

WSR 22-08-003

PROPOSED RULES

STATE BOARD OF HEALTH

[Filed March 23, 2022, 2:13 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-21-018.

Title of Rule and Other Identifying Information: WAC 246-203-130 Keeping of animals. The state board of health (board) is proposing amendments to this section of the general sanitation rules, chapter 246-203 WAC, to modernize the rule's structure, standards, and language. The proposal includes a title change to domestic animal waste to reflect the focus on animal excreta, or animal waste. The proposal applies to waste from livestock animals such as horses and cattle and waste from nonlivestock animals such as dogs and cats. The proposal establishes minimum standards for domestic animal waste to (1) avoid unsanitary accumulations in containment areas; (2) prevent contamination of other people's property, drinking water sources, and surface water bodies with potential to affect human health; (3) promote safe handling and disposal of nonlivestock waste; and (4) promote safe stockpiling of livestock waste.

Hearing Location(s): On June 8, 2022, at 1:30 p.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the board will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Please register in advance for the public hearing for WAC 246-203-130 Keeping of animals at https://us02web.zoom.us/webinar/register/WN_6vqdRyUmTamyb61z3wCSBA. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: June 8, 2022.

Submit Written Comments to: Stuart Glasoe, State Board of Health, P.O. Box 47990, Olympia, WA 98504-7990, email WSBOHProposedAnimalWasteRule@sboh.wa.gov, by May 2, 2022.

Assistance for Persons with Disabilities: Contact Melanie Hisaw, phone 360-236-3301, TTY 711, email melanie.hisaw@sboh.wa.gov, by June 1, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal establishes minimum standards intended to help prevent, control, and abate health hazards and nuisance associated with the handling and disposal of domestic animal waste. The proposal updates and renames the existing rule. The proposal establishes minimum standards for the safe handling and disposal of domestic animal waste to prevent and mitigate human exposure and health risks, with emphasis on control points at the front end of the waste stream when waste is first excreted by animals and is first handled by people (collection, piling, and disposal).

Reasons Supporting Proposal: RCW 43.20.050 (2)(c) charges the board with unique responsibility and authority to adopt rules and standards to prevent, control, and abate health hazards and nuisance related to the disposal of animal waste. WAC 246-203-130 serves as the board's rule on the handling and disposal of animal waste. The language of the existing rule dates to the 1920s and 1930s. Despite its unique niche and authority, the rule has not undergone review or revision in recent decades, leaving a health and sanitation gap in the state regulatory structure for animal waste. Domestic animal waste

presents many challenges that are often well-managed by people. However, situations arise where waste accumulates or is mishandled in ways that create a nuisance or health hazard and action is needed to address and correct the problem. The proposal sets animal waste standards for people to follow that may be locally enforced by a local health officer if needed.

Statutory Authority for Adoption: RCW 43.20.050 (2)(c).

Statute Being Implemented: RCW 43.20.050 (2)(c).

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Unlike some board rules that involve ongoing implementation and frontline regulation of facilities and systems (e.g., food establishments, shellfish operations, and drinking water systems), this proposal includes no operational functions or requirements (e.g., record keeping, routine inspections, and permitting) of facilities such as dog kennels, horse stables, animal hospitals, livestock producers, and other operations involved in the handling and disposal of animal waste. As such, this rule involves no ongoing implementation. Board rules are enforced by either the Washington department of health (DOH) or local health officers as defined in each rule. In this proposal, DOH plays no role in its enforcement. Enforcement of the proposal rests solely with local health officers.

Name of Proponent: State board of health, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Stuart Glasoe, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4111; Enforcement: Local health officers, varied statewide.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Stuart Glasoe, State Board of Health, P.O. Box 47990, Olympia, WA 98504-7990, phone 360-236-4111, TTY 711, email stuart.glasoe@sboh.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: The following sections incorporate by reference without material change standards of a Washington state rule: WAC 246-203-130 (3)(d)(i), control of odors and attraction of flies, rodents, and other vectors; WAC 246-203-130 (3)(d)(ii), limits storage of stockpiled livestock waste to one year; WAC 246-203-130 (3)(d)(iii)(A), requires siting stockpiled livestock waste 100 feet or more from a drinking water well; WAC 246-203-130 (3)(d)(iii)(B), requires siting stockpiled livestock waste 200 feet or more from a public drinking water spring; and WAC 246-203-130 (3)(d)(iii)(C), re-

quires siting stockpiled livestock waste outside the sanitary control area of a public drinking water system.

The following amendments are clarifying, without changing the effect of the rule: WAC 246-203-130(1), establishes the purpose and applicability of the rule; WAC 246-203-130(2), establishes the definitions of terms used in the rule; WAC 246-203-130(3), preface only, introduces the standards of the rule, defers to more stringent standards in law, and excludes certain diffuse practices; WAC 246-203-130(3)(b)(ii), requires the handling of domestic animal waste to prevent contamination of drinking water sources, which clarifies existing language of the rule without changing its effect; WAC 246-203-130(3)(c), introduces the standards of the subdivision and precludes stockpiling nonlivestock waste; WAC 246-203-130(3)(d)(iii)(D)(I) is interpretive language that clarifies that the setback standard does not apply when surface water bodies are upgradient or protected by a levee or other physical barrier; and WAC 246-203-130(4) establishes structure and authority of local health officers to investigate and enforce violations of the rule.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement (SBEIS)

The purpose of this rule making is to modernize WAC 246-203-130 Keeping of animals, a long-standing board rule with language dating back to the 1920s and 1930s. This rule is one section of board rules on general sanitation, chapter 246-203 WAC, covering such issues as nuisance, piggeries, disposal of dead animals, and use of common cup and towel. The chapter was codified as WAC in 1960, followed by administrative recodification in 1991. Despite its unique niche and authority, the rule has not undergone review or revision in recent decades while other related laws and regulations have been enacted, leaving a health and sanitation gap in the state regulatory structure for domestic animal waste.

In 2009, the board received a petition from the Washington Association of Conservation Districts to amend the rule. The board denied the specific petition and opted to file a CR-101 Preproposal statement of inquiry (WSR 09-17-132) to more broadly update the rule. The rule making stalled and ultimately resumed in 2017. In 2018, board staff completed a background report¹ to help guide the rule making and restarted work on the rule with emphasis on stakeholder outreach, research, and rule writing. In fall 2019, the board filed a new CR-101, WSR 19-21-018, to better align the rule making with board policy direction. In early 2020, the board distributed a draft rule for public review, processed the feedback, and revised the draft. In November 2020, staff updated the board on the rule making. The board directed staff to file a CR-102 Proposed rule making.

¹ Washington state board of health, 2018. Keeping of animals background and policy recommendations of the Washington state board of health for revising WAC 246-203-130.

Domestic animal waste presents many challenges that are often well-managed by people. However, situations arise where waste accumulates or is mishandled in ways that create a nuisance or health hazard and action is needed to address and correct the problem. The proposed rule establishes minimum standards intended to help prevent, control, and abate health hazards and nuisance associated with the handling and disposal of domestic animal waste. This includes waste from livestock

such as horses and cattle, and waste from nonlivestock such as dogs and cats.

The proposed rule includes standards to:

- Avoid unsanitary accumulations of waste in containment areas;
- Prevent contamination of other people's property, drinking water sources, and surface water bodies with potential to affect human health;
- Promote safe handling and disposal of nonlivestock waste; and
- Promote safe stockpiling of livestock waste.

The proposed rule is not an operational board rule involving on-going implementation and frontline regulation of facilities and systems (e.g., board rules for food establishments, shellfish operations, water recreation facilities, on-site sewage systems, and drinking water systems). Instead, like the companion sanitation rule on disposal of dead animals (WAC 246-203-121), this proposed rule sets animal waste standards for people to follow that may be locally enforced by a local health officer if needed.

The proposed rule aims to focus squarely on domestic animal waste. It intersects other rules and practices associated with solid waste and manure management but largely stops short of waste and beneficial-use streams regulated by other agencies. Due to the narrow focus on animal waste, the rule includes a proposed title change from keeping of animals to domestic animal waste to more accurately reflect and implement board authority regulating animal excreta.

Costs complying with the proposed rule apply only to businesses not already meeting the standards, and are limited to the incremental cost of complying, not the total cost of animal waste handling and disposal. For such businesses, professional services may include waste collection and disposal, engineering and other technical assistance changing waste handling and manure management practices to prevent contamination of properties and water resources, and technical assistance changing stockpiling practices or possibly converting to alternate waste storage practices.

The following North American Industry Classification System (NAICS) codes identify the types of businesses that are required to comply with the proposed rule along with the calculated minor cost thresholds (MCT).^{2,3}

² United States Census Bureau, North American Industry Classification System (NAICS).

³ Governor's office for regulatory innovation and assistance, Regulatory Fairness Act tools and guidance, Minor Cost Threshold Calculator.

NAICS Code 541940, Description "Veterinary Services," # of businesses in WA "970," MCT (1% average annual payroll) "\$5,775.24," MCT (0.03% annual receipts) "\$4,209.02."

NAICS Code 812910, Description "Pet Care Services," # of businesses in WA "1,696," MCT (1% average annual payroll) "\$1,489.05," MCT (0.03% annual receipts) "\$402.47."

NAICS Code 453910, Description "Pet and Pet Supplies Stores," # of businesses in WA "301," MCT (1% average annual payroll) "\$3,453.20," MCT (0.03% annual receipts) "\$5,022.53."

NAICS Code 562111, Description "Solid Waste Collection," # of businesses in WA "190," MCT (1% average annual payroll) "\$11,022.24," MCT (0.03% annual receipts) "\$26,702.06."

NAICS Code 713990, Description "All Other Amusement and Recreation Industries,"⁴ # of businesses in WA "1,130," MCT (1% average annual payroll) "\$1,817.98," MCT (0.03% annual receipts) "\$1,142.49."

⁴ Includes recreational riding, horse rentals, and outfitters.

NAICS Code 611620, Description "Sports and Recreation Instruction,"⁵ # of businesses in WA "1,075," MCT (1% average annual payroll) "\$1,451.98," MCT (0.03% annual receipts) "\$633.96."

5 Includes horse riding instruction and academies.

NAICS Code 1121, Description "Cattle Ranching and Farming," # of businesses in WA "534," MCT (1% average annual payroll) "\$3,657.58," MCT (0.03% annual receipts) "\$3,864.14."

NAICS Code 1122, Description "Hog and Pig Farming," # of businesses in WA "9," MCT (1% average annual payroll) "redacted," MCT (0.03% annual receipts) "\$169.89."

NAICS Code 1123, Description "Poultry and Egg Production," # of businesses in WA "46," MCT (1% average annual payroll) "\$5,316.15," MCT (0.03% annual receipts) "\$10,431.86."

NAICS Code 1124, Description "Sheep and Goat Farming," # of businesses in WA "36," Minor Cost Threshold (MCT) (1% average annual payroll), "redacted," MCT (0.03% annual receipts) "\$586.22."

NAICS Code 112920, Description "Horse and Other Equine Production," # of businesses in WA "50," MCT (1% average annual payroll) "\$621.54," MCT (0.03% annual receipts) "\$359.84."

NAICS Code 112990, Description "All Other Animal Production,"⁶ # of businesses in WA "171," MCT (1% average annual payroll) "\$499.58," MCT (0.03% annual receipts) "\$468.09."

6 Includes dog, cat, alpaca, llama, bison production and breeding.

NAICS Code 112930, Description "Fur-Bearing Animal and Rabbit Production," # of businesses in WA "6," MCT (1% average annual payroll) "\$99.20," MCT (0.03% annual receipts) "\$245.06."

NAICS Code 115210, Description "Support Activities for Animal Production,"⁷ # of businesses in WA "628," MCT (1% average annual payroll) "\$925.53," MCT (0.03% annual receipts) "\$416.80."

7 Includes horse boarding and training.

NAICS Code 424520, Description "Livestock Merchant Wholesalers," # of businesses in WA "15," MCT (1% average annual payroll) "\$2,415.61," MCT (0.03% annual receipts) "\$4,366.41."

NAICS Code 424590, Description "Other Farm Product Raw Material Merchant Wholesalers,"⁸ # of businesses in WA "26," MCT (1% average annual payroll) "\$3,684.24," MCT (0.03% annual receipts) "\$6,733.79."

8 Includes horses and mules.

The following is an analysis of the probable cost of compliance, identifying the probable costs to comply with the proposed rule, including cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue.

Cost Survey: The board developed a cost survey of Washington businesses to determine if they face any new costs as a result of this proposed rule and if so to then identify and describe one-time costs and recurring annual costs to comply with the significant standards of the proposed rule. Potential costs include equipment, supplies, material, labor, professional services, increased administration, and other costs. One-time costs are costs that occur only once, such as a one-time purchase of equipment. Annual costs are costs that occur on a recurring basis once per year. Recurrent costs are costs that occur multiple times for a specified interval.

Board staff twice distributed the cost survey via email to Washington businesses covering 16 NAICS codes. The survey went to 800

Washington businesses in the first distribution followed by 1,000 businesses in the second distribution. The second distribution included the original 800 businesses. The survey covered such businesses as horse stables, livestock producers, dog kennels/groomers, animal hospitals, animal breeders, livestock markets, and equestrian centers. The board posted the cost survey on its rule making web page for a total of six weeks. The board asked approximately 30 organizations and one state agency to help distribute the survey to raise awareness of the rule making and to get broader reach with the survey.

The board received a total of 41 responses to the cost survey. Cost survey results included four businesses that identified cost impacts, 24 businesses that indicated no costs, and 13 with unspecified responses.⁹ In total, 37 of 41 respondents identified no cost impact or provided no cost information. Table 1 presents a summary of survey responses and the range of cost impacts for the individual proposed standards. Overall, respondents indicated applicable, potential costs for six of seven proposed standards included in this analysis. Cost impacts of individual proposed standards are discussed after the table.

⁹ Includes responses that, for example, did not return the cost survey, did not specify dollar amounts, or provided nonspecific comments (e.g. "not sure how it would impact me").

In the following discussion of cost impacts, a cattle/dairy farming facility identified a one-time cost of \$500 and recurring annual costs of \$2,000 for miscellaneous compliance needs. The board was unable to determine whether the respondent was indicating an estimate of overall cost impacts of the proposed rule or cost impacts of individual proposed standards. The board considered the costs in the cost/benefit analysis in compliance with RCW 34.05.328 for significant legislative rules, also referred to as a significant analysis. The board considered the costs only once in the significant analysis and in each section of this SBEIS but notes that this could be duplication of costs and a potential overestimate of costs to comply with individual standards.

Table 1: Cost survey response summary:

Number of businesses contacted	1,000				
Number of survey responses	41				
Number of surveys indicating costs	4				
Number of surveys indicating no costs	24				
Number of surveys with unspecified responses	13				
Proposed Standard	# Survey Respondents	First year cost to comply with proposed rule ¹⁰		MCT ¹¹	> MCT ¹²
		Low Cost	High Cost		
WAC 246-203-130 (3)(a) Collect waste in containment areas	4	\$500	\$116,000	\$169.89	Y
WAC 246-203-130 (3)(b)(i) and (iii) Do not contaminate properties, surface water bodies	2	\$2,500	\$75,000	\$169.89	Y
WAC 246-203-130 (3)(c)(i) Safely store non-livestock waste	0	no cost	no cost	N/A	N
WAC 246-203-130 (3)(c)(ii) Bag/dispose nonlivestock waste as solid waste	1	\$100	\$100	\$568.22	N

WAC 246-203-130 (3)(d)(iii)(D) Stockpile livestock waste > 100 feet of surface water body	2	\$2,500	\$260,000	\$169.89	Y
WAC 246-203-130 (3)(d)(iii)(D)(II) Allow livestock waste stockpile < 100 feet of surface water body if mitigated by practice(s)	2	\$2,500	\$114,000	\$169.89	Y
WAC 246-203-130 (3)(d)(iii)(E) Remove livestock waste stockpile prior to flooding	2	\$2,500	\$27,500	\$169.89	Y

- 10 Costs are not intended to be summed across rows but analyzed individually and in some cases represent costs to different businesses. First year cost to comply with proposed rule is presented per survey respondent and is the summation of the first year of annual recurrent cost plus one-time cost.
- 11 Derived from the lowest "MCT" for the affected industry(s). Respondents self-identified their NAICS industry code(s). The value listed in this column is the lowest MCT for those affected industries.
- 12 Derived by comparing the highest cost impact to a business with the lowest MCT.

WAC 246-203-130 (3) (a) Collect domestic animal waste at intervals sufficient to maintain sanitary conditions in containment areas.

Description: This proposed standard requires people to collect animal waste frequently enough to avoid unsanitary accumulations in containment areas. The rule defines "containment areas" as areas where domestic animals are held, housed, or kept for a period of time, including but not limited to stables, corrals, confinement areas, kennels, pens, and yards. The proposed standard applies to waste from livestock and nonlivestock animals.

Cost: Most survey respondents (37/41) indicated no cost impacts for this proposed standard. Four survey respondents identified cost impacts. A sheep/goat farming facility identified a recurring annual cost of \$500 for labor, fuel, and equipment. A pig farming/wholesale facility identified a one-time cost of \$58,000 and recurring annual costs of \$58,000 for unidentified needs and concerns related to compliance/enforcement. A horse boarding/riding/instruction facility identified a past one-time cost of \$9,000 to remove a manure pile and ongoing manure disposal costs of \$5,000/month to comply with county regulation (no indication of new costs). And a cattle/dairy farming facility identified a one-time cost of \$500 and recurring annual costs of \$2,000 for recordkeeping, legal counsel, rule analysis, meeting with interested parties, and other miscellaneous compliance needs.

Staff research for the cost-benefit analysis of the significant analysis identified potential incremental costs for equipment, supplies, and labor depending on the situation, waste volumes, and other factors. Equipment needs, for example, range from small-scale tools and equipment such as shovels, buckets and spreaders that run less than \$100 to \$1,000s, to large-scale industrial equipment such as tractors and related attachments that can exceed \$100,000.¹³

¹³ Washington state board of health. 2021. Significant legislative rule analysis, WAC 246-203-130, a rule concerning keeping of animals, revising the section title to domestic animal waste.

WAC 246-203-130 (3) (b) Handle domestic animal waste to prevent deposition, leaching, and runoff to (i) another person's property, and (iii) surface water bodies used for swimming, shellfish harvesting, or other activity with potential to affect human health.

Description: The proposed standards require people to handle animal waste to prevent deposition, leaching, and runoff to another person's property and to surface water bodies where there are activities/uses with potential to affect public health. The proposed standards are addressed jointly because the many associated practices, pollution pathways, and possible impacts are nearly identical. The proposed standards would typically apply to neighboring properties and surface

water bodies, but conceivably could apply more widely depending on transport mechanisms such as wind and water. The proposed standards apply broadly to animal waste handling and are not limited to practices listed in the rule.

Cost: Most survey respondents (39/41) indicated no cost impacts for the proposed standards. Two survey respondents identified cost impacts. A pig farming/wholesale facility identified a one-time cost of \$48,000 and recurring annual costs of \$27,000 for unidentified needs and concerns related to legal counsel and agency consultations. And a cattle/dairy farming facility identified a one-time cost of \$500 and recurring annual costs of \$2,000 for recordkeeping, legal counsel, rule analysis, meeting with interested parties, and other miscellaneous compliance needs.

Staff research for the cost-benefit analysis of the significant analysis determined that potential incremental costs for the proposed standards are indeterminate, case-by-case given that they potentially involve numerous waste handling practices and pollution pathways.¹³

¹³ Washington state board of health. 2021. Significant legislative rule analysis, WAC 246-203-130, a rule concerning keeping of animals, revising the section title to domestic animal waste.

WAC 246-203-130 (3) (c) (i) Hold nonlivestock waste in a watertight container if stored for more than one day prior to proper disposal.

Description: This proposed standard requires people to hold waste from nonlivestock animals in a watertight container, such as plastic bags and enclosed trash bins, if stored for more than a day prior to disposal.

Cost: In the cost survey, no respondents indicated costs associated with this proposed standard. However, one dog boarding facility noted potential costs if required to purchase special waste bins or dumpsters to replace existing waste bins provided by its private waste disposal company. Staff research for the cost-benefit analysis of the significant analysis determined that potential costs are equipment, supplies, and labor. Trash bins and bags are generally less than \$100 in one-time costs and require periodic replacement of bins. Total cost depends on waste volumes and holding needs.¹³

¹³ Washington state board of health. 2021. Significant legislative rule analysis, WAC 246-203-130, a rule concerning keeping of animals, revising the section title to domestic animal waste.

WAC 246-203-130 (3) (c) (ii) Bag and dispose of nonlivestock waste as solid waste.

Description: This proposed standard requires people to bag and dispose of waste from nonlivestock animals as solid waste.

Cost: Most survey respondents (40/41) indicated no cost impacts for this proposed standard. One survey respondent identified cost impacts. A goat/sheep farming facility identified a recurring annual cost of \$100 for bags and collection labor. The proposed standard does not apply to goat, sheep, and other livestock waste, so the board assumes this cost estimate is for waste from nonlivestock associated with the business or business owner.

The board assumes nominal costs as most businesses already meet the proposed standard. Staff research for the cost-benefit analysis of the significant analysis determined that potential incremental costs are disposal services, equipment, supplies, and labor. Solid waste disposal options include curbside collection and self-haul landfill service. Rates vary and are generally less than \$100 for monthly residential service, more for commercial service. Total costs depend mainly on disposal rates and waste volumes.¹³

- 13 Washington state board of health. 2021. Significant legislative rule analysis, WAC 246-203-130, a rule concerning keeping of animals, revising the section title to domestic animal waste.

WAC 246-203-130 (3) (d) (iii) (D) Site stockpiled livestock waste one hundred feet or more from a surface water body (see exception that follows).

Description: If waste from livestock is stockpiled for later use or disposal, this standard requires people to site the stockpile 100 feet or more from a surface water body. The standard assumes unmitigated stockpiling on bare ground on a short-term basis between collection and use.

Cost: Most survey respondents (39/41) indicated no cost impacts for this proposed standard. Two respondents identified cost impacts. A pig farming/wholesale facility identified a one-time cost of \$210,000 and recurring annual costs of \$50,000 for needs and concerns related to constructing a manure lagoon or selling land to comply with the standard. While a landowner may choose to comply in this manner, the proposed standard applies to stackable waste (not lagoon storage) and allows reductions to the setback if control/treatment practices are applied. Therefore, the board anticipates that the cost impacts will likely be lower than estimated. And a cattle/dairy farming facility identified a one-time cost of \$500 and recurring annual costs of \$2,000 for recordkeeping, legal counsel, rule analysis, meeting with interested parties, and other miscellaneous compliance needs.

Staff research for the cost-benefit analysis of the significant analysis determined that potential incremental costs for this proposed standard are indeterminate, case-by-case, affecting people who stockpile livestock waste near surface water bodies or plan to do so in the future.¹³

- 13 Washington state board of health. 2021. Significant legislative rule analysis, WAC 246-203-130, a rule concerning keeping of animals, revising the section title to domestic animal waste.

WAC 246-203-130 (3) (d) (iii) (D) (II) Site stockpiled livestock waste one hundred feet or more from a surface water body unless the surface water body is protected by one or more control or treatment practices that capture and prevent leachate and runoff.

Description: If waste from livestock is stockpiled for later use or disposal, this exception to WAC 246-203-130 (3) (d) (iii) (D) allows reduction of the 100-foot setback from surface water bodies when treatment or control practices are applied to mitigate runoff and leachate. The proposed standard allows people to determine the appropriate practice(s), and existing, functioning controls satisfy this proposed standard.

Cost: Most survey respondents (39/41) indicated no cost impacts for this proposed standard. Two respondents identified cost impacts. A pig farming/wholesale facility identified a one-time cost of \$95,000 and recurring annual costs of \$19,000 for needs and concerns related to engineering services, local permitting, and legal counsel. And a cattle/dairy farming facility identified a one-time cost of \$500 and recurring annual costs of \$2,000 for recordkeeping, legal counsel, rule analysis, meeting with interested parties, and other miscellaneous compliance needs.

Staff research for the cost-benefit analysis of the significant analysis determined that potential incremental costs are equipment, materials, and labor to install and maintain alternate practices to mitigate runoff and leachate from stockpiles. Optional practices range from storage pads and covers to stacking and composting structures.

Costs range broadly (\$100s to \$1,000s and up) depending on the practice(s), waste volumes, and other factors.¹³

13 Washington state board of health. 2021. Significant legislative rule analysis, WAC 246-203-130, a rule concerning keeping of animals, revising the section title to domestic animal waste.

WAC 246-203-130 (3) (d) (iii) (E) Site stockpiled livestock waste outside seasonally or frequently flooded areas unless used or disposed of prior to flooding.

Description: If waste from livestock is stockpiled for later use or disposal, this proposed standard prohibits siting stockpiles in seasonally or frequently flooded areas unless the stockpile is used or disposed of prior to flooding to prevent saturation and inundation of stockpiles.

Cost: Most survey respondents (39/41) indicated no cost impacts for this proposed standard. Two respondents identified cost impacts. A pig farming/wholesale facility identified a one-time cost of \$17,000 and recurring annual costs of \$10,500 for needs and concerns related to inefficient and unscheduled movement of stockpiles. And a cattle/dairy farming facility identified a one-time cost of \$500 and recurring annual costs of \$2,000 for record keeping, legal counsel, rule analysis, meeting with interested parties, and other miscellaneous compliance needs.

The board assumes nominal costs for businesses already using or disposing such piles. Staff research for the cost-benefit analysis of the significant analysis determined that costs to remove/reuse stockpiles are indeterminate, case-by-case. Where possible, stockpiles are generally managed/recycled on site. Costs for off-site movement generally involve higher costs for loading, transport, and disposal. Sample disposal costs range between \$38 and \$168 per ton.

Summary of Compliance Costs: The proposed standards involve practices that the board believes most businesses already do when handling and disposing domestic animal waste. Results of the cost survey support this with 37 of 41 responses across industries specifically identifying no cost impact or not indicating any cost impact. Of the four responses that identified cost impacts, one response identified past and existing costs that would be unaffected by the proposed rule, and three responses identified new costs to comply with the proposed rule.

In instances where additional work is needed to comply with the proposed standards, there may be costs for equipment, supplies, material, and labor to regularly collect and safely store and dispose of animal waste to prevent or abate health hazards and nuisance. For large-scale operations, the volume of waste and the related management challenges and cost impacts are potentially much higher. The overall incremental cost impact of the proposed rule is indeterminate for properties and operations statewide and would be unique in each situation.

Loss of Sales or Revenue: There is no evidence or indication that the proposed rule will result in loss of sales or revenue.

Minor Cost Analysis: The minor cost thresholds for the businesses identified above range from a high of \$26,702.06 (.003 of annual receipts of solid waste collection) to a low of \$169.89 (.003 of annual receipts of hog and pig farming). Based on the analysis above, the rule will impose more-than-minor costs on businesses potentially impacted by this proposed rule.

Disproportionate impact: Cost information from the cost survey is limited and is supported by additional cost information from the cost-benefit analysis of the significant analysis. Costs, outlined above

and in the board's legislative cost/benefit significant analysis, apply to businesses of all sizes across a range of industries that involve animal waste handling and disposal. Based on the available information, the board believes the proposed rule will likely have a disproportionate impact on small businesses.

Steps taken to reduce the costs of the rule on small businesses:

Most businesses already meet the basic standards and practices outlined in the proposed rule as evidenced by 37 of 41 survey responses indicating no cost impacts. For those that do not already meet the proposed standards, there may be new costs to comply with the proposed rule. The board will provide information to address a significant misconception and explain the fact that the proposed rule does not include any operational functions or requirements that could generate or increase costs for businesses, such as recordkeeping, routine inspections, permitting, and reporting.

Small business involvement: The board worked with numerous agencies, individuals, and organizations during the stakeholdering and rule-drafting stages—many representing affected businesses and small businesses. The rule writing involved two in-person stakeholder meetings and review of informal versions followed by distribution of a public review draft aimed at soliciting broader stakeholder feedback. As described in Section 3 of this SBEIS, the cost survey was distributed broadly to 1,000 businesses and numerous associations to help raise awareness of the rule making and to invite feedback on cost impacts of the proposed rule.

Estimated number of jobs that will be created or lost as the result of compliance with the proposed rule: There is no evidence that any jobs will be created or lost as a result of compliance with the proposed rule.

A copy of the statement may be obtained by contacting Stuart Glasoe, P.O. Box 47990, Olympia, WA 98504-7990, phone 360-236-4111, fax 360-236-4088, TTY 711, email stuart.glasoe@sboh.wa.gov.

March 23, 2022
Michelle A. Davis
Executive Director

OTS-2840.3

AMENDATORY SECTION (Amending WSR 91-02-051, filed 12/27/90, effective 1/31/91)

WAC 246-203-130 ((Keeping of animals.)) Domestic animal waste.

~~((1) Any person, firm or corporation is prohibited from keeping or sheltering animals in such a manner that a condition resulting from same shall constitute a nuisance.~~

~~(2) In populous districts, stable manure must be kept in a covered watertight pit or chamber and shall be removed at least once a week during the period from April 1st to October 1st and, during the other months, at intervals sufficiently frequent to maintain a sanitary condition satisfactory to the health officer. Manure on farms or~~

~~isolated premises other than dairy farms need not be so protected and removed unless ordered by the health officer.~~

~~(3) Manure shall not be allowed to accumulate in any place where it can prejudicially affect any source of drinking water.)~~ (1) A person may not keep or shelter animals in such a manner that the domestic animal waste creates a nuisance or health hazard. The purpose of this section is to establish standards for the prevention, control, and abatement of health hazards and nuisance detrimental to human health related to the disposal of domestic animal waste, including handling and storage of domestic animal waste, as described in subsection (3) of this section.

(2) The following definitions apply throughout this section unless the context clearly indicates otherwise.

(a) "Containment area" means an area where domestic animals are held, housed, or kept for a period of time and includes, but is not limited to, stables, corrals, confinement areas, kennels, pens, and yards.

(b) "Domestic animal" means an animal domesticated to live and breed in a tame condition under the care of humans. Domestic animal includes livestock and nonlivestock such as dogs and cats.

(c) "Domestic animal waste" means excreta from a domestic animal and includes associated wash water, feed, and bedding soiled with the excreta.

(d) "Health hazard" includes any organism, chemical, condition, or circumstance that poses a direct and immediate risk to human health.

(e) "Livestock" means domestic animals raised for use or for profit, especially on a farm, and includes horses, mules, donkeys, cattle, bison, sheep, goats, swine, rabbits, llamas, alpacas, ratites, poultry, waterfowl, and game birds.

(f) "Local health officer" means the legally qualified physician appointed as a health officer pursuant to chapter 70.05, 70.08, or 70.46 RCW, or an authorized representative.

(g) "Nuisance" includes an act or omission that harms, endangers, or interferes with the health or safety of another person.

(h) "Person" means any individual, corporation, company, association, society, firm, partnership, joint stock company, or any governmental agency, or the authorized agents of these entities.

(i) "Sanitary" means of or relating to conditions that affect hygiene and health, especially relating to cleanliness and other precautions against disease.

(j) "Stockpiling" means the temporary piling of domestic animal waste from livestock prior to use or disposal. Stockpiling does not include active composting or lagoon storage of domestic animal waste from livestock.

(k) "Surface water" means a body of water open to the atmosphere and subject to surface runoff including, but not limited to, lakes, ponds, streams, rivers, and marine waters.

(3) Unless a standard is superseded by a more stringent standard in federal, state, or municipal law, a person must meet the following standards in order to help prevent, control, and abate nuisance and health hazards related to the disposal of domestic animal waste. Except for free-range grazing, livestock trails, trail riding, and other diffuse sources of domestic animal waste, a person must:

(a) Collect domestic animal waste at intervals sufficient to maintain sanitary conditions in containment areas;

(b) Handle domestic animal waste to prevent deposition, leaching, and runoff to:

(i) Another person's property;

(ii) Drinking water sources; and

(iii) Surface water bodies used for swimming, shellfish harvesting, or other activity with potential to affect human health;

(c) Handle domestic animal waste from nonlivestock as follows so that the waste is not stockpiled:

(i) Hold the waste in a watertight container if stored for more than one day prior to proper disposal; and

(ii) Bag and dispose of the waste as solid waste; and

(d) Handle domestic animal waste from livestock that is collected and stockpiled for later use or disposal as follows:

(i) Store the waste to control odors and attraction of flies, rodents, and other vectors;

(ii) Store the waste no longer than one year; and

(iii) Site the stockpile:

(A) One hundred feet or more from a drinking water well;

(B) Two hundred feet or more from a public drinking water spring;

(C) Outside the sanitary control area of a public drinking water source if different from the areas set forth in (d)(iii)(A) and (B) of this subsection;

(D) One hundred feet or more from a surface water body unless:

(I) The surface water body is upgradient or is protected by a levee or other physical barrier; or

(II) The surface water body is protected by one or more control or treatment practices that capture and prevent leachate. Practices include, but are not limited to, storage pads, covers, storage structures, and filter strips; and

(E) Outside seasonally or frequently flooded areas unless used or disposed of prior to flooding.

(4) The local health officer may investigate and enforce this section. Enforcement actions may include any proceeding within the local health officer's statutory authority. Before taking enforcement action the local health officer must attempt to communicate with the person who may be in violation of this section in order to explore the facts and, if the local health officer determines that a violation has occurred, allow the person reasonable time to correct the violation.

[Statutory Authority: RCW 43.20.050. WSR 91-02-051 (Order 124B), recodified as § 246-203-130, filed 12/27/90, effective 1/31/91; Regulation .50.130, effective 3/11/60.]

WSR 22-08-011

PROPOSED RULES

WESTERN WASHINGTON UNIVERSITY

[Filed March 24, 2022, 8:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-23-072.

Title of Rule and Other Identifying Information: Chapter 516-35 WAC, Use of university property—Freedom of expression and assembly. Chapter 516-36 WAC, Use of university property—Scheduling and general use. WAC 516-52-020 Weapons and armaments prohibited.

Hearing Location(s): On May 11, 2022, at 2:00 p.m. Virtual public hearings necessitated by the COVID-19 pandemic have proven effective in allowing greater public access, eliminating the burden of physical travel, and maintaining public safety. Accordingly, a virtual meeting will be held with an optional in-person component. To attend the virtual public hearing, you must register in advance at <https://wwu-edu.zoom.us/meeting/register/tJwqcOGuqT8uEtWehQveXi35Fplom6Tp3rBz>. You may also register at the university rules website at <https://president.wwu.edu/chapter-516-35-wac-use-university-property-freedom-expression-and-assembly>. After registering, you will receive a confirmation email containing information about joining the public hearing. To attend in person, email the university rules coordinator for meeting location. The hearing will start at 2:00 p.m. and will continue until all oral comments are received.

Date of Intended Adoption: June 10, 2022.

Submit Written Comments to: Jennifer Sloan, rules coordinator, 516 High Street, Mailstop 9015, email sloanj2@wwu.edu, by May 10, 2022.

Assistance for Persons with Disabilities: Contact Jennifer Sloan, Rules Coordinator, phone 360-650-3117, TTY 711, email sloanj2@wwu.edu, by April 29, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapters 516-35 and 516-36 WAC, update changes in titles, offices, and processes. Update language to be clearer for off-campus users. Update language related to external space use scheduling. Housekeeping changes as needed. WAC 516-52-020 update language regarding use of face coverings and housekeeping changes as needed.

Reasons Supporting Proposal: Western Washington University (WWU) is proposing these changes to keep information accurate and up-to-date.

Statutory Authority for Adoption: RCW 28B.35.120(12).

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

Name of Proponent: WWU, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Eric Alexander, 516 High Street, Viking Union 545, Bellingham, WA 98225, 360-650-3451.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the university, and the university has not voluntarily decided to apply it.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule has no impact on small businesses.

March 24, 2022
Jennifer L. Sloan
Rules Coordinator

OTS-3670.1

AMENDATORY SECTION (Amending WSR 18-13-073, filed 6/15/18, effective 7/16/18)

WAC 516-35-001 Definitions. As used in this chapter, the following words and phrases mean:

(1) **Business day.** Any day, Monday through Friday (excluding holidays), during which university offices are open.

(2) **Freedom of expression and assembly.** Any activity protected by the first amendment to the Constitution of the United States and Article I, sections 4 and 5 of the Washington state Constitution. Such activities may include, but are not limited to, informational picketing, petition circulation, distribution of information leaflets or pamphlets, speech-making, demonstrations, rallies, noncontracted appearances of speakers, protests, meetings to display group feelings or sentiments, and other types of constitutionally protected assemblies to share information, perspective, or viewpoints. (~~Freedom of expression or assembly that involves the placement of any furniture, hardware, prop, vehicle, display, sound amplification, or audio-visual device or other object on university property requires prior approved space reservation. To reserve use of university property, refer to chapter 516-36 WAC.~~)

(3) **Limited public forum areas.** Areas of campus available as spaces for freedom of expression and peaceable assembly as protected by the Constitution of the United States and the Washington state Constitution, subject to reasonable time, place, and manner restrictions. Limited public forum areas do not include:

(a) Classrooms or academic buildings (~~conducting~~) utilized for scheduled educational programming with the exception that nothing herein shall be read to interfere between or with the academic freedom of the instructor and enrolled students to engage in educational programs;

(b) Reservable or scheduled property subject to the provisions of chapter 516-36 WAC;

(c) Private administrative or academic offices;

(d) Lavatory or maintenance facilities;

(e) Roadways or sidewalks necessary to permit the free flow of pedestrian, vehicular, emergency responder, or maintenance traffic; or

(f) Any other university property, on a case-by-case basis, where the reasonable application of time, place, and manner restrictions render the location inappropriate for expressive activities.

(4) **Nonuniversity group or individual.** An individual or a collection of individuals who do not have a formal relationship with the university. The term also includes members of these groups who are individually affiliated with the university who desire to use university

property for personal, private, or nonuniversity group related activities.

(5) **Time, place, and manner.** Reasonable limitations on the exercise of expressive rights that are neutral as to the content of expression and leave open alternative channels of expression.

