the authorizer or its charter schools, a high percentage of charter school closures during the preceding 10-year period, or other objective circumstances, to conduct a special review of an authorizer's performance. The purpose of the special review is to determine the need for additional action by the board as provided in these rules.

(2) (~~"Persistently unsatisfactory performance of an authorizer's portfolio of charter schools" shall consist, for any school or schools, of:~~

~~(a) Repeated failure during a contract term, or consecutive contract terms, to meet the expectations for academic performance set forth in the charter contract including, but not limited to, applicable state and federal accountability requirements, without evidence of a trend indicating the school will meet those expectations;~~

~~(b) Repeated failure during a contract term, or consecutive contract terms, to meet the financial performance targets within the charter contract;~~

~~(c) Repeated failure during a contract term, or consecutive contract terms, to meet the targets for organizational performance within the charter contract.~~

~~(3) "A pattern of well-founded complaints" means multiple complaints that are found by the board to be supported by sufficient factual information alleging that an authorizer is not in compliance with a charter contract, its authorizing contract, or its authorizer duties, including the failure to develop and follow nationally recognized principles and standards for charter authorizing.~~

~~(a)) Any individual or entity may submit a written complaint to the board about an authorizer or its charter schools. The complaint should state in specific terms the alleged violation of law, failure to comply with a charter contract or its authorizing contract, or~~

failure to develop and follow nationally recognized principles and standards for charter authorizing. The complaint must be signed and dated and provide contact information for use by the board in requesting additional information as deemed needed. The board shall post a standard form for submission of complaints on its public website.

~~((b))~~ (a) Upon receipt, the board shall transmit the complaint to the authorizer for its written response, which shall be submitted to the board within ~~((thirty))~~ 30 days of receipt.

~~((e))~~ (b) The board may request additional information from the complainant or the authorizer as deemed necessary to investigate the complaint.

~~((d))~~ (c) If the complaint is determined not to be well-founded, the board shall notify the complainant in writing and the board shall not be required to take further action.

~~((e))~~ (d) If the complaint is determined to be well-founded, the board shall provide written notification of such determination to the complainant and the authorizer.

~~((4))~~ "Other objective circumstances" include, but are not limited to, failure of the authorizer or its charter schools to comply with an applicable state or federal law or regulation, or evidence that a charter school is not operating in a manner that fulfills the requirements of its charter contract or has a substantial risk of becoming operationally unable to fulfill those requirements.

~~((5))~~ (3) The board must provide written notice to the authorizer of initiation of a special review, documenting the reasons for the decision to conduct the review. The board must provide opportunity for the authorizer to respond in writing to the specific determinations of the need for the review and may take into consideration any corrective action by the authorizer or other considerations in the review.

~~((6))~~ (4) The board shall submit a written report of the results of the special review to the authorizer and other interested persons. The report may include recommended corrective actions. The report shall be posted on the board's public website.

(5) If the commission is the subject of the special review under this section, the state board of education shall have one year from the initiation of its review to complete the review and provide a report with findings and recommendations, including any recommendations for statutory revisions it deems necessary. The board will seek input from the commission on proposed findings and recommendations before completing the report, and will provide the commission the opportunity to provide a written response to the board's report that will be included when the board's report is provided to the governor, the superintendent of public instruction, and the appropriate committees of the house of representatives and the senate.

AMENDATORY SECTION (Amending WSR 17-20-070, filed 10/2/17, effective 11/2/17)

WAC 180-19-250 Oversight of authorizers—Revocation of authorizing contract.

(1) Evidence of material or persistent failure by an authorizer to carry out its duties according to nationally recognized principles and standards for charter authorizing is grounds for revocation of an authorizer's chartering contract. This may include:

(a) Failure to comply with the terms of the authorizing contract between the authorizer and the board;

(b) Violation of a term of the charter contract between the authorizer and a charter school board;

(c) A high percentage of charter school closures during the preceding 10-year period;

(d) Demonstrated failure to develop and follow chartering policies and practices that are consistent with the principles and standards for quality charter authorizing developed by the National Association of Charter School Authorizers in any of the following areas, as required by RCW 28A.710.100:

(i) Organizational capacity;

(ii) Soliciting and evaluating charter applications;

(iii) Performance contracting;

(iv) Ongoing charter school oversight and evaluation;

(v) Charter renewal decision making.

(2) Notice of intent to revoke. If the board makes a determination, after due notice to the authorizer and reasonable opportunity to effect a remedy, that the authorizer continues to be in violation of a material provision of a charter contract or its authorizing contract, or has failed to remedy other identified authorizing problems:

(a) The board shall notify the authorizer in writing that it intends to revoke the authorizer's chartering authority under RCW 28A.710.120. The notification to the authorizer shall explain and document the reasons for the intent to revoke chartering authority.

(b) The authorizer shall, within (~~thirty~~) 30 days of notification, submit a written response showing that the authorizer has implemented or will implement within (~~sixty~~) 60 days of submitting the written response, a sufficient remedy for the violation or deficiencies that are the stated grounds for the intent to revoke chartering authority. The board shall within (~~thirty~~) 30 days of receipt provide written notice to the authorizer whether it finds the proposed remedy sufficient to correct the violation or deficiencies.

(3) Notice of revocation. If the district authorizer fails to provide a timely written response or if the response is found insufficient by the board to meet the requirement set forth in subsection (1) of this section:

(a) The board shall provide the authorizer with written notice of revocation of the authorizer's chartering authority. The notice of revocation shall state the effective date of revocation, which shall not be sooner than (~~twenty~~) 20 days from the date of receipt of the notice of revocation by the authorizer unless a timely notice of a request for an adjudicative proceeding is filed as set forth herein.

(b) The authorizer may request an adjudicative proceeding to contest the revocation. The request for an adjudicative proceeding must be submitted in writing by the authorizer to the board within (~~twenty~~) 20 days of receipt of the notice of revocation at the following email address: sbe@k12.wa.us or mailing address:

State Board of Education

Old Capitol Building

P.O. Box 47206

600 Washington St. S.E. (~~(, Room 253)~~)

Olympia, Washington 98504

Any adjudicative proceeding shall be conducted in accordance with the Administrative Procedure Act (APA).

AMENDATORY SECTION (Amending WSR 17-20-070, filed 10/2/17, effective 11/2/17)

WAC 180-19-260 Authorizer oversight—Transfer of charter contract. (1) In the event that a notice of revocation is provided to ((the)) a district authorizer under WAC 180-19-250, any charter contract held by that authorizer shall be transferred, for the remaining portion of the charter term, to the Washington charter school commission on documentation of mutual agreement to the transfer by the charter school board and the commission.

(2) Documentation of mutual agreement shall consist of a written agreement between the charter school board and the commission, signed and dated by the chair or president of the charter school board and the chair of the commission. The agreement shall include any modification or amendment of the charter contract as may be mutually agreed upon by the charter school and the commission.

(3) The commission shall submit the agreement to the state board of education. The board shall review the agreement and on a determination that the requirements of these rules have been met, issue written certification of the transfer of the charter contract to the charter school board and the commission.

(4) On certification by the board of the transfer of the charter contract, the prior authorizer shall transfer to the commission all student records and school performance data collected and maintained in the performance of its duties as an authorizer under RCW 28A.710.100 and 28A.710.170.

(5) The commission, in consultation with the charter school board, shall develop and implement a procedure for timely notification to parents of the transfer of the charter contract and any modifications or amendments to the charter included in the written agreement executed under subsection (2) of this section.

(6) If mutual agreement is not obtained on the transfer of the charter contract under RCW 28A.710.120(6) and this section, the charter school shall be closed under the provisions of RCW 28A.710.210. The district shall develop and implement a termination protocol to ensure timely notification to parents, orderly transition of students and student records to new schools, as necessary, and proper disposition of public school funds, property, and assets. The protocol must include, at a minimum, a plan for addressing the following:

(a) Adequate and timely communication with parents, school staff and the community regarding the closing of the charter school and the options for student transfer to another public school;

(b) Retention of student, personnel, governance and financial records in compliance with all applicable laws and policies;

(c) The transfer of all student records in accordance with privacy rules set forth in the Family Educational Rights and Privacy Act (FERPA) and any applicable state laws and school district policies;

(d) Resolution of all financial obligations associated with the closure of the charter school;

(e) Return of the public funds in the possession of the charter school as provided for in RCW 28A.710.201(2), or as required by any other state law; and

(f) A plan for the disposition of all other assets, in compliance with applicable state and federal laws or district policies governing the assets.

The protocol must specify tasks, timelines, and responsible parties, including delineating the respective duties of the charter school and the authorizer. The district shall provide the board with a copy of the termination protocol. The board may review the protocol and request revisions for implementation.

(7) If a charter public school or its authorizer petitions the state board of education, under RCW 28A.710.210(3), for authorization to transfer a charter contract from one authorizer to another or from one charter school to another before the expiration of the charter contract, and if the potential transfer would entail a relocation to another school district, the petitioner shall transmit a written copy of the petition to the board and superintendent of the school district to which the charter public school may relocate, on the same date it submits the petition to the state board of education.

WSR 24-07-018
PERMANENT RULES
SECRETARY OF STATE

[Filed March 8, 2024, 11:01 a.m., effective May 4, 2024]

Effective Date of Rule: May 4, 2024.

Purpose: These proposed rules expand and enumerate the requirements to verify a provided signature on a ballot declaration matches the signature provided on a voter registration record and updates the signature cure process.

Citation of Rules Affected by this Order: New WAC 434-261-051, 434-261-052 and 434-261-053; repealing WAC 434-261-050; and amending WAC 434-262-032, 434-250-120, 434-262-031, 434-324-111, and 434-264-010.

Statutory Authority for Adoption: RCW 29A.04.611.

Adopted under notice filed as WSR 24-03-153 on January 23, 2024.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 3, Amended 5, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 5, Repealed 1.

Number of Sections Adopted using Negotiated Rule Making: New 3, Amended 5, Repealed 1; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 8, 2024.

Amanda Doyle
Chief of Staff

OTS-4842.3

AMENDATORY SECTION (Amending WSR 20-14-035, filed 6/24/20, effective 7/25/20)

WAC 434-250-120 Verification of the signature and return date.

(1) A ballot shall be counted if:

(a) The voter has not already cast a ballot that has been accepted in the election;

(b) The voter signed the ballot declaration (~~(is signed)~~) with a valid signature (~~(. A valid signature may be the voter's name or a distinctive mark or symbol signed by the voter:~~

~~(i) If the voter is unable to sign their name, the voter may make a mark or symbol with two witnesses' signatures. A signature stamp accompanied by two witness signatures is an acceptable mark;~~

~~(ii) A power of attorney cannot be used as a signature for a voter.~~

~~(c) The signature has been verified by the county of current registration pursuant to WAC 434-379-020; and~~

~~(d))~~, as determined by WAC 434-261-051 through 434-261-053, or the voter has provided identification at a voting center; and

(c) The envelope is returned in one of the following methods:

(i) The envelope is postmarked not later than the day of the election and received not later than close of business the day before certification of the election. A postmark is any official mark, imprint, or application that verifies when a ballot entered the U.S. postal system. The mailing date of a ballot sent through a commercial mailing service, such as FedEx or UPS, may be considered a postmark. The postmark on the envelope is the official date of mailing. If there are ~~((two))~~ multiple postmarks, the ~~((earlier))~~ earliest postmark is the date of mailing. A hand cancellation by an agent of the U.S. Postal Service is a postmark.

If the postmark is illegible or missing, the date of the voter's signature is the date of mailing as per RCW 29A.40.110. If the postmark is illegible or missing and the voter did not include a date with their signature, county auditors may use available U.S. Postal Service tools to verify the date of mailing;

(ii) The ballot is deposited in a ballot drop box no later than 8:00 p.m. on election day; or

(iii) For service and overseas voters, the ballot is received by fax or email no later than 8:00 p.m. on election day. Only service and overseas voters can submit ballots by fax or email.

(2) Postage that includes a date, such as meter postage or a dated stamp, does not qualify as a postmark. If an envelope lacks a postmark or if the postmark is unreadable, the date to which the voter has attested on the ballot declaration determines the validity of the ballot, per RCW 29A.40.110. If a ballot is from a service or overseas voter, the date to which the voter has attested on the ballot declaration determines the validity of the ballot, per RCW 29A.40.100.

(3) Consistent with WAC 434-250-080, the voter's current ballot and signed declaration shall be accepted for initial processing; ballots previously or subsequently received for the same voter are not counted nor rejected by the county canvassing board. Such ballots ~~((shall be))~~ are invalid and categorized as informational only.

(a) If the first ballot received is identical to the voter's current ballot because the voter submitted a replacement ballot, the replacement ballot shall be referred to signature verification for initial processing.

(b) If the first ballot received is suspended because of a voter registration update, the suspended ballot shall be held by the county of current registration. The county of registration may choose to manually check the suspended ballot for signature issues and send a ~~((eure))~~ signature update form, while allowing time for the current ballot to be received and accepted.

(4) ~~((The signature on the ballot declaration must be compared with the signature in the voter's voter registration file using the standards established in WAC 434-379-020. The signature on))~~ A ballot ~~((declaration))~~ may not be rejected merely because the ~~((signature))~~ ballot envelope is not dated, unless the date is necessary to validate the timeliness of the ballot. The signature on a ballot declaration may not be rejected merely because the name in the signature is a variation of the name on the voter registration record. ~~((The canvassing board may designate in writing representatives to perform this function. All personnel assigned to the duty of signature verification shall subscribe to an oath administered by the county auditor regarding the discharge of their duties. Personnel shall be instructed in~~

~~the signature verification process prior to actually canvassing any signatures. Local law enforcement officials may instruct those employees in techniques used to identify forgeries.)~~

(5) Only service and overseas voters are eligible to return a ballot by fax or email. For ~~((service and overseas))~~ ballots returned by fax or email from service or overseas voters, the county auditor must apply procedures to protect the secrecy of the ballot.

