

WSR 23-11-005

PROPOSED RULES

BOARD OF ACCOUNTANCY

[Filed May 4, 2023, 8:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-04-068.

Title of Rule and Other Identifying Information: WAC 4-30-022

What is the board's meeting schedule and how are officers elected?

Hearing Location(s): On July 21, 2023, at 9:00 a.m., at Holiday Inn Express & Suites, Chardonnay/Semillon/Riesling Rooms, 4525 Convention Place, Pasco, WA 99301; or Microsoft Teams meeting. The link to join the meeting will be available on the board of accountancy's (board) website approximately two weeks before the hearing date at <https://acb.wa.gov/next-board-meeting>. A phone number will be provided as well in case you are unable to attend online.

Date of Intended Adoption: July 21, 2023.

Submit Written Comments to: Kirsten Donovan, Rules Coordinator, P.O. Box 9131, Olympia, WA 98507, email Kirsten.donovan@acb.wa.gov, fax 360-664-9190, by July 19, 2023.

Assistance for Persons with Disabilities: Contact Kirsten Donovan, rules coordinator, phone 360-664-9191, fax 360-664-9190, TTY 711, email Kirsten.donovan@acb.wa.gov, by July 19, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board proposes amending WAC 4-30-022 to: (1) Provide guidance for resignations, vacancies, and removal of board officers; and (2) rename the rule.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 18.04.055.

Statute Being Implemented: RCW 18.04.055.

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

Name of Proponent: Board of accountancy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Michael J. Paquette, CPA, 711 Capitol Way South, Suite 400, Olympia, WA 98501, 360-485-1659.

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 board is not a listed agency in RCW 34.05.328 (5)(a)(i).

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).

Scope of exemption for rule proposal:

Is fully exempt.

May 4, 2023
Michael J. Paquette, CPA
Executive Director

OTS-4564.1

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-022 (~~(What is the board's meeting schedule and how are officers elected?)~~) Meetings and officers. (1) Meetings.

(a) Regular board meetings begin at 9:00 a.m. on the last Friday of the month in the months of January, April and July or as otherwise determined by the board. The board holds an annual meeting beginning at 9:00 a.m. on the last Friday of October or as otherwise determined by the board.

~~((The board consists of nine members.))~~ (b) Either the chair or a quorum of the board has the authority to call special meetings of the board. The chair presides at all meetings. In the event of the chair's absence or inability to act, the vice chair presides.

(c) The board determines duties of the officers.

(d) The board's meetings are open public meetings conducted pursuant to chapter 42.30 RCW. WAC 4-30-026 provides information on how to contact the board's office for meeting times and locations or additional information regarding the board's activities.

(2) Officers.

(a) At the annual meeting the board elects the chair, vice chair, and secretary from its members. The newly elected officers assume the duties of their offices on January 1 following the annual board meeting.

(b) Officers serve a term of one year and can be reelected for one additional term.

~~((Either the chair or a quorum of the board has the authority to call meetings of the board. The chair presides at all meetings. In the event of the chair's absence or inability to act, the vice chair presides. The board determines other duties of the officers.~~

~~The board's meetings are open public meetings conducted pursuant to chapter 42.30 RCW. WAC 4-30-026 provides information on how to contact the board's office for meeting times and locations or additional information regarding the board's activities.))~~ (c) Any officer may resign their position by tendering a written resignation to the board.

(d) If a vacancy shall occur in an officer position, the board may either elect a member to fill the officer vacancy for the unexpired term or allow the position to remain vacant until the end of that position's term. If the board decides to elect a member to fill the unexpired term of the officer position, it shall give notice of the board meeting at which a member is to be elected to fill the vacancy. A majority of the board serving is required to elect a member to fill a vacancy. Partial terms do not count against term limits for officers.

(e) The removal of any officer shall require a majority of the serving board plus one additional member including all current officers, provided such action shall not be taken unless notice of such action and vote has been included in the notice for the board meeting.

[Statutory Authority: RCW 18.04.055, 42.30.070. WSR 10-24-009, amended and recodified as § 4-30-022, filed 11/18/10, effective 12/19/10; WSR 07-14-034, § 4-25-510, filed 6/26/07, effective 7/27/07; WSR 05-01-137, § 4-25-510, filed 12/16/04, effective 1/31/05; WSR 01-22-036, § 4-25-510, filed 10/30/01, effective 12/1/01; WSR 00-11-068, § 4-25-510, filed 5/15/00, effective 6/30/00; WSR 99-18-111, § 4-25-510, filed 9/1/99, effective 1/1/00. Statutory Au-

thority: RCW 18.04.055. WSR 93-12-077, § 4-25-510, filed 5/27/93, effective 7/1/93.]

WSR 23-11-006

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed May 4, 2023, 11:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-07-094.

Title of Rule and Other Identifying Information: WAC 182-509-0320 MAGI income—Noncountable income and 182-512-0860 SSI-related medical—Income exclusions under federal statute or other state laws.

Hearing Location(s): On June 27, 2023, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_Y517j7-oTzq4pOEKrMh1bg. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than June 28, 2023.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by June 27, 2023, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.Larson@hca.wa.gov, by June 16, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending WAC 182-509-0320 and 182-512-0860 to include the working families' tax credit under RCW 82.08.0206 as income that the agency excludes when determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health and Washington apple health SSI-related medical programs.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Paige Lewis, P.O. Box 42722, Olympia, WA 98504-2722, 360-725-0757.

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 HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

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 pertains to client program eligibility and does not impose any costs on businesses.

Scope of exemption for rule proposal:

Is fully exempt.

May 4, 2023
Wendy Barcus
Rules Coordinator

OTS-4498.1

AMENDATORY SECTION (Amending WSR 20-17-136, filed 8/18/20, effective 9/18/20)

WAC 182-509-0320 MAGI income—Noncountable income. For purposes of determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health (see WAC 182-509-0300):

(1) Some types of income are not counted when determining eligibility for MAGI-based apple health. Under the MAGI income methodology described in WAC 182-509-0300, income is not counted if the Internal Revenue Service (IRS) permits it to be excluded or deducted for purposes of determining the tax liability of a person. (See 26 U.S.C. Sections 62(a) and 101-140.)