(6) **University.** Western Washington University.

(7) **University affiliate.** An entity that has a formal relationship with the university and also encompasses such entity's officers, agents, and employees. The term includes, but is not limited to, the office of the attorney general, contracted agencies, and 501 (c)(3) organizations with formal relationships to the university.

(8) **University group or individual.** An individual or collection of individuals that has a formal relationship with the university, such as a recognized employee group of the university, a registered student group or organization or an individual acting on behalf of the group or organization as well as an individual who is a currently enrolled student or current employee.

(9) **University property.** All buildings, grounds, or assets owned or controlled by the university and the streets, sidewalks, plazas, parking lots, and roadways within the boundaries of property owned or controlled by the university.

[Statutory Authority: RCW 28B.35.120(12). WSR 18-13-073, § 516-35-001, filed 6/15/18, effective 7/16/18.]

AMENDATORY SECTION (Amending WSR 18-13-073, filed 6/15/18, effective 7/16/18)

WAC 516-35-010 Use of university property—Notice. (1) Any non-university group or individual who desires to use a limited public forum area on a temporary basis for freedom of expression (~~((or))~~) and assembly ((in which more than fifty people are likely to assemble,)) must submit notice of planned use to the (~~((university police department and to the dean of students))~~) Western Washington University department of public safety not less than (~~((fifteen))~~) five business days prior to use, subject to limitations set forth in WAC 516-35-030. However, use may be permitted with less notice so long as the use does not interfere with any other function or university operations.

(2) University affiliates or university groups or individuals who desire to use university property or a limited public forum area on a temporary basis for freedom of expression or assembly must adhere to applicable policies and laws and are requested to provide notice to the (~~((university police department and dean of students))~~) Western Washington University department of public safety. If university affiliates or university groups or individuals intend to set up free-standing objects on university property, notice must be given as directed in WAC 516-35-030 (3) and (4).

(3) Submitted notices (~~((may))~~) shall include, but are not limited to, the following:

(a) The contact information for the persons or organizations, including the organization's name and its contact person's name, person's name, address, email address, and telephone number;

(b) The date, time, and location requested for use;

(c) The nature and purpose of the use;

(d) The estimated number of people expected to be involved, including participants, spectators, supporters, and detractors or others;

(e) A description and intended use of any object, free-standing or otherwise, that will be placed on university property including, but not limited to, furniture, hardware, props, vehicle, displays, sound amplification device, audio-visual device, or other objects; and

~~((e))~~ (f) Other information as may be reasonably requested.

[Statutory Authority: RCW 28B.35.120(12). WSR 18-13-073, § 516-35-010, filed 6/15/18, effective 7/16/18.]

AMENDATORY SECTION (Amending WSR 18-13-073, filed 6/15/18, effective 7/16/18)

WAC 516-35-020 Use of university property—Evaluation. (1) The president, or the president's designee, shall have the authority to accept, modify, or reject, in whole or in part, the planned use outlined or described in the notice submitted pursuant to this chapter.

(2) In evaluating a notice submitted pursuant to this chapter, the president, or the president's designee, may consider a variety of factors including, but not limited to, the following:

(a) Whether a university program or activity is scheduled at the location requested. First priority shall be given to the university program or scheduled activity;

(b) Whether the use is in connection with a university program or activity;

(c) Whether the intended use is compatible with the educational mission and objectives of the university.

(3) The president, or the president's designee, may specify reasonable fire, safety, law enforcement, sanitation, cleanup, insurance, and other risk- or impact-mitigating requirements for the use of university property. Charges may be applied in the event any of these requirements are deemed to have costs associated with them. ~~((The university will not provide utility connections or hookups.))~~

(4) Whenever the president, or the president's designee, rejects, either in whole or in part, a request for use of university property, the reasons for such rejection shall be stated in writing.

[Statutory Authority: RCW 28B.35.120(12). WSR 18-13-073, § 516-35-020, filed 6/15/18, effective 7/16/18.]

AMENDATORY SECTION (Amending WSR 18-13-073, filed 6/15/18, effective 7/16/18)

WAC 516-35-030 Use of university property—Exceptions, limitations, and termination of use. (1) The president, or the president's designee, may apply time, place, and manner exceptions to limit, relocate, reschedule, terminate, cancel, or prohibit the use of university property for freedom of expression activities to protect persons or property from harm and/or to prevent the disruption of university op-

erations including, but not limited to, violations of WAC 516-24-130, 516-52-020, or other laws or university policies.

(2) The use of university property for freedom of expression and assembly must comply with all requirements and limitations set forth in WAC 516-24-001 and 516-36-030.

(3) Any activity that involves the placement of furniture, hardware, prop, vehicle, display, sound amplification device, audio-visual device, or other free-standing object on university property for freedom of expression and assembly requires notice pursuant to WAC 516-35-010.

(a) Placed or free-standing objects that are not generally moveable or are of a size or nature that they may pose a personal safety risk, a risk to property, or block egress and traffic flow must have prior approval through a space reservation. To reserve university property, refer to chapter 516-36 WAC.

(b) Objects that are small, moveable by a single person, not permanent or do not need to be secured, and are lightweight; for example, small displays less than four feet in any dimension, folding tables, easels, or other similar object do not require a reservation to place on university property for a limited time and may be subject to other university imposed time, place, or manner restrictions.

(c) At least one person must be present at all times to attend to any placed object for the duration of use until completion of activity pursuant to subsection (6) of this section.

(4) In order to allow for the expression of a wide range of viewpoints and to allow the utilization of university property for a wide range of purposes, the use of university property for freedom of expression and assembly may be limited in duration to the following:

(a) Activities may not continue for longer than five calendar days from start to finish; and

(b) Activities are limited to 7:00 a.m. to 10:00 p.m. on any day due to the residential nature of campus.

(5) University employees, student groups, and university-affiliated groups may reserve outdoor space on campus for university-sponsored activities pursuant to chapter 516-36 WAC. If space is reserved for a university-sponsored activity, other persons and groups may be prohibited from engaging in freedom of expression and assembly in the reserved space. In such cases, a university representative may suggest another area on campus for freedom of expression and assembly.

(6) The group or individual utilizing university property for freedom of expression and assembly must return the university property to its original condition after the use and is responsible for the costs of cleanup and the costs to repair damages to the limited public forum area and other university property that arises from such use.

(7) The university will not provide utility connections or hook-ups.

(8) Nonuniversity groups and individuals may not use the interior of any facility for freedom of expression and assembly.

(9) Freedom of expression and assembly must otherwise be conducted in compliance with any other applicable university policies and rules, local ordinances, and state or federal law.

(10) **Exception - Open public meetings.** Nothing in these rules is intended to interfere with public participation in meetings of the university's governing board or associated student body that are required to be open to the public under the Open Public Meetings Act, chapter 42.30 RCW.

[Statutory Authority: RCW 28B.35.120(12). WSR 18-13-073, § 516-35-030, filed 6/15/18, effective 7/16/18.]

OTS-3633.1

AMENDATORY SECTION (Amending WSR 18-13-073, filed 6/15/18, effective 7/16/18)

WAC 516-36-001 Use of university property—General policy and ((purpose)) scope. Western Washington University is an educational institution provided and maintained by the people of the state of Washington in order to carry out its broad missions of teaching, research, and public service. A state agency is under no obligation to make its public property available to the community for private purposes, and the university generally reserves its property, buildings, and grounds for its mission-related activities, including: Instruction, research, assembly, student activities, and recreational activities related to education. However, the university makes property available for a variety of uses that are of benefit to the general public under the conditions set forth in these regulations if such general uses substantially relate to, or do not interfere with, university missions.

The purpose of these regulations is to establish procedures and reasonable controls for the use of university property by nonuniversity groups or individuals, university affiliates, university groups or individuals, or students, faculty, or staff who desire to use university property for personal, private, or nonuniversity group related activity.

Reasonable conditions may be imposed to regulate the timeliness of requests, to determine the appropriateness of space assigned, time of use, and to ensure the proper maintenance of the property.

[Statutory Authority: RCW 28B.35.120(12). WSR 18-13-073, § 516-36-001, filed 6/15/18, effective 7/16/18. Statutory Authority: RCW 28B.35.120(12), 34.05.220 (1)(b), 34.05.250, 28B.15.600, 42.17.310, 42.30.070 - 42.30.075, chapters 69.41 and 43.21C RCW. WSR 90-10-042, § 516-36-001, filed 4/27/90, effective 5/1/90; Order 75-10, § 516-36-001, filed 11/10/75; Order 72-10, § 516-36-001, filed 11/17/72.]

AMENDATORY SECTION (Amending WSR 18-13-073, filed 6/15/18, effective 7/16/18)

WAC 516-36-004 Freedom of expression and assembly activities not covered. Use of university property for freedom of expression and assembly activities is governed by rules set forth in chapter 516-35 WAC. This chapter does not apply to those individuals or groups using university property for freedom of expression and assembly activities except where directed by chapter 516.35 WAC.

[Statutory Authority: RCW 28B.35.120(12). WSR 18-13-073, § 516-36-004, filed 6/15/18, effective 7/16/18.]

AMENDATORY SECTION (Amending WSR 18-13-073, filed 6/15/18, effective 7/16/18)

WAC 516-36-008 Definitions. As used in this chapter, the following words and phrases mean:

(1) **Business day.** Any day, Monday through Friday (excluding holidays), during which university offices are open.

(2) **Freedom of expression and assembly.** Any activity protected by the first amendment to the Constitution of the United States and Article I, sections 4 and 5 of the Washington state Constitution. Such activities may include, but are not limited to, informational picketing, petition circulation, distribution of information leaflets or pamphlets, speechmaking, demonstrations, rallies, noncontracted appearances of speakers, protests, meetings to display group feelings or sentiments, and other types of constitutionally protected assemblies to share information, perspective, or viewpoints.

(3) **Limited public forum areas.** Areas of campus available as spaces for freedom of expression and peaceable assembly as protected by the Constitution of the United States and the Washington state Constitution, subject to reasonable time, place, and manner restrictions. The use of limited public forum areas for freedom of expression and peaceable assembly activities is governed by chapter 516-35 WAC except for those activities identified in that chapter that require reservations. Limited public forum areas are identified in WAC 516-35-001. Limited public forum areas do not include property such as:

(a) Classrooms or academic buildings (~~conducting~~) utilized for scheduled educational programming with the exception that nothing herein shall be read to interfere between or with the academic freedom of the instructor and enrolled students to engage in educational programs;

(b) Reservable or scheduled property subject to the provisions of this chapter;

(c) Private administrative or academic offices;

(d) Lavatory or maintenance facilities;

(e) Roadways or sidewalks necessary to permit the free flow of pedestrian, vehicular, emergency responder, or maintenance traffic; or

(f) Any other university property, on a case-by-case basis, where the reasonable application of time, place, and manner restrictions render the location inappropriate for expressive activities.

(4) **Nonuniversity group or individual.** An individual or a collection of individuals who do not have a formal relationship with the university. The term also includes members of these groups who are individually affiliated with the university who desire to use university property for personal, private, or nonuniversity group related activities.

(5) **Space administrator.** A university employee, appointed by the president, or the president's designee, who has the authority and responsibility for a designated subset of university property to create and enforce policies and procedures for space use, delegate space approval authority, and are responsible for university space being used

in accordance with this chapter, chapter 516-35 WAC, and the university mission.

(6) **Space approval authority.** A university employee who has the authority, consistent with these regulations and approved campus policies and procedures, to review, approve, amend, or deny requests for rental or use of university property.

(a) The university shall maintain a list of the approving authorities.

(b) Requests for approval to lease space shall be governed by chapter 516-34 WAC.

(7) **Time, place, and manner.** Reasonable limitations on the exercise of expressive rights that are neutral as to the content of expression and leave open alternative channels of expression.

(8) **University.** Western Washington University.

(9) **University affiliate.** An entity that has a formal relationship with the university and also encompasses such entity's officers, agents, and employees. The term includes, but is not limited to, the office of the attorney general, contracted agencies, and 501 (c)(3) organizations with formal relationships to the university.

(10) **University group or individual.** An individual or collection of individuals that has a formal relationship with the university, such as a recognized employee group of the university, a recognized student group or organization, or an individual acting on behalf of the group or organization as well as an individual who is a currently enrolled student or current employee.

(11) **University property.** All buildings, grounds, or assets owned or controlled by the university and the streets, sidewalks, plazas, parking lots, and roadways within the boundaries of property owned or controlled by the university.

[Statutory Authority: RCW 28B.35.120(12). WSR 18-13-073, § 516-36-008, filed 6/15/18, effective 7/16/18.]

AMENDATORY SECTION (Amending WSR 18-13-073, filed 6/15/18, effective 7/16/18)

WAC 516-36-025 Scheduling and reservation practices—Duties of requestor. (1) The primary purpose of university property is to serve the university's instructional, research, and public service activities. However, when not required for scheduled university use, property may be available for rental by nonuniversity groups or individuals in accordance with current fee schedules and other relevant terms and conditions.

(2) No university property may be used by individuals or groups unless the property, including buildings, equipment, and land, have been reserved except as provided in chapter 516-35 WAC. Reservations may not be required in limited public forum areas if the intended use of the property would not cause cost to the university or impact scheduled university activity.

(3) Requests to use university property are made to the space approval authority, as defined in WAC 516-36-008(6) and in accordance with WAC 516-36-020.

(4) The space approval authority may deny the request to use university property when such use would violate any of the limitations

set forth in WAC 516-36-030 or where the requestor is unwilling to comply with university requirements for the use of property, as authorized by this chapter.

(5) The university may require an individual or organization to make an advance deposit, post a bond or obtain insurance to protect the university against cost or other liability as a condition to allowing use of any university property.

(6) When the university grants permission to an individual or organization to use its property it is with the understanding and on the condition that the individual or organization assumes full responsibility for any loss or damage resulting from such use and agrees to hold harmless and indemnify the university against any loss or damage claim arising out of such use.

(7) The university and/or government authorities may specify fire, safety, sanitation, and special regulations for activities occurring in, on or with university property. It is the responsibility of the user to obey those regulations, as well as to comply with other applicable university policies, procedures, rules, regulations, and state, local, and federal laws.

(8) When the university grants permission to an individual or organization to use its facilities, it is with the understanding and on the condition that the individual or organization is responsible to clean the facility and leave it in its original condition at the conclusion of its use or event. The facility may be subject to inspection by a representative of the university after the event. Reasonable charges may be assessed against the sponsoring organization for the costs of extraordinary cleanup or for the repair of the damaged property.

[Statutory Authority: RCW 28B.35.120(12). WSR 18-13-073, § 516-36-025, filed 6/15/18, effective 7/16/18.]

AMENDATORY SECTION (Amending WSR 18-13-073, filed 6/15/18, effective 7/16/18)

WAC 516-36-030 Limitations on use. The following limitations apply to all uses of any university property, unless specifically permitted by the university for special events:

(1) University property may not be used in ways which obstruct vehicular, bicycle, pedestrian, or other traffic or otherwise interfere with ingress or egress to the university, any university building or facility, or that obstruct or interfere with educational activities or other lawful activities on university grounds, university controlled property, or at university sponsored events unless approved by the president, or the president's designee.

(2) University property may not be used in ways that interfere with educational, research, or public service activities inside or outside any university building or otherwise prevent the university from fulfilling its mission and achieving its primary purpose.

(3) University property may not be used for the purpose of campaigning regarding a ballot proposition or by, for, or against candidates who have filed for public office, except that:

(a) This provision does not apply to candidates for Western Washington University student offices or student ballot propositions;

(b) University groups may sponsor candidate forums as well as issue forums regarding ballot propositions;

(c) Candidates for office and proponents or opponents of ballot propositions may rent university property as a nonuniversity group or individual on a short-term basis for campaign purposes to the same extent and on the same basis as may other individuals or groups;

(d) Candidates for office and proponents or opponents of ballot propositions may use the limited public forum areas using the procedures of chapter 516-35 WAC to the same extent and on the same basis as may other individuals or groups; and

(e) For informational purposes, a university group may invite a candidate or another political speaker to one of the meetings of its membership on university property, if it has complied with the scheduling procedures of WAC 516-36-025 and applicable university policy.

(4) University property may not be used in ways that create safety hazards or pose unreasonable safety risks to students, employees, invitees, or guests.

(5) University property may not be used for commercial purposes, including: Advertising, commercial solicitation, sales, or other activities to promote a product, except as allowed under WAC 516-36-040.

(6) University property may not be used in furtherance of or in connection with illegal activity.

(7) University property may not be used in such manner as to create a hazard or result in damage to university property.

(8) University property may not be used where such use would create undue stress on university resources (e.g., a request for a major event may be denied if another major event is already scheduled for the same time period, because of demands for parking, security coverage, etc.); use of limited public forum areas for freedom of expression and assembly must be in accordance with chapter 516-35 WAC and this chapter if applicable.

(9) Use of audio amplifying equipment or sound generation is permitted only in locations and at times that will not disturb the normal conduct of university operations. Advance permission by the president, or the president's designee, is required to use audio amplifying equipment or generate sound that may disturb the normal conduct of university operations.

(10) Alcoholic beverages may be served only as allowed under university policies. It is the responsibility of the event sponsor to obtain all necessary licenses from the Washington state liquor and cannabis board and adhere to their regulations, as well as all local ordinances, university rules, and regulations.

(11) No person may erect a tent or other shelter on university property or remain overnight on university property, including in a vehicle, trailer, tent, or other shelter, with the following exceptions:

(a) The use and occupancy of university housing in accordance with chapter 516-56 WAC;

(b) The use of property by a university employee or agent who remains overnight to fulfill the responsibilities of their position;

(c) The use of property by a university student who remains overnight to fulfill the responsibilities of their course of study;

(d) The use of property where overnight stays are specifically permitted in identified locations for attendees at special events designated by the university.

(e) The use of property during a university, local, state or federal declaration of an emergency as determined by the president, or the president's designee.

(12) Signs and posters and visual displays may be placed only at those locations authorized under, and in accordance with university policies.

(13) Handbills, leaflets, pamphlets, flyers, and similar materials may be distributed only in relation to university sanctioned activities or for purposes of freedom of expression. Materials may not be distributed in a manner that results in littering or requires university resources for disposal.

(14) Animals are only allowed on university property in accordance with WAC 516-52-010 and university policies.

(15) Smoking is not allowed in or on university property, except in accordance with chapter 70.160 RCW.

(16) Mopeds, Segways, skateboards, roller skates, roller blades, bicycles, and similar personal transportation devices may be used on campus in accordance with chapters 516-13 and 516-15 WAC.

[Statutory Authority: RCW 28B.35.120(12). WSR 18-13-073, § 516-36-030, filed 6/15/18, effective 7/16/18. Statutory Authority: RCW 28B.35.120(12), 34.05.220 (1)(b), 34.05.250, 28B.15.600, 42.17.310, 42.30.070 - 42.30.075, chapters 69.41 and 43.21C RCW. WSR 90-10-042, § 516-36-030, filed 4/27/90, effective 5/1/90; Order 75-10, § 516-36-030, filed 11/10/75.]

OTS-3634.1

AMENDATORY SECTION (Amending WSR 18-09-049, filed 4/13/18, effective 5/14/18)

WAC 516-52-020 Weapons and armaments prohibited. (1) Definitions. As used in this section, the following words and phrases mean:

(a) Armor or armaments. Includes, but are not limited to, shields, body armor, tactical gear, tactical face (~~(masks)~~) coverings, and helmets.

(b) Firearm. A weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder, whether loaded or unloaded.

(c) Weapon. Includes, but is not limited to, air guns, pellet guns, paint ball guns, or other pneumatic propellant devices, bows, crossbows, slingshots or other muscle powered projectile devices, daggers, swords, knives or other cutting or stabbing instruments with blades longer than three inches, clubs, bats, sand clubs, truncheons, metal knuckles, incendiary devices or materials, or any other objects or instruments apparently capable of producing bodily harm.

(2) Only such persons who are authorized to carry firearms, ammunition, or other weapons or armaments as duly appointed and commissioned law enforcement officers in the state of Washington, commissioned by agencies of the United States government, or authorized by contract with the university, shall possess firearms or other weapons or armaments issued for their possession by their respective law enforcement agencies or employers while on the campus or other universi-

ty-controlled property, including, but not limited to, residence halls.

(3) Other than the law enforcement officers or other individuals referenced in subsection (2) of this section, individuals seeking to bring a firearm or other weapon onto campus, university-owned property, or a university sponsored event must obtain prior written authorization at the university public safety department, which shall have sole authority to review and approve any such request and, if approval is granted, establish conditions to the firearm or weapon authorization.

(4) Members of the campus community and visitors who bring firearms or other weapons or armaments to campus without prior authorization must immediately remove them from university property or place the firearm(s), weapon(s), or armament(s) in the university provided storage facility. The storage facility is located at the university public safety department and is accessible (~~twenty-four~~) 24 hours per day.

(5) Possession of a valid concealed pistol license authorized by the state of Washington is not an exemption under this section. However, nothing in this section shall prevent an individual holding a valid concealed pistol license from securing their pistol in a vehicle as authorized under RCW 9.41.050.

(6) Except for those persons identified in subsection (2) of this section or under the circumstances described in subsection (3) or (4) of this section, possession of firearms, ammunition, fireworks, and explosives is prohibited on the university campus, university-owned property, and at university sponsored events. No one may possess fireworks or explosives unless certified or licensed to do so for purposes of conducting university-authorized activities, building construction or demolition.

(7) Some (~~weapons~~) items including, but not limited to, sports equipment, kitchen utensils, laboratory materials and equipment, personal protective equipment, safety training equipment, costume/theatrical masks, and props in campus theatre productions are permitted when used for the purpose for which they are intended. Use of weapons, armor, or armaments in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons or property, or in any way to avoid apprehension for a criminal act or acts is prohibited.

(8) Violations of this section are subject to appropriate disciplinary or legal action.

[Statutory Authority: RCW 28B.35.120(12). WSR 18-09-049, § 516-52-020, filed 4/13/18, effective 5/14/18; WSR 93-01-080, § 516-52-020, filed 12/14/92, effective 1/14/93; WSR 90-17-031, § 516-52-020, filed 8/9/90, effective 9/1/90.]

WSR 22-08-021
PROPOSED RULES
POLLUTION LIABILITY
INSURANCE AGENCY

[Filed March 25, 2022, 2:05 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-21-030.

Title of Rule and Other Identifying Information: Chapter 374-80 WAC, Advice and technical assistance program.

Hearing Location(s): On May 11, 2022, at 11:30 a.m. - 1:00 p.m., virtual meeting; on May 18, 2022, at 3:30 - 5:30 p.m., virtual meeting; and on May 24, 2022, at 11:30 a.m. - 1:30 p.m., virtual meeting. Meeting link can be found on pollution liability insurance agency's (PLIA) website www.plia.wa.gov.

Date of Intended Adoption: June 3, 2022.

Submit Written Comments to: Phi Ly, P.O. Box 40930, Olympia, WA 98504-0930, email rules@plia.wa.gov, by May 31, 2022.

Assistance for Persons with Disabilities: Contact Xyzlinda Marshall, phone 360-407-0515, TTY 711 or 800-833-6388, email rules@plia.wa.gov, by May 25, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: PLIA provides an effective and efficient government funding model to support owners and operators in meeting financial responsibility and environmental clean-up requirements for underground storage tanks.

Under this program, the agency provides advice and technical assistance regarding a completed or proposed independent remedial action and application of chapters 70A.330 and 70A.305 RCW. The proposed changes to the rule language clarify program procedures for administering the program that include: (1) Program eligibility, (2) services, (3) conditions when an opinion would be rescinded, and (4) program termination.

Reasons Supporting Proposal: This chapter supports the state's clean-up rules by providing advice and technical assistance to owners and operators who are conducting independent clean-ups of petroleum releases. The amended rule clarifies the process, procedures, and guidelines for how PLIA operates the program.

Statutory Authority for Adoption: RCW 70A.330.040; and chapter 70A.305 RCW.

Statute Being Implemented: Not applicable.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Phi Ly, 500 Columbia Street N.W., Olympia, WA 98501, 360-407-0517.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Cost-benefit analysis is not required for an existing program.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal

statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

March 25, 2022

Phi Ly

Legislative and Policy Manager

OTS-3669.2

AMENDATORY SECTION (Amending WSR 22-01-069, filed 12/9/21, effective 1/9/22)

WAC 374-80-010 Authority and purpose. The purpose of this chapter is to establish a program for providing technical assistance (~~(to a person)~~) regarding a release or suspected release (~~(of (1) heating oil from an active, decommissioned, or abandoned heating oil tank; or (2) petroleum)~~) from (~~(a qualified petroleum)~~) an eligible petroleum storage tank system. Under this program, the agency will provide advice and technical assistance regarding a completed or proposed independent remedial action and application of chapters 70A.330 and 70A.305 RCW.

Any opinion provided by the agency under this program is advisory only and not binding upon either the pollution liability insurance agency or the department of ecology. Participation in this program is not a settlement with the state under the Model Toxics Control Act. Persons conducting independent remedial actions do so at their own risk(~~(r)~~) and may be required to take additional remedial actions by the department of ecology if such actions are determined to be necessary under the Model Toxics Control Act.

[Statutory Authority: RCW 70A.01.010 and 70A.01.020. WSR 22-01-069, § 374-80-010, filed 12/9/21, effective 1/9/22. Statutory Authority: RCW 70.149.040. WSR 20-02-071, § 374-80-010, filed 12/26/19, effective 1/26/20. Statutory Authority: Chapter 70.148 RCW. WSR 03-06-015, § 374-80-010, filed 2/21/03, effective 3/24/03. Statutory Authority: Chapter 70.149 RCW. WSR 97-20-094, § 374-80-010, filed 9/29/97, effective 10/30/97.]

AMENDATORY SECTION (Amending WSR 22-01-069, filed 12/9/21, effective 1/9/22)

WAC 374-80-020 Definitions. Unless the context requires otherwise, the definitions in this section shall apply throughout this chapter.

(1) "Abandoned heating oil tank" means a consumptive use heating oil tank system that has been abandoned or decommissioned and is no longer in service or use.

(2) "Active heating oil tank" means a consumptive use heating oil tank system that is in use.

(3) "Agency" means the Washington state pollution liability insurance agency (PLIA).

(4) "Applicant" means the (~~(person)~~) party who is seeking advice and assistance from the (~~(petroleum)~~) advice and technical assistance program, whose application has been accepted by the agency.

(5) "Decommissioned heating oil tank" means a heating oil tank system that has been removed from operation by an approved method such as abandonment in place (e.g., cleaning and filling with an inert material) or by removal from the ground.

(6) "Director" means the director of the Washington state pollution liability insurance agency.

(7) "Eligible petroleum storage tank system" means the following petroleum storage tank systems:

(a) An active, decommissioned, or abandoned heating oil tank; or

(b) A petroleum storage tank system identified by the agency or department of ecology based on the relative risk posed by the release to human health and the environment as determined under chapter 70A.305 RCW, or other factors identified by the department of ecology.

(8) "Heating oil" means any petroleum product used for space heating in oil-fired furnaces, heaters and boilers, including stove oil, diesel fuel, or kerosene. "Heating oil" does not include petroleum products used as fuel in motor vehicles, marine vessels, trains, buses, aircraft, or any off-highway equipment not used for space heating, or the generation of electrical energy or waste oil, hoists, pipelines, spills from transportation or a form of transport.

~~((8))~~ (9) "Heating oil tank system" means a tank and its connecting pipes, whether above or below ground, or in a basement, with pipes connected to the tank for space heating of human living or working space on the premises where the tank is located.

~~((9))~~ (10) "MTCA" means the Model Toxics Control Act, chapter 70A.305 RCW and implementing regulations in chapters 173-340 and 173-204 WAC.

~~((10))~~ (11) "Petroleum" means any petroleum-based substance including crude oil or any fraction that is liquid at standard conditions of temperature and pressure. The term petroleum includes, but is not limited to, petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, used oils, mineral spirits, Stoddard solvents, waste oils and heating oils. The term petroleum does not include propane, asphalt, or any other petroleum product that is not liquid at standard conditions of temperature and pressure. Standard conditions of temperature and pressure are at (~~(sixty))~~ 60 degrees Fahrenheit and 14.7 pounds per square inch absolute.

~~((11))~~ (12) "Petroleum storage tank system" means a storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other substances. The systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, used oils, and heating oils. "Petroleum storage tank system" does not include any storage tank system regulated under chapter (~~(70A.305))~~ 70A.300 RCW.

~~((12))~~ (13) "Program" or "technical assistance program" means ~~((petroleum))~~ advice and technical assistance program authorized under RCW 70A.330.040(7).

~~((13) "Qualified petroleum storage tank system" means a storage tank system that has been identified as eligible for services under the petroleum technical assistance program by the department of ecology based on the relative risk posed by the release to human health and the environment.)~~

(14) "Release" means any intentional or unintentional entry of petroleum into the environment including, but not limited to, a spill, leak, emission, escape, or leaching into the environment.

(15) "Remedial action" has the same meaning as defined in RCW 70A.305.020.

(16) "Sampling and testing" means a PLIA-approved and recognized technique(s) or procedure(s) for measuring or determining the presence and extent of hydrocarbons in ~~((soil and/or water))~~ the environment.

(17) "Site" has the same meaning as "facility" as defined in RCW 70A.305.020.

~~((18) "Site characterization" means an investigation of the nature and extent of the release.)~~

[Statutory Authority: RCW 70A.01.010 and 70A.01.020. WSR 22-01-069, § 374-80-020, filed 12/9/21, effective 1/9/22. Statutory Authority: RCW 70.149.040. WSR 20-02-071, § 374-80-020, filed 12/26/19, effective 1/26/20. Statutory Authority: Chapter 70.149 RCW. WSR 97-20-094, § 374-80-020, filed 9/29/97, effective 10/30/97.]

AMENDATORY SECTION (Amending WSR 20-02-071, filed 12/26/19, effective 1/26/20)

WAC 374-80-040 Procedures. (1) **Application.** To ~~((receive advice and technical assistance))~~ request services under this program, ~~((a person who is conducting or otherwise interested in independent remedial actions where there is a suspected or confirmed release of petroleum or heating oil from a qualified petroleum storage tank system or a heating oil tank,))~~ an applicant must submit an application ~~((provided by the agency requesting advice and assistance and agreeing))~~ and agree to the terms ~~((of the program))~~ specified by the agency.

(2) **Eligibility.**

(a) To be eligible to request services for a site under the technical assistance program, the applicant must demonstrate the following:

(i) A release from an eligible petroleum storage tank system is suspected or confirmed at the site;

(ii) The release has been reported to the department of ecology in accordance with WAC 173-340-310; and

(iii) The applicant is conducting or otherwise interested in conducting independent remedial actions at the site.

(b) An applicant that has received funding from the PLIA underground storage tank loan and grant program; the heating oil pollution liability insurance program; or the commercial underground storage tank reinsurance program ((are)) is presumed eligible for the technical assistance program unless ~~((a specific determination is made by PLIA))~~ the agency or the department of ecology determines that the ap-

plicant does not have (~~a qualified petroleum~~) an eligible storage tank system.

(3) **Services.** The agency may provide the following advice and technical assistance under the program:

(a) Observe and/or interpret the results of site investigation including, but not limited to, sampling and testing, (~~site characterization results,~~) or other appropriate assessments conducted by the applicant;

(b) Provide technical assistance on how to meet the substantive requirements of MTCA;

(c) Review planned independent remedial actions for a site or property and provide written opinions on whether further remedial action is likely necessary to meet the substantive requirements of MTCA;

(d) Review completed independent remedial actions for a site or property and provide written opinions on whether further remedial action is necessary to meet the substantive requirements of MTCA;

(~~and~~)

(e) Work with the applicant to monitor progress towards milestones and provide written opinions upon request at each stage of cleanup; and

(f) Other appropriate activities approved by the director.

(4) The applicant may select an independent contractor to perform (~~site characterization, sampling and testing, or other~~) remedial actions at the site. The independent contractor is not to be considered for any purpose an employee or agent of PLIA. The applicant will enter into an agreement with the contractor regarding scope or extent of work and fees for services.

(5) **Sampling(~~(7)~~) and testing(~~(, and site characterization)~~) protocols.** The agency will provide requested advice and technical assistance only if sampling(~~(7)~~) and testing(~~(, and site characterization)~~) are performed in accordance with (~~protocols~~) agency-approved (~~by the director~~) methodology.

(6) **Rescinding opinions.** The agency may rescind (~~a no further action determination if PLIA's understanding of the~~) any written opinion if the agency received information that conditions at the site (~~change and~~) changed or the site no longer meets the substantive requirements of MTCA.

(a) Where the issues are minor or administrative in nature, the agency will provide the applicant with (~~a~~) written notice (~~of suspension~~) detailing the issues to be addressed. The applicant will have (~~sixty~~) 60 days to (~~address the issues. If~~) respond to the agency with how the issues are addressed (~~to PLIA's satisfaction, the notice of suspension will be removed~~). If the issues are not addressed to PLIA's satisfaction, the agency (~~will~~) may issue a letter rescinding the (~~no further action determination~~) written opinion. PLIA (~~may~~) will notify the department of ecology (~~of this action~~) if PLIA rescinds a no further action opinion.

(b) Where the issues are substantive in nature, the agency (~~will~~) may issue a letter rescinding the (~~no further action determination~~) written opinion. PLIA will notify the department of ecology (~~of this action~~) if PLIA rescinds a no further action opinion.

[Statutory Authority: RCW 70.149.040. WSR 20-02-071, § 374-80-040, filed 12/26/19, effective 1/26/20. Statutory Authority: Chapter 70.148 RCW. WSR 03-06-015, § 374-80-040, filed 2/21/03, effective 3/24/03. Statutory Authority: Chapter 70.149 RCW. WSR 97-20-094, § 374-80-040, filed 9/29/97, effective 10/30/97.]

AMENDATORY SECTION (Amending WSR 20-02-071, filed 12/26/19, effective 1/26/20)

WAC 374-80-045 Environmental covenant. (1) **Consultation.** Where PLIA issues a written opinion under this program, and the remedial action requires an environmental covenant, ~~((PLIA))~~ the applicant must consult with and seek comment on the draft environmental covenant from a city or county department with land use planning authority for real property subject to the covenant. The consultation and opportunity for comment must take place before the property owner records the environmental covenant.

(2) **Periodic review.** Where PLIA has issued a written opinion under this program, and the remedial action requires an environmental covenant, PLIA must conduct a review of the effectiveness of the environmental covenant ~~((periodically))~~. The agency must conduct the periodic review at least once every five years.

(3) **Violation.** If the terms of the environmental covenant are not complied with, the agency may rescind the no further action ~~((determination))~~ opinion.

(a) Where the issues are minor or administrative in nature, the agency will provide the applicant with ~~((a))~~ written notice ~~((of suspension))~~ detailing the issues to be addressed. The applicant must address the issues within ~~((sixty))~~ 60 days. ~~((If the issues are addressed to PLIA's satisfaction, the notice of suspension will be removed.))~~ If the issues are not addressed to PLIA's satisfaction, the agency will issue a letter rescinding the no further action ~~((determination))~~ opinion. PLIA ~~((may))~~ will notify the department of ecology of this action.

(b) Where the issues are substantive in nature, the agency will issue a letter rescinding the no further action ~~((determination))~~ opinion. PLIA will notify the department of ecology of this action.

(4) **Termination.** If the conditions at the site requiring an environmental covenant no longer exist, the property owner may petition the agency to have the covenant terminated. PLIA will seek public comment on the proposed termination of the environmental covenant. If, after the public comment period, PLIA agrees to the termination of the environmental covenant, the agency will seek termination by consent of the covenant.

(5) **Reimbursement.** The agency may recover costs related to environmental covenants from the applicant and/or the property owner. These costs are not covered by WAC 374-80-050.

[Statutory Authority: RCW 70.149.040. WSR 20-02-071, § 374-80-045, filed 12/26/19, effective 1/26/20.]

AMENDATORY SECTION (Amending WSR 20-02-071, filed 12/26/19, effective 1/26/20)

WAC 374-80-050 Reimbursement. (1) The agency must collect, from the applicant, a fee to cover the costs incurred in providing advice and technical assistance under the program.

(2) ~~The ((fee for providing advice and technical assistance under this program is:~~

~~(a) One thousand dollars if there is a release or suspected re-lease of heating oil from an active, decommissioned, or abandoned heating oil tank system.~~

~~(b) Seven thousand five hundred dollars if there is a release or threatened release of petroleum from a qualified petroleum storage tank system.)~~ agency will post the fee for providing advice and technical assistance under this program on the agency's website and in the program guidance.

(a) The agency will adjust the enrollment fee on an annual basis in July of each calendar year.

(b) The fee is based on the calculation of the costs incurred providing advice and technical assistance and other factors identified by the agency. The agency will make the fee calculation of identified costs available upon request.

(3) The applicant must pay the fee upon acceptance into the program. No advice or technical assistance will be provided until the fee has been paid.

~~(4) ((The fee is nonrefundable. However, if))~~ Unless the agency determines that an applicant's petroleum storage tank system is ineligible after the applicant enters the program, ~~((the agency may re-fund))~~ the fee is nonrefundable.

(5) Fees received by the agency under the program must be deposited in the heating oil pollution liability trust account.

[Statutory Authority: RCW 70.149.040. WSR 20-02-071, § 374-80-050, filed 12/26/19, effective 1/26/20. Statutory Authority: Chapter 70.148 RCW. WSR 03-06-015, § 374-80-050, filed 2/21/03, effective 3/24/03. Statutory Authority: Chapter 70.149 RCW. WSR 97-20-094, § 374-80-050, filed 9/29/97, effective 10/30/97.]

AMENDATORY SECTION (Amending WSR 97-20-094, filed 9/29/97, effective 10/30/97)

WAC 374-80-060 Liability. (1) The state of Washington and/or the pollution liability insurance agency accepts no liability, nor portion of liability, from the ~~((heating oil tank owner or operator))~~ applicant.