(a) If returned by email, the county auditor must print the email and attachments; the printed email and signed declaration page must be processed and retained like other ballot declarations, and the printed ballot must be processed and retained like other ballots. The electronic versions of the email, ballot declaration, and ballot are exempt from public disclosure in order to maintain secrecy of the ballot. Voted service and overseas ballots returned by email may be returned with multiple attachments or in multiple emails.

~~((a))~~ (b) Service and overseas ballots returned by fax or email with a missing or mismatched signature are processed as established in RCW 29A.60.165 and WAC 434-261-050.

~~((b) Only service and overseas voters are eligible to return a ballot electronically.)~~

(6) For ~~((electronic))~~ faxed or emailed ballots received from voters who are not service or overseas voters the county auditor must:

~~((i))~~ (a) Contact the voter immediately if a ~~((fax))~~ faxed or ~~((email))~~ emailed ballot is received to notify the voter that they must return their ballot by mail or ballot drop box.

~~((ii))~~ (b) Count only the ballot received by mail or ballot drop box if the voter returns both ~~((an electronic))~~ a faxed or emailed ballot and a ballot by mail or ballot drop box.

~~((iii))~~ (c) Send the ~~((electronic))~~ faxed or emailed ballot to the canvassing board for rejection if the voter did not return a ballot by mail or ballot drop box.

~~((6))~~ (7) The signature verification process shall be open to the public, subject to reasonable procedures adopted and promulgated by the canvassing board to ensure that order is maintained and to safeguard the integrity of the process.

OTS-4827.4

NEW SECTION

WAC 434-261-051 Standards for verifying ballot declaration signatures. (1) This regulation, together with WAC 434-261-052 and 434-261-053, describes the process for verifying that a signature on the ballot declaration is the voter's registration signature.

(2) At each stage of the signature verification process, there is a presumption that the signature on the ballot declaration is the voter's signature.

(3) When reviewing ballot declaration signatures, staff assigned to verify signatures shall consider the following criteria:

(a) Agreement in style and general appearance, including basic construction, skill, alignment, fluency, and a general uniformity and consistency between signatures;

- (b) Agreement in the proportions of individual letters, height to width, and heights of the upper to lower case letters;
 - (c) Irregular spacing, slants, or sizes of letters that are duplicated in both signatures;
 - (d) Agreement of the most distinctive, unusual traits of the signatures;
 - (e) The ballot declaration signature is in the same format as the voter registration signatures, such as printed, in cursive, or another form;
 - (f) Agreement of individual characteristics, such as how "t's" are crossed, "i's" are dotted, or loops are made on letters;
 - (g) Agreement of initial strokes and connecting strokes of the signature;
 - (h) Agreement of similar endings, such as an abrupt end, a long tail, or loop back around;
 - (i) Agreement of presence or absence of pen lifts;
 - (j) Agreement in the way names are spelled; and
 - (k) After considering the general traits, agreement of the most distinctive, unusual traits of the signatures.
- (4) When reviewing ballot declaration signatures that appear to contain discrepancies, staff verifying signatures should accept signatures if the appearance of a discrepancy can reasonably be explained by the following:
- (a) A shaky signature that could be health-related or the result of aging;
 - (b) The voter's use of a variation of the voter's full name, such as the use of initials, including or omitting a middle name, or substituting a middle name for a first name;
 - (c) A change in the voter's signature over time;
 - (d) A signature written in haste;
 - (e) A signature in the voter's registration file that was written with a stylus pen or other electronic signature tool, which may result in a thick or fuzzy quality;
 - (f) A writing surface that was hard, soft, uneven, or unstable;
 - (g) The voter has a limited history of fewer than three ballots returned; and
 - (h) Any other reasonable factor.
- (5) An agent, including someone acting under a power of attorney, cannot sign a ballot declaration on behalf of their principal.
- (6) If a voter inadvertently signs another voter's ballot declaration, but elections personnel can identify the correct voter and verify that voter's signature, the signature and the ballot must be accepted for the voter that signed the ballot declaration.
- (7) All staff verifying ballot declaration signatures must receive training on these signature verification standards before verifying ballot declaration signatures. They must attend the training at least once every two years. This applies to, but is not necessarily limited to, individuals performing the initial review, secondary review, and review of signatures as part of the cure process. Members of the county canvassing board are required to receive training except as exempted by RCW 29A.04.540.
- (8) The canvassing board may designate the county auditor or the county auditor's staff to perform the signature verification function. All personnel assigned to the duty of signature verification shall subscribe to an oath administered by the county auditor regarding the discharge of their duties.

(9) The signature verification process shall be open to the public, subject to reasonable procedures adopted and promulgated by the canvassing board to ensure that order is maintained and to safeguard the integrity of the process.

NEW SECTION

WAC 434-261-052 Initial and secondary review of ballot declaration signatures. (1) When conducting an initial review of a ballot declaration signature, the county auditor must accept the signature under the following conditions:

(a) The county auditor must accept the signature unless, considering the criteria in WAC 434-261-051 (3) and (4), the signature on the ballot envelope has multiple, significant, and obvious discrepancies from all signatures in the voter's registration record; or

(b) If the voter is unable to sign their name as they are registered to vote, the signature must be accepted so long as the voter has made a mark, symbol, or signature stamp, and the ballot declaration includes two witness signatures.

(2) If the signature is not accepted following the initial review, the ballot declaration signature must be referred to a second review.

(a) A different person who has received signature verification training under WAC 434-261-051(7) must conduct the second review of the signature.

(b) If, considering the criteria in WAC 434-261-051 (3) and (4), the second reviewer determines that there are multiple, significant, obvious discrepancies from all signatures in the voter's registration record, the voter must be notified of the process to cure the signature;

(3) The county auditor may conduct additional reviews of ballot declaration signatures that have not yet been accepted. For example, if the county auditor becomes aware of reasonable explanations that should be considered under WAC 434-261-051(4), an additional review may be appropriate.

(4) Even if the ballot declaration signature appears to match the signature in the voter registration record, and notwithstanding any other provision, a ballot may be referred to the canvassing board if there is clear, objective evidence, beyond the signature itself, that a ballot declaration signature is fraudulent. This provision is intended to apply only very rarely, such as in instances of confessed forgery or similar circumstances. A person verifying signatures may refer a ballot declaration signature to the county auditor, and, if satisfied that the standard is met, the county auditor may refer the ballot to the canvassing board. The county auditor and the canvassing board may refer the matter to law enforcement.

(5) The county auditor may conduct the initial signature review by using an automated verification system approved by the secretary of state. If a signature is not accepted by the automated verification system, the county auditor must manually use the process described in this section.

(6) If two ballots are returned in one return envelope, ballots may be accepted in the following manner. In all other circumstances, the ballots must be referred to the canvassing board for rejection.

(a) If there is only one valid signature on the ballot declaration and the races and measures voted are the same on both ballots, the races and measures voted the same on both ballots may be counted once;

(b) If there are two valid signatures on the ballot declaration, both ballots may be counted in their entirety; or

(c) If there is one valid signature on the ballot declaration and the envelope contains one voted ballot and one blank ballot without marked votes, the voted ballot may be counted in its entirety.

NEW SECTION

WAC 434-261-053 Ballot declaration signature cure process. (1)

If a ballot declaration signature is not accepted following secondary review, the voter used a mark or signature stamp but did not include witnesses, or if the ballot declaration was not signed, the ballot cannot be counted until the voter cures their signature. The voter identified on the ballot return envelope must be notified as soon as practicable, but no later than three business days following receipt, of the procedure for curing their signature by:

(a) A notice letter package sent by first class mail with a signature update form or a missing signature form. The forms must include the ballot declaration required by WAC 434-230-015. The notice letter package must also include a prepaid envelope in which to return a completed signature update or missing signature form. The notice letter must:

(i) Be in substantially the same form as the sample notice letter created by the secretary of state; and

(ii) Be available in all languages required by the Department of Justice.

(b) Phone (if the voter has provided a phone number);

(c) Text message (if the voter has opted into text message notifications); and

(d) Email (if the voter has provided an email address).

(2) The voter may cure their ballot signature no later than the close of business the day before the election is certified.

(3) A voter may cure a missing signature by:

(a) Returning a signed missing signature form. The signature on the form must be compared to the voter's signature in the voter registration record using the process described in WAC 434-261-052; or

(b) Appearing in person and signing the ballot declaration. The signature on the ballot declaration must be compared to the voter's signature in the voter registration record using the process described in WAC 434-261-052.

(4) A voter using a mark may cure a failure to have two witnesses attest to the ballot declaration signature by returning a missing signature form. The form must contain the voter's mark and the signatures of two witnesses.

(5) A voter may cure a nonmatching signature by either:

(a) Returning a signature update form or appearing in person and signing a new registration form.

(i) The signature on the form must be compared to the signature on the ballot declaration using the process described in WAC 434-261-052;

(ii) The signature on the form is saved as a new signature in the voter registration record for the current and future elections; or

(b) Providing valid secondary identity verification. The county auditor must verify the secondary identification is for the voter who signed the ballot declaration. Secondary identification may be:

(i) The last four digits of the voter's Social Security number or the voter's full driver's license number or state identity card number;

(ii) Photo identification, valid enrollment card of a federally recognized Indian tribe in Washington state, copy of a current utility bill or current bank statement, copy of a current government check, copy of a current paycheck, or a government document, other than a voter registration card, that shows both the name and address of the voter; or

(iii) A multifactor authentication code, from a system approved by the secretary of state, the county auditor sent to the voter's phone number or email address that has previously been provided by the voter.

If a voter successfully provides secondary identity verification and confirms, orally or in writing, that the voter in fact returned the ballot, the ballot must be accepted unless two persons who have received signature verification training under WAC 434-261-051(7) conclude beyond a reasonable doubt that a person other than the voter signed the ballot declaration. This conclusion may be based on evidence including, but not limited to, other ballots in the same election bearing the same signature.

(6) If the registered voter asserts that the signature on the ballot declaration is not the voter's signature prior to 8:00 p.m. on election day, the voter may vote a provisional ballot.

(7) If the voter does not successfully cure their signature by close of business the day before certification of the election, the ballot must be sent to the canvassing board.

(8) A record must be kept of the process used to cure ballot envelopes with missing and mismatched signatures. The record must contain the date on which each voter was contacted, the notice was mailed, and the date on which each voter subsequently submitted a signature to cure the missing or mismatched signature.

OTS-4846.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-261-050	Unsigned ballot declaration or mismatched signatures.
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OTS-4843.3

AMENDATORY SECTION (Amending WSR 20-13-043, filed 6/10/20, effective 7/11/20)

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;

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

~~((d))~~ (c) Where the voter has overvoted;

~~((e))~~ (d) Where the ballot was created for a prior election;

(e) Where a ballot was submitted with a fraudulent signature; and

(f) Where the ballot signature did not match the voter registration signature or the signature was missing and the voter did not cure the signature by close of business the day before the election was certified.

OTS-4841.2

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

WAC 434-262-032 Provisional ballots—Disposition. Upon receipt of the provisional ballot, including provisional ballots from other counties or states, the county auditor must investigate the circumstances surrounding the provisional ballot prior to certification of the primary or election. A voted ballot received from an unregistered voter, other than a service, overseas, or conditionally registered voter, is considered a provisional ballot. A provisional ballot cannot be counted unless the voter's name, signature and the date of birth, if available, matches a voter registration record. Once the provisional ballot has been investigated, disposition of the ballot is as follows:

(1) If the voter was previously registered ~~((and))~~, their voter registration was later canceled, and the auditor determines that the

cancellation was in error, the voter's registration must be immediately restored and the provisional ballot counted.

(2) If the voter was previously registered (~~and~~), their voter registration was later canceled, and the auditor determines that the cancellation was not in error, register the voter and count the ballot.

(3) If a registered voter has voted a ballot for a previous address, the auditor must ensure that only those votes for the positions and measures for which the voter was eligible to vote are counted.

(4) If the voter is registered in another county, the auditor shall immediately forward the ballot to the elections official for the jurisdiction in which the voter is registered. The provisional ballot must be forwarded within seven calendar days after a primary or special election and (~~fourteen~~) 14 calendar days after a general election, and as soon as possible if past that date.

(5) If the voter voted a regular ballot and a provisional ballot, the provisional ballot is not counted if the regular ballot has already been counted. The regular ballot is not counted if the provisional ballot has already been counted.

(6) If the voter voted a provisional ballot because (~~he or she~~) the voter failed to produce identification at a voting center, the ballot is counted if the signature on the envelope matches the signature in the voter registration record, using the standards and processes set forth in WAC 434-261-051 through 434-261-053.

(7) If the voter voted a provisional ballot because the voter is provisionally registered and the voter's registration record is still flagged as requiring verification of identity, the provisional ballot is not counted.

(8) Provisional ballots voted for reasons not covered by this section or state statute must be determined by the county canvassing board.

OTS-4845.1

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

WAC 434-264-010 Recount. (1) A recount is the process for retabulating the votes, including write-ins, for a specific office or issue on all valid ballots cast in a primary or election.

(2) All questions of voter registration, voter qualification, and voter intent previously considered during the original count shall not be reconsidered during a recount. If a ballot has been duplicated in accordance with WAC 434-261-005, the duplicate shall be counted.

(3) A voter may not cure a missing or mismatched signature for purposes of counting the ballot in a recount.

(4) Prior to beginning the recount, the county auditor shall exercise due diligence to confirm that all returned ballots have been identified and reconciled, and that no ballots have been erroneously omitted from the original count.

(~~(4)~~) (5) If any ballots or votes are discovered during the recount process that were erroneously not counted or canvassed during the original count or during a previous recount, the ballots shall be

presented to the county canvassing board in accordance with RCW 29A.60.050, and the county canvassing board shall determine whether such ballots are to be included in the recount.

OTS-4844.1

AMENDATORY SECTION (Amending WSR 20-13-043, filed 6/10/20, effective 7/11/20)

WAC 434-324-111 Voluntary cancellation of voter registration. A voter may cancel their own voter registration by submitting a signed written notification to the auditor for the county in which 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)~~) 434-261-051. 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.