(2) Examples of income that are not counted include, but are not limited to:

(a) Bona fide loans, except certain student loans as specified under WAC 182-509-0335;

(b) Federal income tax refunds and earned income tax credit payments for up to (~~twelve~~) 12 months from the date received;

(c) Child support payments received by any person included in household size under WAC 182-506-0010;

(d) Nontaxable time loss benefits or other compensation received for sickness or injury, such as benefits from the department of labor and industries (L&I) or a private insurance company;

(e) Title IV-E and state foster care and adoption support maintenance payments;

(f) Veteran's benefits including, but not limited to, disability compensation and pension payments for disabilities paid to the veteran or family members; education, training and subsistence; benefits under a dependent-care assistance program for veterans, housebound allowance and aid and attendance benefits;

(g) Money withheld from a benefit to repay an overpayment from the same income source;

(h) One-time payments issued under the Department of State or Department of Justice reception and replacement programs, such as Voluntary Agency (VOLAG) payments;

(i) Nontaxable income from employment and training programs;

(j) Any portion of income used to repay the cost of obtaining that income source;

(k) Insurance proceeds or other income received as a result of being a Holocaust survivor;

(l) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;

(m) Income from a sponsor given to a sponsored immigrant;

(n) Fringe benefits provided on a pretax basis by an employer, such as transportation benefits or moving expenses;

(o) Employer contributions to certain pretax benefits funded by an employee's elective salary reduction, such as amounts for a flexible spending account;

(p) Distribution of pension payments paid by the employee (such as premiums or contributions) that were previously subject to tax;

(q) Gifts as described in IRS *Publication 559: Survivors, Executors, and Administrators*;

(r) Cash or noncash inheritances, except that the agency counts income produced by an inheritance;

(s) Death benefits from life insurance and certain benefits paid for deaths that occur in the line of duty; ~~((and))~~

(t) Working families' tax credit payments under RCW 82.08.0206;
and

(u) Other payments that are excluded from income under state or federal law.

(3) Income received from other agencies or organizations as needs-based assistance is not countable income under this section.

(a) "Needs-based" means eligibility for the program is based on having limited income, or resources, or both. Examples of needs-based assistance are:

(i) Clothing;

(ii) Food;

(iii) Household supplies;

(iv) Medical supplies (nonprescription);

(v) Personal care items;

(vi) Shelter;

(vii) Transportation; and

(viii) Utilities (e.g., lights, cooking fuel, the cost of heating or heating fuel).

(b) Needs-based cash programs include, but are not limited to, the following apple health programs:

(i) Diversion cash assistance (DCA);

(ii) Temporary assistance for needy families (TANF);

(iii) State family assistance (SFA);

(iv) Pregnant women's assistance (PWA);

(v) Refugee cash assistance (RCA);

(vi) Aged, blind, disabled cash assistance (ABD); and

(vii) Supplemental security income (SSI).

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-17-136, § 182-509-0320, filed 8/18/20, effective 9/18/20. Statutory Authority: RCW 41.05.021, Patient Protection and Affordable Care Act (P.L. 111-148), 42 C.F.R. §§ 431, 435, 457, and 45 C.F.R. § 155. WSR 14-01-021, § 182-509-0320, filed 12/9/13, effective 1/9/14.]

OTS-4499.1

AMENDATORY SECTION (Amending WSR 14-07-059, filed 3/14/14, effective 4/14/14)

WAC 182-512-0860 SSI-related medical—Income exclusions under federal statute or other state laws. The Social Security Act and other federal statutes or state laws list income that the agency excludes when determining eligibility for Washington apple health (WAH) SSI-related medical programs. These exclusions include, but are not limited to:

(1) Income tax refunds;

(2) Federal earned income tax credit (EITC) payments for ~~((twelve))~~ 12 months after the month of receipt;

- (3) Compensation provided to volunteers in the Corporation for National and Community Service (CNCS), formerly known as ACTION programs established by the Domestic Volunteer Service Act of 1973. P.L. 93-113;
- (4) Assistance to a person (other than wages or salaries) under the Older Americans Act of 1965, as amended by section 102 (h) (1) of Pub. L. 95-478 (92 Stat. 1515, 42 U.S.C. 3020a);
- (5) Federal, state and local government payments including assistance provided in cash or in-kind under any government program that provides medical or social services;
- (6) Certain cash or in-kind payments a person receives from a governmental or nongovernmental medical or social service agency to pay for medical or social services;
- (7) Value of food provided through a federal or nonprofit food program such as WIC, donated food program, school lunch program;
- (8) Assistance based on need, including:
 - (a) Any federal SSI income or state supplement payment (SSP) based on financial need;
 - (b) Basic Food;
 - (c) State-funded cash assistance;
 - (d) CEAP;
 - (e) TANF; and
 - (f) Bureau of Indian Affairs (BIA) general assistance.
- (9) Housing assistance from a federal program such as HUD if paid under:
 - (a) United States Housing Act of 1937 (section 1437 et seq. of 42 U.S.C.);
 - (b) National Housing Act (section 1701 et seq. of 12 U.S.C.);
 - (c) Section 101 of the Housing and Urban Development Act of 1965 (section 1701s of 12 U.S.C., section 1451 of 42 U.S.C.);
 - (d) Title V of the Housing Act of 1949 (section 1471 et seq. of 42 U.S.C.);
 - (e) Section 202(h) of the Housing Act of 1959; or
 - (f) Weatherization provided to low-income homeowners by programs that consider income in the eligibility determinations.
- (10) Energy assistance payments including:
 - (a) Those to prevent fuel cutoffs; and
 - (b) Those to promote energy efficiency.
- (11) Income from employment and training programs as specified in WAC 182-512-0780.
- (12) Foster grandparents program;
- (13) Title IV-E and state foster care maintenance payments if the foster child is not included in the assistance unit;
- (14) The value of any childcare provided or arranged (or any payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act, as amended by section 8(b) of P.L. 102-586 (106 Stat. 5035);
- (15) Educational assistance as specified in WAC 182-512-0760;
- (16) The excluded income described in WAC 182-512-0770 and other income received by American Indians/Alaska Natives that is excluded by federal law;
- (17) Payments from Susan Walker v. Bayer Corporation, et al., 96-c-5024 (N.D. Ill) (May 8, 1997) settlement funds;
- (18) Payments from Ricky Ray Hemophilia Relief Fund Act of 1998, P.L. 105-369;