(2) The state of Washington, the pollution liability insurance agency, and its officers and employees are immune from all liability, and no cause of action arises from any act or omission in providing, or failing to provide, advice, opinion, conclusion, or assistance under this program.

[Statutory Authority: Chapter 70.149 RCW. WSR 97-20-094, § 374-80-060, filed 9/29/97, effective 10/30/97.]

NEW SECTION

WAC 374-80-070 Termination. (1) The issuance of a no further action opinion constitutes notice of termination of the program agreement by the agency.

(2) The agency may terminate a program agreement for other reasons including, but not limited to, inactivity at the site for 12 consecutive months or violating the agency code of conduct.

(3) The applicant may terminate the program agreement at any time. As specified in WAC 374-80-050, the fee is nonrefundable.

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WSR 22-08-023
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT
[Filed March 25, 2022, 4:15 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 357-01-073
Choice performance confirmation, 357-01-230 Performance management confirmation, 357-01-351 Veterans placement program, 357-19-400 May an employer convert a nonpermanent appointment to a probationary or trial service appointment?, 357-31-565 May employers grant paid leave for purposes of recognition?, 357-37-050 May an employer factor in employee performance when granting recognition leave?, 357-37-055 How does an employer receive choice performance confirmation which enables them to factor in employee performance when granting recognition leave?, 357-37-060 What elements will the director evaluate to determine if an employer should be granted choice performance confirmation?, 357-46-020 What must be included in the employer's layoff procedure?, 357-46-050 How does an employer determine an employee's employment retention rating?, 357-58-065 Definitions for WMS, 357-58-190 What must be addressed in agency's WMS recruitment and selection policy and/or procedure?, 357-58-425 May an employer factor in employee performance when granting recognition leave for WMS employees?, 357-58-430 How does an employer receive choice performance confirmation which enables them to factor in performance when granting recognition leave for WMS employees?, and 357-58-435 What elements will the director evaluate to determine if an employer should be granted choice performance confirmation?

Hearing Location(s): On May 12, 2022, at 8:30 a.m., at Office of Financial Management (OFM), audio conference only, Dial-in 888-285-8919, Pin 8101730, Code (if asked) 415.

Date of Intended Adoption: May 19, 2022.

Submit Written Comments to: Brandy Chinn, OFM, P.O. Box 47500, Olympia, WA 98501, email brandy.chinn@ofm.wa.gov, fax 360-586-4694, by May 5, 2022.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by May 5, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To add a new section to define veterans' placement program; to allow employers to change the status of a nonpermanent appointment to probationary or trial service if the nonpermanent position was filled by using a veterans' placement program; and to state that an employer's Washington management service recruitment and selection policy and/or procedure should consider making appointments from a veterans' placement program. The proposed amendment to WAC 357-19-400(1) is to repeal the language "if the employee held permanent status prior to the nonpermanent appointment" because in order for an employee to be in a trial service they must hold permanent status.

The amendment to WAC 357-01-073 and 357-58-065(2) is to define "choice performance confirmation" and to repeal WAC 357-01-230 and 357-58-065(9) to remove the prior definition for performance management confirmation. In addition, to amend the current performance management confirmation (PMC) WAC to reflect the choice performance confirmation (CPC) program title change and remove language referencing

the ability to factor employee performance when making layoff decisions.

Reasons Supporting Proposal: To align Title 357 WAC with Governor Jay Inslee's Executive Order 19-01 directing state agencies to bridge employment opportunities to increase veteran employment. Veterans' placement programs are considered bridge employment opportunities and state agencies are strongly encouraged to use them.

To align Title 357 WAC with CPC program. In September 2016, state human resources (SHR) launched CPC pilot program, a modified version of PMC program. The pilot was designed to assist state employers in the development of a performance management program that (1) creates and manages a performance-based culture; (2) links individual, team, and organizational performance goals; (3) meaningfully distinguishes among different levels of performance; and (4) develops a fair and transparent performance program. The pilot program included changes to the performance-based incentives for confirmed agencies. While CPC was operating as a pilot program, it remained operating under PMC program title. During the preparation for the pilot, SHR met with all CPC confirmed agencies to solicit feedback and recommendations. During that process, SHR learned that participating agencies had never and do not intend on using layoff as part of the program. We are proposing to remove layoff as an option for performance-based incentives. Removing the language "factor employee performance when making layoff decisions" will not impact confirmed agencies.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: Chapter 41.06 RCW.

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 128 10th Avenue, Olympia, WA 98501, 360-878-2901.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

March 25, 2022
Roselyn Marcus
Assistant Director of
Legal and Legislative Affairs

OTS-3647.2

NEW SECTION

WAC 357-01-073 Choice performance confirmation. Approval granted by the director to an employer allowing the employer to factor in individual employee performance when granting recognition leave.

[]

NEW SECTION

WAC 357-01-351 Veterans placement program. A program that is designed to grant transitioning service members and veterans additional support to attain state employment.

[]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 357-01-230 Performance management confirmation.

OTS-3622.3

AMENDATORY SECTION (Amending WSR 21-14-042 and 22-01-153, filed 6/30/21 and 12/15/21, effective 7/1/22)

WAC 357-19-400 May an employer convert a nonpermanent appointment to a probationary or trial service appointment? (1) When an employer uses a competitive process to make a nonpermanent appointment to fill a position in the absence of a permanent employee or fill a position nonpermanently due to the impending or actual layoff of a permanent employee(s), the employer may change the status of the appointment to probationary or ~~((if the employee held permanent status prior to the nonpermanent appointment))~~ to trial service if:

(a) The permanent employee does not return to the position or the layoff action has been implemented; and

(b) The employer needs to fill the position permanently.

(2) When an employer uses a veterans placement program to fill a nonpermanent position for any reason listed in WAC 357-19-360, the employer may change the status of the appointment to probationary or to trial service.

(3) At the discretion of the appointing authority, time spent in the nonpermanent appointment may count towards the probationary or trial service period for the permanent position.

[Statutory Authority: Chapter 41.06 RCW and RCW 41.06.070. WSR 21-14-042 and 22-01-153, § 357-19-400, filed 6/30/21 and 12/15/21, ef-

fective 7/1/22. Statutory Authority: Chapter 41.06 RCW. WSR 06-15-066, § 357-19-400, filed 7/13/06, effective 8/14/06; WSR 05-01-206, § 357-19-400, filed 12/21/04, effective 7/1/05.]

OTS-3648.1

AMENDATORY SECTION (Amending WSR 07-17-124, filed 8/20/07, effective 9/20/07)

WAC 357-31-565 May employers grant paid leave for purposes of recognition? Employers who have received choice performance (~~(management)~~) confirmation may grant employees up to five days of paid leave within a (~~(twelve-month)~~) 12-month period to recognize outstanding accomplishments or the achievement of predefined work goals by individual employees or units. Leave granted under this provision:

(1) Is not payable upon layoff, dismissal, separation, or resignation or transferable between employers;

(2) Must be used within (~~(twelve)~~) 12 months of the leave being granted.

[Statutory Authority: Chapter 41.06 RCW. WSR 07-17-124, § 357-31-565, filed 8/20/07, effective 9/20/07; WSR 06-23-091, § 357-31-565, filed 11/14/06, effective 12/18/06; WSR 05-08-140, § 357-31-565, filed 4/6/05, effective 7/1/05.]

OTS-3649.1

AMENDATORY SECTION (Amending WSR 16-05-056, filed 2/12/16, effective 3/14/16)

WAC 357-37-050 May an employer factor in employee performance when granting recognition leave (~~(and when making layoff decisions)~~)? An employer may factor in an employee's performance when granting recognition leave (~~(and when making layoff decisions)~~) if the employer has received choice performance (~~(management)~~) confirmation.

[Statutory Authority: Chapter 41.06 RCW. WSR 16-05-056, § 357-37-050, filed 2/12/16, effective 3/14/16; WSR 05-01-194, § 357-37-050, filed 12/21/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 16-05-056, filed 2/12/16, effective 3/14/16)

WAC 357-37-055 How does an employer receive choice performance (~~(management)~~) confirmation which enables them to factor in employee performance when granting recognition leave (~~(and when making layoff decisions)~~)? Employers may request choice performance (~~(management)~~)

confirmation from the director. The director will use the elements listed in WAC 357-37-060 to assess and evaluate an employer's readiness to fairly and objectively factor in employee performance when granting recognition leave (~~and when making layoff decisions~~). If the director determines that the employer has developed a performance management program that encompasses the necessary elements, the employer will be granted choice performance (~~management~~) confirmation.

[Statutory Authority: Chapter 41.06 RCW. WSR 16-05-056, § 357-37-055, filed 2/12/16, effective 3/14/16; WSR 05-01-194, § 357-37-055, filed 12/21/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 16-05-056, filed 2/12/16, effective 3/14/16)

WAC 357-37-060 What elements will the director evaluate to determine if an employer should be granted choice performance (~~management~~) confirmation? The director will evaluate the following elements to determine if an employer should receive choice performance (~~management~~) confirmation:

- (1) Executive commitment to a performance-based culture;
- (2) Present status of performance management in the organization;
- (3) Defined roles and responsibilities for implementing and sustaining a performance management system;
- (4) Policy and process for holding managers accountable for properly carrying out their roles and responsibilities in performance management;
- (5) Internal policies and procedures for a performance management system;
- (6) Strategy for communicating to employees regarding policies, procedures and timelines for performance management;
- (7) Performance management orientation and training for managers and supervisors;
- (8) Internal mechanisms for managing funding for performance-based recognition leave;
- (9) Implementation of a performance and development plan for all employees subject to performance factor decisions; and
- (10) Process for monitoring and measuring success.

[Statutory Authority: Chapter 41.06 RCW. WSR 16-05-056, § 357-37-060, filed 2/12/16, effective 3/14/16; WSR 05-01-194, § 357-37-060, filed 12/21/04, effective 7/1/05.]

OTS-3650.1

AMENDATORY SECTION (Amending WSR 10-11-068, filed 5/14/10, effective 6/15/10)

WAC 357-46-020 What must be included in the employer's layoff procedure? The employer's layoff procedure must:

(1) Identify clearly defined layoff unit(s) that minimize disruption of the employer's total operation and provide options to employees scheduled for layoff;

- Employers may establish separate and exclusive layoff units for project employment, employee business units, or special employment programs.

(2) Provide opportunities to avoid or minimize layoff, such as transfers, voluntary demotion, voluntary reduced work schedule, or voluntary leave without pay;

(3) Require the appointing authority to provide written notice of layoff to employees in accordance with WAC 357-46-025;

(4) Provide layoff options for permanent employees being laid off as provided in WAC 357-46-035;

(5) Address the time frame in which employees must select a layoff option;

(6) Define what the employer considers when determining the comparability of a position;

(7) Identify the employer's legitimate business requirements if the employer is going to consider those requirements in determining layoff options under WAC 357-46-035;

- Legitimate business requirements may include requirements such as circumstances or characteristics that render a position uniquely sensitive to disruption in continuity such as meeting critical deadlines, continuity in patient care, or research progress.

(8) Describe how employment retention ratings will be calculated(~~(, including options for factoring performance into ratings))~~; and

(9) Specify how the employer will break ties when more than one employee has the same employment retention rating.

(10) Higher education employers address in their layoff procedure whether or not employees have layoff list rights to classes they held permanent status in prior to any breaks in state service.

[Statutory Authority: Chapter 41.06 RCW. WSR 10-11-068, § 357-46-020, filed 5/14/10, effective 6/15/10; WSR 07-11-092, § 357-46-020, filed 5/16/07, effective 7/1/07; WSR 04-18-114, § 357-46-020, filed 9/1/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 05-12-084, filed 5/27/05, effective 7/1/05)

WAC 357-46-050 How does an employer determine an employee's employment retention rating? The employer determines an employee's employment retention rating using seniority as calculated in WAC 357-46-055 for general government employees and 357-46-053 for higher education employees. (~~Employers with performance management confirmation may consider properly documented performance in addition to seniority. If performance is not considered, an employee's employment retention rating is equal to the employee's seniority.~~)

[Statutory Authority: Chapter 41.06 RCW. WSR 05-12-084, § 357-46-050, filed 5/27/05, effective 7/1/05; WSR 04-18-114, § 357-46-050, filed 9/1/04, effective 7/1/05.]

OTS-3651.3

AMENDATORY SECTION (Amending WSR 19-11-136, filed 5/22/19, effective 7/1/19)

WAC 357-58-065 Definitions for WMS. The following definitions apply to chapter 357-58 WAC:

(1) **Break in service.** An employee has a break in continuous state service if the employee is separated, dismissed or resigns from state service. A furlough for the purposes of temporary layoff as provided in WAC 357-58-550 is not considered a break in continuous state service.

(2) **Choice performance confirmation.** Approval granted by the director to an employer allowing the employer to factor in individual employee performance when granting recognition leave.

(3) **Competencies.** Those measurable or observable knowledge, skills, abilities and behaviors critical to success in a key job role or function.

~~((3))~~ (4) **Director.** State human resources director within the office of financial management.

~~((4))~~ (5) **Dismissal.** The termination of an individual's employment for disciplinary reasons.

~~((5))~~ (6) **Employee.** An individual working in the classified service. Employee business unit members are defined in WAC 357-43-001.

~~((6))~~ (7) **Evaluation points.** The points resulting from an evaluation of a position using the managerial job value assessment chart.

~~((7))~~ (8) **Layoff unit.** A clearly identified structure within an employer's organization within which layoff options are determined in accordance with the employer's layoff procedure. Layoff units may be a series of progressively larger units within an employer's organization.

~~((8))~~ (9) **Management bands.** A series of management levels included in the WMS. Placement in a band reflects the nature of management, decision-making environment and policy impact and scope of management accountability and control assigned to the position.

~~((9) Performance management confirmation. Approval granted by the director to an employer allowing the employer to factor in individual employee performance when granting recognition leave and when making layoff decisions.)~~

(10) **Premium.** Pay added to an employee's base salary on a contingent basis in recognition of special requirements, conditions or circumstances associated with the job.

(11) **Reassignment.** An employer initiated movement of:

(a) A WMS employee from one position to a different position within WMS with the same salary standard and/or evaluation points; or

(b) A WMS position and the employee in that position from one section, department or geographical location to another section, department or geographical location.

(12) **Review period.** A period of time that allows the employer an opportunity to ensure the WMS employee meets the requirements and performance standards of the position.

(13) **Salary standard.** Within a management band a salary standard is the maximum dollar amount assigned to a position in those agencies that use a salary standard in addition to, or in place of, evaluation points.

(14) **Separation.** Separation from state employment for nondisciplinary reasons.

(15) **Suspension.** An absence without pay for disciplinary reasons.

(16) **Transfer.** An employee initiated movement from one position to a different position with the same salary standard and/or same evaluation points.

(17) **Veterans placement program.** A program that is designated to grant transitioning service members and veterans additional support to attain state employment.

(18) **Washington general service (WGS).** The system of personnel administration that applies to classified employees or positions under the jurisdiction of chapter 41.06 RCW which do not meet the definition of manager found in RCW 41.06.022.

~~((18))~~ (19) **Washington management service (WMS).** The system of personnel administration that applies to classified managerial employees or positions under the jurisdiction of RCW 41.06.022 and 41.06.500.

[Statutory Authority: Chapter 41.06 RCW and RCW 41.06.150. WSR 19-11-136, § 357-58-065, filed 5/22/19, effective 7/1/19. Statutory Authority: Chapter 41.06 RCW. WSR 16-05-056, § 357-58-065, filed 2/12/16, effective 3/14/16; WSR 11-23-054, § 357-58-065, filed 11/10/11, effective 12/13/11; WSR 07-11-092, § 357-58-065, filed 5/16/07, effective 7/1/07; WSR 05-21-060, § 357-58-065, filed 10/13/05, effective 11/15/05; WSR 05-12-068, § 357-58-065, filed 5/27/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 20-06-009, filed 2/20/20, effective 3/30/20)

WAC 357-58-190 What must be addressed in agency's WMS recruitment and selection policy and/or procedure? An agency's WMS recruitment and selection policy must:

(1) Provide for the ability to consider any or all qualified candidates for hire, promotion, or internal movement;

(2) Ensure that hiring decisions are fair, objective, and based on the evaluation of leadership and other job related competencies and characteristics required for successful job performance and performance management;

(3) Support workforce diversity and affirmative action goals;

(4) Consider the career development of the agency's employees and other state employees;

(5) Consider making appointments from a veterans placement program;

(6) Ensure that hiring decisions are not based on patronage or political affiliation;

~~((6))~~ (7) Ensure compliance with state and federal laws relating to employee selection and nondiscrimination;

~~((7))~~ (8) Encourage decentralized and regional administration of the recruitment and selection processes when it is appropriate for the agency;

~~((8))~~ (9) Ensure compliance with requirements governing wage and salary information in accordance with RCW 49.58.100, 49.58.110, WAC 357-16-017, 357-16-215, and 357-16-220.

[Statutory Authority: Chapter 41.06 RCW, RCW 49.58.100 and 49.58.110. WSR 20-06-009, § 357-58-190, filed 2/20/20, effective 3/30/20. Statutory Authority: Chapter 41.06 RCW. WSR 05-12-069, § 357-58-190, filed 5/27/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 16-05-056, filed 2/12/16, effective 3/14/16)

WAC 357-58-425 May an employer factor in employee performance when granting recognition leave (~~and when making layoff decisions~~) for WMS employees? A general government employer may factor in an employee's performance when granting recognition leave (~~and when making layoff decisions~~) if the employer has received choice performance (~~management~~) confirmation.

[Statutory Authority: Chapter 41.06 RCW. WSR 16-05-056, § 357-58-425, filed 2/12/16, effective 3/14/16; WSR 05-12-071, § 357-58-425, filed 5/27/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 16-05-056, filed 2/12/16, effective 3/14/16)

WAC 357-58-430 How does an employer receive choice performance (~~management~~) confirmation which enables them to factor in performance when granting recognition leave (~~and when making layoff decisions~~) for WMS employees? Employers may request choice performance (~~management~~) confirmation from the director for WMS employees. The director will use the elements listed in WAC 357-58-435 to assess and evaluate an employer's readiness to fairly and objectively factor in performance when granting recognition leave (~~and when making layoff decisions~~). If the director determines that the employer has developed a performance management program that encompasses the necessary elements, the employer will be granted choice performance (~~management~~) confirmation.

[Statutory Authority: Chapter 41.06 RCW. WSR 16-05-056, § 357-58-430, filed 2/12/16, effective 3/14/16; WSR 11-23-054, § 357-58-430, filed 11/10/11, effective 12/13/11; WSR 05-12-071, § 357-58-430, filed 5/27/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 16-05-056, filed 2/12/16, effective 3/14/16)

WAC 357-58-435 What elements will the director evaluate to determine if an employer should be granted choice performance (~~management~~) confirmation? The director will evaluate the following elements to determine if an employer should receive choice performance (~~management~~) confirmation:

- (1) Executive commitment to a performance-based culture;
- (2) Present status of performance management in the organization;

- (3) Defined roles and responsibilities for implementing and sustaining a performance management system;
- (4) Policy and process for holding managers accountable for properly carrying out their roles and responsibilities in performance management;
- (5) Internal policies and procedures for a performance management system;
- (6) Strategy for communicating to employees regarding policies, procedures and timelines for performance management;
- (7) Performance management orientation and training for managers and supervisors;
- (8) Internal mechanisms for managing funding for performance-based recognition leave;
- (9) Implementation of a performance and development plan for all employees subject to performance factor decisions; and
- (10) Process for monitoring and measuring success.

[Statutory Authority: Chapter 41.06 RCW. WSR 16-05-056, § 357-58-435, filed 2/12/16, effective 3/14/16; WSR 11-23-054, § 357-58-435, filed 11/10/11, effective 12/13/11; WSR 05-12-071, § 357-58-435, filed 5/27/05, effective 7/1/05.]

WSR 22-08-025
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT
[Filed March 25, 2022, 4:18 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 357-04-045 Which temporary employees of higher education employers are exempt from civil service rules?, 357-19-435 For what reasons may a higher education employer appoint an individual to a temporary appointment?, and 357-19-450 When may the director take remedial action for individuals in higher education temporary appointments and what does remedial action include?

Hearing Location(s): On May 12, 2022, at 8:30 a.m., at Office of Financial Management (OFM), audio conference only, Dial-in 888-285-8919, Pin 8101730, Code (if asked) 415.

Date of Intended Adoption: May 19, 2022.

Submit Written Comments to: Brandy Chinn, OFM, P.O. Box 47500, Olympia, WA 98501, email brandy.chinn@ofm.wa.gov, fax 360-586-4694, by May 5, 2022.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by May 5, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend WAC 357-04-045, 357-19-435, and 357-19-450 to align with the July 1, 2022, part-time/temporary/nonpermanent implementation effective date.

Reasons Supporting Proposal: RCW 41.06.070 previously exempted both part-time and temporary employees, as defined by OFM, from state civil service rules (Title 357 WAC). In 2018, the legislature amended RCW 41.06.070 by removing part-time employees from the exemption; only temporary employees, as defined by OFM, are now exempt from civil service rules. Title 357 WAC does not distinguish between part-time and temporary employees for higher education employers; therefore, OFM worked with both higher education employers and union organizations to amend Title 357 WAC to align with the new law. The rule amendments redefine temporary higher education appointments and expand the current general government nonpermanent rules to include higher education employers. These rules were proposed for permanent adoption at the June 10 special director's meeting. David Schumacher, OFM director, adopted these rules on a permanent basis effective on January 1, 2022.

On December 15, 2021, an extension was filed with the code reviser's office to extend the implementation rule effective date for the part-time/temporary/nonpermanent rules from January 1 to July 1, 2022. The purpose of this extension was to allow an appropriate amount of time for (1) the Washington state public employment relations commission to finalize rule making and to clarify bargaining unit descriptions; (2) higher education employers and unions to bargain changes for represented employees; and (3) higher education employers to configure their payroll systems. This rule making aligns certain timelines in the adopted rules with the current effective date of the rules.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.070.

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 128 10th Avenue, Olympia, WA 98501, 360-878-2901.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

March 25, 2022

Roselyn Marcus

Assistant Director

of Legal and Legislative Affairs

OTS-3639.1

AMENDATORY SECTION (Amending WSR 21-14-042 and 22-01-153, filed 6/30/21 and 12/15/21, effective 7/1/22)

WAC 357-04-045 Which temporary employees of higher education employers are exempt from civil service rules? (1) Temporary higher education employees are exempt from civil service rules under the following circumstances:

(a) The employee is employed (~~((twelve))~~) 12 consecutive months or less;

(b) The employee is employed for (~~((one thousand fifty))~~) 1,050 hours or less in that same (~~((twelve))~~) 12 consecutive month period which begins from the original date of hire or (~~((January))~~) July 1, 2022, whichever is later; and

(c) The employee is limited to one appointment only with the same higher education employer that meets the criteria in (a) and (b) of this subsection.

(2) Temporary appointments under the provisions of this section are subject to remedial action in accordance with WAC 357-19-450.

(3) Temporary employees who are exempt under subsection (1) of this section and who work more than (~~((three hundred fifty))~~) 350 hours in a (~~((twelve))~~) 12 consecutive month period from the original date of hire or January 1, 2004, whichever is later, may be included in an appropriate bargaining unit for purposes of collective bargaining, as determined by the public employment relations commission. Overtime and time worked as a student employee under the provisions of WAC 357-04-040 are not counted in the (~~((three hundred fifty))~~) 350 hours. For purposes of counting the (~~((three hundred fifty))~~) 350 hours, the (~~((twelve-month))~~) 12-month period will begin on the employee's original date of hire or January 1, 2004, whichever is later.

[Statutory Authority: Chapter 41.06 RCW and RCW 41.06.070. WSR 21-14-042 and 22-01-153, § 357-04-045, filed 6/30/21 and 12/15/21, effective 7/1/22. Statutory Authority: RCW 41.06.150. WSR 10-11-021, § 357-04-045, filed 5/10/10, effective 6/10/10. Statutory Authority: Chapter 41.06 RCW. WSR 04-15-016, § 357-04-045, filed 7/8/04, effective 7/1/05.]

OTS-3640.1

AMENDATORY SECTION (Amending WSR 21-14-042 and 22-01-153, filed 6/30/21 and 12/15/21, effective 7/1/22)

WAC 357-19-435 For what reasons may a higher education employer appoint an individual to a temporary appointment? A higher education employer may appoint an individual to a temporary appointment for the following reasons:

- (1) The number of hours to be worked by the individual will not exceed (~~one thousand fifty~~) 1,050 hours in a (~~twelve~~) 12 consecutive month period from the original date of hire or (~~January~~) July 1, 2022, whichever is later, in accordance with WAC 357-04-045; or
- (2) The employing official formally assigns a classified employee the duties and responsibilities of a higher-level class for a period of less than six consecutive months. In accordance with WAC 357-19-441(2), temporary appointments under this subsection are not exempt from civil service rules.

[Statutory Authority: Chapter 41.06 RCW and RCW 41.06.070. WSR 21-14-042 and 22-01-153, § 357-19-435, filed 6/30/21 and 12/15/21, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW. WSR 05-01-192, § 357-19-435, filed 12/21/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 21-14-042 and 22-01-153, filed 6/30/21 and 12/15/21, effective 7/1/22)

WAC 357-19-450 When may the director take remedial action for individuals in higher education temporary appointments and what does remedial action include? For individuals in higher education temporary appointments under the provisions of WAC 357-19-435(1), the director may take remedial action to confer permanent status, set base salary and establish seniority when it is determined that the following conditions exist:

- (1) The individual has worked in one or more temporary positions as identified in WAC 357-04-045 for more than (~~one thousand fifty~~) 1,050 hours in any (~~twelve~~) 12 consecutive month period since the original hire date or (~~January~~) July 1, 2022, whichever is later. (Overtime and time worked as a student employee under the provisions of WAC 357-04-040 are not counted in the (~~one thousand fifty~~) 1,050 hours.)
- (2) The position or positions are subject to civil service.

(3) The employee has not taken part in any willful failure to comply with these rules.

[Statutory Authority: Chapter 41.06 RCW and RCW 41.06.070. WSR 21-14-042 and 22-01-153, § 357-19-450, filed 6/30/21 and 12/15/21, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW. WSR 05-01-192, § 357-19-450, filed 12/21/04, effective 7/1/05.]

WSR 22-08-026
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed March 25, 2022, 4:31 p.m.]

Supplemental Notice to WSR 22-01-127.

Preproposal statement of inquiry was filed as WSR 21-19-116.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-412-0025 How do I receive my benefits?

Hearing Location(s): On May 10, 2022, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the COVID[-19] pandemic, hearings are being held virtually. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: Not earlier than May 11, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by May 10, 2022, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Tencza@dshs.wa.gov [Tencza@dshs.wa.gov], by April 26, 2022, by 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments to WAC 388-412-0025 align policy regarding replacement of cancelled benefits from an electronic benefit transfer (EBT) account with that of current federal regulations. Changes from the original proposal define that cancelled basic food benefits cannot be replaced. This change aligns policy with federal Supplemental Nutrition Assistance Program regulations per 7 C.F.R. 274.2 (i) (3).

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. 274.2 (i) (3).

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Joyce Hensen, P.O. Box 45470, Olympia, WA 98504-5470, 425-999-5162.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under RCW 34.05.328 (5) (b) (vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.["]

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 34.05.328 (5) (b) (vii).

Explanation of exemptions: The proposed rules do not affect small businesses. They only affect DSHS clients.

March 25, 2022

Katherine I. Vasquez
Rules Coordinator

SHS-4904.2

AMENDATORY SECTION (Amending WSR 21-13-168, filed 6/23/21, effective 8/1/21)

- WAC 388-412-0025 How do I receive my benefits?** (1) You can choose to get your cash benefits by:
- (a) Electronic benefit transfer (EBT), which is a direct deposit into a DSHS account that you access with a debit card called the Washington EBT Quest card;
 - (b) Electronic funds transfer (EFT), which is a direct deposit into your own bank account;
 - (c) A warrant (check) to an approved authorized representative (AREP);
 - (d) A warrant (check) to a payee who is not approved for direct deposit; or
 - (e) A warrant (check) to you if you get:
 - (i) Diversion cash assistance (DCA) that is not paid directly to a vendor;
 - (ii) Ongoing additional requirements (OAR) that cannot be paid directly to a vendor; or
 - (iii) Clothing and personal incidentals (CPI) payments.
- (2) We send your **basic food** benefits to you by EBT.
- (3) **EBT accounts:**
- (a) We set up an EBT account for the head of household of each assistance unit (AU) that receives benefits by EBT.
 - (b) You use a Quest debit card to access your benefits in your EBT account. You select a personal identification number (PIN) that you must enter when using this card.
 - (c) You must use your cash and basic food benefits from your EBT account. We cannot transfer cash to your bank account or change cash or basic food benefits to checks.
- (4) **Suspended EBT benefits:**
- (a) We suspend access to benefits from your EBT account if:
 - (i) You are a single-person household; and
 - (ii) We are notified that you are incarcerated over (~~(thirty)~~) 30 days.
 - (b) You must contact the department upon release to activate your EBT account for use within (~~(forty-eight)~~) 48 hours.
- (5) **Unused EBT benefits:**
- (a) If you do not use your EBT account within (~~(two-hundred-seventy-four)~~) 274 days, we cancel the cash and basic food on your account; or
 - (b) Benefits on your account will be (~~(eanceled)~~) cancelled upon verification you and all members of your household are deceased.
- (6) **Replacing benefits:**
- (a) **Replacing basic food benefits:** We cannot replace cancelled basic food benefits.

~~((i) We **can replace** cancelled benefits we deposited **less than three hundred sixty-five 274 days** from the date you ask for us to replace your benefits.~~

~~(ii) We **cannot replace** cancelled benefits deposited **three hundred sixty-five 274 or more days** from the date you ask us to replace your benefits.)~~

(b) **Replacing cash benefits:** We **can replace** cancelled cash benefits for you or another member of your assistance unit. Cash benefits are not transferable to someone outside of your assistance unit.

(c) **Replacing cash warrants:**

(i) If we issued you cash benefits as a warrant we can replace these benefits for you or a member of your assistance unit. Cash benefits are not transferable to someone outside of your assistance unit.

(ii) If we issued the benefits as a warrant (~~one hundred sixty~~) 160 or fewer days ago, your local office can replace the warrant.

(iii) If we issued the benefits as a warrant more than (~~one hundred sixty~~) 160 days ago, the Office of Accounting Services (OAS) can replace the warrant. We will contact OAS with the request.

(7) **Correcting your EBT balance:** When you make a purchase with your EBT card a system error can occur where the purchase amount is not deducted from your EBT account. When the error is discovered the following will happen:

(a) You will be notified in writing of the system error before the money is removed from your account; and

(b) You will have (~~ninety~~) 90 days to request an administrative hearing. If you ask for an administrative hearing within (~~ten~~) 10 calendar days, the money will not be removed from your EBT account unless:

(i) You withdraw your administrative hearing request in writing;

(ii) You do not follow through with the administrative hearing process; or

(iii) The administrative law judge tells us in writing to remove the money.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090 and 7 C.F.R. 274.2(i). WSR 21-13-168, § 388-412-0025, filed 6/23/21, effective 8/1/21. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090. WSR 12-14-052, § 388-412-0025, filed 6/28/12, effective 8/1/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.04.005, 74.08.090, 74.08A.020, 7 C.F.R. 274.12 and Quest operating rules. WSR 09-21-071, § 388-412-0025, filed 10/16/09, effective 11/16/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.04.515, 74.08.090, and 7 C.F.R. 274.12. WSR 07-04-029, § 388-412-0025, filed 1/29/07, effective 3/1/07. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. WSR 05-17-089, § 388-412-0025, filed 8/12/05, effective 9/12/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 03-22-038, § 388-412-0025, filed 10/28/03, effective 12/1/03. Statutory Authority: RCW 74.04.510 and 74.08.090. WSR 02-18-105, § 388-412-0025, filed 9/3/02, effective 10/4/02; WSR 01-18-054, § 388-412-0025, filed 8/30/01, effective 9/30/01. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-412-0025, filed 7/31/98, effective 9/1/98.]

WSR 22-08-030
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT
[Filed March 28, 2022, 2:57 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 357-31-070

When is an employer required to approve an employee's request to use a personal holiday?, 357-31-100 Must an employer have a policy for requesting and approving leave?, 357-31-130 When must an employer allow an employee to use their accrued sick leave?, 357-31-133 When may an employer allow an employee to use their accrued sick leave?, 357-31-145 When an employee is on vacation leave and a condition listed in WAC 357-31-130 arises, can the employee use sick leave in place of vacation leave?, 357-31-160 When a former employee is re-employed, is sick leave restored?, 357-31-200 When must an employer grant the use of vacation leave?, 357-31-230 When must an employee be granted the use of accrued compensatory time?, 357-31-325 When must an employer grant leave with pay for other miscellaneous reasons?, 357-31-326 When may an employer grant leave with pay?, 357-31-327 When must an employer grant leave without pay?, 357-31-330 For what reasons may an employer grant leave without pay?, 357-31-490 Will time off for parental leave be paid or unpaid?, 357-31-567 When must an employer grant the use of recognition leave?, and 357-31-845 What definitions apply to the foster parent shared leave pool?

Hearing Location(s): On May 12, 2022, at 8:30 a.m., at Office of Financial Management (OFM), audio conference only, Dial-in 888-285-8919, Enter pin 8101730, Code (if asked) 415.

Date of Intended Adoption: May 19, 2022.

Submit Written Comments to: Brandy Chinn, OFM, P.O. Box 47500, Olympia, WA 98501, email brandy.chinn@ofm.wa.gov, fax 360-586-4694, by May 5, 2022.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by May 5, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To expand leave options for high-risk employees seeking an accommodation to protect themselves during a public health emergency if the employer determines no other accommodation is reasonable besides the use of leave; expand sick leave use to employees when the employee needs to provide care for a child, household or family member who has been exposed to a contagious disease and is required to quarantine, or when a child's school or place of care has been closed for health-related reasons; remove references to the emergency proclamation; repeal outdated language addressing an employee's eligibility to use compensatory time in lieu of temporary layoff during the 2009-2011 biennium; expand leave with pay options to include COVID-19 booster vaccines; expand leave without pay options from "essential services" to "current workload demands and business needs."

Reasons Supporting Proposal: ESSB 5115 passed during the 2021 legislative session with an effective date of May 11, 2021. This bill added a new section to chapter 49.17 RCW (codified as RCW 49.17.062), The Washington Industrial Safety and Health Act. RCW 49.17.062 (6)(a) states "during a public health emergency, no employer may discharge, permanently replace, or in any manner discriminate against an employee who is high risk as a result of the employee seeking accommodation

that protects them from the risk of exposure to the infectious or contagious disease, or, if no accommodation is reasonable." Employers must allow an employee to use all available leave options including leave without pay. The Washington state labor and industries confirmed that leave may be used in any order and employers may not prescribe the type of leave an employee chooses or the order in which leave is taken. In addition, during the course of the COVID-19 pandemic, certain proclamations and requirements impacted employees and their families which resulted in the need to expand the reasons in which certain leave options may be provided to employees beyond the state of emergency; clean up language for consistency; and allow employers to consider approving leave based on workload demands and business needs rather than looking at essential services.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: Chapter 41.06 RCW.

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 128 10th Avenue, Olympia, WA 98501, 360-878-2901.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

March 28, 2022

Roselyn Marcus

Assistant Director

Legal and Legislative Affairs

OTS-3678.3

AMENDATORY SECTION (Amending WSR 20-06-008, filed 2/20/20, effective 5/1/20)

WAC 357-31-070 When is an employer required to approve an employee's request to use a personal holiday? (1) An employer must approve the use of a personal holiday as long as:

- (a) The employee is entitled to a personal holiday in accordance with RCW 1.16.050 and WAC 357-31-055;
- (b) The employee has requested the personal holiday in accordance with the employer's leave procedures; and
- (c) The employee's absence does not interfere with the operational needs of the employer.

(2) At any time, an employer must allow an employee to use part or all of the personal holiday for any of the following reasons:

(a) To care for a minor/dependent child with a health condition that requires treatment or supervision;

(b) To care for a spouse, registered domestic partner, parent, parent-in-law or grandparent of the employee who has a serious health condition or an emergency health condition;

(c) If the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730;

(d) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment; ~~((e))~~

(e) If the employee requests to use their personal holiday as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for paid family and/or medical leave under Title 50A RCW; or

(f) When a high risk employee, as defined in RCW 49.17.062, seeks a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave.

[Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-070, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW. WSR 09-17-057 and 09-18-112, § 357-31-070, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-013, § 357-31-070, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-070, filed 7/11/08, effective 10/1/08; WSR 07-03-054, § 357-31-070, filed 1/12/07, effective 2/15/07; WSR 05-08-136, § 357-31-070, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 20-24-019, filed 11/20/20, effective 12/28/20)

WAC 357-31-100 Must an employer have a policy for requesting and approving leave? Each employer must develop a leave policy which specifies the procedure for requesting and approving all leave, as provided in the civil service rules. The employer's policy must:

(1) Allow an employee to use vacation leave without advance approval when the employee is requesting to use vacation leave to respond to family care emergencies or for an emergency health condition as provided in WAC 357-31-200 (1)(b);

(2) Allow an employee to use a reasonable amount of accrued leave or unpaid leave when the employee is a victim or has a family member, as defined in chapter 357-01 WAC, who is a victim of domestic violence, sexual assault or stalking as defined in RCW 49.76.020;

(3) Allow an employee to use accrued leave as a supplemental benefit as provided in WAC 357-31-248;

(4) Address advance notice from the employee when the employee is seeking leave under subsections (2) and (3) of this section. When advance notice cannot be given because of an emergency or unforeseen circumstances due to domestic violence, sexual assault or stalking, the employee or the employee's designee must give notice to the employer no later than the end of the first day that the employee takes such leave;

(5) Allow an employee to use sick leave for the purpose of parental leave to bond with a newborn, adoptive or foster child. The policy must state the total amount of sick leave allowed to be used beyond ~~((eighteen))~~ 18 weeks in accordance with WAC ~~((357-31-130))~~ 357-31-133;

(6) Address overtime eligible employees that are required to provide medical certification or verification to their employer for the use of paid sick leave under chapter 296-128 WAC;

(7) Address overtime eligible employees that are required to provide reasonable notice to their employer for an absence from work for the use of paid sick leave under chapter 296-128 WAC; ~~((and))~~

(8) Address whether a general government employee may take additional accrued leave beyond ~~((thirty))~~ 30 days in a two-year period to participate in life-giving procedures in accordance with RCW 41.06.570; and

(9) Allow a high risk employee, as defined in RCW 49.17.062, seeking a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease to use their accrued leave and leave without pay if the employer determines no other accommodation is reasonable besides the use of leave.