WSR 24-07-022
PERMANENT RULES
LAKE WASHINGTON
INSTITUTE OF TECHNOLOGY

[Filed March 9, 2024, 4:23 p.m., effective April 9, 2024]

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

Purpose: Adoption of a new definition of hazing. Institutions of higher education in Washington state are required to revise their student conduct codes to prohibit hazing both on and off campus. The act, which took effect on June 9, 2022, does not provide a deadline for completing conduct code revisions. Beginning in fall 2022, institutions of higher education must provide students with educational programming on hazing that includes information on hazing awareness, prevention, intervention, and the institutions of higher education policies prohibiting hazing. This programming can be provided either in person or electronically and must be part of the institutions of higher education new student orientation sessions. The program must also be posted on the institutions of higher education public website for the public, including parents, legal guardians, and volunteers to review.

Rule change includes adding this new legislation to the student conduct code.

Citation of Rules Affected by this Order: New WAC 495D-121-605; and amending WAC 495D-121-320, 495D-121-330, and 495D-121-590.

Statutory Authority for Adoption: RCW 28B.50.140(13).

Adopted under notice filed as WSR 23-22-132 on November 1, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 3, Repealed 0.

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

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

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

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

Date Adopted: December 7, 2023.

Elsa J. Gossett
 Director of Planning and Operations
 Office of the President

OTS-4011.1

AMENDATORY SECTION (Amending WSR 21-18-041, filed 8/24/21, effective 9/24/21)

WAC 495D-121-320 Student conduct code—Jurisdiction. (1) The student conduct code shall apply to student conduct that occurs:

(a) On college premises;

(b) At or in connection with college sponsored activities;

(c) Off-campus when, in the judgment of the college, it adversely affects the college community or the pursuit of its objectives.

(2) Jurisdiction extends to, but is not limited to, locations in which students engage in official college activities including, but not limited to:

(a) Foreign or domestic travel;

(b) Activities funded by the associated students;

(c) Athletic events;

(d) Training internships;

(e) Cooperative and distance education;

(f) Online education;

(g) Practicums;

(h) Supervised work experiences;

(i) Any other college-sanctioned social or club activities.

(3) Students are responsible for their conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

(5) The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct to students or student groups that occurs off campus.

AMENDATORY SECTION (Amending WSR 21-18-041, filed 8/24/21, effective 9/24/21)

WAC 495D-121-330 Student conduct code—Definitions. The following definitions apply for the purposes of this student conduct code:

(1) "Business day" means a weekday, excluding weekends and official college holidays.

(2) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property the college owns, uses, or controls.

(3) "Complainant" means an alleged victim of sexual misconduct.

(4) "Conduct review officer" means the vice president of student services or other college administrator the president designates to have responsibility to receive and review or refer appeals of student disciplinary actions consistent with the procedures of this code. The president can reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter as reasonably necessary.

(5) "Disciplinary action" means the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

(6) "Disciplinary appeal" means the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. The student conduct committee hears disciplinary appeals for a suspension in excess of (~~ten~~) 10 instructional days or a dismissal.

The college will review appeals of all other appealable disciplinary action through brief adjudicative proceedings.

(7) "Filing" means the process by which a document is officially delivered to a college official responsible to facilitate a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) Sending the document by email or first class mail to the specified college official's office and college email address.

Papers required for filing are considered filed when the specified college official actually receives the papers during office hours.

(8) "Hazing" means any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student or other person attending a public institution of higher education in this state, including causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to participate. "Hazing" does not include customary athletic events or other similar contests or competitions.

(9) "President" means the president of the college. The president is authorized to:

(a) Delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and

(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

~~((9))~~ (10) "Respondent" means the student against whom the college initiates disciplinary action.

~~((10))~~ (11) "Service" means the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) Sending the document by email or by certified mail or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed or deposited in the mail.

~~((11))~~ (12) "Sexual misconduct" has the meaning ascribed to this term in WAC 495D-121-590(18).

~~((12))~~ (13) "Student" includes all persons who take classes at or through the college, whether on a full-time or part-time basis, and whether such classes are credit courses, noncredit courses, online courses, or otherwise. People who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who were notified of their acceptance for admission are considered students for purposes of this chapter.

~~((13))~~ (14) "Student conduct committee" means a college committee as described in WAC 495D-121-400.

~~((14))~~ (15) "Student conduct officer" means a college administrator to whom the president or vice president of student services designates responsibility to implement and enforce the student conduct code. The president or vice president can reassign any and all of the

student conduct officer's duties or responsibilities as set forth in this chapter as reasonably necessary.

~~((15))~~ (16) "Student group" is a student organization, athletic or intramural team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups within student housing.

(17) "Title IX coordinator" means a college administrator to whom the president designates responsibility to implement and enforce the guidelines of federal Title IX legislation.

AMENDATORY SECTION (Amending WSR 21-18-041, filed 8/24/21, effective 9/24/21)

WAC 495D-121-590 Student conduct code—Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(d) Academic consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course. Students should refer to each of their faculty's course syllabus. Further academic consequences may follow consistent with the provisions in any program handbook. Incidents of academic dishonesty may also be referred to the student conduct officer for disciplinary action consistent with this chapter in addition to the academic consequences identified above.

(2) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) **Obstructive or disruptive conduct.** Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders:

- (a) Any instruction, research, administration, disciplinary proceeding, or other college activity;
 - (b) The free flow of pedestrian or vehicular movement on college property or at a college activity;
 - (c) Any student's ability to profit from the instructional program; or
 - (d) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.
- (4) **Assault, intimidation, and/or harassment.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.
- (5) **Imminent danger.** Where the student presents an imminent danger to college property, or to themselves, or other students or persons in college facilities on or off campus, or to the education processes of the college.
- (6) **Cyber misconduct.** Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.
- (7) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.
- (8) **Noncompliance.** Failure to comply with:
- (a) The direction of a college officer or employee who is acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so;
 - (b) A college rule or policy as set forth in the *Lake Washington Institute of Technology Policies and Procedures Manual* which may be found in the library or online.
- (9) **Weapons.** Possession, holding, wearing, transporting, storage, or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, martial arts weapons, explosive device, dangerous chemicals, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:
- (a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties; or
 - (b) A student with a valid concealed weapons permit may store a firearm in their vehicle parked on campus in accordance with RCW

9.41.050, provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or designee may authorize possession of a weapon on campus upon a showing that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in advance to bringing weapons to the college, in writing, and shall be subject to such terms or conditions incorporated therein.

(10) **Hazing.** (~~Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.~~)

(a) Hazing is any act committed as part of:

(i) A person's recruitment, initiation, pledging, admission into, or affiliation with a student group; or

(ii) Any pastime or amusement engaged in with respect to such a student group;

(iii) Any act that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student.

(b) Examples of hazing include, but are not limited to:

(i) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm;

(ii) Humiliation by ritual act;

(iii) Striking another person with an object or body part;

(iv) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or

(v) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.

(c) "Hazing" does not include customary athletic events or other similar contests or competitions.

(d) Consent is not a valid defense against hazing.

(11) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college or in any location where such use is prohibited, including (~~twenty-five~~) 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the college. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

(12) **Alcohol.** Being observably under the influence of any alcoholic beverage, or otherwise using, possessing, selling, or delivering any alcoholic beverage, except as permitted by law and authorized by the college president.

(13) **Marijuana.** The use, possession, delivery, sale, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(14) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner. Being

observably under the influence of any lawfully prescribed drug when enrolled in classes that require operation of heavy equipment or other dangerous equipment.

(15) **Disorderly conduct.** Conduct which is disorderly, lewd, obscene, or a breach of peace on college premises or at college sponsored activities that is not otherwise protected under the law.

(16) **Discriminatory conduct.** Conduct which harms or adversely affects any member of the college community because of their race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(17) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 495D-121-680 (supplemental Title IX student conduct procedures).

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome sexual or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

(i) Deny or limit the ability of a student to participate in or benefit from the college's educational program;

(ii) Alter the terms or conditions of employment for a college employee(s); and/or

(iii) Create an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex, including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(d) **Nonconsensual sexual intercourse.** Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(e) **Nonconsensual sexual contact.** Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(f) **Incest.** Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren(~~(7)~~) and adopted children under the age of (~~(eighteen)~~) 18.

(g) **Statutory rape.** Consensual intercourse between a person who is (~~(eighteen)~~) 18 years of age or older, and a person who is under the age of (~~(sixteen)~~) 16.

(h) **Domestic violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(i) **Dating violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(i) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(ii) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(A) The length of the relationship;

(B) The type of relationship; and

(C) The frequency of interaction between the persons involved in the relationship.

(j) For purposes of this code, "consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(18) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental, or physical disability; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications.

(19) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

(20) **Misuse of information resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization;

(i) Failure to comply with the college's acceptable use policy.

(21) **Breach of campus safety.** Safety violation includes any non-accidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community. Breaching campus safety or security includes, but is not limited to:

(a) Unauthorized access to college facilities; intentionally damaging door locks; unauthorized possession of college keys or access cards; duplicating college keys or access cards; propping open of exterior doors; or unauthorized entry onto or into college property;

(b) Tampering with fire safety equipment, such as fire extinguishers, smoke detectors, alarm pull stations or emergency exits or triggering false alarms or other emergency response systems;

(c) Placement of equipment or vehicles, including bicycles, so as to obstruct the means of access to/from college buildings;

(d) Entering or remaining in any closed college facility or entering after the closing time of the college facility without permission of a college official;

(e) Operation of any motor vehicle on college property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person.

(22) **Abuse of procedures.** Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

(a) Failure to obey a subpoena;

(b) Falsification or misrepresentation of information;

(c) Disruption or interference with the orderly conduct of a proceeding;

(d) Interfering with someone else's proper participation in a proceeding;

(e) Destroying or altering potential evidence or attempting to intimidate or otherwise improperly pressure a witness or potential witness;

(f) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member;

(g) Failure to comply with any disciplinary sanction(s) imposed under this student conduct code.

(23) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(24) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

NEW SECTION

WAC 495D-121-605 Student conduct code—Hazing prohibited—Sanctions. (1) Hazing by a student or a student group is prohibited pursuant to WAC 495D-121-590(10).

(2) No student may conspire to engage in hazing or participate in hazing of another. State law provides that hazing is a criminal offense, punishable as a misdemeanor.

(3) Washington state law provides that:

(a) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corporation, whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages.

(b) Any person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college.

(c) Student groups that knowingly permit hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by the college.

(d) Student groups found responsible for violating the code of student conduct, college antihazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault will be disclosed in a public report issued by the college setting forth the name of the student group, the date the investigation began, the date the investigation ended, a finding of responsibility, a description of the incident(s) giving rise to the finding, and the details of the sanction(s) imposed.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 495D-121-550 Student conduct code—Hazing prohibited.

WSR 24-07-031

PERMANENT RULES

WASHINGTON STATE UNIVERSITY

[Filed March 12, 2024, 12:16 p.m., effective April 12, 2024]

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

Purpose: The purpose of the proposed amendment is to meet industry best practices applicable to safety and security at Washington State University (WSU) spectator events, WSU administration is clarifying authority to bar reentry to events and the use of security screening, metal detection, and video security systems. The clear bag policy section is updated for clarification. Personnel titles are updated to reflect the current organization of the OneWSU system.

Citation of Rules Affected by this Order: Amending WAC 504-36-020 and 504-36-030.

Statutory Authority for Adoption: RCW 28B.30.150.

Adopted under notice filed as WSR 23-23-171 on November 22, 2023.

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

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

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

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

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

Date Adopted: March 11, 2024.

Deborah L. Bartlett
Director, Policies, Records, and Form
and University Rules Coordinator

OTS-5044.1

AMENDATORY SECTION (Amending WSR 10-21-025, filed 10/11/10, effective 11/11/10)

WAC 504-36-020 Control of animals. This section governs the control of animals and pets on property owned or controlled by Washington State University.

(1) This section does not apply to animals owned by the university or under its care, custody, and/or control.

(2) Subsections (3) and (8) of this section do not apply to trained guide dogs or service animals that are being used by persons with disability.

(3) Animals are not permitted in university buildings, except in facilities that are the site of university-authorized events, such as stock shows, horse shows, parades, or demonstrations at sporting events, where the animals are participants in said events, or as allowed by university housing policies.

The executive vice president for (~~(business and)~~) finance and administration, the president, (~~(the)~~) chancellor (~~(of a branch campus)~~), or such other person as the president may designate, may waive this subsection for guide dogs in training or service animals in training, provided that such animals are present on campus with trainers or handlers who have a demonstrated history of training such animals.

(4) Animals are not permitted on university property unless under immediate control of their keeper, except as otherwise allowed under this rule. "Keeper" includes an owner, handler, trainer, or any person responsible for the control of an animal. "Under control" means the restraint of an animal by means of a leash or other device that physically restrains the animal to the keeper's immediate proximity. An animal which is otherwise securely confined while in or upon any motor vehicle, including a trailer, is deemed to be under control.

(5) The requirement that animals be under immediate control of their keeper does not apply to:

(a) A dog being exercised in any area designated by the university as leash optional;

(b) A dog undergoing training at a certified dog obedience class on the university campus and authorized by the dean of the college of veterinary medicine, the executive vice president for (~~(business and)~~) finance and administration, the president, chancellor, or (~~(the president's)~~) their designee;

(c) A dog while being exhibited in an organized dog show on university property;

(d) A dog trained to aid law enforcement officers while being used for law enforcement purposes or during demonstrations to illustrate the dog's capabilities;

(e) A dog trained and under the control of a university farm manager to aid farm managers while moving or handling livestock; and

(f) An animal participating in a university-authorized event, such as a stock show, horse show, parade, extension or outreach event, or demonstrations at a sporting, teaching, or agricultural event.

(6) Any stray dog or other animal that is running loose on university property is subject to impound by local authorities in accordance with the municipal or county ordinances that apply to each campus.