(19) Disaster assistance paid under Federal Disaster Relief P.L. 100-387 and Emergency Assistance Act, P.L. 93-288 amended by P.L. 100-707 and for farmers P.L. 100-387;

(20) Payments to certain survivors of the Holocaust as victims of Nazi persecution; payments excluded pursuant to section 1(a) of the Victims of Nazi Persecution Act of 1994, P.L. 103-286 (108 Stat. 1450);

(21) Payments made under section 500 through 506 of the Austrian General Social Insurance Act;

(22) Payments made under the Netherlands' Act on Benefits for Victims of Persecution (WUV);

(23) Restitution payments and interest earned to Japanese Americans or their survivors, and Aleuts interned during World War II, established by P.L. 100-383;

(24) Payments made from the Agent Orange Settlement Funds or any other funds to settle Agent Orange liability claims established by P.L. 101-201;

(25) Payments made under section six of the Radiation Exposure Compensation Act established by P.L. 101-426; (~~and~~)

(26) Any interest or dividend is excluded as income, except for the community spouse of an institutionalized person; and

(27) Working families' tax credit payments under RCW 82.08.0206.

[Statutory Authority: RCW 41.05.021 and Patient Protection and Affordable Care Act (Public Law 111-148), 42 C.F.R. §§ 431, 435, 457 and 45 C.F.R. § 155. WSR 14-07-059, § 182-512-0860, filed 3/14/14, effective 4/14/14. WSR 11-24-018, recodified as § 182-512-0860, filed 11/29/11, effective 12/1/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, chapter 74.12 RCW, and The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. WSR 11-21-025, § 388-475-0860, filed 10/11/11, effective 10/29/11. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.500, and Social Security Act as amended by P.L. 108-203. WSR 06-04-046, § 388-475-0860, filed 1/26/06, effective 2/26/06. Statutory Authority: RCW 74.04.050, 74.08.090. WSR 04-09-005, § 388-475-0860, filed 4/7/04, effective 6/1/04.]

WSR 23-11-019
PROPOSED RULES
LAKE WASHINGTON
INSTITUTE OF TECHNOLOGY
[Filed May 5, 2023, 6:11 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-07-017.

Title of Rule and Other Identifying Information: WAC 495-121-320, 495-121-330, 495-121-605, and 495-121-590, antihazing updates to student conduct code.

Hearing Location(s): On June 27, 2023, at 3 p.m., at W305A Board Room.

Date of Intended Adoption: July 19, 2023.

Submit Written Comments to: Dr. Sheila Walton, 11605 132nd Avenue N.E., Kirkland, WA 98034, email sheila.walton@lwtech.edu, by June 25, 2023.

Assistance for Persons with Disabilities: Contact Dr. Sheila Walton, phone 425-739-8314, email sheila.walton@lwtech.edu, by June 25, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Adoption of a new definition of hazing.

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

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

Reasons Supporting Proposal: HB [2SHB] 1751 requires adoption of new antihazing rules.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Dr. Sheila Walton, E128C, 425-739-8314.

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 rule content is explicitly and specifically dictated by statute.

May 5, 2023
Elsa J. Gossett, Director
Planning and Operations
Office of the President

OTS-4011.1

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

- WAC 495D-121-320 Student conduct code—Jurisdiction.** (1) The student conduct code shall apply to student conduct that occurs:
- (a) On college premises;
 - (b) At or in connection with college sponsored activities;
 - (c) Off-campus when, in the judgment of the college, it adversely affects the college community or the pursuit of its objectives.
- (2) Jurisdiction extends to, but is not limited to, locations in which students engage in official college activities including, but not limited to:
- (a) Foreign or domestic travel;
 - (b) Activities funded by the associated students;
 - (c) Athletic events;
 - (d) Training internships;
 - (e) Cooperative and distance education;
 - (f) Online education;
 - (g) Practicums;
 - (h) Supervised work experiences;
 - (i) Any other college-sanctioned social or club activities.
- (3) Students are responsible for their conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.
- (4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.
- (5) The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct to students or student groups that occurs off campus.

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-18-041, § 495D-121-320, filed 8/24/21, effective 9/24/21. Statutory Authority: RCW 28B.50.140(13). WSR 14-14-047, § 495D-121-320, filed 6/25/14, effective 7/26/14.]

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

- WAC 495D-121-330 Student conduct code—Definitions.** The following definitions apply for the purposes of this student conduct code:
- (1) "Business day" means a weekday, excluding weekends and official college holidays.
 - (2) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property the college owns, uses, or controls.
 - (3) "Complainant" means an alleged victim of sexual misconduct.

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

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

(6) "Disciplinary appeal" means the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. The student conduct committee hears disciplinary appeals for a suspension in excess of (~~ten~~) 10 instructional days or a dismissal. The college will review appeals of all other appealable disciplinary action through brief adjudicative proceedings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~((14))~~ (15) "Student conduct officer" means a college administrator to whom the president or vice president of student services designates responsibility to implement and enforce the student conduct code. The president or vice president can reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as reasonably necessary.

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

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

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-18-041, § 495D-121-330, filed 8/24/21, effective 9/24/21. Statutory Authority: RCW 28B.50.140(13). WSR 14-14-047, § 495D-121-330, filed 6/25/14, effective 7/26/14.]