[Statutory Authority: Chapter 41.06 RCW. WSR 20-24-019, § 357-31-100, filed 11/20/20, effective 12/28/20. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-100, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW and RCW 41.06.133. WSR 19-11-135, § 357-31-100, filed 5/22/19, effective 7/1/19. Statutory Authority: Chapter 41.06 RCW. WSR 18-05-032, § 357-31-100, filed 2/10/18, effective 3/13/18; WSR 14-11-035, § 357-31-100, filed 5/14/14, effective 6/16/14; WSR 10-11-071, § 357-31-100, filed 5/14/10, effective 6/15/10; WSR 09-03-013, § 357-31-100, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-100, filed 7/11/08, effective 10/1/08; WSR 05-08-136, § 357-31-100, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 20-24-025, filed 11/20/20, effective 12/28/20)

WAC 357-31-130 When ~~((may))~~ must an employer allow an employee to use their accrued sick leave? The employer may require medical verification or certification of the reason for sick leave use in accordance with the employer's leave policy and in compliance with chapter 296-128 WAC.

~~((1))~~ Employers **must** allow the use of accrued sick leave under the following conditions:

~~((a))~~ (1) An employee's mental or physical illness, disability, injury or health condition that has incapacitated the employee from

performing required duties; to accommodate the employee's need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or an employee's need for preventive medical care.

~~((b))~~ (2) By reason of exposure of the employee to a contagious disease when the employee's presence at work would jeopardize the health of others.

~~((e))~~ (3) When a high risk employee, as defined in RCW 49.17.062, seeks a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave.

(4) To allow an employee to provide care for a child who has been exposed to a contagious disease and is required to quarantine; or when a household or family member needs additional care, not covered by subsection (6) of this section, who has been exposed to a contagious disease and is required to quarantine.

(5) When the employee's place of business has been closed by order of a public official for any health-related reason, or when an employee's child's school or place of care has been closed for such reason.

~~((d))~~ (6) To allow an employee to provide care for a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or care for a family member who needs preventive medical care.

~~((e))~~ (7) For family care emergencies per WAC 357-31-290, 357-31-295, 357-31-300 and 357-31-305.

~~((f))~~ (8) When an employee is required to be absent from work to care for members of the employee's household or relatives of the employee or relatives of the employee's spouse/registered domestic partner who experience an illness or injury, not including situations covered by subsection ~~((1)-(d))~~ (6) of this section.

~~((i))~~ (a) The employer must approve up to five days of accumulated sick leave each occurrence. Employers may approve more than five days.

~~((ii))~~ (b) For purposes of this subsection, "relatives" is limited to spouse, registered domestic partner, child, grandchild, grandparent or parent.

~~((g))~~ (9) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for paid family and/or medical leave under Title 50A RCW.

~~((h))~~ (10) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

~~((i))~~ (11) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

~~((j))~~ (12) When an employee requests to use sick leave for the purpose of parental leave to bond with a newborn, adoptive or foster child for a period up to ~~((eighteen))~~ 18 weeks. Sick leave for this purpose must be taken during the first year following the child's birth or placement.

~~((2) Employers may allow the use of accrued sick leave under the following conditions:~~

~~(a) For condolence or bereavement;~~

~~(b) When an employee is unable to report to work due to inclement weather in accordance with the employer's policy on inclement weather as described in WAC 357-31-255;~~

~~(c) To bond with a newborn, adoptive or foster child for a period beyond eighteen weeks as allowed in subsection (1)(i) of this section. Sick leave for this purpose must be taken during the first year following the child's birth or placement. The total amount of sick leave allowed to be used, beyond subsection (1)(i) of this section must be addressed in the employer's leave policy in accordance with WAC 357-31-100; or~~

~~(d) When a child is a family member of an employee or member of an employee's household and the child's school or place of care has been closed while proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, is in effect.)~~

[Statutory Authority: Chapter 41.06 RCW. WSR 20-24-025, § 357-31-130, filed 11/20/20, effective 12/28/20. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-130, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW and RCW 41.06.133. WSR 19-11-135, § 357-31-130, filed 5/22/19, effective 7/1/19. Statutory Authority: Chapter 41.06 RCW. WSR 18-05-032, § 357-31-130, filed 2/10/18, effective 3/13/18; WSR 14-11-035, § 357-31-130, filed 5/14/14, effective 6/16/14; WSR 09-17-057 and 09-18-112, § 357-31-130, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-013, § 357-31-130, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-130, filed 7/11/08, effective 10/1/08; WSR 05-08-136, § 357-31-130, filed 4/6/05, effective 7/1/05.]

NEW SECTION

WAC 357-31-133 When may an employer allow an employee to use their accrued sick leave? The employer may require verification or certification of the reason for sick leave use in accordance with the employer's leave policy.

Employers **may** allow the use of accrued sick leave under the following conditions:

(1) For condolence or bereavement;

(2) When an employee is unable to report to work due to inclement weather in accordance with the employer's policy on inclement weather as described in WAC 357-31-255;

(3) To bond with a newborn, adoptive or foster child for a period beyond 18 weeks as allowed in WAC 357-31-130 (1)(j). Sick leave for this purpose must be taken during the first year following the child's birth or placement. The total amount of sick leave allowed to be used, beyond WAC 357-31-130 (1)(i) must be addressed in the employer's leave policy in accordance with WAC 357-31-100; or

(4) When a child is a family member of an employee or member of an employee's household and:

(a) The child's school or place of care has been closed by order or recommendation of a public official for any health-related reason; or

(b) The child has been exposed to a contagious disease and is required to quarantine.

[]

AMENDATORY SECTION (Amending WSR 05-08-136, filed 4/6/05, effective 7/1/05)

WAC 357-31-145 When an employee is on vacation leave and a condition listed in WAC 357-31-130(~~(1)~~) arises, can the employee use sick leave in place of vacation leave? When a condition listed in WAC 357-31-130(~~(1)~~) arises while the employee is on vacation leave, the employer may allow the employee to use accrued sick leave in place of vacation leave. The employee must request the use of accrued sick leave in place of vacation leave according to the employer's leave policy.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-08-136, § 357-31-145, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 05-08-136, filed 4/6/05, effective 7/1/05)

WAC 357-31-160 When a former employee is re-employed, is sick leave restored? Former employees who are re-employed within five years of their separation from service must be restored unused sick leave credits, if any, to which they were entitled at the time of separation. The employee may use the restored balance in accordance with WAC 357-31-130 and 357-31-133.

If the employee was retired from government service before being re-employed, when the employee subsequently retires again or dies, only that unused sick leave accrued since the date of reemployment minus that taken within the same period may be compensated per the conversion provisions of WAC 357-31-150.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-08-136, § 357-31-160, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 20-06-008, filed 2/20/20, effective 5/1/20)

WAC 357-31-200 When must an employer grant the use of vacation leave? (1) An employee's request to use vacation leave must be approved under the following conditions:

(a) As a result of the employee's serious health condition.

(b) To care for a spouse, registered domestic partner, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency health condition.

(c) To care for a minor/dependent child with a health condition that requires treatment or supervision.

(d) For parental leave as provided in WAC 357-31-460.

(e) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(f) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(g) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248.

(h) When a high risk employee, as defined in RCW 49.17.062, seeks a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave.

(2) In accordance with the employer's leave policy, approval for the reasons listed in (1)(a) through (g) above may be subject to verification that the condition or circumstance exists or that paid family and/or medical leave under Title 50A RCW has been approved.

[Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-200, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW. WSR 09-17-057 and 09-18-112, § 357-31-200, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-013, § 357-31-200, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-200, filed 7/11/08, effective 10/1/08; WSR 05-08-137, § 357-31-200, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 20-06-008, filed 2/20/20, effective 5/1/20)

WAC 357-31-230 When ((may)) must an employee be granted the use of accrued compensatory time? (1) Employees must request to use accrued compensatory time in accordance with the employer's leave policy. When considering employees' requests, employers must consider their business needs and the wishes of the employee.

(2) An employee must be granted the use of accrued compensatory time to care for a spouse, registered domestic partner, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency health condition, or to care for a minor/dependent child with a health condition that requires treatment or supervision. In accordance with the employer's leave policy, approval of the employee's request to use accrued compensatory time may be subject to verification that the condition exists.

(3) An employee must be granted the use of accrued compensatory time if the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(4) In accordance with WAC 357-31-373, an employee must be granted the use of accrued compensatory time to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(5) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for approved paid family and/or medical leave under Title 50A RCW.

(6) Compensatory time off may be scheduled by the employer during the final ((~~sixty~~)) 60 days of a biennium.

(7) Employers may require that accumulated compensatory time be used before vacation leave is approved, except in those instances where this requirement would result in loss of accumulated vacation leave.

(8) (~~During the 2009-2011 fiscal biennium only, an employee whose monthly full-time equivalent base salary is two thousand five hundred dollars or less is eligible to use compensatory time in lieu of temporary layoff as described in chapter 32, Laws of 2010.~~) A high risk employee, as defined in RCW 49.17.062, seeking a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease must be granted the use of accrued compensatory time if the employer determines no other accommodation is reasonable besides the use of leave.

[Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-230, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW. WSR 11-23-054, § 357-31-230, filed 11/10/11, effective 12/13/11; WSR 10-23-120, § 357-31-230, filed 11/17/10, effective 12/18/10; WSR 09-17-056 and 09-18-113, § 357-31-230, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-013, § 357-31-230, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-230, filed 7/11/08, effective 10/1/08; WSR 05-08-137, § 357-31-230, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 22-01-019, filed 12/3/21, effective 1/3/22)

WAC 357-31-325 When must an employer grant leave with pay for other miscellaneous reasons? Leave with pay **must** be granted to an employee in accordance with WAC 357-31-320 and for the following reasons:

(1) To allow an employee to receive assessment from the employee assistance program.

(2) When an employee is scheduled to take an examination or participate in an interview for a position with a state employer during scheduled work hours.

(a) Employers may limit the number of occurrences or the total amount of paid leave that will be granted to an employee to participate in an interview or take an examination during scheduled work hours.

(b) Employers may deny an employee's request to participate in an interview or take an examination during scheduled work hours based upon operational necessity.

(3) When an employee is required to appear during working hours for a physical examination to determine physical fitness for military service.

(4) To allow a general government employee to take paid leave, not to exceed (~~thirty~~) 30 days in a two-year period to participate in life-giving procedures, such as medical procedures, including testing, sampling, or donation of organs, tissues, and other body components for the purpose of donation, without compensation. For this subsection blood or plasma donations are not considered life-giving procedures.

(a) General government employers may take operational necessity into account and require the employee to provide reasonable advance notice.

(b) Employees must provide written proof from an accredited medical institution, physician, or other medical professional that the employee will or has participated in a life-giving procedure.

(5) To allow a general government employee to take a reasonable amount of leave with pay for the employee to travel and receive each dose or booster of COVID-19 (~~immunization~~) vaccine if the vaccine is not offered at the workplace. An employer may authorize leave in excess of one day in extraordinary circumstances, such as to accommodate travel where the vaccine is unavailable locally. The employer may require that the request for leave be supported by documentation, which may include proof of the vaccination. (~~This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later.~~) This subsection no longer applies if state or federal law otherwise provides paid leave specifically for employees to receive the COVID-19 (~~immunization~~) vaccine.

[Statutory Authority: Chapter 41.06 RCW. WSR 22-01-019, § 357-31-325, filed 12/3/21, effective 1/3/22; WSR 21-12-020, § 357-31-325, filed 5/24/21, effective 7/1/21; WSR 20-24-019, § 357-31-325, filed 11/20/20, effective 12/28/20; WSR 14-11-033, § 357-31-325, filed 5/14/14, effective 6/16/14; WSR 10-23-041, § 357-31-325, filed 11/10/10, effective 12/13/10; WSR 09-03-014, § 357-31-325, filed 1/9/09, effective 2/13/09; WSR 08-07-062, § 357-31-325, filed 3/17/08, effective 4/18/08; WSR 05-21-055, § 357-31-325, filed 10/13/05, effective 11/15/05; WSR 05-08-138, § 357-31-325, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 22-01-019, filed 12/3/21, effective 1/3/22)

WAC 357-31-326 When may an employer grant leave with pay? (1) A general government employer **may** grant leave with pay for an employee to perform civil duties as a volunteer including, but not limited to, firefighting, search and rescue efforts, or donating blood. Leave granted to participate in blood and plasma donations must not exceed five days in a two-year period.

(2) A higher education employer may grant leave with pay for an employee to perform civil duties as a volunteer including, but not limited to, firefighting, search and rescue efforts, participating in life-giving procedures, or donating blood. Leave granted to participate in life-giving procedures must not exceed five days in a two-year period.

(3) In the department of natural resources, leave with pay equivalent to one regular workshift **may** be allowed for the purpose of rest and recuperation after (~~ten~~) 10 consecutive calendar days performing emergency work under an incident command system, defined in RCW 38.52.010. The employer may grant one additional day of leave with pay for rest and recuperation after (~~twenty-one~~) 21 consecutive calendar days performing emergency work under an incident command system.

(4) A general government employer may grant a reasonable amount of leave with pay for an employee to receive each dose or booster of COVID-19 (~~immunization~~) vaccine if the vaccine is offered at the workplace. An employer may authorize leave in excess of one day for receipt of the vaccine in extraordinary circumstances, such as to accommodate travel where the vaccine is unavailable locally. The employer may require that the request for leave be supported by documentation, which may include proof of the vaccination. (~~This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later.~~) This subsection no longer applies if state or federal law otherwise provides paid leave specifically for employees to receive the COVID-19 (~~immunization~~) vaccine.

(5) A higher education employer may grant a reasonable amount of leave with pay for an employee to receive each dose or booster of COVID-19 (~~immunization~~) vaccine if the vaccine is not offered at the workplace. An employer may authorize leave in excess of one day for receipt of the vaccine in extraordinary circumstances, such as to accommodate travel where the vaccine is unavailable locally. The employer may require that the request for leave be supported by documentation, which may include proof of the vaccination. (~~This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later.~~) This subsection no longer applies if state or federal law otherwise provides paid leave specifically for employees to receive the COVID-19 (~~immunization~~) vaccine.

[Statutory Authority: Chapter 41.06 RCW. WSR 22-01-019, § 357-31-326, filed 12/3/21, effective 1/3/22; WSR 21-12-020, § 357-31-326, filed 5/24/21, effective 7/1/21; WSR 20-24-019, § 357-31-326, filed 11/20/20, effective 12/28/20; WSR 17-18-029, § 357-31-326, filed 8/28/17, effective 10/2/17. Statutory Authority: RCW 41.06.133. WSR 17-11-049, § 357-31-326, filed 5/15/17, effective 6/19/17. Statutory

Authority: Chapter 41.06 RCW. WSR 09-03-014, § 357-31-326, filed 1/9/09, effective 2/13/09.]

AMENDATORY SECTION (Amending WSR 20-06-008, filed 2/20/20, effective 5/1/20)

WAC 357-31-327 When must an employer grant leave without pay?

An employer must grant leave without pay under the following conditions:

- (1) When an employee who is a volunteer firefighter is called to duty to respond to a fire, natural disaster, or medical emergency;
- (2) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730; or
- (3) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.
- (4) When an employee requests a day off for a reason of faith or conscience or an organized activity conducted under the auspices of a religious denomination, church, or religious organization in accordance with WAC 357-31-052.
- (5) When an employee is on approved paid family and/or medical leave under Title 50A RCW. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for paid family and/or medical leave under Title 50A RCW and qualifies for employment protection in accordance with RCW 50A.35.010.
- (6) When a high risk employee, as defined in RCW 49.17.062, seeks a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave.

[Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-327, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW. WSR 14-24-024, § 357-31-327, filed 11/21/14, effective 12/22/14; WSR 09-17-057 and 09-18-112, § 357-31-327, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-014, § 357-31-327, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-327, filed 7/11/08, effective 10/1/08; WSR 07-17-129, § 357-31-327, filed 8/20/07, effective 9/20/07.]

AMENDATORY SECTION (Amending WSR 21-12-020, filed 5/24/21, effective 7/1/21)

WAC 357-31-330 For what reasons may an employer grant leave without pay? Leave without pay may be allowed for any of the following reasons in accordance with the employer's leave policy:

- (1) For any reason leave with pay may be granted, as long as the conditions for leave with pay are met;
- (2) Educational leave;
- (3) Leave for government service in the public interest;
- (4) Military leave of absence as required by WAC 357-31-370;
- (5) Parental leave as required by WAC 357-31-460;
- (6) Family care emergencies as required by WAC 357-31-295;
- (7) Bereavement or condolence;
- (8) Absence due to inclement weather as provided in WAC 357-31-255;
- (9) To accommodate annual work schedules of employees occupying cyclic year positions as specified in WAC 357-19-295;
- (10) Serious health condition of an eligible employee's child, spouse, registered domestic partner, or parent as required by WAC 357-31-525;
- (11) Leave taken voluntarily to reduce the effect of an employer's layoff;
- (12) Leave that is authorized in advance by the appointing authority as part of a plan to reasonably accommodate a person of disability;
- (13) Employees receiving time loss compensation; or
- (14) For an employee to protect themselves, or a relative or household member, from risks related to coronavirus disease 2019 (COVID-19). In determining whether to grant leave, an employer may consider ~~((whether the employee is needed to provide essential services because the employee is a health care provider, an emergency responder or otherwise necessary to maintain public safety. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later))~~ current workload demands and business needs that require employees to perform their duties.

[Statutory Authority: Chapter 41.06 RCW. WSR 21-12-020, § 357-31-330, filed 5/24/21, effective 7/1/21; WSR 09-17-056 and 09-18-113, § 357-31-330, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-014, § 357-31-330, filed 1/9/09, effective 2/13/09; WSR 05-08-138, § 357-31-330, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 22-01-022, filed 12/3/21, effective 7/1/22)

- WAC 357-31-490 Will time off for parental leave be paid or unpaid?** (1) Parental leave may be a combination of vacation leave, personal holiday, compensatory time, holiday credit, shared leave and leave of absence without pay. Sick leave may be used if the criteria in WAC 357-31-130 and 357-31-133 are met. The combination and use of paid and unpaid leave during a parental leave is at the employee's choice.
- (2) If necessary while on approved parental leave, the employee must be allowed to use a minimum of eight hours per month of the accrued paid leave identified in subsection (1) of this section during a parental leave of absence without pay to provide for continuation of benefits as provided by the public employees' benefits board. The em-

ployer designates when during the month paid leave will be interspersed to maintain benefits.

[Statutory Authority: Chapter 41.06 RCW. WSR 22-01-022, § 357-31-490, filed 12/3/21, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-490, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW. WSR 05-08-140, § 357-31-490, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 20-06-008, filed 2/20/20, effective 5/1/20)

WAC 357-31-567 When must an employer grant the use of recognition leave? (1) An employee's request to use recognition leave must be approved under the following conditions:

(a) An employee must be granted the use of recognition leave if the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730;

(b) In accordance with WAC 357-31-373, an employee must be granted the use of recognition leave to be with a spouse or registered domestic partner who is a member of the Armed Forces of the United States, National Guard, or Reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment; ~~((and))~~

(c) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for approved paid family and/or medical leave under Title 50A RCW; and

(d) When a high risk employee, as defined in RCW 49.17.062, seeks a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave.

(2) In accordance with the employer's leave policy, approval for the reasons listed in (1) (a) and (b) above may be subject to verification that the condition or circumstance exists.

~~((3) During the 2009-2011 fiscal biennium only, an employee whose monthly full-time equivalent base salary is two thousand five hundred dollars or less is eligible to use recognition leave in lieu of temporary layoff as described in chapter 32, Laws of 2010.))~~

[Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-567, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW. WSR 10-23-120, § 357-31-567, filed 11/17/10, effective 12/18/10; WSR 09-17-056 and 09-18-113, § 357-31-567, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-013, § 357-31-567, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-567, filed 7/11/08, effective 10/1/08.]

AMENDATORY SECTION (Amending WSR 18-03-081, filed 1/15/18, effective 2/16/18)

WAC 357-31-845 What definitions apply to the foster parent shared leave pool? The following definitions apply to the foster parent shared leave pool:

"Caring for" means taking a foster child to health care appointments, court appointments, visitation with family members and/or any other reasons that sick leave may be used for in WAC 357-31-130 and 357-31-133.

"Employee" means any employee of the state, including employees of school districts and educational service districts, who are entitled to accrue sick leave or vacation leave and for whom accurate leave records are maintained as defined in RCW 41.04.655.

"Monthly salary" means the monthly salary and special pay and shift differential, or the monthly equivalent for hourly employees. Monthly salary does not include overtime pay, callback pay, standby pay or performance bonuses.

"Preparing for" means arranging a foster child's living space, enrolling in school, and/or enrolling in child care.

[Statutory Authority: Chapter 41.04 RCW. WSR 18-03-081, § 357-31-845, filed 1/15/18, effective 2/16/18.]

WSR 22-08-038
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD

[Filed March 30, 2022, 10:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-04-116.

Title of Rule and Other Identifying Information: WAC 314-55-108 Pesticide action levels. The Washington state liquor and cannabis board (WSLCB) proposes amendments to WAC 314-55-108 to update information related to pesticide action level testing of cannabis products.

Hearing Location(s): On May 11, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the board will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Board members, presenters, and staff will all participate remotely. The public may log in using a computer or device, or call-in using a phone, to listen to the meeting through the Microsoft Teams application. The public may provide verbal comments during the specified public comment and rules hearing segments. For more information about board meetings, please visit https://lcb.wa.gov/Boardmeetings/Board_meetings.

Date of Intended Adoption: Not earlier than May 25, 2022.

Submit Written Comments to: Jeff Kildahl, 1025 Union Avenue S.E., Olympia, WA 98501, email rules@lcb.wa.gov, fax 360-664-9689, by May 11, 2022.

Assistance for Persons with Disabilities: Contact Anita Bingham, ADA coordinator, human resources, phone 360-664-1739, fax 360-664-9689, TTY 711 or 1-800-833-6388, email anita.bingham@lcb.wa.gov, by May 4, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule amendments is to update technical chemical isomer information contained in WAC 314-55-108 for some types of pesticides included in cannabis quality control testing, and to clarify the number of significant digits testing laboratories [that] are expected to use for reporting numerical pesticide testing results.

Rule amendments are also needed to ensure consistency with WAC 314-55-102 concerning remediation of marijuana products that have failed quality control testing, remove redundant rule language contained both in the existing subsections (4) and (5), and to update the term "quality assurance testing" to "quality control testing."

Reasons Supporting Proposal: The proposed rule updates will help to protect public health and safety by keeping marijuana pesticide action level information and marijuana remediation guidelines current and up-to-date. These changes are needed to ensure consistency with the amendments to marijuana quality control testing rules in WAC 314-44-101, 314-55-102, and 314-55-1025 that were permanently adopted as WSR 22-06-097 on March 2, 2022.

Statutory Authority for Adoption: RCW 69.50.345 and 69.50.348.

Statute Being Implemented: RCW 69.50.345 and 69.50.348.

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

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Jeff Kildahl, Policy and Rules Coordinator, 1025 Union Avenue S.E., Olympia, WA 98501, 360-664-1781; Implementation: Kendra Hodgson, Marijuana Examiners Unit Manager, 1025 Union Avenue S.E., Olympia, WA 98501, 360-664-4555; and Enforcement: Chandra Brady, Director of Enforcement and Education, 1025 Union Avenue S.E., Olympia, WA 98501, 360-664-1726.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The subject of the proposed rule making does not qualify as a significant legislative rule or other rule requiring a cost-benefit analysis under RCW 34.05.328 (5) (c).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.82.025(4).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Agencies are required to consider costs imposed on business and costs associated with compliance with proposed rules. Agencies are not required under chapter 19.85 RCW to consider indirect costs not associated with compliance. Here, the agency considered potential administrative costs that a licensee may incur complying with the proposed rules.

WSLCB applied the North American Industry Classification System (NAICS) codes 453998 for marijuana stores, both medicinal and recreational, 424590 for marijuana processors, 111998 for outdoor marijuana growers, and 111419 for indoor marijuana growers. The industry descriptions for each of these codes is presented in the table below, and can be accessed at <https://www.census.gov/library/publications/2017/econ/2017-naics-manual.html>.

WSLCB applied a default cost when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). This reflects four hours of administrative time at \$50 per hour, for a total of \$200. The agency assumes this activity would include activities such as completing and submitting forms to WSLCB and phone calls.

2017 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate	1% of Avg Annual Payroll (Threshold)	0.3% of Avg Annual Gross Business Income (Threshold)
424590	\$200	Marijuana, merchant wholesalers	Other Farm Product Raw Material Merchant Wholesalers	\$6,733.79	\$3,684.24 2018 Dataset pulled from USBLS	\$6,733.79 2018 Dataset pulled from DOR
111998	\$200	Marijuana, grown in an open field	All Other Miscellaneous Crop Farming	\$9,125.33	\$9,125.33 2018 Dataset pulled from ESD	\$2,834.77 2018 Dataset pulled from DOR
111419	\$200	Marijuana, grown under cover	Other Food Crops Grown Under Cover	\$2,349.42	\$2,349.42 2018 Dataset pulled from ESD	\$2,324.68 2018 Dataset pulled from DOR

As the table demonstrates, the estimated cost of compliance does not exceed the thresholds for any of the license types. Therefore, im-

plementation of these rules are not anticipated to result in more-than-minor costs on businesses as defined in RCW 19.85.020(2).

March 30, 2022
David Postman
Chair

OTS-3688.2

AMENDATORY SECTION (Amending WSR 17-12-032, filed 5/31/17, effective 8/31/17)

WAC 314-55-108 Pesticide action levels. (1) Only pesticides allowed under WAC 314-55-084 may be used in the production of marijuana, and they must be registered by the Washington state department of agriculture (WSDA) under chapter 15.58 RCW.

(2) Pursuant to WAC 314-55-102, if the WSLCB, WSDA, other designee of the WSLCB, or certified lab identifies a pesticide that is not allowed under subsection (1) of this section and is above the action levels provided in subsection (3) of this section, that lot or batch from which the sample was deducted has failed quality ((assurance)) control testing and may be subject to a recall as provided in WAC 314-55-225.

(3) The action levels for pesticides are provided in the table below. The action level for all other pesticides that are not listed in the table below or not allowed under subsection (1) of this section is 0.1 ppm.

((Analyte	Chemical Abstract Services (CAS) Registry Number	Action-Level ppm
Abamectin	71751-41-2	0.5
Acephate	30560-19-1	0.4
Aeequinoeyl	57960-19-7	2
Acetamiprid	135410-20-7	0.2
Aldicarb	116-06-3	0.4
Azoxystrobin	131860-33-8	0.2
Bifenazate	149877-41-8	0.2
Bifenthrin	82657-04-3	0.2
Boscalid	188425-85-6	0.4
Carbaryl	63-25-2	0.2
Carbofuran	1563-66-2	0.2
Chlorantraniliprole	500008-45-7	0.2
Chlorfenapyr	122453-73-0	†
Chlorpyrifos	2921-88-2	0.2
Clofentezine	74115-24-5	0.2
Cyfluthrin	68359-37-5	†
Cypermethrin	52315-07-8	†

(Analyte	Chemical Abstract Services (CAS) Registry Number	Action-Level ppm
Daminozide	1596-84-5	1
DDVP (Dichlorvos)	62-73-7	0.1
Diazinon	333-41-5	0.2
Dimethoate	60-51-5	0.2
Ethoprophos	13194-48-4	0.2
Etofenprox	80844-07-1	0.4
Etoxazole	153233-91-1	0.2
Fenoxycarb	72490-01-8	0.2
Fenpyroximate	134098-61-6	0.4
Fipronil	120068-37-3	0.4
Flonicamid	158062-67-0	1
Fludioxonil	131341-86-1	0.4
Hexythiazox	78587-05-0	1
Imazalil	35554-44-0	0.2
Imidacloprid	138261-41-3	0.4
Kresoxim-methyl	143390-89-0	0.4
Malathion	121-75-5	0.2
Metaxyl	57837-19-1	0.2
Methiocarb	2032-65-7	0.2
Methomyl	16752-77-5	0.4
Methyl parathion	298-00-0	0.2
MGK-264	113-48-4	0.2
Myelobutanil	88671-89-0	0.2
Naled	300-76-5	0.5
Oxamyl	23135-22-0	1
Paclobutrazol	76738-62-0	0.4
Permethrins ^a	52645-53-1	0.2
Phosmet	732-11-6	0.2
Piperonyl butoxide ^b	51-03-6	2
Prallethrin	23031-36-9	0.2
Propiconazole	60207-90-1	0.4
Propoxur	114-26-1	0.2
Pyrethrins ^{bc}	8003-34-7	1
Pyridaben	96489-71-3	0.2
Spinosad	168316-95-8	0.2
Spiromesifen	283594-90-1	0.2
Spirotetramat	203313-25-1	0.2
Spiroxamine	118134-30-8	0.4
Tebuconazole	80443-41-0	0.4
Thiacloprid	111988-49-9	0.2
Thiamethoxam	153719-23-4	0.2
Trifloxystrobin	141517-21-7	0.2

^aPermethrins should be measured as cumulative residue of cis- and trans-permethrin isomers (CAS numbers 54774-45-7 and 51877-74-8 respectively).

^bAction level applies to marijuana concentrates, marijuana extracts, intermediate products, and imported cannabinoids.

^cPyrethrins should be measured as the cumulative residues of pyrethrin 1, cinerin 1, and jasmolin 1 (CAS numbers 121-21-1, 25402-06-6, and 4466-1-2 respectively.)

<u>Analyte</u>	<u>µg/g (ppm)</u>	<u>CAS#</u>
<u>Abamectin (Sum of Isomers)</u>	<u>0.50</u>	<u>71751-41-2</u>
• <u>Avermectin B1a</u>		<u>65195-55-3</u>
• <u>Avermectin B1b</u>		<u>65195-56-4</u>
<u>Acephate</u>	<u>0.40</u>	<u>30560-19-1</u>
<u>Acequinocyl</u>	<u>2.0</u>	<u>57960-19-7</u>
<u>Acetamiprid</u>	<u>0.20</u>	<u>135410-20-7</u>
<u>Aldicarb</u>	<u>0.40</u>	<u>116-06-3</u>
<u>Azoxystrobin</u>	<u>0.20</u>	<u>131860-33-8</u>
<u>Bifenazate</u>	<u>0.20</u>	<u>149877-41-8</u>
<u>Bifenthrin</u>	<u>0.20</u>	<u>82657-04-3</u>
<u>Boscalid</u>	<u>0.40</u>	<u>188425-85-6</u>
<u>Carbaryl</u>	<u>0.20</u>	<u>63-25-2</u>
<u>Carbofuran</u>	<u>0.20</u>	<u>1563-66-2</u>
<u>Chlorantraniliprole</u>	<u>0.20</u>	<u>500008-45-7</u>
<u>Chlorfenapyr</u>	<u>1.0</u>	<u>122453-73-0</u>
<u>Chlorpyrifos</u>	<u>0.20</u>	<u>2921-88-2</u>
<u>Clofentezine</u>	<u>0.20</u>	<u>74115-24-5</u>
<u>Cyfluthrin</u>	<u>1.0</u>	<u>68359-37-5</u>
<u>Cypermethrin</u>	<u>1.0</u>	<u>52315-07-8</u>
<u>Daminozide</u>	<u>1.0</u>	<u>1596-84-5</u>
<u>DDVP (Dichlorvos)</u>	<u>0.10</u>	<u>62-73-7</u>
<u>Diazinon</u>	<u>0.20</u>	<u>333-41-5</u>
<u>Dimethoate</u>	<u>0.20</u>	<u>60-51-5</u>
<u>Ethoprophos</u>	<u>0.20</u>	<u>13194-48-4</u>
<u>Etofenprox</u>	<u>0.40</u>	<u>80844-07-1</u>
<u>Etoxazole</u>	<u>0.20</u>	<u>153233-91-1</u>
<u>Fenoxycarb</u>	<u>0.20</u>	<u>72490-01-8</u>
<u>Fenpyroximate</u>	<u>0.40</u>	<u>134098-61-6</u>
<u>Fipronil</u>	<u>0.40</u>	<u>120068-37-3</u>
<u>Flonicamid</u>	<u>1.0</u>	<u>158062-67-0</u>
<u>Fludioxonil</u>	<u>0.40</u>	<u>131341-86-1</u>
<u>Hexythiazox</u>	<u>1.0</u>	<u>78587-05-0</u>
<u>Imazalil</u>	<u>0.20</u>	<u>35554-44-0</u>
<u>Imidacloprid</u>	<u>0.40</u>	<u>138261-41-3</u>
<u>Kresoxim-methyl</u>	<u>0.40</u>	<u>143390-89-0</u>
<u>Malathion</u>	<u>0.20</u>	<u>121-75-5</u>
<u>Metalaxyl</u>	<u>0.20</u>	<u>57837-19-1</u>
<u>Methiocarb</u>	<u>0.20</u>	<u>2032-65-7</u>
<u>Methomyl</u>	<u>0.40</u>	<u>16752-77-5</u>
<u>Methyl parathion</u>	<u>0.20</u>	<u>298-00-0</u>

<u>Analyte</u>	<u>µg/g (ppm)</u>	<u>CAS#</u>
<u>MGK-264</u>	<u>0.20</u>	<u>113-48-4</u>
<u>Myclobutanil</u>	<u>0.20</u>	<u>88671-89-0</u>
<u>Naled</u>	<u>0.50</u>	<u>300-76-5</u>
<u>Oxamyl</u>	<u>1.0</u>	<u>23135-22-0</u>
<u>Paclobutrazol</u>	<u>0.40</u>	<u>76738-62-0</u>
<u>Permethrins (Sum of Isomers)</u>	<u>0.20</u>	<u>52645-53-1</u>
• <u>cis-Permethrin</u>		<u>54774-45-7</u>
• <u>trans-Permethrin</u>		<u>51877-74-8</u>
<u>Phosmet</u>	<u>0.20</u>	<u>732-11-6</u>
<u>Piperonyl butoxide</u>	<u>2.0</u>	<u>51-03-6</u>
<u>Prallethrin</u>	<u>0.20</u>	<u>23031-36-9</u>
<u>Propiconazole</u>	<u>0.40</u>	<u>60207-90-1</u>
<u>Propoxur</u>	<u>0.20</u>	<u>114-26-1</u>
<u>Pyrethrins (Sum of Isomers)</u>	<u>1.0</u>	<u>8003-34-7</u>
• <u>Pyrethrin I</u>		<u>121-21-1</u>
• <u>Pyrethrin II</u>		<u>121-29-9</u>
<u>Pyridaben</u>	<u>0.20</u>	<u>96489-71-3</u>
<u>Spinosad (Sum of Isomers)</u>	<u>0.20</u>	<u>168316-95-8</u>
• <u>Spinosyn A</u>		<u>131929-60-7</u>
• <u>Spinosyn D</u>		<u>131929-63-0</u>
<u>Spiromesifen</u>	<u>0.20</u>	<u>283594-90-1</u>
<u>Spirotetramat</u>	<u>0.20</u>	<u>203313-25-1</u>
<u>Spiroxamine</u>	<u>0.40</u>	<u>118134-30-8</u>
<u>Tebuconazole</u>	<u>0.40</u>	<u>80443-41-0</u>
<u>Thiacloprid</u>	<u>0.20</u>	<u>111988-49-9</u>
<u>Thiamethoxam</u>	<u>0.20</u>	<u>153719-23-4</u>
<u>Trifloxystrobin</u>	<u>0.20</u>	<u>141517-21-7</u>

(4) For the purposes of this section, limits have been written to the number of significant digits that laboratories are expected to use when reporting to the board and on associated certificates of analysis.

(5) Except as otherwise provided in this section, licensed marijuana producer or processor that provided a sample that fails quality ((assurance)) control testing must dispose of the entire lot or batch from which the sample was taken as provided by marijuana waste disposal requirements in WAC 314-55-097 and document the disposal of the sample pursuant to traceability requirements in WAC 314-55-083(4) and recordkeeping requirements in WAC 314-55-087. A licensee's sample that does not test above the pesticide action levels under this section where test results show the presence of a pesticide that is not allowed under subsection (1) of this section may still be subject to an administrative violation if the disallowed pesticide was applied.

~~((5) Except as otherwise provided in this section, a licensed marijuana producer or processor which provided a sample that fails quality assurance testing must dispose of the entire lot or batch from which the sample was taken as provided by marijuana waste disposal re-~~

~~quirements in WAC 314-55-097 and document the disposal of the sample pursuant to traceability requirements in WAC 314-55-083(4) and record-keeping requirements in WAC 314-55-087.)~~

(6) Pursuant to WAC 314-55-102, at the request of the producer or processor, the WSLCB may authorize a retest to validate a failed test result on a case-by-case basis. All costs of the retest will be borne by the producer or the processor requesting the retest.

~~(7) ((Producers and processors may remediate failed harvests, lots, or batches so long as the remediation method does not impart any toxic or deleterious substance to the usable marijuana, marijuana concentrates, or marijuana-infused product. Remediation solvents or methods used on the marijuana product must be disclosed to a licensed retailer or consumer upon request. The entire harvest, lot, or batch the failed sample(s) were deducted from must be remediated using the same remediation technique. No remediated harvest, lots or batches may be sold or transported until the completion and successful passage of quality assurance testing as required in this section and WAC 314-55-102.~~

~~(8))~~ Pursuant to WAC 314-55-102, upon request a marijuana licensee must disclose and make available all quality ((assurance)) control tests and retest results for the lot or batch of usable marijuana, marijuana concentrates, or marijuana-infused products to the marijuana licensee or retail customer who is considering purchasing the usable marijuana, marijuana concentrates, or marijuana-infused products.

[Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 17-12-032, § 314-55-108, filed 5/31/17, effective 8/31/17.]

WSR 22-08-064
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

[Filed April 4, 2022, 2:25 p.m.]

The developmental disabilities administration requests the withdrawal of CR-102 proposal filed as WSR 22-06-012 on February 18, 2022, for WAC 388-829-0085 How many hours of continuing education must DDA community residential staff complete each year?, 388-829-0086 When must a direct support professional employed during the COVID-19 public health emergency complete training?, and 388-829-0087 When must continuing education be completed when public health emergency waivers are lifted, and what continuing education credit is granted to direct support professionals employed during the pandemic?

Katherine I. Vasquez
Rules Coordinator

WSR 22-08-071
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed April 5, 2022, 8:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-05-101.

Title of Rule and Other Identifying Information: Adding new WAC 415-113-067 As a dual member in a DRS administered retirement plan and a first class city retirement system can I earn service credit in both plans at the same time?

Hearing Location(s): On May 10, 2022, at 11:00 a.m. The hearing will be conducted by Zoom. See <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings> for details. Zoom link <https://us02web.zoom.us/j/83072586786>, Meeting ID 830 7258 6786, Dial-In 253-215-8782.

Date of Intended Adoption: May 11, 2022.

Submit Written Comments to: Rubi Reaume, Department of Retirement Systems (DRS), P.O. Box 48380, Olympia, WA 98504-8380, email drs.rules@drs.wa.gov, by May 2, 2022.

Assistance for Persons with Disabilities: Contact Rubi Reaume, phone 360-664-7311, TTY 711, email drs.rules@drs.wa.gov, by May 2, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule provides direction on how situations of excess service credit between a first-class city retirement system and a DRS system will be handled by the department.

Reasons Supporting Proposal: State pension plans limit a person from receiving more than one retirement service credit per month.

Statutory Authority for Adoption: RCW 41.50.050.

Statute Being Implemented: Chapter 41.54 RCW.

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

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Implementation: Candice Myrum, DRS, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7288.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(a)(i) does not apply to this proposed rule and is not voluntarily made applicable by the agency.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: DRS' rules only impact members and beneficiaries of the state retirement systems and participating public employers, and do not affect small businesses.

April 5, 2022
Rubi Reaume
Rules Coordinator

OTS-3668.2

NEW SECTION

WAC 415-113-067 As a dual member in a DRS administered retirement plan and a first class city retirement system can I earn service credit in both plans at the same time? (1) You may earn service credit in a DRS system and in a first class city (FCC) retirement system for the city of Seattle, Spokane, or Tacoma at the same time if:

(a) You work for a DRS employer and an employer covered by an FCC retirement system; and

(b) Your employer cannot report service for the FCC in the DRS system.

(2) If the combined months of service credit exceeds the months of overlapping work, the excess service credit will be removed from the DRS system using the following calculation to bring the total combined service credit to not more than one per month:

(a) DRS will determine the months of FCC service credit by obtaining the total hours worked at the city during the overlapping time period, and dividing those hours by 2,088 hours (the number of working hours in a year), and then multiplying that by 12 months.

(b) DRS will determine the amount of excess service credit, rounding down to the nearest quarter month, by taking the combined total of the months of DRS service credit during overlapping time period and the months of FCC service credit during overlapping time period, and subtracting the number of months in the overlapping period, not to exceed the total number of calendar months in the overlapping period.

Example 1:

A PERS 2 employee works full time between January 2005 and June 2010 for a PERS employer. Between July 2007 and February 2008 they work full time for a FCC, working a total of 1,566 hours during these eight months. The FCC service credit will be calculated as $(1,566/2,088) \times 12 = 9$ months of credit.

The excess service credit would be determined by adding the eight months of DRS credit earned with the nine months of FCC credit earned and subtracting the eight calendar months of overlapping time period. This leaves an excess of nine months of credit; however, since the overlapping time period is only eight months long, eight months of credit will be removed from PERS 2.

Prior to the removal the employee would have had eight months of PERS service credit between July 2007 and February 2008. After the removal they have no PERS service credit for this time period.

Example 2:

A SERS 3 employee works part time between September 2005 and August 2011 for a SERS employer, earning one-half of a month of service credit for each month. Between July 2007 and June 2008 they work full time for a FCC, working a total of 2,088 hours during these 12 months. The FCC service credit will be calculated as $(2,088/2,088) \times 12 = 12$ months of credit.

The excess service credit would be determined by adding the six months of DRS credit earned with the 12 months of FCC credit earned and subtracting the 12 calendar months of overlapping time period. This leaves an excess of six months of credit therefore six months will be removed from SERS 3.

Prior to the removal of the service credit this employee had six months of SERS service credit between July 2007 and June 2008. After the removal of service credit they are left with no SERS during this time period.

Example 3:

A PERS 3 employee works part time between March 2010 and November 2011 for a PERS employer, earning 13.5 months of service credit during this period. During the same time period, they work part time for a FCC, working a total of 2,500 hours during these 20 months. The FCC service credit will be calculated as $(2,500/2,088) \times 12 = 14.368$ months of credit.

The excess service credit would be determined by adding the 13.5 months of DRS credit earned with the 14.368 months of FCC credit earned and subtracting the 20 calendar months of overlapping time period. This leaves an excess of 7.868 months of credit therefore 7.75 months (rounding down to the nearest quarter credit) will be removed from PERS 3.

Prior to the removal of service credit this employee had 13.5 months of service credit in PERS between March 2010 and November 2011. After the removal of the excess service credit they will have 5.75 months of service credit for this time period.

Example 4:

A PERS 2 employee leaves their PERS employer on February 14th and begins working with a FCC on February 15th. They had worked 80 hours for their PERS employer and earned one-half of a service credit for February. They worked 80 hours for the FCC in February so they earned .46 months of credit with the city $(80/2,088) \times 12$.

The excess service credit would be determined by adding the .5 months of DRS credit with the .46 months of credit from the FCC. Since this does not exceed one month of credit there is not an excess of service credit.

Example 5:

A PERS 2 employee leaves their PERS employer on March 14th and begins working with a FCC on March 15th. They had worked 80 hours for their PERS employer and earned one-half of a service credit for March. They worked 96 hours for the FCC in February so they earned .55 months of credit with the city $(96/2,088) \times 12$.

The excess service credit would be determined by adding the .5 months of DRS credit with the .55 months of credit from the FCC. The .05 of credit is excess; however, it rounds down to zero since it does not exceed a quarter credit of excess credit.

Example 6:

An FCC employee leaves their FCC employer on July 14th and begins working with a PERS 2 employer on July 15th. They had worked 80 hours for their FCC employer and earned .46 months of a service credit for July. They worked 96 hours for the PERS employer in July so they earned a full month of credit in PERS 2.

The excess service credit would be determined by adding the one months of DRS credit with the .46 months of credit from the FCC. The .46 months of credit is excess and rounds down to a quarter of service credit to be removed from PERS 2.

[]

WSR 22-08-088
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed April 5, 2022, 1:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-24-017.

Title of Rule and Other Identifying Information: WAC 388-823-0510
What constitutes substantial limitation due to autism?

Hearing Location(s): On May 10, 2022, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington Street S.E., Olympia, WA 98501. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the COVID-19 pandemic, hearings are held virtually, see the DSHS website for the most current information.

Date of Intended Adoption: No earlier than May 11, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m. on May 10, 2022.

Assistance for Persons with Disabilities: Contact Shelley Tencza, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email shelley.tencza@dshs.wa.gov, by 5:00 p.m. on April 26, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The developmental disabilities administration (DDA) is proposing amendments to this section to expand the list of professionals from whom DDA accepts a statement that a person's autism prevents the person from completing a full-scale intellectual quotient test.

Reasons Supporting Proposal: This change prevents disruption in service for current DDA clients whose statement from a professional does not meet currently enacted requirements. A more comprehensive list of qualified professionals will also assist applicants for DDA services. This change reduces the potential impact to hospitals, law enforcement agencies, and behavioral health institutes by preserving the person's current living situation in the community. DDA eligibility and access to DDA services support both the client and the care system by providing predictable, stable services. Enacting this emergency rule prevents potential harm brought by disruption to services, or inability to access services.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.10.020, 71A.16.020.

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

Name of Proponent: DSHS, DDA, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1500; Implementation and Enforcement: Will Nichol, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1583.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Chantelle

Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1500, fax 360-407-0955, TTY 1-800-833-6388, email chantelle.diaz@dshs.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4) because the rules do not affect small businesses.

Explanation of exemptions: The proposed amendments impose no new or disproportionate costs on small businesses so a small business economic impact statement is not required.

April 4, 2022
Katherine I. Vasquez
Rules Coordinator

SHS-4905.3

AMENDATORY SECTION (Amending WSR 21-13-164, filed 6/23/21, effective 8/1/21)

WAC 388-823-0510 What constitutes substantial limitation due to autism? (1) To establish substantial limitation due to autistic disorder diagnosed under the DSM-IV-TR, you must have an adaptive skills test score more than two standard deviations below the mean as described in WAC 388-823-0740 and subject to all of WAC 388-823-0740 and WAC 388-823-0750.

(2) To establish substantial limitation due to autism spectrum disorder diagnosed under the DSM-5 you must:

(a) Have an adaptive-skills test score more than two standard deviations below the mean as described in WAC 388-823-0740 and subject to WAC 388-823-0740 and WAC 388-823-0750; and

(b) Have either:

(i) A full-scale intellectual quotient (FSIQ) score more than one standard deviation below the mean as described in WAC 388-823-0720 and subject to WAC 388-823-0720 and WAC 388-823-0730; or

(ii) A written statement from a (~~professional~~) qualified (~~to administer intellectual tests stating~~) professional that your autism prevents you from completing (~~the~~) FSIQ testing. "Qualified professional" means:

(A) Board-certified neurologist;

(B) Board-certified psychiatrist;

(C) Licensed psychologist;

(D) Licensed physician associated with an autism center, developmental center, or center of excellence;

(E) Board-certified developmental and behavioral pediatrician; or

(F) Washington certified school psychologist or other school psychologist certified by the National Association of School Psychologists.

[Statutory Authority: RCW 71A.12.030, 71A.12.020 and 71A.16.020. WSR 21-13-164, § 388-823-0510, filed 6/23/21, effective 8/1/21. Statutory Authority: RCW 71A.12.030, 71A.12.120 and 74.08.090. WSR 14-12-046, § 388-823-0510, filed 5/29/14, effective 7/1/14. Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020,

71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. WSR 05-12-130, § 388-823-0510, filed 6/1/05, effective 7/2/05.]

WSR 22-08-090
PROPOSED RULES
COMMUNITY COLLEGES
OF SPOKANE

[Filed April 5, 2022, 2:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-24-019.

Title of Rule and Other Identifying Information: Chapter 132Q-10 WAC, Standards of conduct for students.

Hearing Location(s): On May 17, 2022, at 8:30 a.m., at Lodge Building, 3305 West Whistalks Way, Spokane, WA 99224. Virtual meeting option - join Zoom meeting, <https://ccs-spokane.zoom.us/j/83755648757?pwd=ZGZGaHhXdnFvaldjU25zOG0wZjJ0UT09&from=addon>, Meeting ID 837 5564 8757, Passcode 252751; Mobile US +1 253 215 8782 or +1 346 248 7799 or +1 669 900 6833 or +1 312 626 6799 or +1 646 558 8656 or +1 301 715 8592. In-person attendees will be required to follow community colleges of Spokane (CCS) campus guidelines pertaining to COVID-19.

Date of Intended Adoption: May 17, 2022.

Submit Written Comments to: John O'Rourke, 501 North Riverpoint Boulevard, Mailstop 1006, Spokane, WA 99217-6000, email john.orourke@ccs.spokane.edu, mobile 509-220-4200, by October 14, 2021.

Assistance for Persons with Disabilities: Contact John O'Rourke, phone 509-434-5185, fax 509-434-5279, TTY 509-434-5275, email john.orourke@ccs.spokane.edu, mobile 509-220-4200, by March 11, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updates to the rules are necessary in order to add new language clarifying the appeal process including that parties have the right to appeal the dismissal of a formal complaint as well as language clarifying a president's authority to appoint an administrative law judge or third party to serve as hearing officer. In addition, on August 4, 2020, the Washington Court of Appeals Division III filed an opinion regarding academic misconduct in the *Daniel Nelson v. Spokane Community College* case (No. 36556-5-III). CCS will provide clarification regarding its treatment of academic misconduct to ensure compliance with the decision of the court of appeals.

Reasons Supporting Proposal: Clarifying the appeal process as well as language clarifying a president's authority to appoint an administrative law judge or third party to serve as hearing officer, and ensuring compliance with the decision of the Court of Appeals.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13).

Statute Being Implemented: Title IX 20 U.S.C. § 1681 et seq.

Rule is necessary because of federal law and state court decision, *Daniel Nelson v. Spokane Community College* case (No. 36556-5-III).

Name of Proponent: CCS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Patrick McEachern or Glen Cosby, Spokane, Washington, 509-533-3514 or 509-533-7015.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. CCS is not a listed agency under RCW 34.05.328 and is therefore exempt from this provision.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

April 5, 2022
John O'Rourke
WAC Coordinator

OTS-3575.2

AMENDATORY SECTION (Amending WSR 15-15-161, filed 7/21/15, effective 8/21/15)

WAC 1320-10-210 Academic dishonesty and other ethical violations. (1) Acts of academic dishonesty (~~((will be reported to the student conduct officer and))~~) include the following:

(a) Cheating which includes:

(i) Use of unauthorized assistance in taking quizzes, tests, or examinations.

(ii) Acquisition, without permission, of tests or other academic material belonging to a member of the college faculty or staff.

(iii) Fabrication, which is the intentional invention or counterfeiting of information in the course of an academic activity. Fabrication includes:

- Counterfeiting data, research results, information, or procedures with inadequate foundation in fact;
- Counterfeiting a record of internship or practicum experiences;
- Submitting a false excuse for absence or tardiness;
- Unauthorized multiple submission of the same work; sabotage of others' work.

(iv) Engaging in any behavior specifically prohibited by a faculty member in the course syllabus or class discussion.

(v) Plagiarism which includes the use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.

(vi) Facilitation of dishonesty, including not challenging academic dishonesty.

(b) Knowingly furnishing false information to any college official, faculty member, or office including submission of fraudulent transcripts from other institutions.

(c) Forgery, alteration or misuse of any college document, record or instrument of identification.

(d) Tampering with an election conducted by or for CCS college students.

(2) (~~(Acts of)~~) Other ethical violations (~~((will be reported to the student conduct officer and))~~) include the following: 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.

[Statutory Authority: RCW 28B.50.140. WSR 15-15-161, § 132Q-10-210, filed 7/21/15, effective 8/21/15.]

NEW SECTION

WAC 132Q-10-221 Faculty member authority to respond to academic dishonesty and other ethical violations. (1) A faculty member need not give credit for course work that is the product of cheating, plagiarism, or other dishonesty. For any act of dishonesty that occurs during an instructional course, the faculty member may impose reprimands, educational opportunities, and/or adjust the student's grade accordingly for the particular examination, paper, or other work product where that dishonesty occurred. Any such faculty response shall not limit or preclude disciplinary sanction(s) from the student conduct office for the same act of dishonesty.

(2) A student who has received a grade adjustment by the faculty member on the basis of academic dishonesty under this code may grieve that adjustment under the student complaint procedure; however, any sanction that is imposed by the student conduct officer or student conduct board or panel must be reviewed under the student disciplinary procedure. See WAC 132Q-10-335.

[]

AMENDATORY SECTION (Amending WSR 21-10-010, filed 4/23/21, effective 5/24/21)

WAC 132Q-10-600 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the Community Colleges of Spokane's standard disciplinary procedures, WAC 132Q-10-101 through 132Q-10-503, these supplemental procedures shall take precedence. The college may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13). WSR 21-10-010, § 132Q-10-600, filed 4/23/21, effective 5/24/21.]

AMENDATORY SECTION (Amending WSR 21-10-010, filed 4/23/21, effective 5/24/21)

WAC 132Q-10-608 Appeals. (1) ~~((The))~~ All parties, including the student conduct officer in their capacity as a representative of the college shall have the right to appeal from the ((initial order's)) determination of responsibility and/or from a dismissal ((of an allegation(s) of sexual harassment in a formal complaint. The right to ap-

peal will be subject to the same procedures and time frames set forth in WAC 132Q-10-335.)), in whole or part, of a formal complaint during the investigative or hearing process. Appeals must be in writing and filed with the appropriate vice president's office within 21 days of service of the initial order or notice of dismissal. Appeals must identify the specific findings of fact and/or conclusions of law in the initial order or dismissal that the appealing party is challenging and must contain argument as to why the appeal should be granted. Failure to file a timely appeal constitutes a waiver of the right to appeal and the initial order or dismissal shall be deemed final.

(2) For appeals coming from Spokane Community College, the vice president of student affairs at Spokane Falls Community College will ((determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s). For appeals coming from Spokane Falls Community College, the vice president of student services at Spokane Community College will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

(3)) process the appeal. For appeals coming from Spokane Falls Community College, the vice president of student services at Spokane Community College will process the appeal.

(3) Upon receiving a timely appeal, the appropriately identified vice president's office will serve a copy of the appeal on all parties, who will have 10 days from the date of service to submit written responses to the appropriate vice president's office addressing issues raised in the appeal. Failure to file a timely response constitutes a waiver of the right to participate in the appeal. Upon receipt of written responses, the appropriate vice president shall serve copies of the responses to the other parties.

(4) Parties receiving a copy of the responses shall have five days in which to submit a written reply addressing issues raised in the responses to the appropriate vice president's office.

(5) The appropriate vice president or their delegate, based on their review of parties' submission and the hearing or investigative record, will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether a dismissal if affirmed or denied, or if the disciplinary sanctions and conditions imposed in the initial order are affirmed, vacated, or amended, and if amended set for the new disciplinary sanctions and conditions.

(6) The appropriate vice president of student affairs/services shall serve the final decision on the parties simultaneously.

(7) All administrative decisions reached through this process are and may be judicially appealed pursuant to applicable provisions of chapter 34.05 RCW including, but not limited to, the timelines set forth in RCW 34.05.542.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13). WSR 21-10-010, § 132Q-10-608, filed 4/23/21, effective 5/24/21.]

WSR 22-08-091
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed April 5, 2022, 2:38 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-04-108.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-478-0015 Need standards for cash assistance.

Hearing Location(s): On May 10, 2022, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>; or virtually. Due to the COVID-19 pandemic, hearings are held virtually, see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than May 11, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m. on May 10, 2022.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email tencza@dshs.wa.gov [tencza@dshs.wa.gov], by 5:00 p.m. on April 26, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SHB 1151 (chapter 9, Laws of 2021) requires the department to update standards of need using an existing, broadly-used national standard. The proposed amendments reflect this required update using the University of Washington Center for Women's Welfare Self-Sufficiency Standard.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, and 74.08.090.

Statute Being Implemented: RCW 74.04.770, as amended by SHB 1151 (chapter 9, Laws of 2021).

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Patrick Budde, P.O. Box 45470, Olympia, WA 98504, 360-764-0068.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.["]

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: The proposed amendments do not impact small businesses. They only impact DSHS clients.

April 4, 2022
 Katherine I. Vasquez
 Rules Coordinator

SHS-4919.1

AMENDATORY SECTION (Amending WSR 21-23-102, filed 11/17/21, effective 1/1/22)

WAC 388-478-0015 Need standards for cash assistance. The monthly need and payment standards for cash assistance are based on a determination of the assistance unit size. The need standards for cash assistance units are:

Assistance unit size	Need standard
1	\$ (1,631) <u>2,998</u>
2	((2,064)) <u>4,883</u>
3	((2,548)) <u>5,893</u>
4	((3,007)) <u>7,786</u>
5	((3,465)) <u>9,144</u>
6	((3,924)) <u>10,706</u>
7	((4,535)) <u>12,137</u>
8	((5,020)) <u>13,553</u>
9	((5,504)) <u>15,220</u>
10 or more	((5,988)) <u>17,793</u>

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, and 74.08.090. WSR 21-23-102, § 388-478-0015, filed 11/17/21, effective 1/1/22. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.04.0052, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.08A.120, 74.08A.230, 74.62.030 and 2020 c 357. WSR 20-20-007, § 388-478-0015, filed 9/24/20, effective 10/25/20. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, and 74.08.090. WSR 19-24-032, § 388-478-0015, filed 11/25/19, effective 1/1/20; WSR 18-22-021, § 388-478-0015, filed 10/26/18, effective 1/1/19; WSR 18-01-040, § 388-478-0015, filed 12/12/17, effective 1/12/18; WSR 16-23-146, § 388-478-0015, filed 11/22/16, effective 1/1/17; WSR 16-03-013, § 388-478-0015, filed 1/8/16, effective 2/8/16; WSR 14-24-072, § 388-478-0015, filed 11/26/14, effective 1/1/15; WSR 13-24-041, § 388-478-0015, filed 11/26/13, effective 1/1/14; WSR 12-24-034, § 388-478-0015, filed 11/29/12, effective 1/1/13; WSR 11-24-021, § 388-478-0015, filed 11/30/11, effective 1/1/12; WSR 11-01-121, § 388-478-0015, filed 12/20/10, effective 1/1/11; WSR 10-04-111, § 388-478-0015, filed 2/3/10, effective 3/6/10; WSR 08-24-070, § 388-478-0015, filed 12/1/08, effective 1/1/09; WSR 07-24-033, § 388-478-0015, filed 11/30/07, effective 12/31/07; WSR 07-06-066, § 388-478-0015, filed 3/5/07, effective 4/5/07. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 06-05-102, § 388-478-0015, filed 2/14/06, effective 3/17/06. Statutory Authority: RCW 74.04.050,

74.04.055, 74.04.057, 74.04.770, and 74.08.090. WSR 05-22-077 and 05-23-012, § 388-478-0015, filed 10/31/05 and 11/4/05, effective 1/1/06; WSR 05-01-074, § 388-478-0015, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 74.04.770, 74.04.050, 74.04.055, 74.04.057. WSR 03-24-059, § 388-478-0015, filed 12/1/03, effective 1/1/04; WSR 03-23-116, § 388-478-0015, filed 11/18/03, effective 12/19/03. Statutory Authority: RCW 74.08.090, 74.04.510, and 74.04.770. WSR 02-23-029, § 388-478-0015, filed 11/12/02, effective 12/1/02. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.04.200. WSR 01-11-108, § 388-478-0015, filed 5/21/01, effective 7/1/01. Statutory Authority: RCW 74.04.200. WSR 99-04-056, § 388-478-0015, filed 1/29/99, effective 3/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-478-0015, filed 7/31/98, effective 9/1/98.]

WSR 22-08-092
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed April 5, 2022, 2:44 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-17-105.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-424-0001 Citizenship and alien status—Definitions, 388-424-0020 How does my alien status impact my eligibility for federally funded Basic Food benefits?, and 388-466-0005 Immigration status requirements for refugee cash assistance.

Hearing Location(s): On May 10, 2022, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the COVID-19 pandemic, hearings are held virtually, see DSHS website for the most current information.

Date of Intended Adoption: Not earlier than May 11, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m. on May 10, 2022.

Assistance for Persons with Disabilities: Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email tencza@dshs.wa.gov [tencza@dshs.wa.gov], by 5:00 p.m. on April 26, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments are necessary to update state rules for public benefits eligibility for special immigrants from Iraq and Afghanistan paroled in the United States under Section 602 (B) (1) of Afghan Allies Protection Act of 2009, or Sec 1059(a) of National Defense Authorization Act.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Olga Walker, P.O. Box 45470, Olympia, WA 98504-5470, 360-725-4641.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under RCW 34.05.328 (5) (b) (vii) which states in part, "This section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility ..."

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 34.05.328 (5) (b) (vii).

Explanation of exemptions: The proposed rules do not affect small businesses. They only affect DSHS clients.

April 4, 2022

Katherine I. Vasquez
Rules Coordinator

SHS-4902.3

AMENDATORY SECTION (Amending WSR 22-02-014, filed 12/27/21, effective 2/1/22)

WAC 388-424-0001 Citizenship and immigration status—Definitions. For the purposes of determining an individual's citizenship and immigration status for public assistance, the following definitions apply:

(1) **"Lawfully present"** are immigrants or noncitizens who have been inspected and admitted into the United States and have not overstayed the period for which they were admitted, or have current permission from the U.S. Citizenship and Immigration Services (CIS) to stay or live in the U.S.

(2) **"Qualified aliens"** are lawfully present immigrants defined in federal law as one of the following:

(a) Individuals lawfully admitted for permanent residence (LPRs).

(b) Individuals who are admitted to the U.S. as refugees under INA §207. The following individuals are treated the same as refugees in their eligibility for public assistance:

(i) Hmong or Highland Lao are members of a Hmong or Highland Laotian tribe which rendered military assistance to the U.S. during the Vietnam era (August 5, 1964, to May 7, 1975), and are "lawfully present" in the U.S. This category also includes the spouse (including unremarried widow or widower) or unmarried dependent child of such tribal members.

(ii) Victims of trafficking according to federal law are:

(A) Individuals who have been certified as victims of trafficking by the federal U.S. Department of Health and Human Services (HHS), Office on Trafficking in Person (OTIP), or have been granted a T visa.

(B) Immediate family members of trafficking victims. Immediate family members are the spouse or child of a victim of any age and the parent or unmarried minor sibling if the victim is under 21 years old.

(iii) Afghan nationals and their spouses and children, paroled into the U.S. between July 31, 2021, and September 30, 2022, after evacuation from Afghanistan to the U.S., or to a location overseas.

~~((iii))~~ (iv) Special immigrants from Iraq and Afghanistan are individuals granted:

(A) ~~((special))~~ Special immigrant status under INA §101 (a) (27)

~~((B))~~ (B)

(B) Special immigrant conditional permanent resident; or

(C) Paroled under section 602 (B) (1) AAPA/Sec 1059 (a) NDAA 2006.

(c) Individuals who have been granted asylum under INA §208.

(d) Cuban/Haitian entrants. These are nationals of Cuba or Haiti who were paroled into the U.S. or given other special status.

(e) Abused spouses or children, parents of abused children, or children of abused spouses:

(i) When the alien no longer resides with the person who committed the abuse, and has one of the following:

(A) A pending or approved I-130 petition or application to immigrate as an immediate relative of a U.S. citizen or as the spouse or unmarried child under age 21 of a lawful permanent resident (LPR);

(B) A notice of "prima facie" approval of a pending self-petition under the violence against women act (VAWA); or

(C) Proof of a pending application for suspension of deportation or cancellation of removal under VAWA.

(ii) Children of an abused spouse do not need their own separate pending or approved petition, but are included in their parent's petition if it was filed before they turned 21 years old. Children of abused persons who meet the conditions above retain their "qualified alien" status even after they turn 21 years old.

(f) Individuals who have been granted parole into the U.S. for at least a period of one year (or indefinitely) under INA §212 (d) (5), including "public interest" parolees.

(g) Individuals granted withholding of deportation or removal under INA §243(h) or §241 (b) (3).

(h) Individuals who were admitted to the U.S. as conditional entrants under INA §203 (a) (7) prior to April 1, 1980.

(i) Amerasians who were born to U.S. citizen armed services members in Southeast Asia during the Vietnam War.

(3) **"Nonqualified aliens"** are noncitizens who are lawfully present in the U.S. and who are not included in the definition of qualified aliens in subsection (1) of this section. Nonqualified aliens include but are not limited to:

(a) Citizens of Marshall Islands, Micronesia, or Palau;

(b) Immigrants paroled into the U.S. for less than one year;

(c) Immigrants granted temporary protected status; or

(d) Nonimmigrants who are allowed entry into the U.S. for a specific purpose usually for a limited time are also nonqualified. Examples include:

(i) Business visitors;

(ii) Students; and

(iii) Tourists.

(4) **"Survivors of certain crimes"** are noncitizens, and any of their qualifying family members, as defined in subsection (5) of this section, who have:

(a) Filed or are preparing to file an application for a T visa (trafficking victim);

(b) Filed or are preparing to file an application for a U visa (crime victim); or

(c) Been harmed by one of the specific crimes described below; and

(i) Was granted continued presence by U.S. Homeland Security; or

(ii) Has filed or is preparing to file an application for asylum status.

Specific crimes include:

(A) Those related to human trafficking, kidnapping, unlawful imprisonment, custodial interference, luring, trafficking, coercion of involuntary servitude, and others under chapter 9A.40 RCW;

(B) Sexual exploitation of children and others under chapter 9.68A RCW; or

(C) Substantially similar crimes under federal law or the laws of another state.

(5) **"Qualifying family members"** are the spouse and child(ren) of survivors of certain crimes, and the parents or unmarried minor siblings if the survivor is under 21 years old. Qualifying family members

do not include a person charged with or convicted of attempt, conspiracy, solicitation, or commission of a crime, listed under subsection (4) (c) of this section, against the survivor of certain crimes.

(6) **"Undocumented aliens"** are noncitizens without a lawful immigration status as defined in subsections (2) or (3) of this section, and who:

(a) Entered the U.S. illegally; or

(b) Were lawfully admitted but whose status expired or was revoked per United States Citizenship and Immigration Services (USCIS).

(7) **"U.S. citizens"** are one of the following:

(a) Individuals born in the United States or its territories (Guam, Puerto Rico, and the U.S. Virgin Islands; also residents of the Northern Mariana Islands who elected to become U.S. citizens).

(b) American Indians born outside the U.S. without regard to immigration status or date of entry if:

(i) They were born in Canada and are ((fifty)) 50 percent American Indian blood (but need not belong to a federally recognized tribe); or

(ii) They are members of a federally recognized Indian tribe or Alaskan Native village or corporation.

(c) Individuals who have become naturalized U.S. citizens.

(d) Individuals born abroad to at least one U.S. citizen parent depending on conditions at the time of their birth, per title 8, subchapter III, section 1401 of the United States Code.

(e) Individuals who turn 18 years of age on or after February 27, 2001, automatically become U.S. citizens if the following conditions are met while the individual is under age ((eighteen)) 18 per INA 320.

(i) The individual is granted lawful permanent resident (LPR) status;

(ii) At least one of the individual's parents is a U.S. citizen by birth or naturalization; and

(iii) The individual:

(A) Resides in the U.S. in the legal and physical custody of the citizen parent; or

(B) Was adopted according to the requirements of INA 101 and resides in the U.S. in the legal and physical custody of the citizen parent.

(f) Individuals, who turned 18 before February 27, 2001, would have automatically become a citizen if, while still under 18, they became a lawful permanent resident and both of their parents were naturalized. Such individuals also may have derived citizenship when only one parent naturalized, if the other parent was dead or a U.S. citizen by birth, or the individual's parents were separated and the naturalized parent had custody.

(8) **"U.S. nationals"** are persons who owe permanent allegiance to the U.S. and may enter and work in the U.S. without restriction. The following are the only persons classified as U.S. nationals:

(a) Persons born in American Samoa or Swain's Island after December 24, 1952; and

(b) Residents of the Northern Mariana Islands who did not elect to become U.S. citizens.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.820, 74.08.090, 74.08A.120, 74.09.035. WSR 22-02-014, § 388-424-0001, filed 12/27/21, effective 2/1/22. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.057, 74.04.500, 74.04.510, 74.04.515, 74.08.090, and 74.08A.120. WSR 20-09-044, § 388-424-0001, filed

4/8/20, effective 5/9/20. Statutory Authority: RCW 74.04.050, 74.04.057, and 74.08.090. WSR 11-16-056, § 388-424-0001, filed 7/29/11, effective 8/29/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.020, and Sec. 8120 of Pub. L 111-118 (DOD appropriations law); USDA Food and Nutrition Service federal guidance from January 29, 2010; U.S. DHHS Administration for Children and Families, Office of Family Assistance federal guidance letter No. TANF-ACF-PI-2010-05 issued on June 16, 2010. WSR 10-15-045, § 388-424-0001, filed 7/13/10, effective 7/27/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08A.320, 74.08.090, and Public Law 110-161 Section 525; Public Law 110-181 Section 1244; FNS Admin Notice 08-17; State Letter 04-12 from the Office of Refugee Resettlement. WSR 08-14-116, § 388-424-0001, filed 6/30/08, effective 8/1/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 04-15-004, § 388-424-0001, filed 7/7/04, effective 8/7/04.]

AMENDATORY SECTION (Amending WSR 12-18-024, filed 8/27/12, effective 9/27/12)

WAC 388-424-0020 How does my alien status impact my eligibility for federally funded Basic Food benefits? (1) If you are a U.S. citizen or U.S. national as defined in WAC 388-424-0001 and meet all other eligibility requirements, you may receive federal Basic Food benefits.

(2) If you are not a U.S. citizen or U.S. national, you must fall within (a) or (b) of this subsection, and meet all other eligibility requirements, in order to receive federal Basic Food benefits:

(a) You are a member of one of the following groups of lawful immigrants as defined in WAC 388-424-0001:

- (i) Amerasian;
- (ii) Asylee;
- (iii) Cuban or Haitian entrant;
- (iv) Deportation or removal withheld;
- (v) Refugee;
- (vi) Afghan nationals paroled into the U.S. between July 31, 2021, and September 30, 2022;
- (vii) Special immigrant from Iraq or Afghanistan;
- ~~((vii))~~ (viii) Victim of trafficking;
- ~~((viii))~~ (ix) Noncitizen American Indian; or
- ~~((ix))~~ (x) Hmong or Highland Lao tribal member.

(b) (i) You are a member of one of the following groups of qualified aliens as defined in WAC 388-424-0001:

- (A) Conditional entrant;
- (B) Lawful permanent resident (LPR);
- (C) Paroled for one year or more; or
- (D) Abused spouse or child or parent or child of an abused spouse or child.

(ii) And, one of the following also applies to you:

- (A) You have worked or can get credit for forty Social Security Administration (SSA) work quarters - as described in WAC 388-424-0008;
- (B) You are an active duty personnel or honorably discharged veteran of the U.S. military or you are the spouse, unmarried surviving spouse, or unmarried dependent child of someone who meets this requirement, as described in WAC 388-424-0007;
- (C) You receive cash or medical benefits based on supplemental security income (SSI) criteria for blindness or disability;

(D) You have lived in the U.S. as a "qualified alien" as described in WAC 388-424-0001 for at least five years;

(E) You are under age eighteen; or

(F) You were lawfully residing in the U.S. on August 22, 1996 and were born on or before August 22, 1931.

(3) If you are a legal immigrant not eligible for federal benefits under Basic Food only because of your alien status, you may be eligible for state-funded food assistance program (FAP) benefits under WAC 388-400-0050.

[Statutory Authority: RCW 74.04.005, 74.04.500, 74.04.510, 74.04.515, 74.08.090, and 74.08A.120. WSR 12-18-024, § 388-424-0020, filed 8/27/12, effective 9/27/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120. WSR 11-02-035, § 388-424-0020, filed 12/29/10, effective 2/1/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.020, and Sec. 8120 of Pub. L 111-118 (DOD appropriations law); USDA Food and Nutrition Service federal guidance from January 29, 2010; U.S. DHHS Administration for Children and Families, Office of Family Assistance federal guidance letter No. TANF-ACF-PI-2010-05 issued on June 16, 2010. WSR 10-15-045, § 388-424-0020, filed 7/13/10, effective 7/27/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.320, Pub. L. No. 110-181, National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 111-08, the Omnibus Appropriations Act of 2009, Division F, Title VI, Section 602; Office of Refugee Resettlement State Letter 09-17 from April 9, 2009; and federal guidance issued on May 15, 2009, by the Food and Nutrition Service, United States Department of Agriculture. WSR 09-21-046, § 388-424-0020, filed 10/14/09, effective 11/4/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08A.320, 74.08.090, and Public Law 110-161 Section 525; Public Law 110-181 Section 1244; FNS Admin Notice 08-17; State Letter 04-12 from the Office of Refugee Resettlement. WSR 08-14-116, § 388-424-0020, filed 6/30/08, effective 8/1/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 04-15-004, § 388-424-0020, filed 7/7/04, effective 8/7/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.04.510. WSR 03-05-029, § 388-424-0020, filed 2/10/03, effective 4/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and H.R. 2646 Farm Security and Rural Investment Act of 2002. WSR 02-22-046, § 388-424-0020, filed 10/30/02, effective 12/1/02. Statutory Authority: RCW 74.04.510, S. 1150, the Agricultural Research, Extension, and Education Reform Act of 1998. WSR 99-01-058, § 388-424-0020, filed 12/11/98, effective 1/11/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-424-0020, filed 7/31/98, effective 9/1/98. Formerly WAC 388-518-1805.]

AMENDATORY SECTION (Amending WSR 12-19-037, filed 9/12/12, effective 10/13/12)

WAC 388-466-0005 Immigration status requirements for refugee cash assistance. (1) You may be eligible for refugee cash assistance (RCA) if you can provide documentation issued by the U.S. Citizenship and Immigration Services (USCIS), that you are:

- (a) Admitted as a refugee under section 207 of the Immigration and Nationalities Act (INA);
 - (b) Paroled into the U.S. as a refugee or asylee under section 212 (d) (5) of the INA;
 - (c) Granted conditional entry under section 203 (a) (7) of the INA;
 - (d) Granted asylum under section 208 of the INA;
 - (e) Admitted as an Amerasian Immigrant from Vietnam through the orderly departure program, under section 584 of the Foreign Operations Appropriations Act, incorporated in the FY88 Continuing Resolution P.L. 100-212;
 - (f) A Cuban-Haitian entrant who was admitted as a public interest parolee under section 212 (d) (5) of the INA;
 - (g) Certified as a victim of human trafficking by the federal office of refugee resettlement (ORR);
 - (h) An eligible family member of a victim of human trafficking certified by ORR who has a T-2, T-3, T-4, or T-5 Visa;
 - (i) Afghan nationals paroled into the U.S. between July 31, 2021, and September 30, 2022;
 - (j) Admitted as Special Immigrant from Iraq or Afghanistan under section 101 (a) (27) of the INA, or special immigrant conditional permanent resident, or paroled under section 602 (B) (1) AAPA/Sec 1059(a) NDAA 2006.
- (2) A permanent resident alien meets the immigration status requirements for RCA if the individual was previously in one of the statuses described in subsections (1) (a) through (g) of this section.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.250, and 2011 1st sp.s. c 15. WSR 12-19-037, § 388-466-0005, filed 9/12/12, effective 10/13/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08A.320, 74.08.090, and Public Law 110-161 Section 525; Public Law 110-181 Section 1244; FNS Admin Notice 08-17; State Letter 04-12 from the Office of Refugee Resettlement. WSR 08-14-116, § 388-466-0005, filed 6/30/08, effective 8/1/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-466-0005, filed 7/31/98, effective 9/1/98.]