(7) The keeper of any animal must remove for disposal any fecal matter deposited by the animal on university premises before the keeper leaves the area where the matter was deposited. This requirement does not apply to an individual who, by reason of disability, is unable to comply, or to individuals bringing animals to university-authorized events where arrangements have been made for the removal of fecal matter.

(8) The executive vice president for (~~(business and)~~) finance and administration, the president, (~~(the)~~) a chancellor (~~(of a branch campus)~~), a service animal administrator, or such other person as designated by the president, may designate areas on a campus otherwise open to the public as restricted from access by dogs or other animals even when under the control of their keepers for safety reasons or where the presence of dogs or other animals conflicts with the educational or research missions of the university.

AMENDATORY SECTION (Amending WSR 18-23-085, filed 11/19/18, effective 12/20/18)

WAC 504-36-030 Spectator events—Safety rules. (1) Protection of the safety and general welfare of students, faculty and staff, performers and officials, and members of the general public attending or participating in spectator events on campus is a primary concern of Washington State University.

(2) The following rules of conduct apply to all spectator events of Washington State University. "Spectator event," for the purposes of this section, means ticketed or nonticketed athletic or entertainment events held on any portion of university property (~~(, including, but not limited to, Martin Stadium and the Beasley Coliseum)~~) and all campuses and locations (hereafter the "event site").

(a) Behavior which in the judgment of designated university officials, as defined in subsection (4) of this section, constitutes a disruption of the event or a safety hazard for other spectators or participants is prohibited.

(b) For ticketed events, an individual is entitled to occupy only the seat for which ~~((he or she has))~~ they have the proper ticket.

(c) Photographing or making audio or visual recordings of a spectator event for commercial purposes is not permitted without specific written permission from the WSU athletic department (for athletic events) or the performer and applicable designated university official (for entertainment events).

(d) Aisles, walkways, and stairs must be kept clear of hazards and obstacles at all times to ensure safe and easy passage for all persons.

~~(e) ((Possession and/or consumption of illegal drugs or marijuana is prohibited. Possession and/or consumption of alcoholic beverages is permitted subject to restrictions.~~

~~(i) Any illegal drugs, marijuana, or alcoholic beverages, except for such beverages provided in accordance with (e) (ii) of this subsection, found in the possession of a spectator or otherwise found on the event site may be confiscated and delivered to the custody of designated university officials for law enforcement purposes or for disposal, as appropriate.~~

~~(ii) Alcoholic beverages may be possessed, sold, served, and consumed at event sites only under a valid permit or license issued by the Washington state liquor and cannabis board. Events at which alcoholic beverages are possessed, sold, served, and consumed must comply with the restrictions imposed by the Washington state liquor and cannabis board and restrictions and policies imposed by the university, have restricted attendance, and be limited to specified room(s) or area(s). Possession, consumption, service, dispensation, or sale of alcohol is prohibited except to persons of legal age.~~

~~(f) Smoking and other uses of tobacco and/or nicotine products are prohibited in all areas of the Pullman campus in accordance with chapter 504-38 WAC and all areas of the Vancouver campus in accordance with chapter 504-37 WAC.~~

~~(g))~~ All WSU campuses and locations are tobacco free.

(f) Unless otherwise expressly permitted by the specific event rules, each spectator is allowed to bring one empty disposable or non-disposable water bottle into the event site, provided that the capacity of the water bottle is no more than one and one-half liters. All other beverage containers and devices used for carrying beverage con-

tainers are prohibited. ((All such items are subject to a visual inspection by designated university officials upon entry to the event site. If designated university officials make the determination that a given container or device is prohibited, the possessor of the container or device must remove the container or device from the event site premises or may surrender the container or device to such designated university officials for disposal.

~~(h) Each spectator is allowed to bring the following sizes and styles of bags into the event site, provided that, for seated events, the bags are small enough to fit completely under the spectator's seat, where such bags must be kept.~~

~~(i) Bags made of clear plastic, vinyl, or PVC that are no larger than fourteen inches by eight inches by fourteen inches.~~

~~(ii) Clear drawstring bags that are no larger than fourteen inches by fourteen inches.~~

~~(iii) One gallon clear plastic freezer bags (Ziploc bag or similar).~~

~~(iv) Small clutch bags, with or without a handle strap, that are no larger than four and one-half inches by six and one-half inches (the approximate size of a hand).~~

~~(v) Exceptions are made for medically necessary items after proper inspection upon entrance.~~

~~(vi) The clear bag policy is enforced at various venues at the discretion of university personnel and management. Exceptions may also be made depending on the venue.~~

~~(i-)) (g) For events that have been designated by university officials as subject to the clear bag policy in subsection (3)(d) of this section, bags brought to the event site must comply with the following rules:~~

~~(i) Subject to the following exceptions, each spectator is allowed to bring only one bag into an event site. The bag must be clear (clear plastic, vinyl, or PVC) and no larger than 14 inches by eight inches by 14 inches. In addition to one clear bag as described, a spectator may bring the following, subject to additional inspection upon entrance:~~

~~(A) One small clutch bag, with or without a handle strap, that is no larger than four and one-half inches by six and one-half inches (the approximate size of a hand).~~

~~(B) An additional clear bag of the size specified above for medically necessary items.~~

~~(C) An additional clear bag of the size specified above for supplies (such as diapers, wipes, and similar items) for babies and small children.~~

~~(ii) For seated events, any bag(s) must be small enough to fit completely under the spectator's seat, where such bags must be kept.~~

~~(h) For events that have been designated by university officials as subject to the clear bag policy, prohibited bags and containers include, but are not limited to:~~

~~(i) Purses larger than a clutch bag;~~

~~(ii) Coolers;~~

~~(iii) Briefcases;~~

~~(iv) Backpacks and hydration packs;~~

~~(v) Fanny packs;~~

~~(vi) Cinch bags;~~

~~(vii) Luggage of any kind;~~

~~(viii) Computer or camera bags;~~

~~(ix) Binocular cases;~~

~~(x) Any bag ((larger than the permissible sizes specified in subsection (h)) that does not meet the requirements of (g) of this ((section)) subsection.~~

~~((j)) (i) For events that have been designated by university officials as subject to the clear bag policy, spectators are allowed to bring personal items, e.g., keys, cellular telephones, wallet, makeup, in their pockets if they choose not to use a clear bag.~~

~~((k) Additional items such as diapers, wipes, and other supplies for babies and small children are allowed if placed in an approved clear bag.~~

~~(l) All items are subject to a visual inspection by designated university officials upon entry into the event site. If designated university officials make the determination that a given bag is prohibited, the possessor of the bag must remove the bag from the event site premises or may surrender the bag to such designated university officials for disposal.~~

~~(m)) (j) The following items are ((also)) prohibited in ((the)) all event sites:~~

~~(i) Fireworks, weapons, explosive devices, or artificial noise-making devices (such as airhorns);~~

~~(ii) Items deemed potentially dangerous ((or unacceptable)) by designated university officials;~~

~~(iii) Drones;~~

~~(iv) Laser pointers;~~

~~(v) Extension items used to hold cellular telephones or cameras in place (e.g., "selfie sticks");~~

~~(vi) Flag poles, or any items that act as an extension of an arm and have a flag or sign affixed;~~

~~(vii) Footballs, frisbees, sport balls, any kind of inflatable balls, or any other projectiles;~~

~~(viii) Umbrellas;~~

~~(ix) Seat cushions with rigid frames, unless expressly permitted by the specific event rules. Seatback cushions must:~~

~~(A) Be soft sided;~~

~~(B) Contain no pockets or zippers; and~~

~~(C) Be no wider than ((eighteen)) 18 inches.~~

~~(x) Pets or animals, except as allowed by WAC 504-36-020 or as otherwise required by state or federal law;~~

~~(xi) Food and beverages, unless expressly permitted by the specific event rules or purchased from a vendor within the event site;~~

~~(xii) Possessing and/or consuming illegal drugs or marijuana. Possession and/or consumption of alcoholic beverages is permitted subject to restrictions.~~

~~(A) Any illegal drugs, marijuana, or alcoholic beverages, except for such beverages provided in accordance with (j) (xii) (B) of this subsection, found in the possession of a spectator or otherwise found on the event site may be confiscated and delivered to the custody of designated university officials for law enforcement purposes or for disposal, as appropriate.~~

~~(B) Alcoholic beverages may be possessed, sold, served, and consumed at event sites only under a valid permit or license issued by the Washington state liquor and cannabis board. Events at which alcoholic beverages are possessed, sold, served, and consumed must comply with the restrictions imposed by the Washington state liquor and cannabis board, the restrictions and policies imposed by the university, and all applicable laws.~~

(3) Designated university officials, as defined in subsection (4) of this section, are authorized to act to the fullest extent of the law to enforce the prohibitions set forth in subsection (2) of this section. This includes, but is not limited to, the following:

(a) Designated university officials may perform an inspection of all items, bags, and persons entering or present at any event site.

(b) Designated university officials may use additional methods of security screening including, but not limited to, video security systems, metal detection, and other technologies, to detect the presence of prohibited items at an event site.

(c) The university chief of police/director of public safety, or designee; the director of campus safety or equivalent for locations other than Pullman, or designee; in consultation with the event sponsor, may implement a no reentry policy for any event.

(d) The clear bag policy is enforced at various venues at the discretion of university personnel and management. Exceptions may also be made depending on the venue. If a designated university official makes the determination that a given bag is prohibited, the possessor of the bag must remove the bag from the event site premises or may surrender the bag to such designated university official for disposal.

~~((3) Where))~~ (e) When there is reasonable cause to believe that a person is violating, or is attempting to violate, the requirements identified in subsection (2) of this section, such person is denied license or privilege to enter or remain in or upon the event site premises, and designated university officials may take necessary action to deny entry or to remove such persons from the event site premises.

(f) Prohibited items found in the possession of a spectator or otherwise found on the event site are to be confiscated and delivered to the custody of designated university officials for law enforcement purposes or for disposal, as appropriate.

(g) Violation of the requirements identified in subsection (2) of this section or failure to vacate the event site premises upon request of designated university officials may result in university disciplinary action (if applicable), a no trespass order under WAC 504-35-150 (Administrative control—Trespass) barring the individual from campus, and/or subsequent legal proceedings under federal or state law and/or the Washington Administrative Code.

(4) For purposes of this section, designated university officials include the president of the university or designee, the executive vice president for finance and administration or designee, campus chancellor or designee of the campus where the event site is located, and the following officials:

(a) Director of athletics or designee for athletic events;

(b) Director of the Beasley Coliseum or designee for Beasley Coliseum events;

(c) Director of the Compton Union Building or designee for events in the Compton Union Building;

(d) Director of the School of Music or designee for events sponsored by that school;

(e) The WSU (~~executive director~~) chief of police/director of public safety, the director of campus safety or equivalent for locations other than Pullman, or designee;

(f) Officers of the WSU police department when (i) acting at the request of any of the above-named officials to enforce university regulations, or (ii) enforcing state laws or local ordinances;

- (g) Campus safety personnel, contracted or hired security personnel, and crowd management personnel when:
- (i) Acting at the direction of the above-named officials or designees to enforce university regulations; or
 - (ii) Enforcing state laws or local ordinances.

WSR 24-07-032

PERMANENT RULES

WASHINGTON STATE UNIVERSITY

[Filed March 12, 2024, 12:17 p.m., effective April 12, 2024]

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

Purpose: The proposed amendment clarifies who is permitted to act as a representative in Washington State University formal adjudicative proceedings, resolving an internal inconsistency with WAC 504-26-020.

Citation of Rules Affected by this Order: Amending WAC 504-04-130.

Statutory Authority for Adoption: RCW 28B.30.150.

Adopted under notice filed as WSR 23-23-172 on November 22, 2023.

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

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

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

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

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

Date Adopted: March 11, 2024.

Deborah L. Bartlett
Director, Policies, Records, and Form
and University Rules Coordinator

OTS-5043.1

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-04-130 Advising and representation of parties. Any person whose rights are in issue in a formal adjudicative proceeding has the right to have an advisor present during any stage of the proceedings. However, only persons currently admitted to ((the)) practice ((of)) law ((in the state of Washington)), including licensed legal interns, are permitted to act as representatives at the proceedings. The presiding officer has the power to impose reasonable conditions upon participation of advisors and representatives.

WSR 24-07-042
PERMANENT RULES
CRIMINAL JUSTICE
TRAINING COMMISSION

[Filed March 13, 2024, 12:28 p.m., effective April 13, 2024]

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

Purpose: To update the burden of proof and make clear the requirements and responsibilities of the hearing process in regard to the office of administrative hearings, the Washington state criminal justice training commission, and the respondent.

Citation of Rules Affected by this Order: Amending 2 [WAC 139-03-070 and 139-06-070].

Statutory Authority for Adoption: RCW 43.101.080.

Adopted under notice filed as WSR 24-04-056 on January 31, 2024.

Changes Other than Editing from Proposed to Adopted Version: Amended WAC 139-03-070 and 139-06-070. Rules on this subject are required to notify and make clear the due process rights of respondents whose certification is being brought before a hearing panel.

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

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

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

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

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

Date Adopted: March 13, 2024.

Lacey Ledford
Rules Coordinator

OTS-5036.2

AMENDATORY SECTION (Amending WSR 00-17-017, filed 8/4/00, effective 9/4/00)

WAC 139-03-070 Burden and standard of proof. Unless otherwise provided by law (~~(, the appealing party has the burden of proof, and the standard of proof on all factual issues is preponderance of the evidence)~~) or rule:

(1) The standard of proof on all factual issues is preponderance of the evidence.

(2) The burden of proof for the final administrative decision of the commission rests with the commission.

(3) In any action to appeal the commission's final administrative decision, the appealing party shall bear the burden of proof.

(4) The burden of proof in certification matters is governed by WAC 136-06-070(13).

OTS-5037.3

AMENDATORY SECTION (Amending WSR 23-19-038, filed 9/13/23, effective 10/14/23)

WAC 139-06-070 Conference and hearings procedures. (1) An administrative law judge (ALJ) shall preside over all prehearing conferences, status conferences, and the hearing itself.