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

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

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

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

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

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

(d) Academic consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty mem-

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

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

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

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

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

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

(a) Any instruction, research, administration, disciplinary proceeding, or other college activity;

(b) The free flow of pedestrian or vehicular movement on college property or at a college activity;

(c) Any student's ability to profit from the instructional program; or

(d) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) **Assault, intimidation, and/or harassment.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.

(5) **Imminent danger.** Where the student presents an imminent danger to college property, or to themselves, or other students or persons in college facilities on or off campus, or to the education processes of the college.

(6) **Cyber misconduct.** Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(7) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords,

access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(8) **Noncompliance.** Failure to comply with:

(a) The direction of a college officer or employee who is acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so;

(b) A college rule or policy as set forth in the *Lake Washington Institute of Technology Policies and Procedures Manual* which may be found in the library or online.

(9) **Weapons.** Possession, holding, wearing, transporting, storage, or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, martial arts weapons, explosive device, dangerous chemicals, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties; or

(b) A student with a valid concealed weapons permit may store a firearm in their vehicle parked on campus in accordance with RCW 9.41.050, provided the vehicle is locked and the weapon is concealed from view; or

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

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

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

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

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

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

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

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

(ii) Humiliation by ritual act;

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

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

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

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

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

(11) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college or in any location

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) The length of the relationship;

(B) The type of relationship; and

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

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

(18) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person be-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) Failure to obey a subpoena;
- (b) Falsification or misrepresentation of information;
- (c) Disruption or interference with the orderly conduct of a proceeding;
- (d) Interfering with someone else's proper participation in a proceeding;
- (e) Destroying or altering potential evidence or attempting to intimidate or otherwise improperly pressure a witness or potential witness;

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

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

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

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

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

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-18-041, § 495D-121-590, filed 8/24/21, effective 9/24/21. Statutory Authority: RCW 28B.50.140(13). WSR 16-10-092, § 495D-121-590, filed 5/3/16, effective 6/3/16; WSR 14-14-047, § 495D-121-590, filed 6/25/14, effective 7/26/14.]

NEW SECTION

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

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

(3) Washington state law provides that:

(a) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corpo-

ration, whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages.

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

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

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

[]

REPEALER

The following section of the Washington Administrative Code is repealed:

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

WSR 23-11-026

PROPOSED RULES

BUILDING CODE COUNCIL

[Filed May 10, 2023, 8:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-05-019.

Title of Rule and Other Identifying Information: Chapter 51-50 WAC; amendments to the 2021 International Building Code to adopt R-4 occupancy group and modify code provisions related to licensed care facilities. This adoption will require coordination with chapter 51-54A WAC. The applicable sections in chapter 51-54A WAC will be amended with expedited rule making for consistency with chapter 51-50 WAC.

Hearing Location(s): On June 28, 2023, at 10:00 a.m., at 1500 Jefferson Street S.E., Olympia, WA 98504. Please access the meetings in person, via Zoom, or via conference call. The Zoom link and phone will be provided in the agenda at sbcc.wa.gov.

Date of Intended Adoption: June 30, 2023.

Submit Written Comments to: State Building Code Council, P.O. Box 41449, Olympia, WA 98504-1449, email sbcc@des.wa.gov, by June 28, 2023.

Assistance for Persons with Disabilities: Contact Annette Harworth, phone 360-407-9255, email sbcc@des.wa.gov, by June 18, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 1993, the R-4 occupancy designation was replaced with licensed care occupancies in the adopted Washington state uniform codes. In the 2006 international version of the codes, Washington removed licensed care occupancies and distributed those facilities to the appropriate I and R occupancy classifications, while continuing to strike the unneeded R-4 occupancy classification. The International Code Council model codes have evolved to include an enhanced building science model for the R-4 designation that includes mitigations for both active and passive fire and life safety systems. There is no longer a reason for nonadoption of the R-4 occupancy group.

Reasons Supporting Proposal: RCW 19.27.031, 19.27.074.

Statutory Authority for Adoption: RCW 19.27.031, 19.27.074.

Statute Being Implemented: RCW 19.27.031, 19.27.074.

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: None.

Name of Proponent: State building code council, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Stoyan Bumbalov, 1500 Jefferson Street S.E., Olympia, WA 98504, 360-407-9277; Enforcement: Local jurisdictions.

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. Exempt under RCW 34.05.328 (4)(b)(iii) and (iv).

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; 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.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule adopts sections from the 2021 International Building Code, which is adopted by reference pursuant to RCW 19.27.031. Several existing amendments are also deleted or modified to incorporate changes to the model codes or to clarify language.

Scope of exemption for rule proposal:

Is fully exempt.

May 9, 2023
Tony Doan
Council Chair

OTS-4545.3

AMENDATORY SECTION (Amending WSR 22-13-094, filed 6/14/22, effective 7/1/23)

WAC 51-50-0200 Chapter 2—Definitions.

SECTION 202—DEFINITIONS.

ADULT FAMILY HOME. A dwelling, licensed by the state of Washington department of social and health services, in which a person or persons provide personal care, special care, room and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services. An existing adult family home may provide services to up to eight adults upon approval from the department of social and health services in accordance with RCW 70.128.066.

ASSISTED LIVING FACILITY. A home or other institution, licensed by the state of Washington, providing housing, basic services and assuming general responsibility for the safety and well-being of residents under chapters 18.20 RCW and 388-78A WAC. These facilities may provide care to residents with symptoms consistent with dementia requiring additional security measures.

AUTOMATIC LOAD MANAGEMENT SYSTEM (ALMS). A system designed to manage electrical load across one or more EV Ready parking spaces.

BOTTLE FILLING STATION. A plumbing fixture connected to the potable water distribution system and sanitary drainage system that is designed and intended for filling personal use drinking water bottles or containers not less than 10 inches (254 mm) in height. Such fixtures can be sepa-

rate from or integral to a drinking fountain and can incorporate a water filter and a cooling system for chilling the drinking water.