WSR 22-08-098
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD
[Filed April 5, 2022, 4:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-04-100.

Title of Rule and Other Identifying Information: WAC 181-79A-132
Dual endorsement requirement.

Hearing Location(s): On May 19, 2022, at 8:00 a.m., at The Hampton Inn, 486 Bradley Boulevard, Richland, WA 99352. Exact meeting location and a link to listen to the meeting virtually will be available several weeks prior to the meeting. More information regarding this can be found on our website <https://www.pesb.wa.gov/about-us/board-meetings/>.

Date of Intended Adoption: May 19, 2022.

Submit Written Comments to: Professional Educator Standards Board (PESB), 600 Washington Street S.E., Olympia, WA 98504, email pesb.k12.wa.us, by 8:00 a.m., Monday, May 16, 2022.

Assistance for Persons with Disabilities: Contact PESB, phone 360-725-6275, email pesbk12.wa.us, by 8:00 a.m., Thursday, May 5, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend the dual endorsement requirement to remove special education and early childhood special education from the list of endorsements that require a second endorsement. These endorsements would no longer require a second endorsement to obtain a teaching certificate.

Reasons Supporting Proposal: Increase access to the special education and early childhood special education endorsements by removing barriers to obtain these endorsements.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Statute Being Implemented: Chapter 28A.410 RCW.

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

Name of Proponent: PESB, governmental.

Name of Agency Personnel Responsible for Drafting: Sophia Keskey, 600 Washington Street S.E., Olympia, WA 98504, 360-890-5814; Implementation: Jisu Ryu, 600 Washington Street S.E., Olympia, WA 98504, 360-867-8510; and Enforcement: Erica Hernandez-Scott, 600 Washington Street S.E., Olympia, WA 98504, 360-890-2443.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

April 5, 2022
Sophia Keskey
Rules Coordinator

OTS-3676.1

AMENDATORY SECTION (Amending WSR 18-08-025, filed 3/26/18, effective 4/26/18)

WAC 181-79A-132 Dual endorsement requirement. Per WAC 181-82A-215, all teachers are required to hold at least one endorsement, provided, a teacher who obtains a (~~special education, early childhood special education,~~) bilingual education, or English language learner endorsement after September 1, 2019, must earn and/or hold a second endorsement in another endorsement area that may be earned at the preresidency level. (~~Special education, early childhood special education,~~) Bilingual education, English language learner, and traffic safety do not qualify as the other endorsement area. Provided, that individuals applying for a Washington state teacher certificate that have completed an out-of-state teacher preparation program may have two years in which to add the second endorsement.

[Statutory Authority: RCW 28A.410.220. WSR 18-08-025, § 181-79A-132, filed 3/26/18, effective 4/26/18. Statutory Authority: RCW 28A.410.210. WSR 14-24-005, § 181-79A-132, filed 11/19/14, effective 12/20/14.]

WSR 22-08-099
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD
[Filed April 5, 2022, 4:25 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-02-043.

Title of Rule and Other Identifying Information: WAC 181-78A-027 Waiver of clinical practice and coursework by a preparation program provider, and 181-79A-228 Emergency teacher certificates.

Hearing Location(s): On May 19, 2022, at 8:00 a.m., at The Hampton Inn, 486 Bradley Boulevard, Richland, WA 99352. Exact meeting location and a link to listen to the meeting virtually will be available several weeks prior to the meeting. More information regarding this can be found on our website <https://www.pesb.wa.gov/about-us/board-meetings/>.

Date of Intended Adoption: May 19, 2022.

Submit Written Comments to: Professional Educator Standards Board (PESB), 600 Washington Street S.E., Olympia, WA 98504, email pesb.k12.wa.us, by 8:00 a.m., Monday, May 16, 2022.

Assistance for Persons with Disabilities: PESB, phone 360-725-6275, email pesb.k12.wa.us, by 8:00 a.m., Thursday, May 5, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Communities continue to experience a public health crisis related to the outbreak of the novel coronavirus, COVID-19. Educator preparation programs and their candidates face ongoing challenges related to this public health situation. These emergency rule changes would extend existing pandemic supports that address these challenges for educator preparation programs and candidates. The pandemic supports include: WAC 181-78A-027 Waiver of clinical practice and coursework by a preparation program provider, this section allows preparation program providers to review a candidate's work and learning experiences, and waive required clinical practice and/or coursework if the program determines the candidate has the knowledge and skills to be otherwise gained from the required clinical practice or coursework; and WAC 181-79A-228 Emergency teacher certificates, this section allows for emergency certificates for teacher preparation program candidates who have not completed assessment requirements, but have completed all other program completion requirements. These emergency certificates are valid for one year.

Reasons Supporting Proposal: Changes in educational settings due to current public health concerns mean that some educator candidates are unable to complete clinical practice and coursework in traditional settings and may be unable to take required assessments (i.e. basic skills and content knowledge assessments) in a timely manner. WAC 181-78A-027 allows preparation programs to review a candidate's previous field experience and coursework to determine if the candidate has the requisite knowledge and skills. WAC 181-79A-228 would allow emergency certificates for candidates who have not completed assessment requirements. Emergency certificates allow candidates to serve in their educator role while they complete the assessment requirements.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Statute Being Implemented: Chapter 28A.410 RCW.

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

Name of Proponent: PESA, governmental.

Name of Agency Personnel Responsible for Drafting: Sophia Keskey, 600 Washington Street S.E., Olympia, WA 98504, 360-890-5814; Implementation: Jisu Ryu, 600 Washington Street S.E., Olympia, WA 98504, 360-867-8510; and Enforcement: Erica Hernandez-Scott, 600 Washington Street S.E., Olympia, WA 98504, 360-890-2443.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

April 5, 2022
Sophia Keskey
Rules Coordinator

OTS-3569.1

AMENDATORY SECTION (Amending WSR 20-16-033, filed 7/25/20, effective 8/25/20)

WAC 181-78A-027 Waiver of clinical practice and course work by a preparation program provider. (1) Based on review of current educational settings, and review of a candidate's previous course work, field experiences, work experiences, and alternative learning experiences, an educator preparation program provider may waive or reduce in length the required clinical practice, and/or waive required course work, if based on the review the provider determines that the candidate has the knowledge and skills to be otherwise gained from the required clinical practice or course work.

(2) Under this section, educator preparation program providers may waive or reduce in length the required clinical practice and/or course work through June 30, (~~(2021)~~) 2023.

[Statutory Authority: Chapter 28A.410 RCW. WSR 20-16-033, § 181-78A-027, filed 7/25/20, effective 8/25/20.]

OTS-3570.1

AMENDATORY SECTION (Amending WSR 21-08-001, filed 3/24/21, effective 4/24/21)

WAC 181-79A-228 Emergency teacher certificates. Emergency teacher certificates, valid for one year, may be issued by the superintendent of public instruction under the following conditions:

(1) A teacher preparation program approved by the professional educator standards board has recommended the candidate as having met all requirements for program completion with the exception of one or more of the following:

(a) The performance assessment as described in WAC 181-78A-232;

(b) The content knowledge assessment as described in chapter 181-78A WAC; and

(c) The basic skills assessment as described in WAC 181-78A-232.

(2) During the validity period of the certificate, preparation program providers are required to inform, advise, and support applicants on assessment requirements as described in WAC 181-78A-231(3).

(3) Teacher preparation programs may recommend candidates for an emergency certificate under this section through ~~((December 31, 2021))~~ June 30, 2023.

(4) One additional one-year emergency certificate may be issued upon recommendation by the preparation program provider. Teacher preparation programs may recommend candidates for this additional one-year emergency certificate through June 30, ~~((2022))~~ 2024.

(5) Candidates recommended for an emergency certificate under this section must apply for that certificate through the office of superintendent of public instruction no later than December 31, ~~((2022))~~ 2024.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-08-001, § 181-79A-228, filed 3/24/21, effective 4/24/21; WSR 20-16-034, § 181-79A-228, filed 7/25/20, effective 8/25/20.]

WSR 22-08-100
PROPOSED RULES
DEPARTMENT OF
ENTERPRISE SERVICES

[Filed April 5, 2022, 4:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-04-006.

Title of Rule and Other Identifying Information: Chapter 200-110 WAC, Local government self-insurance health and welfare program.

Hearing Location(s): On May 10, 2022, at 2 to 4 p.m., virtual public hearing via Zoom. Copy and paste the following hyperlink into your internet browser <https://des-wa.zoom.us/j/94412074240?pwd=eHlKMdDLRDM4Ym54WmhvOW1PY09HZz09>. When prompted, use passcode 510038; by phone, call 877-853-5247. When prompted [no further information supplied by agency].

Date of Intended Adoption: May 25, 2022.

Submit Written Comments to: Jack Zeigler, online at <https://des.wa.gov/about/policies-laws-rules/rulemaking>, local government self-insurance health and welfare program rules, by 5 p.m., May 18, 2022.

Assistance for Persons with Disabilities: Contact Jack Zeigler, email jack.zeigler@des.wa.gov, by May 2, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this update of the rules is to align the existing rules with statutory changes placing health insurance for school employees under the oversight of the newly formed school employees benefits board. Other content changes were made to align with recent changes to other self-insurance rules addressing solvency requirements and independent audit requirements.

Reasons Supporting Proposal: State law establishes the power of the state risk manager to put in place rules governing the management and operation of both individual and joint local government self-insured health and welfare benefits programs. Current rules are no longer current because of statutory changes and agency practices. Without these changes, the rules may promote misunderstanding and inefficiency in state government. Further, lack of clarity increases the risk of noncompliance.

Statutory Authority for Adoption: RCW 48.62.061 Rule making by state risk manager—Standards.

Statute Being Implemented: RCW 48.62.061 Rule making by state risk manager—Standards.

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

Name of Proponent: Department of enterprise services (DES), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Shannon Stuber, 1500 Jefferson [Street S.E.], Olympia, WA, 360-407-8153; Enforcement: Jason Siems, 1500 Jefferson [Street S.E.], Olympia, WA, 360-742-6348.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. DES is not an agency listed in RCW 34.05.328 (5) (a) (i). Further, DES does not voluntarily make section 201 applicable to this rule adoption nor, to date, has the joint administrative rules review committee made section 201 applicable to this rule adoption.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

April 5, 2022

Jack Zeigler

Rules and Policy Manager

OTS-3712.1

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-110-020 Definitions. (1) "Actuary" means any person who is a member of the American Academy of Actuaries.

(2) "Assessment" means the moneys paid by the members to a joint self-insurance program.

(3) "Beneficiary" means any individual entitled to payment of all or part of a covered claim under a local government health and welfare self-insurance program.

(4) "Broker of record" means the insurance producer licensed in the state of Washington who, through a contractual agreement with the self-insurance program, procures insurance on behalf of the self-insurance program.

(5) "Claim" means a demand for payment for the delivery of a covered service or services.

(6) "Claim adjustment expense" means expenses, other than claim payments, incurred in the course of processing and settling claims.

(7) "Claims auditor" means a person who has the following qualifications:

(a) Has experience in auditing the same manner of claims filed against the program being audited;

(b) Provides proof of professional liability insurance; and

(c) Provides a statement that the auditor is independent from the program being audited, its brokers and third-party administrators.

(8) "Competitive solicitation" means a documented competitive selection process providing an equal and open opportunity to qualified parties and culminating in a selection based on criteria which may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services.

(9) "Consultant" means an independent individual or firm contracting with a self-insurance program to perform actuarial, claims auditing or third-party administration services, represent the program as broker of record, or render an opinion or recommendation according to the consultant's methods, all without being subject to the control

of the program, except as to satisfaction of the contracted deliverables.

~~(10) ("Contingent reserve policy" means a policy adopted by the governing body of an individual or joint program which establishes the amount of money (contingent reserves) necessary to fund the termination costs of the program and to insulate the program against unusual severity or frequency of claims.~~

~~(11) "Contingent reserves" means:~~

~~(a) For joint programs, an amount of money equal to eight weeks of program expenses as stated in the contingent reserve policy established by ordinance or resolution of the governing body;~~

~~(b) For individual programs, an amount of money equal to eight weeks of program expenses as recommended by the state risk manager or equal to a different amount as stated in the contingent reserve policy established by ordinance or resolution of the governing body.~~

~~(12)) "Contribution" means the amount paid or payable by the employee into a health and welfare self-insurance program.~~

~~((13)) (11) "Governing body" means the multimember board, commission, committee, council, or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.~~

~~((14)) (12) "Individual self-insurance program" means a formal program established and maintained by a local government entity, with the exception of public school districts, to provide advance funding to self-insure health and welfare benefits on its own behalf as opposed to risk assumption, which means a decision to absorb the entity's financial exposure to a risk of financial loss without the creation of a formal program of advance funding of anticipated losses.~~

~~((15)) (13) "Interlocal agreement" means an agreement joining local government members of a self-insurance program that is established under the Interlocal Cooperation Act defined in chapter 39.34 RCW.~~

~~((16)) (14) "Joint self-insurance program" means any two or more local government entities which have entered into a cooperative risk sharing agreement pursuant to the provisions of the Interlocal Cooperation Act (chapter 39.34 RCW) and/or subject to regulation under chapter 48.62 RCW.~~

~~((17)) (15) "Member" means a local government entity that:~~

~~(a) Is a signatory to a joint insurance program's interlocal agreement;~~

~~(b) Agrees to pay assessments as part of the program's joint self-insurance program; and~~

~~(c) Is a past or present participant in a joint self-insurance program subject to regulation under chapter 48.62 RCW.~~

~~((18)) (16) "Program liability" means an amount as of fiscal year end determined by each program to be either:~~

~~(a) Eight weeks of total program expenses based on total program expenses paid during the previous year; or~~

~~(b) The program's liability as determined by an actuary.~~

~~((19)) (17) "Program reserves" means moneys set aside to pay expenses of an individual or joint self-insurance program.~~

~~((20)) (18) "Risk sharing" means a decision by the members of a joint self-insurance program to jointly absorb certain or specified financial exposures to risks of loss through the creation of a formal program of advance funding of anticipated losses; and/or joint pur-~~

chase of insurance as a member of a joint self-insurance program formed under chapter 48.62 RCW.

~~((21))~~ (19) "Self-insurance program" means any individual or joint local government entity self-insurance program required by chapter 48.62 RCW to comply with this chapter.

~~((22))~~ (20) "Services" means administrative, electronic, management, training, wellness or other ongoing significant support services which do not include the participation in or purchase of the pool's commercial or self-insured insurance programs.

~~((23))~~ (21) "Stop-loss insurance" means a promise by an insurance company that it will cover losses of the entity it insures over and above an agreed-upon individual or aggregated amount.

~~((24))~~ (22) "Termination cost" means an estimate of the program's liabilities at the time the program ceases to operate, which shall include, at a minimum, final claim payments, claim adjustment expenses, unallocated loss adjustment expenses, and costs attributed to increased utilization.

~~((25))~~ (23) "Third-party administrator" means an independent association, agency, entity or enterprise which, through a contractual agreement, provides one or more of the following ongoing services: Program management or administration services, claims administration services, risk management services, or services for the termination of an individual or joint self-insurance program.

~~((26))~~ (24) "Unallocated loss adjustment expense (ULAE)" means costs that cannot be associated with specific claims but are related to the claims adjustment process, such as administrative and internal expenses related to settlement of claims at the termination of the program.

[Statutory Authority: 2011 c 43. WSR 11-23-093, recodified as § 200-110-020, filed 11/17/11, effective 11/17/11. Statutory Authority: RCW 48.62.061. WSR 10-20-102, § 82-65-020, filed 10/1/10, effective 11/1/10.]

AMENDATORY SECTION (Amending WSR 17-22-048, filed 10/25/17, effective 11/25/17)

WAC 200-110-040 Standards for solvency—Program funding requirements. (1) All individual and joint health and welfare programs self-insuring medical benefits shall establish program reserves in an amount equal to ~~((sixteen))~~ 16 weeks of program expenses. An aggregate stop-loss policy is recommended, but not required.

(2) All individual and joint health and welfare self-insurance programs providing either vision, dental or prescription drug benefits or any combination of programs thereof shall establish and maintain program reserves in an amount not less than eight weeks of program expenses for each program offered. ~~((An additional contingency reserve is recommended, but not required.))~~

(3) In lieu of the requirements stated in subsections (1) and (2) of this section, all individual and joint health and welfare self-insurance programs providing either medical, vision, dental or prescription drug benefits or any combination thereof must obtain an independent actuarial study of estimated outstanding program liabilities as of

fiscal year ending and maintain funds equal to or greater than the actuarially determined program liability at fiscal year ending.

(4) All programs in existence less than one year shall establish reserves according to the initial plan submitted and approved by the state risk manager.

(5) Self-insurance programs that do not meet requirements for program reserves as of the program's year end shall notify the state risk manager of the condition. The state risk manager shall require the program submit a corrective action plan within (~~sixty~~) 60 days of year end. The state risk manager will notify the program in writing of denial or approval of the corrective action plan within (~~thirty~~) 30 days of submission.

(6) Failure to meet the requirements of the approved corrective action plan may result in further remedial action by the state risk manager, including the service of a cease and desist order upon the program.

[Statutory Authority: RCW 48.62.061. WSR 17-22-048, § 200-110-040, filed 10/25/17, effective 11/25/17. Statutory Authority: 2011 c 43. WSR 11-23-093, recodified as § 200-110-040, filed 11/17/11, effective 11/17/11. Statutory Authority: RCW 48.62.061. WSR 10-20-102, § 82-65-040, filed 10/1/10, effective 11/1/10.]

AMENDATORY SECTION (Amending WSR 17-22-048, filed 10/25/17, effective 11/25/17)

WAC 200-110-090 Standards for management—Standards for operations—Financial plans. (1) All self-insurance programs shall maintain a written plan for managing the financial resources of the program. The financial plan shall include:

(a) A procedure for accounting for moneys received, payments made and liabilities of the joint program which complies with generally accepted accounting principles. For individual programs, a separate fund to account for revenues and expenses associated with the program is recommended, but not required;

(b) An investment policy which conforms to RCW 48.62.111 governing the investments of the program; and

(c) All individual and joint self-insurance programs shall ensure the preparation and submission of accurate and timely annual reports to the state risk manager within (~~one hundred fifty~~) 150 days of fiscal year end.

Joint self-insurance programs providing medical benefits must submit to the state risk manager unaudited financial statements as prescribed by the state auditor's office within (~~one hundred fifty~~) 150 days of fiscal year end. Joint self-insurance programs providing medical benefits must submit to the state risk manager audited financial statements as prescribed by the state auditor's office within one year of the program's fiscal year end.

(2) No financial plan of an individual self-insurance program shall permit interfund loans from assets held against liabilities for unpaid claims and claim adjustment expenses except for those amounts which are clearly inactive or in excess of program reserve (~~and contingency reserve~~) requirements.

(3) No financial plan of a joint self-insurance program shall permit loans to any member.

[Statutory Authority: RCW 48.62.061. WSR 17-22-048, § 200-110-090, filed 10/25/17, effective 11/25/17. Statutory Authority: 2011 c 43. WSR 11-23-093, recodified as § 200-110-090, filed 11/17/11, effective 11/17/11. Statutory Authority: RCW 48.62.061. WSR 10-14-034, § 82-65-090, filed 6/28/10, effective 10/1/10.]

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-110-120 Standards for claims management—Claims administration. (1) (a) All self-insurance programs shall have a written claims administration program which includes, as a minimum, claims filing procedures, internal financial control mechanisms, and claim and claim adjustment expense reports.

(b) All individual and joint health and welfare self-insurance programs shall have a written claim appeal procedure that contains, as a minimum, a time limit for filing an appeal, a time limit for response, and a provision for the second level of review.

(2) All self-insurance programs may perform claims administration services on their own behalf or may contract for claims administration services with a qualified third-party administrator, provided all of the specific requirements under subsection (1) of this section are included in the contract.

(3) All joint self-insurance programs shall maintain a financial system that identifies claim and claim adjustment expenses.

(4) All joint self-insurance programs shall maintain claim expense reports for all claims made against the joint self-insurance program and its members.

(5) All self-insurance programs offering medical coverage shall obtain a claims audit of claim reserving, adjusting and payment procedures every three years at a minimum. A claims audit shall be conducted by a qualified claims auditor not affiliated with the program, its broker of record, or its third-party administrator. Such review shall be in writing and identify strengths, areas of improvement, findings, conclusions and recommendations. Such review shall be provided to the governing body and retained for a period not less than six years. The scope of the claims audit shall include claims administration procedures listed in subsection (1) of this section. The claims audit may include other self-insured benefits offered to employees, but only self-insured employee medical programs are required to obtain an audit.

(6) The state risk manager may require more frequent claims audits for programs that, in the state risk manager's opinion, are not operationally or financially sound. Failure to obtain the requested independent claims audit when required may result in the procurement of such audit by the state risk manager on behalf of the program. Costs of these services shall be the responsibility of the self-insurance program.

[Statutory Authority: 2011 c 43. WSR 11-23-093, recodified as § 200-110-120, filed 11/17/11, effective 11/17/11. Statutory Authority:

RCW 48.62.061. WSR 10-14-034, § 82-65-120, filed 6/28/10, effective 10/1/10.]

AMENDATORY SECTION (Amending WSR 17-22-048, filed 10/25/17, effective 11/25/17)

WAC 200-110-130 Standards for management and operations—State risk manager reports. (1) Every individual and joint health and welfare self-insurance program authorized to transact business in the state of Washington shall electronically submit the annual report to the state risk manager no later than (~~one hundred fifty~~) 150 days following the completion of the program's fiscal year. (~~Programs that terminate operations shall continue to submit annual reports until all claims have been paid.~~)

(2) Joint self-insurance programs offering medical benefits shall electronically submit annual financial statements in the format prescribed by the state auditor's office. All individual and joint self-insurance programs shall electronically submit the revenue, expenses and other financial data on a form provided by the state risk manager.

(3) All individual and joint self-insurance programs providing medical benefits and maintaining reserves of less than (~~sixteen~~) 16 weeks of program expenses shall submit a written actuarial estimate of outstanding program liabilities as of fiscal year ending.

(4) All individual and joint self-insurance programs shall submit electronically a list of contracted consultants with the annual report to the state risk manager.

(5) Joint self-insurance programs shall submit electronically the following additional information as part of the annual report to the state risk manager:

(a) Details of changes in articles of incorporation, bylaws or interlocal agreement;

(b) Details of ongoing significant services provided by contract to nonmembers;

(c) List of local government members added to or terminated from the program.

(6) All individual and joint self-insurance programs not meeting reserve requirements as of fiscal year ending as described in WAC 200-110-040 may be required by the state risk manager to submit quarterly reports until notified by the state risk manager that reserving standards have been met.

(7) Failure to provide required financial reports may result in corrective action by the state risk manager. Such actions may include:

(a) Increase in frequency of examinations;

(b) On-site monitoring by the state risk manager;

(c) Service of a cease and desist order upon the program.

[Statutory Authority: RCW 48.62.061. WSR 17-22-048, § 200-110-130, filed 10/25/17, effective 11/25/17. Statutory Authority: 2011 c 43. WSR 11-23-093, recodified as § 200-110-130, filed 11/17/11, effective 11/17/11. Statutory Authority: RCW 48.62.061. WSR 10-20-102, § 82-65-130, filed 10/1/10, effective 11/1/10.]

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-110-140 Standards for operations—Program changes—Notification to the state risk manager. (1) All individual and joint self-insurance programs shall operate in the same form and manner stated in the program's original application approved by the state risk manager. Programs shall submit a written request and receive approval from the state risk manager prior to implementing the following proposed program changes:

(a) Any change in the terms of the interlocal agreement of a joint self-insurance program;

(b) ~~((Elimination or reduction of stop-loss insurance;~~

~~(e)))~~ Acceptance of any loans or lines of credit;

~~((d)))~~ (c) Provision of services to nonmembers;

~~((e)))~~ (d) Addition of members of other entity types than those included in original application approved by state risk manager.

(2) The following joint self-insurance program changes require written notification to the state risk manager prior to implementing the following changes:

(a) Initial contract with a third-party administrator, or change in third-party administrator;

(b) Any change to bylaws of a joint self-insurance program.

[Statutory Authority: 2011 c 43. WSR 11-23-093, recodified as § 200-110-140, filed 11/17/11, effective 11/17/11. Statutory Authority: RCW 48.62.061. WSR 10-14-034, § 82-65-140, filed 6/28/10, effective 10/1/10.]

WSR 22-08-106

PROPOSED RULES

BOARD OF TAX APPEALS

[Filed April 6, 2022, 10:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR [21-22-023].

Title of Rule and Other Identifying Information: Chapter 456-10 WAC, Informal hearings—Practice and procedure.

Hearing Location(s): On Friday, May 13, 2022, at 10:00 a.m., electronic meeting via Microsoft Teams, information on agency website.

Date of Intended Adoption: May 20, 2022.

Submit Written Comments to: Keri Lamb, email bta@bta.wa.gov, fax 360-586-9020, by two weeks before hearing.

Assistance for Persons with Disabilities: Contact Keri Lamb, phone 360-753-5446, fax 360-586-9020, TTY 360-753-5446, email bta@bta.wa.gov, by two weeks before hearing.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these changes is to clarify statutory language, simplify the calculation of deadlines, limit submissions, and streamline the informal hearings process.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 82.03.170.

Statute Being Implemented: Chapters 34.05 RCW and 10-08 WAC.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The board itself has drafted the proposed changes, and therefore recommends them in full. The board implements and enforces its own rules, so the proposed changes have no fiscal impact.

Name of Proponent: Washington state board of tax appeals, governmental.

Name of Agency Personnel Responsible for Drafting: Andrea Vingo, board of tax appeals, 360-753-5446; Implementation and Enforcement: Board of tax appeals, 360-753-5446.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Changes have no fiscal impact.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. No substantive changes in the board's administrative process.

April 6, 2022
Andrea Vingo
Review Officer

OTS-3710.1

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-001 Purpose and application of chapter. (1) This chapter explains how informal hearings are conducted before the board of tax appeals (board). ~~((Although informal hearings are available to all parties,))~~ The informal process is helpful for ((persons)) those who are not represented by ((counsel. In the informal process a taxpayer does not need to possess)) an attorney or other representative, or do not have legal expertise ((in order to pursue an appeal)). These rules of practice and procedure will be liberally construed to secure the just, speedy, and ~~((economical))~~ efficient determination of every ~~((action))~~ appeal.

(2) Where procedures are not ~~((covered))~~ addressed by this chapter, the board may, upon its own motion or upon written ~~((application by))~~ motion of any party, refer to and apply any rule provided for in chapter 456-09 WAC - Formal hearings—Practice and procedure, chapter 10-08 ~~((Washington Administrative Code ()))~~ WAC ~~(())~~ - Model rules of procedure, or the superior court civil rules. This chapter ~~((augmentments))~~ adds but does not ~~((supplant))~~ replace the provisions of chapter 82.03 RCW.

(3) The superior court civil rules, rules of professional conduct, the Washington Administrative Code (WAC), and the Revised Code of Washington (RCW) referred to ~~((herein))~~ in this chapter are available in public libraries and online ~~((at various websites))~~.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-001, filed 6/21/05, effective 8/1/05.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-010 ((Distinction)) Difference between formal and informal ((hearing and converting an appeal)) proceedings. (1) A party making an appeal may ~~((elect in writing, with))~~ choose either a formal or informal hearing in its written notice of appeal ~~((, either a formal or informal hearing))~~. Informal hearings are conducted ~~((pursuant))~~ according to the rules of practice and procedure ~~((set forth))~~ outlined in this chapter. Formal hearings are conducted ~~((pursuant))~~ according to the Administrative Procedure Act, chapter 34.05 RCW, and the rules of practice and procedure of chapter 456-09 WAC. Failure to ~~((elect in writing a formal or informal hearing at the time of submitting the notice of appeal shall))~~ choose a type of hearing will result in the proceeding being conducted as informal.

(a) ~~((A formal decision of the board is subject to judicial review pursuant to RCW 34.05.570. Judicial review is limited to the record made of the proceedings before the board. The record made of the proceedings includes a verbatim account of the hearings together with the evidence, pleadings, and documents submitted to the board by the parties. In appeals from a decision of a board of equalization, the~~

record includes the decision of that board together with the evidence submitted thereto.

~~(b))~~ Decisions entered in an informal appeal are not subject to judicial review ~~((as authorized))~~ under the Administrative Procedure Act, chapter 34.05 RCW like formal decisions. Proposed and initial decision in informal cases, however, can be internally appealed to the board members by filing an exception as outlined in WAC 456-10-730.

~~((e) Aggrieved))~~ (b) The parties may have ((avenues of further appeal)) additional avenues to challenge allowed by law ((which are not pertinent to the statutory authority granted to the board and)), but which the board does not have legal authority to grant, and therefore, are not discussed ((herein)) in this chapter.

(2) ~~((The))~~ An appeal may be converted from an informal to a formal proceeding as provided below.

(a) ~~((The))~~ A respondent ~~((, as a party to an appeal))~~ in an appeal from a decision by a board of equalization pursuant to RCW 84.08.130 ((appeal from a decision by a board of equalization) may, within twenty calendar days from the date of the board's mailing of the acknowledgment of the notice of appeal, submit to the clerk of the board) submit a notice of intention that the hearing be ((a formal hearing)) formal, if made within 20 calendar days of the date the board transmits the acknowledgment of the notice of appeal.

(b) ~~((In appeals under RCW 82.03.130,))~~ The department of revenue ((may, within thirty calendar days from the date of the board's mailing of the acknowledgment of the notice of appeal, submit to the clerk of the board)), in appeals under RCW 82.03.130 (1)(e), may submit a notice of its intention that the hearing be ((a) formal ((hearing)), if made within 30 calendar days of the date the board transmits the acknowledgment of the notice of appeal.

(c) ~~((In appeals under RCW 82.03.130 (1)(e),))~~ The department of revenue ((may, within ten calendar days from the date of the board's mailing of the acknowledgment of the notice of appeal, submit to the clerk of the board)), in appeals under RCW 82.03.130 (1)(e), may submit a notice of its intention that ((the)) a hearing be ((a formal hearing)) formal, if made within 10 calendar days from the date the board transmits the acknowledgment of the notice of appeal.

(d) At any time up to ~~((thirty))~~ 30 days prior to the date of the hearing, the parties may submit to the clerk of the board a notice signed by all parties of intention to convert the proceedings to either a formal or informal hearing.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-010, filed 6/21/05, effective 8/1/05; WSR 94-07-043, § 456-10-010, filed 3/10/94, effective 4/10/94; WSR 89-10-057 (Order 89-03), § 456-10-010, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-110 Definitions. ~~((As used))~~ (1) In this chapter, the ((following terms shall)) subsequent terms have the following meanings:

~~((1))~~ (a) "Appellant" means a person or entity who appeals any order or decision.

(b) "Board" means the board of tax appeals ((as)) described in chapter 82.03 RCW and chapters 456-09 and 456-10 WAC. Where appropriate, the term "board" also refers to the designated hearing officers, tax referees, or agents of the board ((of tax appeals)).

~~((2))~~ (c) "Decision" means a written judgment or ruling issued by the board, designated hearing officers, tax referees or agents of the board.

(d) "File" means to present or to deliver. Filings with the board may be delivered personally, by mail, by commercial delivery service, by fax or electronic transmission as provided in these rules. The terms "to file" and "to submit" are used interchangeably.

(e) "Motion" means a written or oral request for the board to take action.

(f) "Order" means a written direction given by the board instructing that some act be done or that some act is prohibited. Orders are not appealable unless otherwise provided by law.

(g) "Party" means any person or entity who is an appellant, respondent, or intervenor.

(h) "Presiding officer" or "hearing officer" ((shall)) means any member of the board, tax referee, or any person who is assigned to conduct a conference or hearing by the board. The presiding officer ((shall have)) has the authority ((as provided by)) outlined in WAC 10-08-200 and chapter 34.05 RCW.

~~((3) "Appellant" means a person, natural or otherwise, who appeals any order or decision to the board of tax appeals.~~

~~(4))~~ (i) "Respondent" means a person ((, natural or otherwise,)) or entity who is ((named)) listed as a responding party in any appeal ((before the board of tax appeals)).

~~((5) "Formal hearing" means a proceeding conducted pursuant to the Administrative Procedure Act, chapter 34.05 RCW and chapter 456-09 WAC.~~

~~(6) "Informal hearing" means a proceeding governed by those rules specified in chapter 456-10 WAC.~~

~~(7) "Decision" means a written judgment or ruling, including orders, issued by the board of tax appeals or the designated hearing officers or agents of the board of tax appeals.~~

~~(8) "Party" means any person who in a proceeding before the board is an appellant or respondent.~~

~~(9) "To submit" means to present or to deliver. Submissions to the board may be delivered personally, by mail, by commercial delivery service, or by fax or electronic transmission as provided in these rules. As used herein, the terms "to submit" and "to file" are used interchangeably.~~

~~(10) "To file" means to present or to deliver. Filings with the board may be delivered personally, by mail, by commercial delivery service, or by fax or electronic transmission as provided in these rules. As used herein, the terms "to file" and "to submit" are used interchangeably.)~~ (j) "Submit" means to present or deliver to the board. Submissions may be delivered personally, by mail, by commercial delivery service, by fax, or by electronic transmission as provided in these rules. The terms "submit" and "file" are used interchangeably.

(k) "Transmit" means to deliver electronically.

(2) If a term has not been defined in this section, the board will interpret the term as having its ordinary meaning.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-110, filed 6/21/05, effective 8/1/05; WSR 95-05-032 (Order 95-02), §

456-10-110, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170, 82.03.140 and 82.03.150. WSR 90-11-106, § 456-10-110, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-057 (Order 89-03), § 456-10-110, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-120 Alternative procedures. The board may (~~(, from time to time,)~~) offer expedited or abbreviated procedures for certain informal hearings (~~(in order)~~) to resolve appeals in an (~~(economic and)~~) efficient manner.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-120, filed 6/21/05, effective 8/1/05; WSR 89-10-057 (Order 89-03), § 456-10-120, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-210 Appearance and practice before the board. Practice before the board in informal proceedings (~~(shall be)~~) is limited to (~~(the following)~~):

- (1) Taxpayers who are natural persons representing themselves;
- (2) Attorneys at law (~~(duly qualified and entitled to practice in the courts of the state of Washington)~~) authorized to practice in the highest court of any state;
- (3) Public officials (~~(in their official capacity)~~), county assessors, or their authorized representatives;
- (4) Certified public accountants (~~(licensed in the state of Washington)~~) currently licensed in any state;
- (5) (~~(A duly authorized director,)~~) An authorized officer, partner, trustee or full-time employee of an individual firm, association, partnership, or corporation who appears (~~(for)~~) with the permission of such firm, association, partnership, (~~(or)~~) corporation, or trust;
- (6) (~~(Partners, joint venturers, or trustees representing their respective partnerships, joint venturers, or trusts; and~~
- ~~(7))~~ Other persons designated by a taxpayer (~~(with approval of)~~) and approved by the board.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-210, filed 6/21/05, effective 8/1/05; WSR 89-10-057 (Order 89-03), § 456-10-210, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-220 Rules of professional conduct. (1) All persons appearing in proceedings before the board (~~(, whether on their own behalf or in a representative capacity,~~) shall conform to the rules of professional conduct (RPC) required of attorneys before the courts of

Washington)) are required to follow the rules of professional conduct (RPC) required of attorneys before the courts of Washington. If any such person does not follow these rules, the hearing officer has the discretion, depending on the circumstances, to admonish or reprimand such person, exclude such person from further participation in the proceedings, adjourn the hearing, or report the matter to the board. Further, all persons are required to treat all parties, representatives, and the board's staff courteously and fairly both inside and outside the proceedings.

(2) The board in its discretion, either upon referral by a hearings officer or on its own motion, may consider information that establishes to the board a question regarding a person's ethical conduct and fitness to practice before the board. This information will be considered at a hearing after notice to all parties. If the person's conduct is found to be unethical or unfit, the board may take appropriate disciplinary action including, but not limited to, refusal to permit such person to appear or appear in a representative capacity in any proceeding before the board.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-220, filed 6/21/05, effective 8/1/05; WSR 89-10-057 (Order 89-03), § 456-10-220, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 89-10-057, filed 5/2/89)

WAC 456-10-230 Ex parte communication. (~~No one may~~) Neither the board nor any person will make or attempt to make any ex parte (contact) communication with a member of the board (or), presiding officer (except upon notice and opportunity for all parties to be present or to the extent required for the disposition of ex parte matters as authorized by law), or tax referee which are prohibited by the Administrative Procedure Act in RCW 34.05.455. Attempts (by anyone) to make such (prohibited ex parte) communications (shall) will be subject (such person) to the sanctions (of) in WAC 456-10-220 and 456-10-555.

[Statutory Authority: RCW 82.03.170. WSR 89-10-057 (Order 89-03), § 456-10-230, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-300 ((Commencing the)) Initiating an appeal. (1) ((Persons)) Those wishing to (make) initiate an appeal must (submit to the board an original) file a notice of appeal and a copy of the order or determination that is being appealed. ((The board will transmit a copy of the notice of appeal and a copy of the order or determination that is being appealed to the respondent(s) within thirty days of its receipt by the board.))