(2) The attorney general's office shall represent ~~((the))~~ commission staff in all adjudicative proceedings before ~~((the commission))~~ a hearing panel.

(3) Once the commission hearings coordinator receives the request for hearing, the first prehearing conference shall be held within 14 days unless that time is extended by mutual agreement of the parties or for good cause.

(a) ~~((Prior to the first prehearing conference, the parties shall receive timely notice of prehearing conference.))~~ The ALJ shall serve timely notice of the initial prehearing conference on all parties. The notice will contain the date and time ~~((for))~~ of the first prehearing conference ~~((as well as sign-on information and the names of the hearing panel members for the hearing)),~~ the sign-on information, and the names of the hearing panel members.

(b) Any motion for disqualification of a panel member must be filed prior to the first prehearing conference.

(4) The first prehearing conference is administrative. Its primary purpose is to schedule the hearing date, which must occur within 90 days of the first prehearing conference unless that time is extended on mutual agreement of the parties or for good cause.

(a) During the first prehearing conference, the ~~((administrative law judge (ALJ))~~ ALJ may schedule due dates for the filing of any prehearing briefs, witness lists, exhibit lists and exchange of exhibits, objections to witnesses and exhibits, and prehearing motions. The ALJ will also schedule a second prehearing conference.

(b) The ALJ shall issue a prehearing conference order within one week of the conclusion of the first prehearing conference. The prehearing conference order shall describe the action taken at the conference and the ~~((agreements made by the parties))~~ parties' agreements.

(5) The purpose of the second prehearing conference ~~((will be to address any objections to the parties' witnesses and exhibits))~~ is to address the parties' evidentiary objections and ascertain the parties' readiness to proceed to hearing. ~~((During the second prehearing conference, parties shall be prepared to discuss any remaining matters including any objections to witnesses or exhibits, and any remaining motions))~~ Parties shall be prepared to discuss all evidentiary objections, all motions, and any remaining matters.

(a) The ALJ will make any necessary rulings on motions and evidentiary objections ~~((to witnesses and exhibits))~~.

(b) ~~((An order shall be issued by))~~ The ALJ shall issue an order within 10 days of the conclusion of the second prehearing conference.

(c) After the second prehearing conference, the panel members will be provided with copies of all materials admitted into evidence, ~~((to include))~~ the witness ~~((list and copies of))~~ lists, the statement of charges, ~~((as well as all))~~ and the briefings submitted by the parties.

(6) Failure of the respondent or the respondent's attorney to attend or participate in any scheduled prehearing conference will result in a finding of default and an order will be entered under RCW 34.05.440.

(7) Hearings may be held in-person or virtually.

(a) Once the hearing date has been set, a written notice will appear on the commission website with the date, time, and location of the hearing.

(b) Hearings are open to the public and accommodations will be made for public attendance of virtual meetings.

(c) The commission shall create audio or video recordings of all prehearing conferences and hearings.

(8) If an in-person hearing is scheduled, the hearings coordinator will provide an admitted exhibits binder including all admitted exhibits from both parties. Both parties shall use the admitted exhibits binder (~~((shall be used by both parties))~~) to reference or display any admitted exhibits during the hearing. If a virtual hearing is scheduled, the parties shall maintain control of their exhibits and, if necessary, will be required to share their screens when referencing or displaying an admitted exhibit during the proceeding. Parties are forbidden from screen sharing any portion or version of exhibits (~~((or any versions of exhibits))~~) not previously admitted.

(9) If an in-person hearing is scheduled, the respondent must attend the proceeding in person. (~~((Respondents who fail))~~) A respondent's failure to comply with this attendance requirement will result in the revocation, suspension, or denial of certification and the hearings panel shall enter an order of default and final order under RCW 34.05.440.

(a) In-person hearings will be conducted at the training commission located at: 19010 1st Avenue South, Burien, Washington, 98148.

(b) If a virtual hearing is scheduled, the respondent shall remain visible on screen at all times the parties are on the record. (~~((Respondents who fail))~~) A respondent's failure to comply with this attendance requirement will result in the revocation, suspension, or denial of certification and the hearings panel shall enter an order of default and final order under RCW 34.05.440.

(10) Regardless of whether a hearing is scheduled in-person or virtually, witnesses may testify at the hearing in-person, by telephone, or virtually.

(11) A five-member hearings panel shall hear the case and will make the commission's final administrative decision based on a majority of the vote.

(12) The standard of proof (~~((in actions before the commission))~~) for certification proceedings is a preponderance of the evidence. RCW 43.101.380(1).

(13) The commission staff bears the burden of proof in actions before the hearings panel to deny, suspend, or revoke an officer's certification, or require remedial training for an officer.

(14) In an appeal of the commission's final administrative decision issued by the hearing panel, the appellant bears the burden of proof, unless otherwise provided by law.

WSR 24-07-043
PERMANENT RULES
CRIMINAL JUSTICE
TRAINING COMMISSION

[Filed March 13, 2024, 12:29 p.m., effective April 13, 2024]

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

Purpose: Laws have changed, requiring now that corrections officers and limited authority officers are recognized as certified officers. Certified officers are required to complete 24 hours of annual in-service training, including the Washington state criminal justice training commission's two-hour CIT online course.

Citation of Rules Affected by this Order: Amending 1 [WAC 139-05-300].

Statutory Authority for Adoption: RCW 43.101.080.

Adopted under notice filed as WSR 24-04-058 on February 1, 2024.

Changes Other than Editing from Proposed to Adopted Version: Amended WAC 139-05-300. Rules on this subject are required to include corrections and limited authority officers in the 24-hour annual in-service training requirement.

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

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

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

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

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

Date Adopted: March 13, 2024.

Lacey Ledford
Rules Coordinator

OTS-5153.2

AMENDATORY SECTION (Amending WSR 22-13-075, filed 6/9/22, effective 7/10/22)

WAC 139-05-300 Requirement for in-service training. The commission recognizes that continuing education and training is the cornerstone for a successful career as a ((peace)) certified officer (WAC 139-01-310) in providing competent public safety services to the communities of Washington state.

(1) Every ((peace or tribal)) certified officer ((certified)) under RCW 43.101.095 or 43.101.157 will complete a minimum of 24 hours of in-service training annually.

(a) The in-service training requirement for each newly hired officer must begin on January 1st of the calendar year following their certification as a result of successful completion of the basic law

enforcement academy, equivalency academy, or approved waiver as provided by WAC 139-03-030.

(b) The in-service training requirement for certified limited authority peace officers and corrections officers will begin on January 1, 2026.

(c) Training may be developed and provided by the employer or other training resources.

~~((e))~~ (d) The commission will publish guidelines for approved in-service training.

~~((d))~~ (e) The 24 hours must include the successful completion of the commission's annual online crisis intervention course prescribed under RCW 43.101.427.

(2) Every reserve peace officer as defined by WAC 139-05-810 will complete a minimum of 24 hours of in-service training annually.

(a) The in-service training requirement for each newly appointed reserve peace officer must begin on January 1st of the calendar year following their appointment as a result of successful completion of the basic law enforcement academy, basic reserve academy equivalency process, or approved waiver as provided by WAC 139-03-030.

(b) Training may be developed and provided by the employer or other training resources.

(c) The commission will publish guidelines for approved in-service training.

(d) As of July 1, 2018, the 24 hours must include the successful completion of the commission's annual online crisis intervention course prescribed under RCW 43.101.427.

(3) All records for training required for this rule must be maintained by the employing agency and be available for review upon request by an authorized commission representative.

(a) The commission will maintain records of successfully completed commission-registered courses.

(b) Upon request, the commission will furnish a recordkeeping template for use by agencies to track training.

(4) The sheriff or chief of an agency may request an extension of three months for officers in their employ by notification in writing to the commission, identifying those specific officers.

(a) A sheriff or chief may request a three-month personal extension of the requirement by doing so in writing to the commission.

(b) Written requests submitted under the provision of this subsection must be received by December 1st of the calendar year in question.

(c) The three-month extension under this provision provides the individuals named until March 31st to complete the mandated 24 hours.

(d) Any training obtained during this three-month extension only counts towards the previous year being audited.

(5) The commission executive director or designee may, on a case-by-case basis, grant exceptions for individuals with extenuating circumstances where the employing agency has made every reasonable effort to obtain training for the officer.

WSR 24-07-052
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed March 14, 2024, 9:45 a.m., effective April 14, 2024]

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

Purpose: The department of social and health services is adopting amendments to WAC 388-447-0001 What are the incapacity requirements for referral to the housing and essential needs (HEN) program? and 388-449-0001 What are the disability requirements for the aged, blind, or disabled (ABD) program? These amendments clarify program rules regarding disability requirements for ABD cash and incapacity requirements for the HEN referral program. A supplemental CR-102 filed under WSR 24-03-151 addressed formal comments made after the first public comment period.

Citation of Rules Affected by this Order: Amending WAC 388-447-0001 and 388-449-0001.

Statutory Authority for Adoption: RCW 74.04.050 and 74.08.090.

Adopted under notice filed as WSR 23-21-078 and 24-03-151 on October 13, 2023, and January 23, 2024.

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

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

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

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

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

Date Adopted: March 14, 2024.

Katherine I. Vasquez
Rules Coordinator

SHS-5004.4

AMENDATORY SECTION (Amending WSR 18-18-007, filed 8/23/18, effective 9/23/18)

WAC 388-447-0001 What are the incapacity requirements for referral to the housing and essential needs (HEN) program? (1) For the purposes of this chapter, the following definitions apply:

(a) "We" and "us" mean the department of social and health services.

(b) "You" means the applicant or recipient.

(c) "Incapacitated" means you cannot be gainfully employed due to a physical or mental impairment that is expected to continue for at least (~~ninety~~) 90 days from the date you apply.

- (d) "Mental impairment" means a diagnosable mental disorder.
- (e) "Physical impairment" means a diagnosable physical illness.
- (2) You must be incapacitated in order to receive a HEN referral.
- (3) We determine if you are incapacitated when:
 - (a) You apply for a referral to the HEN program;
 - (b) You become gainfully employed; or
 - (c) ~~((You obtain work skills by completing a training program;~~
 - ~~(d) We receive new information that indicates you may be able to work; or~~
 - ~~(e))~~ Your incapacity authorization period ends.

(4) We deny your HEN referral if you are gainfully employed at the time of application for referral to the HEN program. "Gainfully employed" means you are performing, in a regular predictable manner, an activity usually done for pay or profit and earning more than the substantial gainful activity standard defined by the Social Security Administration (SSA).

(5) We do not consider you to be gainfully employed if you are working:

- (a) Under special conditions that go beyond providing reasonable accommodation; or
- (b) Occasionally or part-time because your impairment limits the hours you are able to work compared to unimpaired workers in the same job.

(6) We determine you are incapacitated if you are:

- (a) Eligible for the aged, blind, or disabled (ABD) cash assistance program;
- (b) Approved through the progressive evaluation process (PEP). The PEP is a sequence of eight steps described in WAC 388-447-0030 through 388-447-0100;
- (c) Eligible for services from the developmental disabilities administration (DDA);
- (d) Diagnosed as having an intellectual disability based on a full scale score of ~~((seventy))~~ 70 or lower on the Wechsler adult intelligence scale (WAIS);
- (e) Eligible for long-term care services from the aging and long-term support administration (AL TSA);
- (f) Released from a medical institution where you received services from AL TSA within the past 90 days; or
- (g) Released from inpatient treatment for a mental impairment within the past 90 days if:
 - (i) The release from inpatient treatment was not against medical advice; and
 - (ii) You were discharged into outpatient mental health treatment.

(7) If you have a physical or mental impairment or are impaired due to a substance use disorder, and do not meet the other incapacity criteria in subsection (6) (c) through (g) of this section, we decide if you are incapacitated by applying the PEP.

(8) In determining incapacity, we consider only your ability to perform basic work-related activities. "Basic work-related activities" are activities that anyone would be required to perform in a work setting. They consist of: Sitting, standing, walking, lifting, carrying, handling; and other physical functions (including manipulative or postural functions such as pushing, pulling, reaching, handling, stooping, or crouching), seeing, hearing, communicating, remembering, understanding and following instructions, responding appropriately to supervisors, ~~((and))~~ co-workers, ~~((tolerating the pressures of a))~~ and

usual work ((~~setting~~)) situations, maintaining appropriate behavior, using judgment, and adapting to changes in a routine work setting.

AMENDATORY SECTION (Amending WSR 23-01-057, filed 12/14/22, effective 1/14/23)

WAC 388-449-0001 What are the disability requirements for the aged, blind, or disabled (ABD) program? (1) For the purposes of this chapter, the following definitions apply:

(a) "We" and "us" ((~~refer to~~)) mean the department of social and health services.

(b) "You" means the applicant or recipient.

(c) "Disabled" means the inability to engage in any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment(s) which has lasted or can be expected to last for a continuous period of not less than 12 months with available treatment or result in death.

(d) "Physical impairment" means a diagnosable physical illness.

(e) "Mental impairment" means a diagnosable mental disorder. We exclude any diagnosis of or related to a substance use disorder.

(2) We ((~~determine~~)) review if you ((~~are likely to be disabled~~)) meet disability requirements when:

(a) You apply for ABD cash benefits;

(b) You become employed; or

(c) ((~~You obtain work skills by completing a training program; or~~

~~(d) We receive new information that indicates you may be employable)) A disability review is required under WAC 388-449-0150.~~

(3) ((~~We determine you are likely to be disabled if:~~)) You are likely to meet disability requirements if:

(a) You are determined to meet SSA disability criteria by the Social Security Administration (SSA);

(b) You are determined to meet SSA disability criteria by disability determination services (DDDS) based on the most recent DDDS determination;

(c) ((~~The Social Security Administration (-)~~)) SSA((~~+~~)) stops your supplemental security income (SSI) payments solely because you are not a citizen;

(d) You are eligible for services through the developmental disabilities administration (DDA) for a medical condition that is expected to last 12 months or more or result in death;

(e) You are eligible for long-term care services from the aging and long-term support administration (AL TSA) for a medical condition that is expected to last 12 months or more or result in death;

(f) You have been civilly committed to eastern or western state hospital;

(g) You have been placed in eastern or western state hospital for an offense you have been found not guilty by reason of insanity;

((~~or~~))

(h) You have been diagnosed as having an intellectual disability based on a full scale score of 70 or lower on the Wechsler adult intelligence scale (WAIS); or

(i) You are approved through the sequential evaluation process (SEP) defined in WAC 388-449-0005 through 388-449-0100. The SEP is the sequence of five steps. Step 1 considers whether you are currently working. Steps 2 and 3 consider medical evidence and whether you are

likely to meet or equal a listed impairment under Social Security's rules. Steps 4 and 5 consider your residual functional capacity and vocational factors such as age, education, and work experience in order to determine your ability to do your past work or other work.