CHILD CARE. The care of children during any period of a 24-hour day.

CHILD CARE, FAMILY HOME. A child care facility, licensed by Washington state, located in the dwelling of the person or persons under whose direct care and supervision the child is placed, for the care of 12 or fewer children, including children who reside at the home.

CLIMATE ZONE. A geographical region that has been assigned climatic criteria as specified in the Washington State Energy Code.

CLUSTER. Clusters are multiple *portable school classrooms* separated by less than the requirements of the building code for separate buildings.

COMPOST. Biodegradable solid wastes that are separated for composting such as food waste, food soiled paper, and yard waste.

CUSTODIAL CARE. Assistance with day-to-day living tasks; such as assistance with cooking, taking medication, bathing, using toilet facilities, and other tasks of daily living. Custodial care includes persons receiving care who have the ability to respond to emergency situations and may receive limited verbal or physical assistance. These care recipients may evacuate at a slower rate and/or who have mental and psychiatric complications.

EFFICIENCY DWELLING UNIT. A dwelling unit where all permanent provisions for living, sleeping, eating and cooking are contained in a single room.

ELECTRIC VEHICLE (EV) CAPABLE PARKING SPACE. A parking space provided with a conduit, electrical panel and load capacity to support future installation of EV charging equipment.

ELECTRIC VEHICLE (EV) CHARGER. Off-board charging equipment used to charge electric vehicles.

ELECTRIC VEHICLE (EV) CHARGING STATION. EV Ready parking space with installed EV charger.

ELECTRIC VEHICLE (EV) READY PARKING SPACE. A parking space provided with a receptacle outlet allowing charging of electric vehicles.

ELECTRIC VEHICLE SUPPLY EQUIPMENT (EVSE). The conductors, including the ungrounded, grounded, and equipment grounding conductors, and the electric vehicle connectors, attachment plugs, personnel protection system, and all other fittings, devices, power outlets, or apparatus installed specifically for the purpose of transferring energy between the premises wiring and the electric vehicle.

HIGH-RISE BUILDING. A building with an occupied floor, located more than 75 feet (22,860 mm) above the lowest level of fire department vehicle access. For the purposes of this definition, an occupied roof with an occupant load of 50 or more is considered to be an occupied floor.

HOSPICE CARE CENTER. A building or portion thereof used on a 24-hour basis for the provision of hospice services to terminally ill inpatients.

LIMITED VERBAL OR PHYSICAL ASSISTANCE. Persons who, because of age, physical limitations, cognitive limitations, treatment or chemical dependency, and may not independently recognize, respond, or evacuate without limited verbal or physical assistance during an emergency situation. Verbal assistance includes prompting, giving, and repeating instructions.

Physical assistance includes assistance with transfers to walking aids or mobility devices and assistance with egress.

LOFT. A space on an intermediate level or levels between the floor and ceiling of a Group R occupancy dwelling or sleeping unit, open on one or more sides to the room in which the loft is located, and in accordance with Section 420.13.

NIGHTCLUB. An A-2 Occupancy in which the aggregate area of concentrated use of unfixed chairs and standing space that is specifically designated and primarily used for dancing or viewing performers exceeds 350 square feet, excluding adjacent lobby areas. "Nightclub" does not include theaters with fixed seating, banquet halls, or lodge halls.

PORTABLE SCHOOL CLASSROOM. A prefabricated structure consisting of one or more rooms with direct exterior egress from the classroom(s). The structure is transportable in one or more sections and is designed to be used as an educational space with or without a permanent foundation. The structure shall be capable of being demounted and relocated to other locations as needs arise.

RECYCLED MATERIALS. Those solid wastes that are separated for recycling or reuse, such as papers, metals, and glass.

RESIDENTIAL SLEEPING SUITES. A unit that provides multiple rooms or spaces for up to five residents, includes provisions for sleeping and can include provisions for living, eating, sanitation, and kitchen facilities.

SMALL BUSINESS. Any business entity (including a sole proprietorship, corporation, partnership or other legal entity) which is owned and operated independently from all other businesses, which has the purpose of making a profit, and which has 50 or fewer employees.

STAGED EVACUATION. A method of emergency response, that engages building components and trained staff to provide occupant safety during an emergency. Emergency response involves moving or holding certain occupants at temporary locations for a brief period of time before evacuating the building. This response is used by ambulatory surgery facility and assisted living facilities to protect the health and safety of fragile occupants and residents.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 22-13-094, § 51-50-0200, filed 6/14/22, effective 7/1/23; WSR 21-12-103, § 51-50-0200, filed 6/2/21, effective 7/3/21; WSR 20-01-090, § 51-50-0200, filed 12/12/19, effective 7/1/20; WSR 19-02-038, § 51-50-0200, filed 12/26/18, effective 7/1/19; WSR 16-03-064, § 51-50-0200, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.074, 19.27.020, and 19.27.031. WSR 14-24-089, § 51-50-0200, filed 12/1/14, effective 5/1/15. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-0200, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-0200, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 08-01-110, § 51-50-0200, filed 12/18/07, effective 4/1/08. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-0200, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.020, 19.27.031, 19.27.074, and chapters 19.27 and 34.05 RCW. WSR 05-24-070, § 51-50-0200, filed 12/5/05, effective 7/1/06. Statutory Authority:

RCW 19.27.031 and 19.27.074. WSR 04-01-108, § 51-50-0200, filed 12/17/03, effective 7/1/04.]

AMENDATORY SECTION (Amending WSR 22-13-094, filed 6/14/22, effective 7/1/23)

WAC 51-50-0308 Section 308—Institutional Group I.