(2) The board will acknowledge ((to the appellant in writing)) receipt of a notice of appeal in excise tax appeals and provide a copy to the department of revenue within 30 days of receipt. The board may acknowledge receipt of a notice of appeal in all other cases.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-300, filed 6/21/05, effective 8/1/05.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-310 Contents of a notice of appeal. (1) ~~((For informal appeals, an appellant may submit a notice of appeal using forms provided by the board.~~

~~(2) In the alternative,))~~ An appellant ~~((may))~~ must submit a notice of appeal that substantially contains the following:

(a) The appellant's name, mailing address, telephone number, email address, and that of the representative, if any.

(b) Name of the respondent together with respondent's mailing address, email address, and phone number if known.

~~((When the respondent is a government agency or agencies,))~~ The board may add additional respondents ~~((in order))~~ to ensure that all necessary ~~((persons))~~ entities are a party to the appeal.

(c) ~~((The date))~~ A copy of the order, decision, or determination ~~((from which the appeal is taken, together with a copy of the order, decision, or application))~~ appealed from.

(d) The ~~((nature of the))~~ type of tax.

(i) In excise tax cases, the amount of the tax in controversy and the period ~~((covered thereby))~~ at issue;

(ii) In property tax cases, the parcel number of the property ~~((under appeal)),~~ the ~~((year for which the valuation has been determined))~~ assessment year(s) at issue, the ~~((full))~~ value ~~((as))~~ determined by the local board of equalization, and ~~((a declaration of true and fair value as alleged by the appellant))~~ the appellant's contended value; and

(iii) In property tax exemption cases, the parcel number of the property ~~((under appeal)),~~ and the year(s) for which the exemption is at issue ~~((, the basis under which exempt status should be granted or denied, and the use of the property)).~~

(e) ~~((Specification of the issue to be decided by the board.~~

~~(f) A clear, separate, and concise assignment of each error alleged and a short statement of facts upon which the appellant relies to sustain each contention.~~

~~(g))~~ The relief sought.

~~((h) The))~~ (f) A signature ~~((of the appellant or the appellant's representative))~~ or acknowledgment, electronic or otherwise, by the appellant or the appellant's representative that all the information contained in the notice of appeal is true and correct to the best of his or her knowledge, and that he or she will comply with the rules of conduct in this chapter.

~~((3))~~ (2) The board may, upon motion of a party or upon its own motion, require ~~((a more complete statement of the claim or defense or))~~ additional information or explanation of any matter stated in ~~((any))~~ a notice of appeal.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-310, filed 6/21/05, effective 8/1/05; WSR 98-22-040, § 456-10-310, filed 10/29/98, effective 11/29/98. Statutory Authority: RCW 82.03.170, 82.03.140 and 82.03.150. WSR 90-11-106, § 456-10-310, filed 5/22/90,

effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-057 (Order 89-03), § 456-10-310, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-315 Deadlines for submitting ~~((the))~~ a notice of appeal. (1) The jurisdiction of the board (~~((to hear an appeal))~~) is limited to those appeals (~~((submitted within))~~) that comply with and are filed by the deadlines stated in this section (~~((Any appeal to the board shall be submitted within the time required))~~) or by the statute governing the respective agency or proceeding involved. (~~((All time periods set forth below are expressed in calendar days.))~~)

(a) (~~((Appeals))~~) For appeals of a denial of petition or notice of determination for a reduction or refund taken by the department of revenue pursuant to RCW 82.03.190, ~~((thirty))~~ 30 days from the ~~((mailing of))~~ date the determination was mailed or transmitted.

(b) For appeals from a county board of equalization pursuant to RCW 84.08.130, ~~((thirty))~~ 30 days from the ~~((mailing of the decision))~~ date the determination was mailed or transmitted.

(c) For appeals by an assessor or landowner from an order of the director of revenue made pursuant to RCW 84.08.010 and 84.08.060, ~~((thirty))~~ 30 days from the ~~((mailing of))~~ date the determination was mailed or transmitted.

(d) For appeals by an assessor or owner of an intercounty public utility or private car company from determinations by the director of revenue of equalized assessed valuation of property and ~~((the))~~ its apportionment ~~((thereof to a county))~~ made pursuant to chapters 84.12 and 84.16 RCW, ~~((thirty))~~ 30 days from the ~~((mailing of the order))~~ date the determination was mailed or transmitted.

(e) For appeals by an assessor, landowner, or owner of an intercounty public utility or private car company from a determination of any county indicated ratio for such county compiled by the department of revenue pursuant to RCW 84.48.075, ~~((fifteen days after the mailing of the certification))~~ 15 days from the date the certification was mailed or transmitted.

(f) For appeals from the decisions of a sale price of second class shorelands on navigable lakes by the department of natural resources pursuant to RCW 79.94.210, ~~((thirty))~~ 30 days from the ~~((mailing of the notification))~~ date the certification was mailed or transmitted.

(g) For appeals from urban redevelopment property tax apportionment district proposals established by governmental ordinances pursuant to RCW 39.88.060, ~~((thirty))~~ 30 days from the ~~((mailing of))~~ date the ordinance was mailed or transmitted.

(h) For appeals from interest rates as determined by the department of revenue for use in valuing farmland under current use assessment pursuant to RCW 84.34.065, ~~((thirty))~~ 30 days after ~~((the publication of))~~ the rate was published.

(i) For appeals from revisions to stumpage value tables used to determine value by the department of revenue pursuant to RCW 84.33.091, on or before the ~~((sixtieth))~~ 60th day after the date of final adoption.

(j) For appeals from denial of tax exemption application by the department of revenue pursuant to RCW 84.36.850, ~~((thirty))~~ 30 days

from the ~~((mailing of))~~ date the determination was mailed or transmitted.

(2) All time periods set forth in this section are expressed in calendar days unless otherwise noted. If the last date for submitting the notice of appeal falls upon a Saturday, Sunday or legal holiday as defined in RCW 1.16.020, the submission ~~((shall))~~ will be considered timely if ~~((performed))~~ submitted on the next business day by 5:00 p.m. Pacific Time.

(3) Any party may ~~((, by motion,))~~ file a written motion to challenge the jurisdiction of the board ((in any appeal)). The board may, upon its own motion, raise ~~((such jurisdictional issues))~~ a question about jurisdiction.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-315, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 82.03.140 and 82.03.150. WSR 90-11-106, § 456-10-315, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-057 (Order 89-03), § 456-10-315, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-325 Date and manner of submitting ((the)) a notice of appeal. (1) ~~((The date of submitting))~~ A notice of appeal ((shall be the)) is considered submitted on the date of ((actual)) receipt by the board at its Olympia office if the appeal is hand delivered. The board's date stamp ~~((placed thereon shall))~~ will be evidence of the date of receipt. If the notice of appeal is mailed, the postmark will ~~((control and shall))~~ be evidence of the date of submission.

(2) ~~((All documents may))~~ A notice of appeal may also be submitted to the board ((via fax or)) by fax, electronic mail ~~((transmission. However,))~~, or uploaded through the board's website. A submission will not be ~~((deemed complete and the board will not acknowledge receipt of the notice of appeal as provided in WAC 456-10-300 unless the following procedures are strictly observed:~~

(a) ~~Documents received by fax or electronic mail will be stamped "received" by the board between the hours of 8:00 a.m. and 5:00 p.m. excluding Saturdays, Sundays, and legal holidays. Any transmission not completed before 5:00 p.m. will be stamped "received" on the following business day. The date and time indicated by the board's fax or computer shall be evidence of the date and time of receipt of transmission.~~

(b) ~~The original notice of appeal must be mailed and postmarked or otherwise submitted to the board on or before the date of fax or electronic transmission.~~

(c) ~~All fax or electronic transmissions are sent at the risk of the sender)~~ considered complete unless received by 5:00 p.m. Pacific Time on the date due. The date and time indicated by the board's fax or computer will be evidence of the date and time of receipt.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-325, filed 6/21/05, effective 8/1/05; WSR 98-22-040, § 456-10-325, filed 10/29/98, effective 11/29/98; WSR 95-05-032 (Order 95-02), § 456-10-325, filed 2/8/95, effective 3/11/95; WSR 94-07-043, § 456-10-325, filed 3/10/94, effective 4/10/94. Statutory Authority: RCW

82.03.170, 82.03.140 and 82.03.150. WSR 90-11-106, § 456-10-325, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-057 (Order 89-03), § 456-10-325, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-335 Response. The respondent may submit a response to the notice of appeal (~~(with the board)~~). The response, if any, must be submitted to the board at least (~~(ten business)~~) 30 calendar days (~~(prior to hearing)~~) after the date the board acknowledged receipt of the notice of appeal, unless otherwise ordered (~~(by the board)~~), together with proof of service pursuant to WAC 456-10-410.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-335, filed 6/21/05, effective 8/1/05; WSR 89-10-057 (Order 89-03), § 456-10-335, filed 5/2/89.]

NEW SECTION

WAC 456-10-365 Limits on exhibits and evidence. (1) Each party must indicate the specific pages of evidence it intends to rely upon, if any, from the body from which the party appeals. Failure to indicate specific page numbers will result in the presumption that the party does not intend to rely on the underlying record, and instead intends to submit and rely only on new evidence.

(2) For property tax appeals, each party is strongly encouraged to submit the following exhibits or evidence in the following instances:

(a) A table of comparable sales if the party intends to rely on such evidence. The table should list the sales in order of most similar to least similar to the subject property, and include each sale's age, size, sales price, date of sale, and location relative to the subject property. A suggested format is available on the board's website or by contacting the board's staff.

(b) An income approach to valuation outline if the party intends to rely on such evidence. The outline should include at least the subject property's square footage, contended price per square foot, vacancy rate, operating expenses, income, and capitalization rate.

(3) Each party may submit evidence and/or exhibits in support of its appeal; however, submissions are limited to the page limitations below. These page limitations do not include the findings or determination of the body from which the decision or finding is appealed:

(a) For residential property tax appeals, each party is limited to submitting a total of 30 pages per assessment year appealed, including the record of the county board of equalization not excluded as outlined above that the party intends to rely on;

(b) For commercial property tax appeals, each party is limited to submitting a total of 40 pages per assessment year appealed, including the record of the county board of equalization not excluded as outlined above that the party intends to rely on;

(c) For DOR excise tax appeals, each party is limited to submitting a total of 250 pages, including the record of the department of

revenue not excluded as outlined above that the party intends to rely on;

(d) For all other appeals, each party is limited to submitting a total of 75 pages, including the record of the body from which a decision is appealed, and which the party intends to rely on.

(4) For property tax appeals, each party is limited to submitting five comparable sales.

(5) A party may file a motion with the board to submit evidence and/or exhibits beyond the page limits up to 500 pages, or comparable sales limits listed, which the board will grant for good cause. Exceeding the page or comparable sales limits without the board's permission may result in the hearing being continued, or the exclusion of evidence beyond the limits.

(6) The board will not review the record of a county board of equalization or any other tribunal that is unduly large, disorganized, or not numbered.

[]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-410 Service ((of papers on parties)) and filing of documents and proof of service. (1) All notices, pleadings, exhibits, correspondence specific to an appeal, and other papers submitted to the board ((shall)) must be served ((upon)) on all counsel and representatives of record and ((upon)) on unrepresented parties or ((upon)) on their agents designated by them, or to other persons or entities as required by law.

(a) Service ((shall)) must be made personally or, unless otherwise provided by law, by first-class, registered, or certified mail; by fax ((and same-day mailing of copies; or)); by commercial delivery company; or electronically.

(b) Service by mail ((shall be regarded as completed upon deposit in the United States mail,)) will be considered complete as evidenced by the postmark((, properly stamped and addressed)). Service by fax ((shall be regarded as completed upon production by the fax machine of)) will be considered complete on a confirmation of transmission ((and deposit on the same day in the United States mail)). Service by commercial delivery ((shall be regarded as)) will be considered completed ((upon)) on delivery to the delivery company((, properly addressed with charges prepaid)). Electronic service will be considered completed as evidenced by a sent receipt or the equivalent.

(c) Service must be completed by 5:00 p.m. Pacific Time on the date due.

(2) Proof of service. ((Where proof of service is required by statute or rule,)) Receipt ((of the papers)) by the board, together with one of the following, ((shall constitute)) will serve as proof of service:

(a) ((An acknowledgement)) A written acknowledgment of service by all parties of record.

(b) A ((certificate that the person signing the certificate served the papers upon)) written declaration of service indicating service on all parties of record ((in the proceeding by delivering a copy thereof in person to (names)).

~~(c) A certificate that the person signing the certificate served the papers upon all parties of record in the proceeding by:~~

~~(i) Mailing a copy thereof, properly addressed with postage pre-paid, to each party to the proceeding or his or her attorney or authorized agent; or~~

~~(ii) Transmitting a copy thereof by fax, and on the same day mailing a copy, to each party to the proceeding or his or her attorney or authorized agent; or~~

~~(iii) Depositing a copy thereof, properly addressed with charges prepaid, with a commercial delivery company)) was made. The declaration must include language that:~~

(i) A copy was mailed to each party or his or her attorney or representative; or

(ii) A copy was faxed to each party to the proceeding or to his or her attorney or representative; or

(iii) A copy was delivered to a commercial delivery company; or

(iv) A copy was electronically transmitted to each party or his or her attorney or representative.

(3) All notices, pleadings, exhibits, correspondence specific to an appeal, and other papers are considered filed with the board:

(a) On the date of receipt by the board at its Olympia office if the document is hand-delivered, commercially delivered, or mailed. The board's date stamp will be evidence of the date of receipt; or

(b) On the date and time indicated by the board's fax or computer, if the document is submitted by fax, electronic mail, or uploaded through the board's website as long as the document shows it was received by 5:00 p.m. Pacific Time on the date due.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-410, filed 6/21/05, effective 8/1/05; WSR 98-22-040, § 456-10-410, filed 10/29/98, effective 11/29/98; WSR 89-10-057 (Order 89-03), § 456-10-410, filed 5/2/89.]

NEW SECTION

WAC 456-10-415 Requirements for briefs, motions, responses, replies, memorandum, and other documentary evidence. (1) All briefs, motions, responses, replies, and memorandum must:

(a) Be legibly printed on letter-size paper (8-1/2 x 11 inches). All margins must be a minimum of one inch. This rule also applies to attachments unless the nature of the attachment makes compliance impractical.

(b) Be typed in 12-point or larger type in one of the following fonts or their equivalent: Times New Roman, courier, CG Times, or Arial. They must also be double-spaced and printed only on one side of the page. Footnotes may be single spaced in 10-point or larger type. If it is not possible to type a document, it may be legibly handwritten in blue or black ink. This rule also applies to attachments unless the nature of the attachment makes compliance impractical.

(c) Include a signature block that the signer certifies the number of words in the brief, motion, or memorandum that substantially states: "I certify that this memorandum contains _____ words, in compliance with the board's rules."

(d) Refrain from including, or partially redact where inclusion is necessary, the following personal data identifiers from all docu-

ments filed or used as exhibits, unless otherwise ordered by the board:

- (i) Dates of birth - Redact to the year of birth, unless deceased;
 - (ii) Social Security numbers and taxpayer identification numbers - Redact in their entirety;
 - (iii) Financial account number information - Redact to the last four digits; and
 - (iv) Driver license numbers - Redact in their entirety.
- (2) In the absence of a prehearing order that says otherwise, the following word limits will apply:
- (a) Trial briefs may not exceed 6,000 words (approximately 12 pages).
 - (b) Motions in limine and any brief in opposition may not exceed 4,500 words (approximately nine pages).
 - (c) Dispositive motions; including motions for summary judgment and motions to dismiss, must not exceed 6,000 words, and replies 3,000 words (approximately six pages).
 - (d) Exceptions and motions for reconsideration and any responses must not exceed 3,000 words (approximately six pages).
 - (e) All other motions must not exceed 3,000 words (approximately six pages), and responses 1,500 words (approximately three pages).
- (3) The board may refuse to consider any text, including footnotes, which is beyond the word limit. Captions, tables of contents, tables of authorities, signature blocks, and certificates of service need not be included within the word limit.
- (4) Motions to file over-length motions or briefs are disfavored but may be filed subject to the following:
- (a) The motion must be no more than 1,000 words (approximately two pages) in length, and must request a specific number of additional words;
 - (b) The motion must clearly explain why the party requesting the over-length brief cannot comply with the board's word limit; and
 - (c) No opposition to the motion may be filed unless requested by the board.

If the board allows a party to file an over-length motion, the brief in opposition will automatically be allowed an equal number of additional words. In all cases, the reply brief cannot exceed one-half the total length of the brief filed in opposition.

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AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-500 Prehearing conference. ((The board, upon its own motion or upon request of a party, may conduct a prehearing conference or conferences. Such prehearing conference will be conducted in accordance with the provisions of WAC 456-09-540.)) (1) The board may conduct a prehearing conference to consider:

- (a) Whether pleadings or other documents need to be amended;
- (b) Whether the parties can agree to any facts or procedures;
- (c) Deadlines for exchanging evidence, witness lists, exhibit lists, and filing briefs;

(d) How to label exhibits and attachments to briefs, motions, and other pleadings; and

(e) Other matters that may help to clarify or streamline the proceeding.

(2) After the prehearing conference, the board or hearing officer will issue an order outlining what occurred at the prehearing conference, including any agreements made by the parties.

(3) Documents or evidence that are submitted after the deadlines or not in a manner outlined in these rules or in the prehearing conference order will not be considered unless the party offering the evidence can make a clear showing that there was good cause for not following the order.

(4) Nothing in this rule will be interpreted to keep the parties from settling the appeal at any times.

(5) The board or a hearing officer can issue a prehearing order even if a prehearing conference has not been held.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-500, filed 6/21/05, effective 8/1/05.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-501 Limitation on discovery. (1) ~~((Insofar as))~~ If applicable and not in conflict with this chapter, the statutes and court rules regarding pretrial procedures in civil cases in the superior courts of the state of Washington ~~((shall))~~ will be used. ~~((Such))~~ These statutes and rules ~~((shall))~~ include, but ~~((shall not be))~~ are not limited to, those rules ~~((pertaining to))~~ about the discovery of evidence ~~((by parties to civil actions))~~.

(2) The board may limit discovery ~~((upon motion by))~~ on its own motion, or by motion of any party.

(3) The board may decide whether to ~~((permit the taking of depositions, the requesting of))~~ allow depositions, requests for admissions, and ~~((all other procedures authorized by rules 26 through 37 of the superior court civil rules))~~ any other discovery procedure. The board may condition the use of discovery on a party showing ~~((of necessity and unavailability of))~~ that discovery is necessary and that other means of obtaining such information are not available. In exercising such discretion, the board will consider the criteria ~~((set forth))~~ outlined in RCW 34.05.446.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-501, filed 6/21/05, effective 8/1/05.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-503 Summary judgment. A motion for summary judgment may be granted ~~((and an order issued))~~ if the written record shows that, in viewing the evidence in a light most favorable to the nonmoving party, there is no genuine issue as to any material fact and

((that the moving)) a party is entitled to judgment as a matter of law. Motions for summary judgment must comply with WAC 456-10-510.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-503, filed 6/21/05, effective 8/1/05.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-505 Time ((in which)) for filing evidence, briefs, ((and)) replies ((must be submitted)), and documentary evidence. In the absence of a prehearing order, evidence, briefs, and other documents must be submitted to the board ((within the times stated below)) by the following due dates:

(1) Documentary evidence ((which is to be introduced at hearing shall)) must be submitted ((to the board)) at least 10 calendar days prior to hearing, together with proof of service pursuant to WAC 456-10-410 ((at least ten business days prior to hearing)). Failure to comply may be grounds for exclusion of such evidence or dismissal in accordance with WAC 456-10-555.

(2) Briefs or other supporting statements, if any, ((shall)) must be submitted ((to the board)) at least 15 calendar days prior to hearing, together with proof of service pursuant to WAC 456-10-410 ((at least fifteen calendar days prior to hearing)).

(3) Reply briefs or other supporting statements, if any, ((shall)) must be submitted ((to the board)) at least 10 calendar days prior to the hearing, together with proof of service pursuant to WAC 456-10-410 ((at least ten calendar days prior to hearing)).

(4) Documentary evidence submitted to a board of equalization and forwarded to this board is ((excepted)) exempted from ((the)) these requirements ((of this provision)).

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-505, filed 6/21/05, effective 8/1/05; WSR 95-05-032 (Order 95-02), § 456-10-505, filed 2/8/95, effective 3/11/95; WSR 89-10-057 (Order 89-03), § 456-10-505, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-510 Motions. (1) Any ((application)) request for an order or ruling or a request for relief ((from any provision of this chapter)) is considered a motion. Every motion, unless made during a hearing, ((shall)) must be in writing and ((shall)) include the following:

(a) A statement of the relief or order sought;

(b) The ((reason)) basis for the relief or order;

(c) A statement that the moving party has made a good faith effort to meet and confer with the other party or parties to resolve the subject matter of the motion;

(d) ((The amount of time needed for argument)) A statement whether oral argument is requested, and if so, how much time is sought. Mo-

tions for summary judgment and motions to dismiss will receive approximately 20 minutes per side; and

(e) ~~((Shall include))~~ Proof of service pursuant to WAC 456-10-410.

(2) All motions ~~((shall))~~ must be properly captioned, contain the docket number assigned ~~((to the appeal))~~ by the board, and be signed by the party, their attorney or ~~((the))~~ their representative.

(3) At the discretion of the board, the hearing on motion may be ~~((by teleconference or in person))~~ held in person, by phone, video, or by other electronic means.

(4) A response to the motion ~~((shall))~~ must be submitted to the board ~~((together with proof of service pursuant to WAC 456-10-410 within ten business days following the date of service of the motion))~~ and opposing parties 14 calendar days of the date the motion was served on the responding party together with proof of service pursuant to WAC 456-10-410.

(5) Replies are not permitted, absent proper permission of the board. If permitted, the reply must be filed within five calendar days of the board's receipt of the response. A reply is limited to addressing the facts and arguments presented in the response.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-510, filed 6/21/05, effective 8/1/05; WSR 95-05-032 (Order 95-02), § 456-10-510, filed 2/8/95, effective 3/11/95; WSR 89-10-057 (Order 89-03), § 456-10-510, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-515 Postponements, continuances, and extensions of time. (1) Postponements, continuances, and extensions of time may be ordered by the board on its own motion.

(2) Requests to postpone, continue, extend the time, or reschedule the prehearing conference, if any, ~~((and the initially scheduled hearing date of an appeal will be freely granted provided such request is made within the time specified in the board's letter setting the prehearing conference, if any, and the initial hearing date))~~ must be made in writing and comply with WAC 456-10-510 and 456-10-410. The board will freely grant a party's first request. For second and subsequent requests, the moving party must show good cause as to why a new date and time is needed.

(3) Requests to postpone, continue, extend the time, or reschedule the hearing date must be made in writing, comply with WAC 456-10-510 and 456-10-410, and be filed 14 calendar days before the scheduled hearing. The board will freely grant a party's first request. For second and subsequent requests, the moving party must show good cause as to why a new date and time is needed. The presiding officer will decide whether to hear argument and will rule on the request.

~~((3))~~ (4) Other requests for a postponement, continuance, or extension of time must be timely, in writing, and comply with WAC 456-10-510 and 456-10-410. ((The board shall promptly schedule a conference to hear argument and to rule on the request. Requests for continuance will not be granted absent a showing of good cause.)) The presiding officer will decide whether to hear argument on the request.

~~((4))~~ (5) This section ~~((shall))~~ does not extend any ~~((applicable time for appeal to this board))~~ deadline to file an initial appeal.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-515, filed 6/21/05, effective 8/1/05; WSR 89-10-057 (Order 89-03), § 456-10-515, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 89-10-057, filed 5/2/89)

WAC 456-10-520 ~~((Teleconference proceeding.))~~ **Telephonic, video, and electronic proceedings.** ~~((1) At the discretion of the board, and where the rights of the parties will not be prejudiced thereby,))~~ All or part of the hearing, prehearing, or settlement conference may be conducted by ((telephone, television)) phone, video, or other electronic means. Each party and participant in the proceeding ~~((must))~~ will have an opportunity to ~~((participate effectively in, to hear, and if technically and economically feasible, to see the entire proceeding while it is taking place.))~~

~~(2) The board may require documentary evidence to be submitted sufficiently in advance of))~~ hear and effectively participate in the proceeding.

[Statutory Authority: RCW 82.03.170. WSR 89-10-057 (Order 89-03), § 456-10-520, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-530 **Requirements for a notice of hearing.** (1) A notice of a hearing ~~((shall))~~ will be mailed or transmitted to all parties ~~((not less than twenty))~~ at least 20 calendar days before the hearing date. The ~~((twenty-day))~~ 20-day notice provision may be waived ~~((by agreement of all))~~ if the parties agree.

(2) ~~((Contents.))~~ The notice ~~((shall))~~ must contain:

(a) The names and mailing and email addresses of the parties and their representatives, if any;

(b) The docket number or numbers and the name of the proceeding;

(c) ~~((The name, official title, mailing address, and telephone number of the presiding officer, if known;))~~

~~((d))~~ A statement of the ~~((time, place, date, and))~~ general nature of the proceeding (e.g., excise, property, etc.);

~~((e))~~ (d) A statement that the hearing is held pursuant to this chapter and chapter 82.03 RCW;

~~((f))~~ (e) A statement that ~~((, if a limited-English-speaking or hearing-impaired party or witness needs an interpreter,))~~ a qualified interpreter will be appointed at no cost to the party or witness, if a limited-English speaking or hearing-impaired party or witness needs an interpreter. The notice ~~((shall))~~ must also state that persons with disabilities may request reasonable accommodations to allow their participation in the hearing. The notice ~~((shall))~~ must include a form for a party to indicate if an interpreter is needed and ~~((identifica-~~

tion of the primary) in what language, or if a participant is hearing impaired(~~(+)~~), or to describe the reasonable accommodations requested.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-530, filed 6/21/05, effective 8/1/05; WSR 95-05-032 (Order 95-02), § 456-10-530, filed 2/8/95, effective 3/11/95; WSR 89-10-057 (Order 89-03), § 456-10-530, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-540 Hearing procedure. (~~(Unless otherwise ordered by the board, hearings will be conducted in accordance with the following format:~~

- ~~(1) Administering of oath;~~
- ~~(2) Appellant's opening statement;~~
- ~~(3) Respondent's opening statement;~~
- ~~(4) Appellant's case in chief:~~
 - ~~(a) Direct examination of witness;~~
 - ~~(b) Cross-examination by respondent;~~
 - ~~(c) Redirect examination by appellant;~~
 - ~~(d) Recross examination;~~
 - ~~(e) The above procedure is followed for each witness.~~
- ~~(5) Respondent's case in chief:~~
 - ~~(a) Direct examination of witness;~~
 - ~~(b) Cross-examination by appellant;~~
 - ~~(c) Redirect examination by respondent;~~
 - ~~(d) Recross examination;~~
 - ~~(e) The above procedure is followed for each witness.~~
- ~~(6) Appellant's closing argument;~~
- ~~(7) Respondent's closing argument;~~
- ~~(8) Appellant's closing rebuttal;~~

~~(9) The board may pose questions to the parties, their representatives, and any witness at any time during the hearing.)~~ Hearings will generally be organized as follows:

- (1) All parties and witnesses will be sworn in by a hearings officer to tell the truth;
 - (2) Each party may then provide a short explanation of what the testimony of their witnesses and evidence will show;
 - (3) Next, each party may call witnesses to testify, beginning with the party that is appealing. The opposing party will have an opportunity to ask each witness questions; and
 - (4) Lastly, each party may summarize the testimony and evidence that supports their case, beginning with the party that appealed.
- The board or hearing officer may ask a party, a representative, or a witness a question at any time during the hearing.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-540, filed 6/21/05, effective 8/1/05; WSR 89-10-057 (Order 89-03), § 456-10-540, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-545 Testimony under oath. (1) ~~((All testimony to be considered by the board shall be sworn, and each))~~ Every person ~~((shall))~~ testifying before the board must swear or affirm in any manner allowed in chapter 5.28 RCW that the person's testimony ~~((to be given shall be the truth, the whole truth, and nothing but the truth))~~ will be truthful.

(2) Every interpreter ~~((shall, before beginning to interpret,))~~ will take an oath that he or she will make a true interpretation ~~((will be made to))~~ of the person being examined ~~((of all the proceedings))~~ in a language or in a manner which the person understands, and that the interpreter will repeat the statements of the person being examined ~~((to the board, in the))~~ in English ~~((language,))~~ to the best of the interpreter's skill and judgment.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-545, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 82.03.140 and 82.03.150. WSR 90-11-106, § 456-10-545, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-057 (Order 89-03), § 456-10-545, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-547 Recording ((devices)) of hearings. (1) All hearings ~~((shall))~~ will be recorded by manual, electronic, or other ~~((type of))~~ recording device.

(2) Photographic and recording equipment ~~((shall))~~ will be permitted at hearings; however, the presiding officer may impose ~~((such))~~ conditions upon their use ~~((as deemed necessary))~~ to prevent disruption ~~((of the hearing)),~~ or when a statute or law limits such use.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-547, filed 6/21/05, effective 8/1/05; WSR 91-07-039 (Order 91-02), § 456-10-547, filed 3/15/91, effective 4/15/91.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-550 Failure to attend and hearings on the record.

(1) When a party ~~((to these proceedings has, after notice,))~~ has failed to attend a hearing ~~((and has not notified the board and the opposing party of the intention to not attend,))~~ after receiving timely notice, the board will consider a motion for default or dismissal ~~((may be sought))~~ brought by any party to the proceedings, or ~~((raised by the board upon))~~ on its own motion. ~~((Any such order shall))~~ An order for default or dismissal will include ~~((a statement of the grounds))~~ the reason for the order and ~~((shall))~~ will be served upon all parties ~~((to the proceeding)).~~

Within ~~((ten business days after))~~ 14 calendar days of service of the ~~((default order or dismissal under subsection (1) of this sec-~~

tion) order, the party against whom the order was entered may submit ~~((to the board together with proof of service pursuant to WAC 458-10-410 [456-10-410]))~~ a written objection requesting that the order be vacated ~~((and stating))~~. The objection must state the specific ((grounds relied upon)) reasons why the order should be vacated, together with proof of service pursuant to WAC 458-10-410. The board may ~~((, for good cause,))~~ set aside ~~((an entry of))~~ a dismissal, default, or final order for good cause.

(2) ~~((Upon stipulation by both parties))~~ If the parties agree in writing and the presiding officer approves, an appeal may be submitted to the board on the record and attendance of ~~((a party may be excused. However, the board in its discretion may require attendance for argument))~~ one or more parties at the hearing will not be required.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-550, filed 6/21/05, effective 8/1/05; WSR 89-10-057 (Order 89-03), § 456-10-550, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-555 Dismissal, stipulations, and withdrawal of actions. ~~((Any action))~~ An appeal may be dismissed ~~((by the board))~~ for any of the following reasons.

(1) ~~((When))~~ All parties ((se)) stipulate. Stipulations ~~((on the value of))~~ that involve the value of real property ((shall contain)) must include the parcel number, assessment year(s), the agreed upon value ((of the subject property)), and a brief statement ((supporting the agreed upon)) that supports the value.

(2) ~~((As a matter of right when))~~ The appellant requests orally or in writing to withdraw the appeal ((prior to)) before the scheduled hearing.

(3) ~~((Upon motion of))~~ The appellant makes a motion at the hearing ((prior to the presentation of the respondent's case)) before the respondent presents his or her case.

(4) ~~((Upon motion by the respondent alleging))~~ The respondent alleges that the appellant has failed to prosecute the case, failed to comply with this chapter, or failed to follow any order of the board.

(5) ~~((Upon the board's own motion for failure by))~~ The parties fail to comply with applicable rules or any order of the board.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-555, filed 6/21/05, effective 8/1/05; WSR 89-10-057 (Order 89-03), § 456-10-555, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-560 Rules of evidence and criteria for admissibility ((criteria)). (1) All relevant evidence, including hearsay ~~((evidence)),~~ is admissible if, in the opinion of the board, ~~((the offered evidence))~~ it is the kind of evidence ~~((on which))~~ that a reasonably prudent person ~~((s are))~~ is accustomed to ~~((rely))~~ relying on in the

conduct of (~~their~~) his or her business affairs. The board may exclude evidence (~~that is excludable on~~) for constitutional or statutory grounds, or (~~on the basis of~~) for evidentiary privilege recognized in the courts of this state. The board may also exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(2) The board's experience, technical knowledge, competency, and specialized knowledge may be used (~~in evaluation of~~) to evaluate evidence.

(3) Documentary evidence may be submitted in the form of copies or excerpts.

(4) If not inconsistent with subsection (1) of this section, the board may refer to, but (~~shall~~) is not (~~be~~) bound by, the Washington state court rules of evidence.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-560, filed 6/21/05, effective 8/1/05; WSR 89-10-057 (Order 89-03), § 456-10-560, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-565 Official notice. (1) The board may take official notice of (~~the following~~):

(a) Any judicially cognizable facts;

(b) Any matter of public record;

(c) Technical or scientific facts within the agency's specialized knowledge; and

(d) Codes or standards that have been adopted by (~~an agency of the United States, of this state or of another state,~~) any state or federal agency or by a nationally recognized organization or association.

(2) (~~If any decision is stated to rest in whole or in part upon official notice of a fact to which the parties have not had a prior opportunity to controvert,~~) Any party may (~~controvert~~) challenge such a fact by filing an exception to a proposed or initial decision pursuant to WAC 456-10-730 (~~if such notice is taken in a proposed decision~~), or by a petition for reconsideration (~~if notice of such fact is taken in~~) of a final decision pursuant to WAC 456-10-755. Such (~~controversion shall~~) a challenge must concisely and clearly set forth the sources, authority, and other data relied (~~upon~~) on to show the existence or nonexistence of the fact assumed or denied in the decision.

(3) A party (~~proposing that~~) asking the board to take official notice (~~be taken~~) may be required to produce a copy of the material to be noticed.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-565, filed 6/21/05, effective 8/1/05; WSR 89-10-057 (Order 89-03), § 456-10-565, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-710 Assistance to the board. (1) The board may obtain assistance ~~((concerning the))~~ with an appeal ~~((of any case within the scope of))~~ from a county board of equalization as allowed by RCW 82.03.130 (1)(b) ~~((appeals from a county board of equalization))~~ or from ~~((the staff of))~~ the department of revenue as ~~((provided))~~ allowed by RCW 82.03.150. If the board intends to see assistance, the board will notify the parties of its intent ~~((to seek such assistance and the matters sought to be investigated before contacting the department of revenue.))~~ and indicate the reasons for seeking assistance. Once notified, the parties may recommend an alternative to the board to achieve the same objectives ~~((without contacting the department of revenue))~~.

(2) If the department of revenue supplies the requested assistance, the parties will be apprised of any information provided ~~((by the department of revenue))~~ and ~~((will be))~~ given an opportunity to respond.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-710, filed 6/21/05, effective 8/1/05; WSR 89-10-057 (Order 89-03), § 456-10-710, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 89-10-057, filed 5/2/89)

WAC 456-10-715 Presentation of ~~((posthearing))~~ evidence after the hearing. ~~((No posthearing evidence will be accepted unless requested by the board.))~~ Unless requested, the board will not accept any evidence after a hearing unless it determines such evidence could not reasonably have been anticipated or discovered before the hearing. All parties ~~((shall))~~ will have an opportunity to respond to such evidence.

[Statutory Authority: RCW 82.03.170. WSR 89-10-057 (Order 89-03), § 456-10-715, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-725 Proposed decision. (1) A proposed decision ~~((shall be prepared))~~ will be issued when:

- (a) An appeal has been heard by only one member of the board;
- (b) An appeal has been heard by ~~((only))~~ two members of the board ~~((and the two members))~~ who cannot agree on a conclusion;
- (c) An appeal has been heard by a hearing officer, tax referee, or other individual assigned by the board; or
- (d) The board ~~((shall otherwise))~~ elects to do so.

(2) If an exception ~~((as provided in WAC 456-10-730))~~ is not timely submitted to the board ~~((within twenty calendar days of the date of mailing of the proposed decision))~~ as provided in WAC 456-10-730, the proposed decision ~~((shall be deemed the))~~ will be con-

sidered the board's final decision ((of the board)), unless the decision specifies otherwise.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-725, filed 6/21/05, effective 8/1/05; WSR 89-10-057 (Order 89-03), § 456-10-725, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-730 Exceptions to proposed decisions~~(, replies, and disposition)~~. (1) Any party may ~~((make, by mail or otherwise, a written exception with the board))~~ petition for review of a proposed decision. A petition for review of a proposed decision is referred to as an exception.

(2) An exception must be transmitted to the board and served on all parties within ((twenty)) 20 calendar days ((from)) of the date ((of mailing of)) the proposed decision ((or, upon timely application, within such further time as the board may allow. The statement of exceptions shall be served on all other parties pursuant to)) was transmitted, unless otherwise specified. Proof of service must be filed with the board as outlined in WAC 456-10-410.

~~((2) Exceptions shall contain the specific factual and legal grounds upon which the exception is based.))~~ (3) An exception must indicate which portions of or what evidence in the record supports the exception. No new evidence or arguments may be ((introduced in the written exception; nor may the party or parties raise an argument in the exception that was not raised at the hearing. The party or parties making the exception shall be deemed to have waived all objections or irregularities not specifically set forth)) presented or raised.

~~((3))~~ (4) Any party may ((make a reply)) respond to a written exception. The ((reply, together with proof of service pursuant to WAC 456-10-410, shall be submitted)) response must be sent or transmitted to the board within ((ten business)) 14 calendar days of the date ((of the letter acknowledging receipt by the board of the written exception)) the board acknowledged receipt of the petition, together with proof of service outlined in WAC 456-10-410.