(4) If you have a physical or mental impairment and you are impaired by a substance use disorder and do not meet the other disability criteria in subsections (2) (a)-~~((d))~~ (c) of this section, we decide if you are eligible for ABD cash by applying the sequential evaluation process described in WAC 388-449-0005 through 388-449-0100. You ~~((aren't))~~ are not eligible for ABD cash benefits if you are disabled primarily because of a substance use disorder.

(5) In determining disability, we consider only your ability to perform basic work-related activities. "Basic work-related activities" are activities that anyone would be required to perform in a work setting. They consist of: Sitting, standing, walking, lifting, carrying, handling, and other physical functions (including manipulative or postural functions such as pushing, pulling, reaching, handling, stooping, or crouching), seeing, hearing, communicating, remembering, understanding and following instructions, responding appropriately to supervisors, ~~((and coworkers))~~ co-workers, and usual work situations, ~~((tolerating the pressures of a work setting,))~~ maintaining appropriate behavior, and adapting to changes in a routine work setting.

(6) We determine you are not likely to meet ~~((SSI))~~ disability criteria if SSA denied your application for SSI or Social Security Disability Insurance (SSDI) based on disability in the last 12 months unless:

- (a) You file a timely appeal with SSA;
- (b) SSA decides you have good cause for a late appeal; or
- (c) You give us medical evidence of a potentially disabling condition that SSA did not consider or medical evidence confirming your condition has deteriorated.

WSR 24-07-090
PERMANENT RULES
DEPARTMENT OF
ENTERPRISE SERVICES

[Filed March 19, 2024, 11:39 a.m., effective July 1, 2024]

Effective Date of Rule: July 1, 2024.

Purpose: 2SSB 5268, Laws of 2024, updates public works contracting requirements to enhance administrative efficiency, promote the utilization and growth of small business, and maintain protections to the labor work force. The updates to the state's small works roster rules under chapter 200-300 WAC:

Make sure the state's small works roster procedures align with recent changes to state law under 2SSB 5268, and put in place a model small works roster procedure for use by state agencies and local governments when meeting their obligations under 2SSB 5268.

Citation of Rules Affected by this Order: New 5; repealing 4; and amending 1.

Statutory Authority for Adoption: RCW 39.04.155.

Adopted under notice filed as WSR 23-24-006 on November 27, 2023.

Changes Other than Editing from Proposed to Adopted Version: WAC 200-330-010 Purpose and authority, changed to clarify the scope of the department of enterprise services' rule-making authority is limited to oversight over state agencies. WAC 200-330-010 Purpose and authority, changed to properly identify the statutory basis for amending the small works roster procedures rules. WAC 200-330-040 Small works competitive contracting, changed to clarify written or electronic quotations are acceptable.

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 5, Amended 1, Repealed 4.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 5, Amended 1, Repealed 4.

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

Date Adopted: March 15, 2024.

Jack Zeigler
Policy and Rules Manager

OTS-5070.2

AMENDATORY SECTION (Amending WSR 15-23-062, filed 11/13/15, effective 12/14/15)

WAC 200-330-010 Purpose and authority. The purpose of this chapter is to establish a model procedure for use by state agencies, local governments and the municipal research and services center when

awarding contracts under the small works roster process established in RCW 39.04.151. Use of the model procedure by state agencies is required. Use of the model procedure by local governments and the municipal research and services center is discretionary. This chapter of the Washington Administrative Code is adopted pursuant to ((chapter 98, Laws of 1982)) RCW 39.04.151(4), which ((requires)) authorizes the director of the department of enterprise services to adopt by rule ((a procedure to prequalify contractors for inclusion on a small works roster established by the state agencies enumerated in section 2, chapter 98, Laws of 1982)) procedures implementing RCW 39.04.151. The procedures set forth in this chapter shall be ((utilized by those agencies in establishing a small works roster)) included in any rules providing for a small works roster that is adopted by another state agency.

NEW SECTION

WAC 200-330-025 Definitions. As used in this chapter the terms:

- (1) "Contracting agency" means all agencies and political subdivisions of the state with public works contracting authority.
- (2) "Independent roster" means a small works roster established by a contracting agency either by itself or with another contracting agency.
- (3) "MRSC" means the municipal research and services center.
- (4) "OMWBE" means the office of minority and women's business enterprises.
- (5) "Publicly available" means published on a contracting agency's public website. If an agency does not support a public website, the agency must make printed copies of the material available at the reception area of its headquarters by having printed copies available at the office's reception desk or posted on a bulletin board available to the public at the office.
- (6) "Public work" means all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the contracting agency, or which is by law a lien or charge on any property therein. "Public work" does not include work, construction, alteration, repair, or improvement performed under contracts entered into under RCW 36.102.060(4) or under development agreements entered into under RCW 36.102.060(7) or leases entered into under RCW 36.102.060(8).
- (7) "Statewide roster" means the statewide small works roster developed by the department of commerce through MRSC.

NEW SECTION

WAC 200-330-035 General roster rules and procedures. (1) Small works rosters. Contracting agencies may use the statewide roster or an independent roster when contracting for small works. Contracting agencies are encouraged to use the statewide roster to promote administrative efficiency for both contracting agencies and contractors.

(2) Requirements. The statewide roster and independent rosters must meet the requirements of RCW 39.04.151, 39.04.152, and this chapter including, but not limited to, the following:

(a) Roster inclusion. All qualified responsible, licensed contractors must be included on the roster at their request. MRSC and contracting agencies with independent rosters may implement an application process for contractors to be placed on the roster.

(b) Contact information. Contractors included on the roster must designate an official email to receive bids notifications from the contracting agency.

(c) Contractor recordkeeping. Contractors included on the roster must keep records of applicable licenses, certifications, registrations, bonding, and insurance as required by RCW 39.04.350. This information must be made available at the request of the contracting agency.

(d) Small and diverse business certification.

(i) At the time of a contractor's application to be included on a roster, the contractor must indicate its certification status with OMWBE and the department of veterans affairs.

(ii) MRSC and contracting agencies with independent rosters must be able to download data from OMWBE and the department of veterans affairs to obtain current information on contractor certifications at the time of solicitation.

NEW SECTION

WAC 200-330-040 Small works competitive contracting. (1) Small works bid process. In lieu of a formal public works bidding process, contracting agencies may use the following small works competitive contracting process to invite contractors from the small works roster to submit bids for small works contracts. To use the competitive contracting process, the contracting agency's estimate of the work must be equal to or less than the competitive contracting cost limit established in RCW 39.04.152 (4) (a), excluding sales tax.

(2) Requirements. Contracting agencies must meet the requirements of RCW 39.04.151, 39.04.152, and this chapter, when implementing a small works competitive contracting process, inclusive of, but not limited to, the following:

(a) Invitations to bid.

(i) Invitations to bid must include:

(A) Plans, specifications, and an estimate of the work sufficient to define the work and for the contractor to generate a bid; and

(B) A date and time for receipt of bids through the designated bidding system.

(ii) Contracting agencies must provide an invitation to bid to all contractors on the appropriate roster category associated with the work to be performed.

(b) Estimated cost. The contracting agency's estimate of the work must be equal to or under the cost limit specified in RCW 39.04.152 to solicit bids under competitive contracting process. The contracting agency may award contracts for more than this amount if the contract cost is not excessive or does not constitute a cardinal change. A general guideline is that 10 percent or less of the statutory bid limit will not constitute a cardinal change.

(c) Change orders. Change orders may be added to the contract amount at the discretion of the contracting agency if the change orders are necessary to complete the work described in the plans, specifications, and estimate, or do not constitute a cardinal change. Con-

tracting agencies shall not use change orders to avoid the statutory bid limit for this type of solicitation.

(d) Retainage. Retainage may be waived or reduced by the contracting agency. If the contracting agency waives or reduces retainage, the waiver or reduction must be indicated in the invitation to bid at the time of solicitation, and the contracting agency assumes liability for any unpaid wages and taxes.

(e) Bid acceptance. Contracting agencies:

(i) Must accept written quotations or accept quotations through electronic methods such as electronic mail or an electronic bid system;

(ii) Shall not establish a formal bid opening; and

(iii) Must make bid tabs publicly available.

NEW SECTION

WAC 200-330-050 Small works direct contracting. (1) Direct contracting process. In lieu of a formal public works bidding process and the small works competitive contracting process provided in WAC 200-330-040, contracting agencies may enter into direct contracts with a contractor by soliciting a quote from a single selected contractor on the statewide roster or independent roster and negotiate a final price. Pursuant to the limits set forth in RCW 39.04.151 and 39.04.152, the direct contracting process may be used when the contracting agency's estimate for the work is equal to or less than the cost limit specified in RCW 39.04.152 (4) (b), excluding sales tax.

(2) Requirements. Contracting agencies must meet the requirements of RCW 39.04.151, 39.04.152, and this chapter, when implementing a small works direct contracting process, inclusive of, but not limited to, the following:

(a) Administrative efficiency. Direct contracting is intended to be a quick and administratively efficient process with a focus on promoting the use of small and diverse businesses. This is not a competitive solicitation.

(b) Diverse business utilization plan. Contracting agencies must establish a small, minority, women, and veteran-owned business utilization plan prior to using the direct contracting process.

(c) Contractor rotation.

(i) Contracting agencies must rotate direct contracting opportunities among the available contractors on the appropriate roster.

(ii) Contracting agencies must not favor certain contractors by repeatedly awarding contracts to contractors without documented attempts to directly contract with other contractors.

(iii) Contracting agencies must adopt a policy regarding how contract opportunities will be rotated to avoid favoritism in direct contracting. Contracting agencies must make this policy publicly available.

(iv) A contracting agency's rotation policy must, at a minimum, provide the following:

(A) Contractors that have been issued a contract under the direct contracting process must not be offered a future contract until all other contractors on the roster have received a solicitation for a quote through the direct contracting process; and

(B) Contracting agencies must consider nonresponsive solicitations and the inability to negotiate an agreed price in their rotation policy.

(d) Soliciting quotes.

(i) Solicitations for a quote under the direct contracting process must include the following:

(A) A description of the work to be performed sufficient for the contractor to develop a price;

(B) The date the contracting agency must receive the contractor's quote; and

(C) Any timeline requirements for mobilization.

(ii) When six or more contractors certified as public works small business enterprises by OMWBE are listed on the appropriate roster, the contracting agency must solicit a quote from a certified public works small business enterprise contractor on the roster in accordance with the agency's rotation policy.

(iii) When five or fewer contractors certified as public works small business enterprises by OMWBE are listed on the appropriate small works roster for this type of work, the contracting agency may solicit a quote from any contractor on the roster in accordance with the agency's rotation policy.

(e) Negotiated price.

(i) A contract price must be negotiated with a single selected contractor from the statewide or independent roster. The negotiated price should be based on the quote from the contractor and available project funds identified by the contracting agency.

(ii) If the contractor and the contracting agency cannot agree on a price, the agency may elect to end negotiations and move to the next contractor on the rotation in accordance with the agency's rotation policy.

(iii) Once a price is established and all other requirements are met, the contracting agency may proceed with award and execution of the contract.

(iv) Contracting agencies are prohibited from bid shopping using the direct contracting process. If the contracting agency and the next contractor on the rotation cannot agree on a contract price, the contracting agency must competitively bid the work under WAC 200-300-040, if the agency intends to proceed with the work.

(f) Notice of award. Contracting agencies must provide notice of a small works contract award to all other contractors on the appropriate roster of award.

(g) LNI portal. Contracting agencies are required to initiate the small works project using labor and industries' awarding agency portal when awarding a contract under the direct contracting process.

(h) Recordkeeping. Contracting agencies must keep documented records of their efforts under the direct contracting process, including records of the following:

(i) The contractors that the contracting agency solicited for the contract;

(ii) Whether the contractor responded to the solicitation;

(iii) Records of price negotiations;

(iv) The contracts that were awarded and to whom; and

(v) Records documenting the reasons a negotiated price could not be reached.

NEW SECTION

WAC 200-330-060 Small works roster contracting templates. The department of enterprise services will develop and make publicly available templates for bid invitations, bidding, and contracting using the direct contracting process for the use of all contracting agencies.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 200-330-020 Notice required by agency establishing small works roster.
- WAC 200-330-030 Contractors application form—Information required.
- WAC 200-330-070 Denial or removal of contractors from small works roster—Reasons.
- WAC 200-330-080 Denial or removal from roster—Notice and hearing.

WSR 24-07-096
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed March 19, 2024, 4:51 p.m., effective July 1, 2024]

Effective Date of Rule: July 1, 2024.

Purpose: The purpose of this rule making is to increase the electrical fees by 6.40 percent to support operating expenses for the electrical program. The fee increase is the maximum allowable fiscal growth factor rate by the state office of financial management for fiscal year 2025. The current fee levels are insufficient to cover current program expenses. The fee increase is needed to ensure that revenues match expenditures.

This rule making also removes the fee for printed copies of the electrical laws and rules. The department of labor and industries is no longer providing printed copies, as electronic versions are available online. Removing the fee will ensure the rule is up-to-date and aligns with requirements.

Citation of Rules Affected by this Order: Amending WAC 296-46B-906, 296-46B-909, and 296-46B-911.

Statutory Authority for Adoption: Chapter 19.28 RCW, Electricians and electrical installations, including RCW 19.28.031 and 19.28.251.