308.2 Institutional Group I-1. Institutional Group I-1 occupancy shall include buildings, structures or portions thereof for more than 16 persons, excluding staff, who reside on a 24-hour basis in a supervised environment and receive custodial care. Buildings of Group I-1 shall be classified as one of the occupancy conditions specified in Section 308.2.1 or 308.2.2 and shall comply with Section 420. This group shall include, but not be limited to, the following:

Alcohol and drug centers;

Assisted living facilities as licensed by Washington state under chapter 388-78A WAC;

Congregate care facilities;

Group homes;

Halfway houses;

Residential board and care facilities;

Social rehabilitation facilities;

Residential treatment facilities as licensed by Washington state under chapter 246-337 WAC.

308.2.5 Adult family homes. Adult family homes licensed by Washington state shall be classified as Group R-3 or shall comply with the *International Residential Code*.

308.2.6 ((Licensed care)) Assisted living facilities. Assisted living facilities as licensed by Washington state under chapter 388-78A WAC shall be classified as Group I-1, Condition 2.

~~((Residential treatment facilities licensed by Washington state under chapter 246-337 WAC shall be classified as one or more occupancy types in accordance with chapter 246-337 WAC.))~~

308.3 Institutional Group I-2. Institutional Group I-2 occupancy shall include buildings and structures used for *medical care* on a 24-hour basis for more than five persons who are *incapable of self-preservation*. This group shall include, but not be limited to, the following:

Foster care facilities.

Detoxification facilities.

Hospice care centers.

Hospitals.

Nursing homes.

Psychiatric hospitals.

308.5.5 Family home child care. Family home child care licensed by Washington state for the care of 12 or fewer children shall be classified as Group R-3 or shall comply with the *International Residential Code*.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 22-13-094, § 51-50-0308, filed 6/14/22, effective 7/1/23; WSR 20-21-021, § 51-50-0308, filed 10/9/20, effective 11/9/20; WSR 20-01-090, § 51-50-0308, filed 12/12/19, effective 7/1/20; WSR 16-03-064, §

51-50-0308, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-0308, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-0308, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-0308, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-108, § 51-50-0308, filed 12/17/03, effective 7/1/04.]

AMENDATORY SECTION (Amending WSR 22-13-094, filed 6/14/22, effective 7/1/23)

WAC 51-50-0310 Section 310—Residential Group R.

310.3 Residential Group R-2. Residential occupancies containing *sleeping units* or more than two *dwelling units* where the occupants are primarily permanent in nature, including:

Apartment houses
Congregate living facilities (nontransient) with more than 16 occupants

Boarding houses (nontransient)

Convents

Dormitories

Fraternities and sororities

Monasteries

Hotels (nontransient)

Live/work units

Motels (nontransient)

Vacation timeshare properties

310.4.3 Adult family homes, family home child care. Adult family homes and family home child care facilities that are within a single-family home are permitted to comply with the *International Residential Code*.

310.4.4 Foster family care homes. Foster family care homes licensed by Washington state are permitted to comply with the *International Residential Code*, as an accessory use to a dwelling, for six or fewer children including those of the resident family.

~~((310.5 Residential Group R-4. R-4 classification is not adopted. Any reference in this code to R-4 does not apply.))~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 22-13-094, § 51-50-0310, filed 6/14/22, effective 7/1/23; WSR 21-06-035, § 51-50-0310, filed 2/23/21, effective 3/26/21; WSR 16-03-064, § 51-50-0310, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-0310, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-0310, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 08-01-110, § 51-50-0310, filed 12/18/07, effective 4/1/08. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-0310, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW

19.27.031 and 19.27.074. WSR 04-01-108, § 51-50-0310, filed 12/17/03, effective 7/1/04.]

AMENDATORY SECTION (Amending WSR 22-13-094, filed 6/14/22, effective 7/1/23)

WAC 51-50-0420 Section 420—Groups I-1, R-1, R-2, R-3, and R-4.

420.2 Separation walls. Walls separating dwelling units in the same building, walls separating sleeping units in the same building and walls separating dwelling or sleeping units from other occupancies contiguous to them in the same building shall be constructed as fire partitions in accordance with Section 708. Buildings containing multiple sleeping units with common use or central kitchens shall not be classified as a single dwelling.

((EXCEPTIONS: 1. Where sleeping units include private bathrooms, walls between bedrooms and the associated private bathrooms are not required to be constructed as fire partitions.
2. Where sleeping units are constructed as suites, walls between bedrooms within the sleeping unit and the walls between the bedrooms and associated living spaces are not required to be constructed as fire partitions.
3. In Groups R-3 facilities, walls within the dwelling units or sleeping units are not required to be constructed as fire partitions.
4. Groups R-2 and I-1 arranged into residential sleeping suites containing a maximum of five sleeping residents. Separation between bedrooms, living areas and toilet rooms within these residential sleeping suites shall not be required.
5. Group I-1 sleeping areas arranged so that a dedicated staff member has direct observation over a multiple resident sleeping room, without intervening full height walls, shall not be required to provide fire partitions within the resident sleeping area.))

420.12 Adult family homes. This section shall apply to all newly constructed adult family homes and all existing single-family homes being converted to adult family homes. This section shall not apply to those adult family homes licensed by the state of Washington department of social and health services prior to July 1, 2001.

420.12.1 Sleeping room classification. Each sleeping room in an adult family home shall be classified as one of the following:

1. Type S - Where the means of egress contains stairs, elevators or platform lifts.
2. Type NS1 - Where one means of egress is at grade level or a ramp constructed in accordance with Section 1012 is provided.
3. Type NS2 - Where two means of egress are at grade level or ramps constructed in accordance with Section 1012 are provided.

420.12.2 Types of locking devices and door activation. All bedrooms and bathroom doors shall be openable from the outside when locked.

Every closet door shall be readily openable from the inside.

Operable parts of door handles, pulls, latches, locks and other devices installed in adult family homes shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. Pocket doors shall have graspable hardware available when in the closed or open position.