~~((4) The disposition may be in the form of))~~ (5) The board will address an exception in a written order ((denying the exception and adopting the proposed decision as the final decision, granting the exception and issuing a final decision, or granting the exception and setting the matter for further hearing)). The board may require the parties to submit written briefs ((or statements of position)) or to appear and present oral argument ((regarding the matters on which exceptions were taken, within such time and on such terms as may be prescribed)) on the exception.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-730, filed 6/21/05, effective 8/1/05; WSR 95-05-032 (Order 95-02), § 456-10-730, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170, 82.03.140 and 82.03.150. WSR 90-11-106, § 456-10-730, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-057 (Order 89-03), § 456-10-730, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-755 Petition for reconsideration of a final decision.

(1) A petition for reconsideration of a final decision is not available where a proposed decision was first issued.

(2) Where a final decision has been issued and no proposed decision was first issued, any party may submit a petition for reconsideration (~~((with the board))~~) within 20 calendar days from the transmittal of the final decision together with proof of service (~~((pursuant to))~~) as outlined in WAC 456-10-410 (~~((within ten business days from the mailing of the final decision))~~). The board may require or any party may at its own option, (~~((within ten business days of the date of the letter acknowledging receipt by the board of the petition for reconsideration, submit to the board))~~) submit within 14 calendar days of the date of the letter acknowledging receipt by the board of the petition, a response together with proof of service pursuant to WAC 456-10-410.

(3) (~~((The))~~) Submitting (~~((of))~~) a petition for reconsideration (~~((shall))~~) suspends the final decision until further action by the board. The board may deny the petition, modify its decision, or reopen the hearing.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-755, filed 6/21/05, effective 8/1/05; WSR 95-05-032 (Order 95-02), § 456-10-755, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170, 82.03.140 and 82.03.150. WSR 90-11-106, § 456-10-755, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-057 (Order 89-03), § 456-10-755, filed 5/2/89.]

((SEPA))

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 456-10-140	Organization and office.
WAC 456-10-150	Quorum.
WAC 456-10-160	Meetings of the board.
WAC 456-10-215	Notice of appearance by representatives.
WAC 456-10-330	Amendments to notice of appeal.
WAC 456-10-507	Amicus.
WAC 456-10-970	Applicability of SEPA guidelines.

WSR 22-08-108
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed April 6, 2022, 10:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-12-097.

Title of Rule and Other Identifying Information: Amending WAC 415-104-215 What are my LEOFF Plan 2 retirement benefit options?, and 415-104-483 Is my disability benefit affected by choosing a survivor option?

Hearing Location(s): On May 10, 2022, at 10:30 a.m. The hearing will be conducted by Zoom <https://us02web.zoom.us/j/82016797631>, Meeting ID 820 1679 7631, Dial-in 253-215-8782. See <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings> for details.

Date of Intended Adoption: May 11, 2022.

Submit Written Comments to: Rubi Reaume, Department of Retirement Systems (DRS), P.O. Box 48380, Olympia, WA 98504-8380, email drs.rules@drs.wa.gov, by May 2, 2022.

Assistance for Persons with Disabilities: Contact Rubi Reaume, phone 360-664-7311, TTY 711, email drs.rules@drs.wa.gov, by May 2, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify survivor options when a law enforcement officers' and firefighters' Plan 2 member's disability status changes.

Reasons Supporting Proposal: These amendments reflect the department's current practice of allowing law enforcement officers' and firefighters' Plan 2 members to select a new survivorship option due to disability status change.

Statutory Authority for Adoption: RCW 41.50.050.

Statute Being Implemented: Chapter 41.26 RCW.

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

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Implementation: Candice Myrum, DRS, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7124.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5) (a) (i) does not apply to this proposed rule and is not voluntarily made applicable by the agency.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: DRS' rules only impact members and beneficiaries of the state retirement systems and participating public employers, and do not affect small businesses.

April 6, 2022
Rubi Reaume
Rules Coordinator

OTS-3673.1

AMENDATORY SECTION (Amending WSR 22-01-061, filed 12/8/21, effective 1/8/22)

WAC 415-104-215 What are my LEOFF Plan 2 retirement benefit options? If you retire for service under RCW 41.26.430 or nonduty disability under RCW 41.26.470, or if you choose to receive a monthly benefit for duty disability under RCW 41.26.470, you must choose to have your monthly retirement benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly benefit after my death?** Options described in subsection (2)(b) through (d) of this section will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." After your death, your survivor beneficiary will receive a monthly benefit for the duration of their life. Your monthly retirement benefit will be reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit will be affected if you choose a survivor option.

(2) **What are my benefit options?**

(a) **Option one: Standard benefit (nonsurvivor option).** The department will pay you a monthly retirement benefit throughout your lifetime. Your monthly benefit will cease upon your death.

(b) **Option two: Joint and 100 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

(c) **Option three: Joint and 50 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to 50 percent of your gross monthly benefit.

(d) **Option four: Joint and two-thirds benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667%) of your gross monthly benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's consent, verified by notarization or other means acceptable to the department. If you do not provide verified spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.26.460(2).

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, verified spousal consent is required. If you do not provide spousal consent, verified by notarization or other means acceptable to the department, the department will pay you a monthly retirement benefit based on option three (joint and 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.26.460(2).

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was

filed with the department at least 30 days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What happens if I choose a benefit option with a survivor option and my survivor beneficiary dies before I do?** If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(6) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following (~~four~~) five exceptions:

(a) **Return to membership.** If you retire and then return to membership, you may choose a different retirement option upon your subsequent retirement.

(b) **Postretirement marriage option.** If you select the standard benefit option at the time of retirement and marry after retirement, you may select a benefit option with a survivor option and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a benefit option with a survivor option and name a nonspouse as survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

(d) **One-time change of survivor.** You may change your benefit option and/or designated survivor one time within 90 days from the date your first benefit payment is issued. Your change request must be in writing, and must comply with other requirements as described in this section. Your new benefit amount will be effective the first of the month following the receipt of your request by the department.

(e) Retirement type changes. If your retirement status changes due to the acceptance of a new retirement application from service retirement to a nonduty, duty or catastrophic retirement, or duty to catastrophic retirement, you may select a different survivor benefit option. Your benefit will be recalculated to reflect your new survivor option in accordance with WAC 415-104-483.

(7) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(ii) If you have not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your surviving spouse.

(iii) If not paid according to (a)(i) or (ii) of this subsection, then to your estate.

(b) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(ii) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(iii) If not paid according to (b)(i) or (ii) of this subsection, then to your survivor beneficiary's estate.

(8) For more information, see RCW 41.26.460.

[Statutory Authority: RCW 41.50.050. WSR 22-01-061, § 415-104-215, filed 12/8/21, effective 1/8/22; WSR 20-13-065, § 415-104-215, filed 6/15/20, effective 7/16/20; WSR 20-06-040, § 415-104-215, filed 2/27/20, effective 3/29/20. Statutory Authority: RCW 41.50.050(5). WSR 13-18-034, § 415-104-215, filed 8/28/13, effective 10/1/13. Statutory Authority: RCW 41.50.050(5), 41.26.460. WSR 05-23-062, § 415-104-215, filed 11/14/05, effective 12/15/05; WSR 03-12-014, § 415-104-215, filed 5/27/03, effective 7/1/03. Statutory Authority: RCW 41.50.050(5), 41.26.460, 41.32.530, 41.32.785, 41.32.851, 41.35.220, 41.40.188, 41.40.660, 41.40.845. WSR 01-10-045, § 415-104-215, filed 4/26/01, effective 6/1/01. Statutory Authority: RCW 41.50.050. WSR 99-16-075, § 415-104-215, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 2.10.146, 41.26.460, 41.32.530, 41.50.050, 41.32.785, 41.40.188 and 41.40.660. WSR 96-01-047, § 415-104-215, filed 12/14/95, effective 1/14/96. Statutory Authority: RCW 34.05.050 and 1990 c 249. WSR 91-03-014, § 415-104-215, filed 1/7/91, effective 2/7/91.]

AMENDATORY SECTION (Amending WSR 18-13-078, filed 6/15/18, effective 7/16/18)

WAC 415-104-483 Is my disability benefit affected by choosing a survivor option? (1) If you choose a benefit option with a survivor feature at the time of retirement, your survivor beneficiary will receive an ongoing monthly disability benefit after your death. Your disability benefit will be actuarially reduced to offset the cost of providing payments over two lifetimes. The survivor options are further described in WAC 415-104-215. See WAC 415-02-380 for more information and examples on how the actuarial reduction is applied to your disability benefit.

(2) If your retirement status changes due to the acceptance of a new retirement application from service retirement to a nonduty, duty or catastrophic retirement, or duty to catastrophic retirement, you may select a different survivor benefit option. Your benefit will be recalculated to reflect your new survivor option.

Example 1: Pat retired with a duty disability retirement benefit with survivor option 3 (50%). Pat's condition worsened. Pat applied

for and was granted a catastrophic duty disability retirement. Pat selected survivor option 2 (100%) on the catastrophic application. Pat's catastrophic retirement benefit will be calculated to reflect this survivor option.

Example 2: Pat retired with a duty disability retirement benefit with survivor option 2 (100%) for their spouse. Pat's condition worsened. Pat applied for and was granted a catastrophic duty disability retirement benefit. Pat selected survivor option 1 (no on-going survivor benefit after Pat's death). Pat's spouse will need to agree to this survivor option and the application will need to be notarized.

[Statutory Authority: RCW 41.50.050. WSR 18-13-078, § 415-104-483, filed 6/15/18, effective 7/16/18.]

WSR 22-08-111

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed April 6, 2022, 11:37 a.m.]

Continuance of WSR 21-16-050.

Preproposal statement of inquiry was filed as WSR 21-05-068.

Title of Rule and Other Identifying Information: WAC 458-20-290 (new rule) Workforce education investment surcharge—Select advanced computing businesses.

Hearing Location(s): On May 10, 2022, at 10:00 a.m. This meeting will be conducted over the internet/telephone. Contact Atif Aziz at AtifA@dor.wa.gov for login/dial-in information. The meeting information will also be announced via the department's excise tax listserv.

Date of Intended Adoption: June 2, 2022.

Submit Written Comments to: Leslie Mullin, P.O. Box 47453, Olympia, WA 98504-7453, email LeslieMu@dor.wa.gov, 360-534-1589.

Assistance for Persons with Disabilities: Contact Julie King or Renee Cosare, phone 360-704-5733 or 360-704-5734, TTY 800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed new rule is to reflect 2020 and 2022 legislation, ESSB 6492, SSB 5799, and ESB 5800, that imposed a surcharge on select advanced computing businesses as described in RCW 82.04.299.

Reasons Supporting Proposal: Businesses that engage in the activities subject to RCW 82.04.299 will find [that] the new rule provides additional clarification on the application of the surcharge.

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

Statute Being Implemented: RCW 82.04.299.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Leslie Mullin, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1589; Implementation and Enforcement: John Ryser, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not a significant legislative rule as defined by RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. This rule making does not impose any liability for taxes, reporting requirements, recordkeeping requirements, or compliance requirements not otherwise imposed by statute.

April 6, 2022

Atif Aziz

Rules Coordinator

OTS-3215.3

NEW SECTION

WAC 458-20-290 Workforce education investment surcharge—Select advanced computing businesses. (1) **Introduction.** This rule provides information about the taxability of and surcharge for select advanced computing businesses as described in RCW 82.04.299.

(2) **Examples.** This rule includes examples that identify a number of facts and then state a conclusion. These examples should only be used as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(3) **Definitions.** The following definitions apply throughout this rule:

(a) **"Advanced computing"** means designing or developing computer software or computer hardware, whether directly or contracting with another person, including:

(i) Modifications to computer software or computer hardware;

(ii) Cloud computing services; or

(iii) Operating as a marketplace facilitator as defined by RCW 82.08.0531, an online search engine, or an online social networking platform.

(b) **"Advanced computing business"** means a business that derives income, including income from affiliates, from engaging in advanced computing.

(c) **"Affiliate"** and **"affiliated"** means a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person.

(d) **"Affiliated group"** means a group of two or more persons that are affiliated with each other.

(e) **"Cloud computing services"** means on-demand delivery of computing resources, such as networks, servers, storage, applications, and services, over the internet.

(f) **"Control"** means the possession, directly or indirectly, of more than 50 percent of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise.

(g) **"Select advanced computing business"** means a person who is a member of an affiliated group with at least one member of the affiliated group engaging in the business of advanced computing, and the affiliated group had worldwide gross revenue of more than \$25,000,000,000 during the immediately preceding calendar year. A select advanced computing business does not include any of the following:

(i) A person primarily engaged within this state in the provision of commercial mobile service, as that term is defined in 47 U.S.C. Sec. 332 (d) (1);

(ii) A person primarily engaged in this state in the operation and provision of access to transmission facilities and infrastructure that the person owns or leases for the transmission of voice, data, text, sound, and video using wired telecommunications networks; or

(iii) A person primarily engaged in business as a "financial institution" as defined in RCW 82.04.29004, as that section existed on January 1, 2020.

For purposes of (g) of this subsection, "primarily" is determined based on the taxable income of the business, as defined in (h) of this subsection.

(h) **"Taxable income of the business"** means the gross income of the business, as defined in RCW 82.04.080, to which the tax rate in RCW 82.04.290(2) is applied to determine the business's tax liability under that B&O tax classification. In other words, it is the business's taxable income under the service and other activities B&O tax classification.

(i) **"Worldwide gross revenue"** means the annual sum of all sources of revenues, worldwide, prior to any subtractions, for all members of an affiliated group.

(4) **Select advanced computing businesses - Taxability.**

(a) **Service and other activities B&O tax.** A select advanced computing business is subject to the service and other activities B&O tax rate of 1.5 percent as required in RCW 82.04.290 (2) (a) (ii).

(b) **Workforce education investment surcharge.** Beginning with business activities occurring on or after April 1, 2020, a workforce education investment surcharge (surcharge) is imposed on select advanced computing businesses. This surcharge is in addition to the B&O taxes described in (a) of this subsection, plus any additional taxes that are due and payable to the department.

(i) Surcharge amount. For each select advanced computing business, the surcharge is equal to the taxable income of the business, multiplied by a rate of 1.22 percent. The combined annual surcharge paid by all members of an affiliated group may not exceed \$9,000,000.

(ii) Surcharge reporting. A select advanced computing business must report and pay the surcharge to the department on a quarterly basis, regardless of the tax reporting frequencies of the members in the select advanced computing business under RCW 82.32.045. The return and amount payable are due by the last day of the month immediately following the end of the quarter. This reporting requirement continues even if the combined annual surcharge paid by all members of an affiliated group reaches the \$9,000,000 annual maximum amount described in (b) (i) of this subsection.

(iii) Surcharge payment agreement. Members of an affiliated group of select advanced computing businesses may enter into an agreement with the department for facilitating the payment of the surcharge for all members of the group.

(iv) Disclosure obligations. The department may require persons believed to be engaging in advanced computing, or affiliated with a person believed to be engaging in advanced computing, to disclose whether they are a member of an affiliated group, and if so, to identify all other members of the affiliated group subject to the surcharge.

(v) Penalties. If the department establishes by clear, cogent, and convincing evidence, that one or more members of an affiliated group, with the intent to evade the surcharge, failed to fully comply with the department's disclosure request, as described in (b) (iv) of this subsection, that person, or those persons collectively, will be assessed a penalty equal to 50 percent of the amount of the total surcharge payable by all members of that affiliated group for the calendar year during which the person or persons failed to comply. This penalty is in lieu of, and not in addition to, the evasion penalty under RCW 82.32.090(7). However, additional penalties may still apply including, but not limited to, the penalty for late payment of tax due on a return. See RCW 82.32.090(1).

(vi) Hospital exemption. The surcharge described in (b) of this subsection does not apply to:

(A) A hospital as defined in RCW 70.41.020, including any hospital that comes within the scope of chapter 71.12 RCW if the hospital is also licensed under chapter 70.41 RCW; or

(B) A provider clinic offering primary care, multispecialty and surgical services, including behavioral health services, and any affiliate of the provider clinic if the affiliate is an organization that offers health care services or provides administrative support for a provider clinic, or is an independent practice association or accountable care organization. For purposes of (b)(vi)(B) of this subsection, "health care services" means services offered by health care providers relating to the prevention, cure, or treatment of illness, injury, or disease, and "primary care" means wellness and prevention services and the diagnosis and treatment of health conditions.

The exemptions under (b)(vi)(A) and (B) of this subsection do not apply to amounts received by any member of an affiliated group other than the businesses described in (b)(vi)(A) and (B) of this subsection.

(c) **Example 1.** Entity X, Entity Y, and Entity Z, an affiliated group, cumulatively had worldwide gross revenue of over \$25,000,000,000 in 2021. Entity X and Entity Y are engaged in advanced computing, and Entity Z is engaged in real estate and leases commercial property to Entity X and Entity Y. All three entities are registered with the department and file and pay taxes on a monthly basis. For the first quarter of 2022, the entities reported the following amounts as taxable income of the business, respectively: Entity X: \$800,000; Entity Y: \$100,000; and Entity Z: \$1,200,000.

The first step is to determine whether the taxable income subject to tax under the service and other activities B&O tax classification for each entity is subject to the 1.22 percent surcharge. Because Entities X, Y, and Z are all members of an affiliated group that had more than \$25,000,000,000 of worldwide gross revenue during the preceding calendar year (2021 in this example), and Entity X and Entity Y are engaged in the business of advanced computing. Entities X, Y, and Z are each considered a "select advanced computing business." Therefore, the taxable income of the business for each entity is subject to the 1.22 percent surcharge as follows:

Entity X: $\$800,000 * 1.22\% = \$9,760$

Entity Y: $\$100,000 * 1.22\% = \$1,220$

Entity Z: $\$1,200,000 * 1.22\% = \$14,640$

The total surcharge owed by this affiliated group of select advanced computing businesses for the first quarter of 2022 is \$25,620. This amount is due no later than April 30, 2022, and must be reported and paid by each select advanced computing business to the department.

The next step is to determine the service and other activities B&O tax rate in RCW 82.04.290(2) to apply to the taxable income reported by each entity. Because the three entities are subject to the 1.22 percent surcharge, the taxable income reported under RCW 82.04.290(2) by each entity will be subject to the B&O tax rate of 1.5 percent as required in RCW 82.04.290(2)(a)(ii):

Entity X: $\$800,000 (*) 1.5\% (=) \$12,000$

Entity Y: $\$100,000 (*) 1.5\% (=) \$1,500$

Entity Z: $\$1,200,000 (*) 1.5\% (=) \$18,000$

Each entity will continue to file and pay any taxes due on a monthly basis.

(d) **Example 2.** Using the same facts as Example 1, beginning July 1, 2022, if Entity Z was operating a qualifying hospital or provider clinic, as described in (b)(vi)(A) and (B) of this subsection, it

would be exempt from the surcharge. However, Entity X and Entity Y would still be subject to the surcharge because neither is a business described in (b) (vi) (A) or (B) of this subsection.

[]

WSR 22-08-112
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed April 6, 2022, 11:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-21-075.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is proposing to add new sections to chapter 388-71 WAC, Home and community services and programs; and chapter 388-112A WAC, Residential long-term care services training.

Hearing Location(s): On May 10, 2022, at 10:00 a.m., at Office Building 2, DSHS Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the COVID-19 pandemic, hearings are held virtually, see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than May 11, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m. on May 10, 2022.

Assistance for Persons with Disabilities: Contact DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email tencza@dshs.wa.gov [tencza@dshs.wa.gov], by 5:00 p.m. on April 26, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DSHS is proposing to add new sections in chapters 388-71 and 388-112A WAC. The intent is to require long-term care workers (LTCW) to complete training requirements by certain dates that would reduce the impact of clients accessing qualified LTCW to provide personal care services.

Reasons Supporting Proposal: To reduce the impact of clients accessing qualified LTCW to provide personal care services.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.520.

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: David Chappell, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-2366; and Enforcement: Christine Morris, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-2549.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting David Chappell, P.O. Box 45600, Olympia, WA 98504-5600, phone 360-725-2366, email david.chappell@dshs.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. [No information supplied by agency.]

April 4, 2022
Katherine I. Vasquez
Rules Coordinator

SHS-4888.10

NEW SECTION

WAC 388-71-0876 When must long-term care workers who were working or hired during the COVID-19 public health emergency complete training, including required specialty training? (1) Unless exempt from training as described in WAC 388-71-0839 or WAC 388-112A-0090, a long-term care worker affected by the COVID-19 public health emergency must complete training, including required specialty training, as follows:

Worker hired or rehired during the time frame of:	Must complete basic training no later than:
8/17/2019 to 9/30/2020	10/31/2022
10/1/2020 to 4/30/2021	1/31/2023
5/1/2021 to 3/31/2022	4/30/2023
4/1/2022 to 9/30/2022	8/31/2023
10/1/2022 - 12/31/2022 or the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later	9/30/2023 or within 120 days after the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later
After the end of the COVID-19 training waivers established by gubernatorial proclamation or beginning 1/1/2023, whichever is later	Standard training

(2) Unless exempt from certification as described in WAC 246-980-025, a worker affected by the COVID-19 public health emergency who is required to be certified as a home care aide must obtain certification as follows:

Worker hired or rehired during the time frame of:	Must be certified as a home care aide no later than:
8/17/2019 to 9/30/2020	1/19/2023
10/1/2020 to 4/30/2021	4/21/2023
5/1/2021 to 3/31/2022	7/19/2023
4/1/2022 to 9/30/2022	11/19/2023
10/1/2022 - 12/31/2022 or the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later	12/19/2023 or within 200 days after the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later
After the end of the COVID-19 training waivers established by gubernatorial proclamation or beginning 1/1/2023, whichever is later	Standard training

(3) "Hired" and "rehired" as used in this section mean the date of hire as defined in chapter 246-980 WAC. A long-term care worker is considered rehired if they held previous employment as a long-term care worker and did not have an active home care aide credential when hired during the time frames outlined in section (1) of this section.

(4) If a long-term care worker is limited-English proficient, the worker may request an additional 60 days to obtain certification.

(5) Nothing in this section prevents a long-term care worker hired between 8/17/2019 and 9/30/2022 from completing training or obtaining certification in advance of the deadlines stipulated in subsections (1) or (2) of this section.

[]

NEW SECTION

WAC 388-71-0992 When must continuing education be completed when public health emergency waivers are lifted, and what continuing education credit is granted to long-term care workers employed during the pandemic? (1) The department finds that long-term care workers employed during the COVID-19 pandemic between March 1, 2020, and February 28, 2021, required emergent and intensive on-the-job training. Long-term care workers received critical, ongoing training in such topics as:

- (a) Donning and doffing personal protective equipment (PPE);
- (b) Hand hygiene;
- (c) Disinfection of high-touch surfaces;
- (d) Managing visitations and physical distancing;
- (e) Responding to newly infected residents;
- (f) Promotion of vaccination;
- (g) Protocols for quarantine;
- (h) Use of cloth face coverings;
- (i) Personal protection outside of the work environment; and
- (j) How to reduce exposure and spread.

(2) This on-the-job training was required of all workers in all long-term care environments in Washington state. Instruction was provided in assisted living facilities, adult family homes, homecare agencies, enhanced services facilities, certified community residential services, and to individual providers by the SEIU775 benefits group and DSHS to discuss infection control and the availability and distribution of personal protective equipment. Recognition of this training as a valid learning experience, in its various forms, was agreed upon with input from consumer and worker representatives, as the content was based on guidelines established by the Centers for Disease Control (CDC) and other federal, state, and local health care authorities.

(3) During this time, long-term care workers required ongoing critical training because guidance from the CDC, department of labor and industries, and other health authorities changed as more was learned about the SARS-CoV-2 virus. The department finds that this unprecedented on-the-job training constituted at least 12 hours of continuing education between March 1, 2020, and February 28, 2021, and that this training is not considered to be repeated training as described in WAC 388-112A-0600(2).

(4) All long-term care workers employed during the dates in section (3) of this section are granted 12 hours of DSHS-approved continuing education credit for the training entitled "COVID-19 On-The-Job Training Protocols," bearing the DSHS approval code CE2135218. No physical certificate for this training will be issued or required. The COVID-19 continuing education hours may be applied to renewal periods ending no earlier than March 1, 2020, and no later than December 31, 2021.

(5) The department recognizes that long-term care workers may not have completed training hours in excess of the 12 hours of CE granted in section (4) of this section due to the COVID-19 public health emergency. All long-term care workers shall have until December 31, 2022, or 120 days from the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later, to complete any additional CE that may have become due while training waivers were in place in excess of the 12 hours of CE granted in subsection (4) of this section. If a worker's next birthday allows fewer than 120 days after the waivers are lifted to complete required CE for their current renewal cycle, the worker will have 120 days from the end of training waivers to complete the required CE.

[]

NEW SECTION

WAC 388-112A-0081 When must long-term care workers who were working or hired during the COVID-19 public health emergency complete training, including required specialty training? (1) Unless exempt from training as described in WAC 388-71-0839 or WAC 388-112A-0090, a long-term care worker affected by the COVID-19 public health emergency must complete training, including required specialty training, as follows:

Worker hired or rehired during the time frame of:	Must complete basic training no later than:
8/17/2019 to 9/30/2020	10/31/2022
10/1/2020 to 4/30/2021	1/31/2023
5/1/2021 to 3/31/2022	4/30/2023
4/1/2022 to 9/30/2022	8/31/2023
10/1/2022 - 12/31/2022 or the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later	9/30/2023 or within 120 days after the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later
After the end of the COVID-19 training waivers established by gubernatorial proclamation or beginning 1/1/2023, whichever is later	Standard training

(2) Unless exempt from certification as described in WAC 246-980-025, a worker affected by the COVID-19 public health emergency

who is required to be certified as a home care aide must obtain certification as follows:

Worker hired or rehired during the time frame of:	Must be certified as a home care aide no later than:
8/17/2019 to 9/30/2020	1/19/2023
10/1/2020 to 4/30/2021	4/21/2023
5/1/2021 to 3/31/2022	7/19/2023
4/1/2022 to 9/30/2022	11/19/2023
10/1/2022 - 12/31/2022 or the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later	12/19/2023 or within 200 days after the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later
After the end of the COVID-19 training waivers established by gubernatorial proclamation or beginning 1/1/2023, whichever is later	Standard training

(3) "Hired" and "rehired" as used in this section mean the date of hire as defined in chapter 246-980 WAC. A long-term care worker is considered rehired if they held previous employment as a long-term care worker and did not have an active home care aide credential when hired during the time frames outlined in section (1) of this section.

(4) If a long-term care worker is limited-English proficient, the worker may request an additional 60 days to obtain certification.

(5) Nothing in this section prevents a long-term care worker hired between 8/17/2019 and 9/30/2022 from completing training or obtaining certification in advance of the deadlines stipulated in subsections (1) or (2) of this section.

[]

NEW SECTION

WAC 388-112A-0613 When must continuing education be completed when public health emergency waivers are lifted, and what continuing education credit is granted to long-term care workers employed during the pandemic?

(1) The department finds that long-term care workers employed during the COVID-19 pandemic between March 1, 2020, and February 28, 2021, required emergent and intensive on-the-job training. Long-term care workers received critical, ongoing training in such topics as:

- (a) Donning and doffing personal protective equipment (PPE);
- (b) Hand hygiene;
- (c) Disinfection of high-touch surfaces;
- (d) Managing visitations and physical distancing;
- (e) Responding to newly infected residents;
- (f) Promotion of vaccination;
- (g) Protocols for quarantine;
- (h) Use of cloth face coverings;

(i) Personal protection outside of the work environment; and

(j) How to reduce exposure and spread.

(2) This on-the-job training was required of all workers in all long-term care environments in Washington state. Instruction was provided in assisted living facilities, adult family homes, homecare agencies, enhanced services facilities, certified community residential services, and to individual providers by the SEIU775 benefits group and DSHS to discuss infection control and the availability and distribution of personal protective equipment. Recognition of this training as a valid learning experience, in its various forms, was agreed upon with input from consumer and worker representatives, as the content was based on guidelines established by the Centers for Disease Control (CDC) and other federal, state, and local health care authorities.

(3) During this time, long-term care workers required ongoing critical training because guidance from the CDC, department of labor and industries, and other health authorities changed as more was learned about the SARS-CoV-2 virus. The department finds that this unprecedented on-the-job training constituted at least 12 hours of continuing education between March 1, 2020, and February 28, 2021, and that this training is not considered to be repeated training as described in WAC 388-112A-0600(2).

(4) All long-term care workers employed during the dates in section (3) of this section are granted 12 hours of DSHS-approved continuing education credit for the training entitled "COVID-19 On-The-Job Training Protocols," bearing the DSHS approval code CE2135218. No physical certificate for this training will be issued or required. The COVID-19 continuing education hours may be applied to renewal periods ending no earlier than March 1, 2020, and no later than December 31, 2021.

(5) The department recognizes that long-term care workers may not have completed training hours in excess of the 12 hours of CE granted in section (4) of this section due to the COVID-19 public health emergency. All long-term care workers shall have until December 31, 2022, or 120 days from the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later, to complete any additional CE that may have become due while training waivers were in place in excess of the 12 hours of CE granted in subsection (4) of this section. If a worker's next birthday allows fewer than 120 days after the waivers are lifted to complete required CE for their current renewal cycle, the worker will have 120 days from the end of training waivers to complete the required CE.

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WSR 22-08-113

PROPOSED RULES

DEPARTMENT OF HEALTH

(Chiropractic Quality Assurance Commission)

[Filed April 6, 2022, 11:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-23-106.

Title of Rule and Other Identifying Information: WAC 246-808-590 Professional boundaries and sexual misconduct (formerly titled sexual misconduct). The chiropractic quality assurance commission (commission) is proposing clarifications to existing rules about sexual misconduct and more closely aligning these rules with the department's sexual misconduct rules in chapter 246-16 WAC.

Hearing Location(s): On May 12, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the commission will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Join on your computer or mobile app https://teams.microsoft.com/dl/launcher/launcher.html?url=%2F%23%2F1%2Fmeetup-join%2F19%3Ameeting_Mjk4MDMwOGYtMzIzMi00MjhmLTkyM2UtOWYzNzg3M2QyZDIz%40thread.v2%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%252211d0e217-264e-400a-8ba0-57dcc127d72d%2522%252c%2522Oid%2522%253a%2522842fd80d-c544-49c8-bc06-392ac3b3c17b%2522%257d%26anon%3Dtrue&type=meetup-join&deeplinkId=f43ae871-31fb-4a90-bef4-b405536f3f10&directDl=true&msLaunch=true&enableMobilePage=true&suppressPrompt=true; or call-in (audio only) +1 564-999-2000,,268362475# United States, Olympia, Phone Conference ID 268 362 475#.

Date of Intended Adoption: May 12, 2022.

Submit Written Comments to: Betty J. Moe, Washington State Department of Health (DOH), Chiropractic Quality Assurance Commission, P.O. Box 47858, Olympia, WA 98504-7858, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2360, by May 3, 2022.

Assistance for Persons with Disabilities: Contact Betty J. Moe, phone 360-236-2868, fax 360-236-2360, TTY 711, email Betty.Moe@doh.wa.gov, by April 29, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The intent of updating the sexual misconduct rule is to: (1) Remove any ambiguities and create clear definitions; (2) ensure that the rules clearly outline professional boundaries and sexual misconduct; and (3) ensure the commission's definition of sexual misconduct is consistent with other professions' rules defining sexual misconduct.

These requirements already exist but are being outlined in more detail to provide clarity and to align with the department's sexual misconduct rules in chapter 246-16 WAC.

Reasons Supporting Proposal: It is the purpose of the commission under chapter 18.25 RCW to regulate the competency and quality of professional health care providers under its jurisdiction by establishing, monitoring, and enforcing consistent standards of practice and discipline, and those rules, policies, and procedures developed by the commission must promote the delivery of quality health care to the residents of the state.

RCW 18.130.062(1) requires the commission to review all cases of unprofessional conduct involving sexual misconduct and refer to the

secretary those cases that do not involve clinical expertise or standard of care issues.

RCW 18.130.180(24) cites abuse of a client or patient or sexual contact with a client or patient constitutes unprofessional conduct.

The proposed rules meet all stated intents by implementing statutory requirements. Additionally, the commission is proposing updates based on needs identified during the five-year review required by RCW 43.70.041.

Statutory Authority for Adoption: RCW 18.25.0171, 18.130.050, and 18.130.062.

Statute Being Implemented: RCW 18.25.002, 18.130.050, and 18.130.180.

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

Name of Proponent: DOH, chiropractic quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Betty J. Moe, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2868.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Betty J. Moe, DOH, Chiropractic Quality Assurance Commission, P.O. Box 47858, Olympia, WA 98504-7858, phone 360-236-2868, fax 360-236-2360, TTY 711, email Betty.Moe@doh.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rules do not impose more-than-minor costs on businesses because the proposed rules only apply to a provider's license or registration. A violation of the proposed rules could result in a penalty or sanction on the provider's license or registration.

April 6, 2022
Robert J. Nicoloff
Executive Director

OTS-3545.2

AMENDATORY SECTION (Amending WSR 96-16-074, filed 8/6/96, effective 9/6/96)

WAC 246-808-590 Professional boundaries and sexual misconduct.

~~((1) The chiropractor shall never engage in sexual contact or sexual activity with current clients.~~

~~(2) The chiropractor shall never engage in sexual contact or sexual activity with former clients if such contact or activity involves the abuse of the chiropractor-client relationship. Factors which the commission may consider in evaluating if the chiropractor-client relationship has been abusive include, but are not limited to:~~

- ~~(a) The amount of time that has passed since therapy terminated;~~
- ~~(b) The nature and duration of the therapy;~~

- ~~(c) The circumstances of cessation or termination;~~
~~(d) The former client's personal history;~~
~~(e) The former client's current mental status;~~
~~(f) The likelihood of adverse impact on the former client and others; and~~
~~(g) Any statements or actions made by the chiropractor during the course of treatment suggesting or inviting the possibility of a post-termination sexual or romantic relationship with the former client.~~
- ~~(3) The chiropractor shall never engage in sexually harassing or demeaning behavior with current or former clients.)~~ (1) The following definitions apply throughout this section unless the context clearly requires otherwise.
- (a) "Patient" means a person who is receiving health care or treatment, or has received health care or treatment without a termination of the health care provider-patient relationship. The determination of when a person is a patient is made on a case-by-case basis with consideration given to a number of factors, including the nature, extent, and context of the professional relationship between the health care provider and the person. The fact that a person is not actively receiving treatment or professional services is not the sole determining factor.
- (b) "Health care provider" means a person licensed or registered to practice under chapter 18.25 RCW.
- (c) "Key third party" means immediate family members and others who would be reasonably expected to play a significant role in the health care decisions of the patient and includes, but is not limited to, the spouse, domestic partner, sibling, parent, child, guardian, and person authorized to make health care decisions of the patient.
- (2) A health care provider shall not engage in sexual misconduct with a current patient or key party. Sexual misconduct includes, but is not limited to:
- (a) Sexual intercourse or genital to genital contact;
(b) Touching or exposing breasts, genitals, anus, or any sexualized body part for any purpose other than appropriate examination and treatment;
(c) Rubbing against a patient or key third party for sexual gratification;
(d) Kissing;
(e) Examination of or touching genitals, anus, or rectum without using gloves;
(f) Not allowing a patient the privacy to dress or undress;
(g) Dressing or undressing in the presence of the patient or key third party;
(h) Removing patient clothing or gown or draping without consent;
(i) Encouraging the patient to masturbate in the presence of the health care provider or masturbation by the health care provider while the patient is present;
(j) Suggesting or discussing the possibility of a dating, sexual or romantic relationship after the professional relationship ends;
(k) Terminating a professional relationship for the purpose of dating or pursuing a romantic or sexual relationship;
(l) Soliciting a date with a patient or key third party;
(m) Communicating the sexual history, preferences, opinions, or fantasies of the health care provider, patient or key third party;
(n) Making statements regarding the patient key third party's body, appearance, sexual history, or sexual orientation other than for legitimate health care purposes;

(o) Sexually demeaning behavior including any verbal or physical contact which may reasonably be interpreted as demeaning, humiliating, embarrassing, threatening, or harming a patient or key third party;

(p) Photographing or filming the body or any body part or pose of a patient or key party, other than for legitimate health care purposes;

(q) Showing a patient or key third party sexually explicit photographs, other than for legitimate health care purposes.

(r) Offering to provide goods or services in exchange for sexual favors;

(s) Oral to genital contact; and

(t) Genital to anal contact or oral to anal contact.

(3) A health care provider shall not engage in any of the conduct described in subsection (2) of this section with a former patient or key third party if the health care provider:

(a) Uses or exploits the trust, knowledge, influence, or emotions derived from the professional relationship; or

(b) Uses or exploits privileged information or access to privileged information to meet the health care provider's personal or sexual needs.

(4) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent, sexually harassing or demeaning behavior with current or former patients or key third parties, or a conviction of a sex offense as defined in RCW 9.94A.030.

(5) To determine whether a patient is a current patient or a former patient, the commission will analyze each case individually, and will consider a number of factors including, but not limited to, the following:

(a) Documentation of formal termination of professional relationship;

(b) Transfer of the patient's care to another health care provider;

(c) The length of time that has passed since the last health care services were provided to the patient;

(d) The length of the professional relationship;

(e) The extent to which the patient has confided personal or private information to the health care provider;

(f) The nature of the patient's health problem; and

(g) The degree of emotional dependence and vulnerability of the patient.

(6) These rules do not prohibit:

(a) Providing health care services in case of emergency where the services cannot or will not be provided by another health care provider;

(b) Contact that is necessary for a legitimate health care purpose and that meets the standard of care appropriate to chiropractic profession; or

(c) Providing health care services for a legitimate health care purpose to a person who is in a preexisting, established personal relationship with the health care provider where there is no evidence of, or potential for, exploiting the patient.

(7) It is not a defense that the patient, former patient, or key third party initiated or consented to the conduct, or that the conduct occurred outside the professional setting.

(8) A violation of any provision of this rule shall constitute grounds for disciplinary action.

[Statutory Authority: Chapter 18.25 RCW. WSR 96-16-074, § 246-808-590, filed 8/6/96, effective 9/6/96.]