Adopted under notice filed as WSR 24-01-113 on December 19, 2023.

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

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

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

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

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

Date Adopted: March 19, 2024.

Joel Sacks
Director

OTS-5075.4

AMENDATORY SECTION (Amending WSR 21-11-085, filed 5/18/21, effective 7/1/21)

WAC 296-46B-906 Inspection fees. To calculate inspection fees, the amperage is based on the conductor ampacity or the overcurrent device rating. The total fee must not be less than the number of progress inspection (one-half hour) units times the progress inspection fee rate from subsection (8) of this section, PROGRESS INSPECTIONS.

The amount of the fee due is calculated based on the fee effective at the date of a department assessed fee (e.g., plan review or fee due) or when the electrical permit is purchased.

(1) Residential.

(a) Single- and two-family residential (New Construction).

Notes:

- (1) Square footage is the area included within the surrounding exterior walls of a building exclusive of any interior courts. (This includes any floor area in an attached garage, basement, or unfinished living space.)
- (2) "Inspected with the service" means that a separate service inspection fee is included on the same electrical work permit.
- (3) "Inspected at the same time" means all wiring is to be ready for inspection during the initial inspection trip.
- (4) An "outbuilding" is a structure that serves a direct accessory function to the residence, such as a pump house or storage building. Outbuilding does not include buildings used for commercial type occupancies or additional dwelling occupancies.

(i) First 1300 sq. ft.	((\$99.60)) \$105.90
Each additional 500 sq. ft. or portion of	((\$31.80)) \$33.80
(ii) Each outbuilding or detached garage - Inspected at the same time as a dwelling unit on the property	((\$41.40)) \$44.00
(iii) Each outbuilding or detached garage - Inspected separately	((\$65.50)) \$69.60
(iv) Each swimming pool - Inspected with the service	((\$65.50)) \$69.60
(v) Each swimming pool - Inspected separately	((\$99.60)) \$105.90
(vi) Each hot tub, spa, or sauna - Inspected with the service	((\$41.40)) \$44.00
(vii) Each hot tub, spa, or sauna - Inspected separately	((\$65.50)) \$69.60
(viii) Each septic pumping system - Inspected with the service	((\$41.40)) \$44.00
(ix) Each septic pumping system - Inspected separately	((\$65.50)) \$69.60

(b) Multifamily residential and miscellaneous residential structures, services and feeders (New Construction).

Each service and/or feeder

Ampacity	Service/Feeder	Additional Feeder
0 to 200	((\$107.40)) \$114.20	((\$31.80)) \$33.80
201 to 400	((\$133.60)) \$142.10	((\$65.50)) \$69.90
401 to 600	((\$183.50)) \$195.20	((\$91.20)) \$97.00
601 to 800	((\$235.50)) \$250.50	((\$125.40)) \$133.40
801 and over	((\$335.90)) \$357.40	((\$251.90)) \$268.00

(c) Single or multifamily altered services or feeders including circuits.

(i) Each altered service and/or altered feeder

Ampacity	Service/Feeder
0 to 200	((\$91.20)) \$97.00
201 to 600	((\$133.60)) \$142.10
601 and over	((\$201.40)) \$214.20

(ii) Maintenance or repair of a meter or mast (no alterations to the service or feeder) ((~~\$49.40~~))
\$52.50

(d) Single or multifamily residential circuits only (no service inspection).

Note:

Altered or added circuit fees are calculated per panelboard. Total cost of the alterations in an individual panel should not exceed the cost of a complete altered service or feeder of the same rating, as shown in subsection (1) RESIDENTIAL (c) (table) of this section.

(i) 1 to 4 circuits (see note above)	((\$65.50)) <u>\$69.60</u>
(ii) Each additional circuit (see note above)	((\$6.90)) <u>\$7.30</u>

(e) Mobile homes and modular homes.

(i) Mobile home or modular home service or feeder only	((\$65.50)) <u>\$69.60</u>
(ii) Mobile home service and feeder	((\$107.40)) <u>\$114.20</u>

(f) Mobile home park sites and RV park sites.

Note:

For master service installations, see subsection (2) COMMERCIAL/INDUSTRIAL of this section.

(i) First site service or site feeder	((\$65.50)) <u>\$69.60</u>
(ii) Each additional site service; or additional site feeder inspected at the same time as the first service or feeder	((\$41.40)) <u>\$44.00</u>

(2) Commercial/industrial.

(a) New service or feeder, and additional new feeders inspected at the same time (includes circuits).

Note:

For large COMMERCIAL/INDUSTRIAL projects that include multiple feeders, "inspected at the same time" can be interpreted to include additional inspection trips for a single project. The additional inspections must be for electrical work specified on the permit at the time of purchase. The permit fee for such projects must be calculated using this section. However, the total fee must not be less than the number of progress inspection (one-half hour) units times the progress inspection fee rate from subsection (8) PROGRESS INSPECTIONS of this section.

Ampacity	Service/Feeder	Additional Feeder
0 to 100	((\$107.40)) <u>\$114.20</u>	((\$65.50)) <u>\$69.60</u>
101 to 200	((\$130.80)) <u>\$139.10</u>	((\$83.50)) <u>\$88.80</u>
201 to 400	((\$251.90)) <u>\$268.00</u>	((\$99.60)) <u>\$105.90</u>
401 to 600	((\$293.60)) <u>\$312.30</u>	((\$117.20)) <u>\$124.70</u>
601 to 800	((\$379.80)) <u>\$404.10</u>	((\$159.70)) <u>\$169.90</u>
801 to 1000	((\$463.70)) <u>\$493.30</u>	((\$193.20)) <u>\$205.50</u>
1001 and over	((\$505.90)) <u>\$538.20</u>	((\$269.70)) <u>\$286.90</u>

(b) Altered services/feeders (no circuits).

(i) Service/feeder

Ampacity	Service/Feeder
0 to 200	((\$107.40)) <u>\$114.20</u>
201 to 600	((\$251.90)) <u>\$268.00</u>
601 to 1000	((\$379.80)) <u>\$404.10</u>
1001 and over	((\$421.90)) <u>\$448.90</u>

(ii) Maintenance or repair of a meter or mast (no alterations to the service or feeder)	((\$91.20)) <u>\$97.00</u>
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(c) Circuits only.

Note:

Altered/added circuit fees are calculated per panelboard. Total cost of the alterations in a panel (or panels) should not exceed the cost of a new feeder (or feeders) of the same rating, as shown in subsection (2) COMMERCIAL/INDUSTRIAL (2)(a)(table) above.

- (i) First 5 circuits per branch circuit panel ((~~\$83.50~~)
\$88.80)
- (ii) Each additional circuit per branch circuit panel ((~~\$6.90~~)
\$7.30)
- (d) **Over 600 volts surcharge per permit.** ((~~\$83.50~~)
\$88.80)

(3) Temporary service(s).

Notes:

- (1) See WAC 296-46B-590 for information about temporary installations.
- (2) Temporary stage or concert inspections requested outside of normal business hours will be subject to the portal-to-portal hourly fees in subsection (11) OTHER INSPECTIONS. The fee for such after hours inspections will be the greater of the fee from this subsection or the portal-to-portal fee.

Temporary services, temporary stage or concert productions.

Ampacity	Service/Feeder	Additional Feeder
0 to 60	((\$57.40) \$61.00	((\$29.40) \$31.20
61 to 100	((\$65.50) \$69.60	((\$31.80) \$33.80
101 to 200	((\$83.50) \$88.80	((\$41.40) \$44.00
201 to 400	((\$99.60) \$105.90	((\$49.50) \$52.60
401 to 600	((\$133.60) \$142.10	((\$65.50) \$69.60
601 and over	((\$151.50) \$161.20	((\$75.40) \$80.20

(4) Irrigation machines, pumps, and equipment.

Irrigation machines.

- (a) Each tower - When inspected at the same time as a service and feeder from (2) COMMERCIAL/INDUSTRIAL ((~~\$6.90~~)
\$7.30)
- (b) Towers - When not inspected at the same time as a service and feeder - 1 to 6 towers ((~~\$99.60~~)
\$105.90)
- (c) Each additional tower ((~~\$6.90~~)
\$7.30)

(5) Miscellaneous - Commercial/industrial and residential.

(a) **A Class 2 low-voltage thermostat** and its associated cable controlling a single piece of utilization equipment or a single furnace and air conditioner combination.

- (i) First thermostat ((~~\$49.50~~)
\$52.60)
- (ii) Each additional thermostat inspected at the same time as the first ((~~\$15.30~~)
\$16.20)

(b) **Class 2 or 3 low-voltage systems and telecommunications systems.** Includes all telecommunications installations, fire alarm, nurse call, energy management control systems, industrial and automation control systems, lighting control systems, and similar Class 2 or 3 low-energy circuits and equipment not included in WAC 296-46B-908 for Class B work.

- (i) First 2500 sq. ft. or less ((~~\$57.40~~)
\$61.00)
- (ii) Each additional 2500 sq. ft. or portion thereof ((~~\$15.30~~)
\$16.20)

(c) Signs and outline lighting.

- (i) First sign (no service included) ((~~\$49.50~~)
\$52.60)
- (ii) Each additional sign inspected at the same time on the same building or structure ((~~\$23.30~~)
\$24.70)

(d) Berth at a marina or dock.

Note:

Five berths or more will be permitted to have the inspection fees based on appropriate service and feeder fees from section (2) COMMERCIAL/ INDUSTRIAL above.

- (i) Berth at a marina or dock ((~~\$65.50~~))
\$69.60
- (ii) Each additional berth inspected at the same time ((~~\$41.40~~))
\$44.00
- (e) Yard pole, pedestal, or other meter loops only.**
- (i) Yard pole, pedestal, or other meter loops only ((~~\$65.50~~))
\$69.60
- (ii) Meters installed remote from the service equipment and inspected at the same time as a service, temporary service or other installations ((~~\$15.30~~))
\$16.20
- (f) Inspection appointment requested for outside of normal working hours.**
- Regular fee plus surcharge of: ((~~\$125.40~~))
\$133.40

(g) Generators.

Note:

Permanently installed generators: Refer to the appropriate residential or commercial new/alterd service or feeder section.

- Portable generators: Permanently installed transfer equipment for portable generators ((~~\$91.20~~))
\$97.00

(h) Electrical - Annual permit fee.

Note:

See WAC 296-46B-901(13).

For commercial/industrial location employing full-time electrical maintenance staff or having a yearly maintenance contract with a licensed electrical contractor. Note, all yearly maintenance contracts must detail the number of contractor electricians necessary to complete the work required under the contract. This number will be used as a basis for calculating the appropriate fee. Each inspection is based on a 2-hour maximum.

	Inspections	Fee
1 to 3 plant electricians	12	((\$2,416.40)) \$2,571.00
4 to 6 plant electricians	24	((\$4,835.60)) \$5,145.00
7 to 12 plant electricians	36	((\$7,253.10)) \$7,717.30
13 to 25 plant electricians	48	((\$9,672.30)) \$10,291.30
More than 25 plant electricians	52	((\$12,091.50)) \$12,865.30

(i) Telecommunications - Annual permit fee.

Notes:

- (1) See WAC 296-46B-901(12).
- (2) Annual inspection time required may be estimated by the purchaser at the rate for "OTHER INSPECTIONS" in this section, charged portal-to-portal per hour.

For commercial/industrial location employing full-time telecommunications maintenance staff or having a yearly maintenance contract with a licensed electrical/telecommunications contractor.

- 2-hour minimum ((~~\$199.70~~))
\$212.40
- Each additional hour, or portion thereof, of portal-to-portal inspection time ((~~\$99.60~~))
\$105.90

(j) Permit requiring ditch cover inspection only.

- Each 1/2 hour, or portion thereof ((~~\$49.50~~))
\$52.60

- (k) Cover inspection for elevator/conveyance installation. This item is only available to a licensed/registered elevator contractor.** ((~~\$83.50~~))
\$88.80

(6) Carnival inspections.

(a) First carnival field inspection each calendar year.

- (i) Each ride and generator truck ((~~\$23.30~~))
\$24.70

(ii) Each remote distribution equipment, concession, or gaming show ((~~\$6.90~~)
\$7.30)

(iii) If the calculated fee for first carnival field inspection above is less than (~~(\$106.30)~~) **\$113.10**, the minimum inspection fee will be: \$133.40

(b) Subsequent carnival inspections.

(i) First (~~(ten)~~) 10 rides, concessions, generators, remote distribution equipment, or gaming show ((~~\$125.40~~)
\$133.40)

(ii) Each additional ride, concession, generator, remote distribution equipment, or gaming show ((~~\$6.90~~)
\$7.30)

(c) Concession(s) or ride(s) not part of a carnival.

(i) First field inspection each year of a single concession or ride, not part of a carnival ((~~\$99.60~~)
\$105.90)

(ii) Subsequent inspection of a single concession or ride, not part of a carnival ((~~\$65.50~~)
\$69.60)

(7) Trip fees.

(a) Requests by property owners to inspect existing installations. (This fee includes a maximum of one hour of inspection time. All inspection time exceeding one hour will be charged at the rate for progressive inspections.) ((~~\$99.60~~)
\$105.90)

(b) Submitter notifies the department that work is ready for inspection when it is not ready. ((~~\$49.50~~)
\$52.60)

(c) Additional inspection required because submitter has provided the wrong address or incomplete, improper or illegible directions for the site of the inspection. ((~~\$49.50~~)
\$52.60)

(d) More than one additional inspection required to inspect corrections; or for repeated neglect, carelessness, or improperly installed electrical work. ((~~\$49.50~~)
\$52.60)

(e) Each trip necessary to remove a noncompliance notice. ((~~\$49.50~~)
\$52.60)

(f) Corrections that have not been made in the prescribed time, unless an exception has been requested and granted. ((~~\$49.50~~)
\$52.60)

(g) Installations that are covered or concealed before inspection. ((~~\$49.50~~)
\$52.60)

(8) Progress inspections.