The force required to activate operable parts shall be 5.0 pounds (22.2 N) maximum. Required exit door(s) shall have no additional locking devices. Required exit door hardware shall unlock inside and outside mechanisms when exiting the building allowing reentry into the adult family home without the use of a key, tool or special knowledge.

420.12.3 Smoke and carbon monoxide alarm requirements. Alarms shall be installed in such a manner so that the detection device warning is audible from all areas of the dwelling upon activation of a single alarm.

420.12.4 Escape windows and doors. Every sleeping room shall be provided with emergency escape and rescue windows as required by Section 1030. No alternatives to the sill height such as steps, raised platforms or other devices placed by the openings will be approved as meeting this requirement.

420.12.5 Grab bar general requirements. Where facilities are designated for use by adult family home clients, grab bars for water closets, bathtubs and shower stalls shall be installed according to ICC A117.1.

420.12.6 Shower stalls. Where provided to meet the requirements for bathing facilities, the minimum size of shower stalls for an adult family home shall be 30 inches deep by 48 inches long.

420.13 Licensed care cooking facilities. In Group I-1, Condition 2 assisted living facilities licensed under chapter 388-78A WAC and residential treatment facilities licensed under chapter 246-337 WAC, rooms or spaces that contain a cooking facility with domestic cooking appliances shall be permitted to be open to the corridor where all of the following criteria are met:

1. The number of care recipients housed in the smoke compartment is not greater than 30.
2. The number of care recipients served by the cooking facility is not greater than 30.
3. Only one cooking facility area is permitted in a smoke compartment.
4. The types of domestic cooking appliances permitted are limited to ovens, cooktops, ranges, warmers and microwaves.
5. The corridor is a clearly identified space delineated by construction or floor pattern, material or color.
6. The space containing the domestic cooking facility shall be arranged so as not to obstruct access to the required exit.
7. A domestic cooking hood installed and constructed in accordance with Section 505 of the *International Mechanical Code* is provided over the cooktop or range.
8. The domestic cooking hood provided over the cooktop or range shall be equipped with an automatic fire-extinguishing system of a type recognized for protection of domestic cooking equipment. Preengineered automatic extinguishing systems shall be tested in accordance with UL 300A and *listed* and *labeled* for the intended application. The system shall be installed in accordance with this code, its listing and the manufacturer's instructions.
9. A manual actuation device for the hood suppression system shall be installed in accordance with Sections 904.13.1 and 904.13.2.
10. An interlock device shall be provided such that upon activation of the hood suppression system, the power or fuel supply to the cooktop or range will be turned off.
11. A shut-off for the fuel and electrical power supply to the cooking equipment shall be provided in a location that is accessible only to staff.
12. A timer shall be provided that automatically deactivates the cooking appliances within a period of not more than 120 minutes.
13. A portable fire extinguisher shall be installed in accordance with Section 906 of the *International Fire Code*.

420.14 Lofts. Where provided in Group R occupancies, *lofts* shall comply with this code as modified by Sections 420.14.1 through 420.14.5. *Lofts* constructed in compliance with this section shall be considered

a portion of the story below. Such *lofts* shall not contribute to either the building area or number of stories as regulated by Section 503.1. The loft floor area shall be included in determining the *fire area*.

EXCEPTION: *Lofts* need not comply with Section 420.13 where they meet any of the following conditions:

1. The *loft* has a maximum depth of less than 3 feet (914 mm).
2. The *loft* has a floor area of less than 35 square feet (3.3 m²).
3. The *loft* is not provided with a permanent means of egress.

420.14.1 Loft limitations. *Lofts* shall comply with the following conditions:

1. The *loft* floor area shall be less than 70 square feet (6.5 m²).
2. The *loft* ceiling height shall not exceed 7 feet (2134 mm) for more than one-half of the *loft* floor area.

The provisions of Sections 420.14.2 through 420.14.5 shall not apply to *lofts* that do not comply with Items 1 and 2.

420.14.2 Loft ceiling height. The ceiling height below a *loft* shall not be less than 7 feet (2134 mm). The ceiling height above the finished floor of the *loft* shall not be less than 3 feet (914 mm). Portions of the *loft* with a sloped ceiling measuring less than 3 feet (914 mm) from the finished floor to the finished ceiling shall not contribute to the *loft* floor area.

420.14.3 Loft area. The aggregate area of all *lofts* and *mezzanines* within a room shall comply with Section 505.2.1.

EXCEPTION: The area of a single *loft* shall not be greater than two-thirds of the area of the room in which it is located, provided that no other *lofts* or *mezzanines* are open to the room in which the *loft* is located.

420.14.4 Permanent egress for lofts. Where a permanent means of egress is provided for *lofts*, the means of egress shall comply with Chapter 10 as modified by Section 420.14.4.1.

420.14.4.1 Ceiling height at loft means of egress. A minimum ceiling height of 3 feet shall be provided for the entire width of the means of egress from the *loft*.

420.14.5 Smoke alarms. Single- or multiple-station smoke alarms shall be installed in all *lofts* in accordance with Section 907.2.11.1 or 907.2.11.2.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 22-13-094, § 51-50-0420, filed 6/14/22, effective 7/1/23; WSR 20-01-090, § 51-50-0420, filed 12/12/19, effective 7/1/20; WSR 16-03-064, § 51-50-0420, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-0420, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-0420, filed 1/20/10, effective 7/1/10.]

AMENDATORY SECTION (Amending WSR 22-13-094, filed 6/14/22, effective 7/1/23)

WAC 51-50-0706 Section 706—Fire walls.

706.3 Materials. *Fire walls* that separate a building of Type I or II construction from a building of any construction type shall be of any

approved noncombustible materials. Other fire walls shall be built of materials consistent with the types permitted for the type of construction of the building.

~~((706.4 Fire-resistance rating. Fire walls shall have a fire-resistance rating of not less than that required by Table 706.4.~~

**Table 706.4
Fire Wall Fire-resistance Ratings**

GROUP	FIRE-RESISTANCE RATING (hours)
A, B, E, H-4, I, R-1, R-2, U	3 ^a
F-1, H-3 ^b , H-5, M, S-1	3
H-1, H-2	4 ^b
F-2, S-2, R-3	2

^a In Type II, III, IV, or V construction, walls shall be permitted to have a 2-hour fire-resistance rating.