Note:

The fees calculated in subsections (1) through (6) of this section will apply to all electrical work. This section will be applied to a permit where the permit holder has requested additional inspections beyond the number supported by the permit fee calculated at the rate in subsections (1) through (6) of this section.

On partial or progress inspections, each 1/2 hour. ((~~\$49.50~~)
\$52.60)

(9) Plan review.

(a) Plan review fee is 35% of the electrical work permit fee as determined by WAC 296-46B-906. 35%

(b) Plan review submission fee . ((~~\$83.50~~)
\$88.80)

(c) Supplemental submissions of plans per hour or fraction of an hour of review time. ((~~\$99.60~~)
\$105.90)

(d) Plan review handling fee. ((~~\$23.30~~)
\$24.70)

(10) Out-of-state inspections.

(a) Permit fees will be charged according to the fees listed in this section.

(b) Travel expenses:

All travel expenses and per diem for out-of-state inspections are billed following completion of each inspection(s). These expenses can include, but are not limited to: Inspector's travel time, travel cost and per diem at the state rate. Travel time is hourly based on the rate in subsection (11) of this section.

(11) Other inspections.

Inspections not covered by above inspection fees must be charged portal-to-portal per hour: ((~~\$99.60~~)
\$105.90)

(12) Variance request processing fee.

Variance request processing fee. This fee is nonrefundable once the transaction has been validated.	((\$99.60) \$105.90)
(13) Class B basic electrical work labels.	
(a) Block of ((twenty)) 20 Class B basic electrical work labels (not refundable).	((\$273.60) \$291.10)
(b) Reinspection of Class B basic electrical work to assure that corrections have been made (per 1/2 hour timed from leaving the previous inspection until the reinspection is completed). See WAC 296-46B-908(5).	((\$49.50) \$52.60)
(c) Reinspection of Class B basic electrical work because of a failed inspection of another Class B label (per 1/2 hour from previous inspection until the reinspection is completed). See WAC 296-46B-908(5).	((\$49.50) \$52.60)
(14) Provisional electrical work permit labels.	
Block of ((twenty)) 20 provisional electrical work permit labels.	((\$273.60) \$291.10)

AMENDATORY SECTION (Amending WSR 21-11-085, filed 5/18/21, effective 7/1/21)

WAC 296-46B-909 Electrical/telecommunications contractor's license, administrator certificate and examination, master electrician certificate and examination, electrician certificate and examination, copy, and miscellaneous fees.

- Notes:**
- (1) The department will deny renewal of a license, certificate, or permit if an individual owes money as a result of an outstanding final judgment(s) to the department or is in revoked status. The department will deny application of a license, certificate, or permit if an individual is in suspended status or owes money as a result of an outstanding final judgment(s) to the electrical program.
 - (2) Certificates may be prorated for shorter renewal periods in one-year increments. Each year or part of a year will be calculated to be one year.
 - (3) The amount of the fee due is calculated based on the fee effective at the date payment is made.

(1) General or specialty contractor's license per ((twenty-four)) 24-month period. (Nonrefundable after license has been issued.)	
(a) Initial application or renewal made in person, by mail, or by fax	((\$293.60) \$312.30)
(b) Renewal fully completed using the online web process	((\$254.00) \$270.20)
(c) Reinstatement of a general or specialty contractor's license after a suspension	((\$59.40) \$63.20)
(2) Master electrician/administrator/electrician/trainee certificate.	
(a) Examination application (nonrefundable)	
Administrator certificate examination application. (Required only for department administered examinations.) (Not required when testing with the department's contractor.)	((\$36.70) \$39.00)
(b) Examination fees (nonrefundable)	
Note:	
Normal examination administration is performed by a state authorized contractor. The fees for such examinations are set by contract with the department. For written examinations administered by the department, use the following fee schedule.	
(i) Master electrician or administrator first-time examination fee (when administered by the department)	((\$88.60) \$94.20)
(ii) Master electrician or administrator retest examination fee (when administered by the department)	((\$103.80) \$110.40)
(iii) Journey level or specialty electrician examination fee (first test or retest when administered by the department)	((\$66.70) \$70.90)
(iv) Certification examination review fee	((\$137.40) \$146.10)
(c) Original certificates (nonrefundable after certificate has been issued)	
(i) Electrical administrator original certificate (except 09 telecommunication)	((\$132.80) \$141.30)
(ii) Telecommunications administrator original certificate (for 09 telecommunications)	((\$88.30) \$93.90)

(iii) Master electrician exam application (includes original certificate and application processing fee) (((\$36.70)) \$39.00 is nonrefundable after application is submitted)	(\$169.80) <u>\$180.60</u>
(iv) Journey level, specialty, or reciprocal electrician application (includes original certificate and application processing fee) (((\$36.70)) \$39.00 is nonrefundable after application is submitted)	(\$95.20) <u>\$101.20</u>
(v) Training certificate	
(A) Initial application made in person, by mail, or by fax	(\$46.60) <u>\$49.50</u>
(B) Initial application fully completed online using the online web process	(\$40.00) <u>\$42.50</u>
(C) 0% supervision modified training certificate. Includes trainee update of hours (i.e., submission of affidavit of experience) (((\$56.40)) \$60.00 is nonrefundable after application is submitted)	(\$84.90) <u>\$90.30</u>
(D) 75% supervision modified training certificate.	(\$56.40) <u>\$60.00</u>
(E) Unsupervised training certificate as allowed by RCW 19.28.161 (4)(b).	(\$27.90) <u>\$29.60</u>
(d) Certificate renewal (nonrefundable)	
(i) Master electrician or administrator certificate renewal	
(A) Renewal made in person, by mail, or by fax	(\$167.80) <u>\$178.50</u>
(B) Renewal fully completed using the online web process	(\$145.80) <u>\$155.10</u>
(ii) Telecommunications (09) administrator certificate renewal	
(A) Renewal made in person, by mail, or by fax	(\$111.80) <u>\$118.90</u>
(B) Renewal fully completed using the online web process	(\$96.40) <u>\$102.50</u>
(iii) Late renewal of master electrician or administrator certificate	
(A) Renewal made in person, by mail, or by fax	(\$335.60) <u>\$357.00</u>
(B) Renewal fully completed using the online web process	(\$291.60) <u>\$310.20</u>
(iv) Late renewal of telecommunications (09) administrator certificate	
(A) Renewal made in person, by mail, or by fax	(\$223.60) <u>\$237.90</u>
(B) Renewal fully completed using the online web process	(\$192.80) <u>\$205.10</u>
(v) Journey level or specialty electrician certificate renewal	
(A) Renewal made in person, by mail, or by fax	(\$88.30) <u>\$93.90</u>
(B) Renewal fully completed using the online web process	(\$76.90) <u>\$81.80</u>
(vi) Late renewal of journey level or specialty electrician certificate	
(A) Renewal made in person, by mail, or by fax	(\$176.60) <u>\$187.90</u>
(B) Renewal fully completed using the online web process	(\$153.80) <u>\$163.60</u>
(vii) Trainee update of hours submitted more than 30 days after expiration of a training certificate	(\$56.40) <u>\$60.00</u>
(viii) Trainee certificate renewal	
(A) Renewal made in person, by mail, or by fax	(\$56.40) <u>\$60.00</u>
(B) Renewal fully completed using the online web process when the affidavit of experience is submitted per WAC 296-46B-942 (8)(d)	(\$49.20) <u>\$52.30</u>
(ix) Late trainee certificate renewal	
(A) Renewal made in person, by mail, or by fax	(\$79.20) <u>\$84.20</u>

(B) Renewal fully completed using the online web process	((\$68.90) \$73.30)
(e) Certificate - Reinstatement (nonrefundable)	
(i) Reinstatement of a suspended master electrician or administrator's certificate (in addition to normal renewal fee)	((\$59.40) \$63.20)
(ii) Reinstatement of suspended journey level, or specialty electrician certificate (in addition to normal renewal fee)	((\$27.90) \$29.60)
(f) Assignment/unassignment of master electrician/administrator designation (nonrefundable)	
	((\$44.00) \$46.80)
(3) Certificate/license.	
(a) Replacement for lost or damaged certificate/license. (Nonrefundable.)	((\$19.20) \$20.40)
(b) Optional display quality General Master Electrician certificate.	((\$31.30) \$33.30)
(4) Continuing education courses or instructors. (Nonrefundable.)	
(a) If the course or instructor review is performed by the electrical board or the department	
The course or instructor review	((\$56.50) \$60.10)
(b) If the course or instructor review is contracted out by the electrical board or the department	
(i) Continuing education course or instructor submittal and approval (per course or instructor)	As set in contract
(ii) Applicant's request for review, by the chief electrical inspector, of the contractor's denial	((\$137.70) \$146.50)
(5) Copy fees. (Nonrefundable.)	
((a)) Certified copy of each document (maximum charge per file):	((\$62.50) \$66.50)
((i)) (a) First page:	((\$27.90) \$29.60)
((ii)) (b) Each additional page:	((\$2.20) \$2.30)
((b)) RCW or WAC printed document:	\$6.10)
(6) Training school program review fees. Initial training school program review fee. (Nonrefundable.)	
(a) Initial training school program review fee submitted for approval. Valid for three years or until significant changes in program content or course length are implemented (see WAC 296-46B-971(4)).	((\$650.90) \$692.50)
(b) Renewal of training school program review fee submitted for renewal. Valid for 3 years or until significant changes in program content or course length are implemented (see WAC 296-46B-971(4)).	((\$325.40) \$346.20)

AMENDATORY SECTION (Amending WSR 21-11-085, filed 5/18/21, effective 7/1/21)

WAC 296-46B-911 Electrical testing laboratory and engineer accreditation fees. The amount of the fee due is calculated based on the fee effective at the date payment is made.

Electrical testing laboratory	
Initial filing fee: (Nonrefundable)	((\$618.80) \$658.40)
Initial accreditation fee:	
1 product category	((\$309.30) \$329.10)
Each additional category for the next 19 categories	((\$123.60) \$131.50 each)
Maximum for 20 categories or more	((\$2,661.30) \$2,831.60)

Renewal fee: (Nonrefundable)	50% of initial filing fee
Renewal of existing accreditations	
Each additional category for the next 19 categories	(\$123.60) <u>\$131.50</u> each
Maximum for 20 categories or more	(\$2,661.30) <u>\$2,831.60</u>
Engineer for evaluating industrial utilization equipment	
Initial filing fee: (Nonrefundable)	(\$618.80) <u>\$658.40</u>
Renewal fee: (Nonrefundable)	50% of initial filing fee

WSR 24-07-099

PERMANENT RULES

DEPARTMENT OF COMMERCE

[Filed March 20, 2024, 9:15 a.m., effective April 20, 2024]

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

Purpose: Chapter 19.260 RCW establishes energy efficiency standards for multiple products listed in RCW 19.260.030 that are sold, offered for sale, or installed in the state. The law also authorizes the department of commerce (commerce) to adopt by rule a more recent version of any standard established in statute in order to improve consistency with other comparable standards in other states. Under this authority, commerce regularly updates its appliance standards through rule, including after the passage of HB [ESHB] 1619 concerning appliance efficiency standards (2022), and in 2021 to incorporate updated appliance standards for computer equipment. Commerce has developed draft rules to update state efficiency standards for electric vehicle supply equipment (EVSE) and residential ventilating fans to reflect more recent versions of the Environmental Protection Agency EnergyStar standards listed in RCW 19.260.040. Commerce has also developed rules to remove the section of chapter 194-24 WAC concerning air purifiers in light of new federal conservation standards for air cleaners, which preempt the state standard.

Citation of Rules Affected by this Order: Repealing WAC 194-24-187; and amending WAC 194-24-151 and 194-24-200.

Statutory Authority for Adoption: RCW 19.260.040, 19.260.070.

Adopted under notice filed as WSR 23-23-175 on November 22, 2023.

Changes Other than Editing from Proposed to Adopted Version: Commerce received two comments requesting that the corresponding updated test procedures in EnergyStar specifications for EVSE and residential ventilating fans be included in the updated rules. Commerce updated the rules to reflect the updated test procedures corresponding to the new standards.

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 1; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: March 20, 2024.

Amanda Hathaway
Rules Coordinator

OTS-5095.2

AMENDATORY SECTION (Amending WSR 23-07-050, filed 3/9/23, effective 4/9/23)

WAC 194-24-151 Residential ventilating fans manufactured on or after January 1, 2024. (1) **Scope.** This rule applies to new residential ventilating fans manufactured on or after January 1, 2024.

(2) **Standard.** Residential ventilating fans must meet the requirements included in the scope of the Environmental Protection Agency ENERGY STAR® program product specification for residential ventilating fans, version ((4.1)) 4.2.

(3) **Testing.** Residential ventilating fans must meet the testing requirements included in the scope of the Environmental Protection Agency ENERGY STAR® program product specification for residential ventilating fans, version ((4.1)) 4.2.

(4) **Listing.** Each manufacturer must cause to be listed each residential ventilating fan, by model number, in the ENERGY STAR® product database.

(5) **Marking.** Every unit of every residential ventilating fan must have an ENERGY STAR® label.

AMENDATORY SECTION (Amending WSR 23-07-050, filed 3/9/23, effective 4/9/23)

WAC 194-24-200 Electric vehicle supply equipment. (1) **Scope.** This rule applies to new electric vehicle supply equipment manufactured on or after January 1, 2024.

(2) **Standard.** Electric vehicle supply equipment must meet the requirements included in the scope of the Environmental Protection Agency ENERGY STAR® program product specification for electric vehicle supply equipment, version ((1.0)) 1.2.

(3) **Testing.** Electric vehicle supply equipment must meet the testing requirements included in the scope of the Environmental Protection Agency ENERGY STAR® program product specification for electric vehicle supply equipment, version ((1.0)) 1.2.

(4) **Listing.** Each manufacturer must cause to be listed each electric vehicle supply equipment, by model number, in the ENERGY STAR® product database.

(5) **Marking.** Every unit of every electric vehicle supply equipment must have an ENERGY STAR® label.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 194-24-187 Air purifiers.