^b For Group H-1, H-2, or H-3 buildings, also see Sections 415.7 and 415.8.)

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 22-13-094, § 51-50-0706, filed 6/14/22, effective 7/1/23; WSR 20-01-090, § 51-50-0706, filed 12/12/19, effective 7/1/20; WSR 16-03-064, § 51-50-0706, filed 1/19/16, effective 7/1/16.]

AMENDATORY SECTION (Amending WSR 22-13-094, filed 6/14/22, effective 7/1/23)

WAC 51-50-10170 Section 1017—Exit access travel distance.

**Table 1017.2
Exit Access Travel Distance^a**

Occupancy	Without Sprinkler System (feet)	With Sprinkler System (feet)
A, E, F-1, M, R, S-1	200 ^c	250 ^b
I-1	Not Permitted	250 ^b
B	200	300 ^c
F-Z, S-Z, U	300	400 ^c
H-1	Not Permitted	75 ^d
H-Z	Not Permitted	100 ^d
H-3	Not Permitted	150 ^d
H-4	Not Permitted	175 ^d
H-5	Not Permitted	200 ^c
I-Z, I-3	Not Permitted	200 ^c
I-4	150	200 ^c

For SI: 1 foot = 304.8 mm.

^a See the following sections for modifications to exit access travel distance requirements:

- Section 402.8: For the distance limitation in malls.
- Section 407.4: For the distance limitation in Group I-2.
- Sections 408.6.1 and 408.8.1: For the distance limitations in Group I-3.
- Section 411.2: For the distance limitation in special amusement areas.
- Section 412.6: For the distance limitations in aircraft manufacturing facilities.

- Section 1006.2.2.2: For the distance limitation in refrigeration machinery rooms.
 - Section 1006.2.2.3: For the distance limitation in refrigerated rooms and spaces.
 - Section 1006.3.4: For buildings with one exit.
 - Section 1017.2.2: For increased distance limitation in Groups F-1 and S-1.
 - Section 1030.7: For increased limitation in assembly seating.
 - Section 3103.4: For temporary structures.
 - Section 3104.9: For pedestrian walkways.
 - Section 3116: For fixed guideway and passenger rail stations.
- b Buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2. See Section 903 for occupancies where automatic sprinkler systems are permitted in accordance with Section 903.3.1.2.
- c Buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1.
- d Group H occupancies equipped throughout with an automatic sprinkler system in accordance with Section 903.2.5.1.
- e Group R-3 and R-4 buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.3. See Section 903.2.8 for occupancies where automatic sprinkler systems are permitted in accordance with Section 903.3.1.3.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 22-13-094, § 51-50-10170, filed 6/14/22, effective 7/1/23.]

AMENDATORY SECTION (Amending WSR 22-13-094, filed 6/14/22, effective 7/1/23)

WAC 51-50-1019 ((Section 1019 Exit access stairways and ramps.) Reserved.

~~((1019.3 Occupancies other than Groups I-2 and I-3. In other than Groups I-2 and I-3 occupancies, floor openings containing exit access stairways or ramps shall be enclosed with a shaft enclosure constructed in accordance with Section 713.~~

EXCEPTIONS:

1. Exit access stairways and ramps that serve or atmospherically communicate between only two adjacent stories. Such interconnected stories shall not be open to other stories.
2. In Group R-1, R-2 or R-3 occupancies, exit access stairways and ramps connecting four stories or less serving and contained within an individual dwelling unit or sleeping unit or live/work unit.
3. Exit access stairways serving and contained within a Group R-3 congregate residence are not required to be enclosed.
4. ~~Exit access stairways and ramps in buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1, where the area of the vertical opening between stories does not exceed twice the horizontal projected area of the stairway or ramp and the opening is protected by a draft curtain and closely spaced sprinklers in accordance with NFPA 13. In other than Group B and M occupancies, this provision is limited to openings that do not connect more than four stories.~~
5. ~~Exit access stairways and ramps within an atrium complying with the provisions of Section 404.~~
6. ~~Exit access stairways and ramps in open parking garages that serve only the parking garage.~~
7. ~~Exit access stairways and ramps serving smoke-protected or open-air assembly seating complying with the exit access travel distance requirements of Section 1030.7.~~
8. ~~Exit access stairways and ramps between the balcony, gallery or press box and the main assembly floor in occupancies such as theaters, places of religious worship, auditoriums, and sports facilities.~~
9. ~~Exterior exit access stairways or ramps between occupied roofs.~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 22-13-094, § 51-50-1019, filed 6/14/22, effective 7/1/23; WSR 20-21-021, § 51-50-1019, filed 10/9/20, effective 11/9/20; WSR 20-01-090, § 51-50-1019, filed 12/12/19, effective 7/1/20; WSR 10-03-097, § 51-50-1019, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-1019, filed 12/19/06, effective 7/1/07.]

WSR 23-11-029
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed May 10, 2023, 1:36 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-21-093.

Title of Rule and Other Identifying Information: Wildfire smoke; chapter 296-820 WAC and chapter 296-307 WAC, Part G-1.

Hearing Location(s): On July 18, 2023, at 10:00 a.m., at Hampton Inn by Hilton, 2010 South Assembly Road, Spokane, WA 99224; on July 19, 2023, at 10:00 a.m., at Red Lion Hotel Columbia Center, 1101 North Columbia Center Boulevard, Kennewick, WA 99336; on July 20, 2023, at 10:00 a.m., at Spring Hill Suites by Marriott, 4040 Northwest Avenue, Bellingham, WA 98226; on July 25, 2023, at 10:00 a.m., at Clark College at Columbia Tech Center, 18700 S.E. Mill Plain Boulevard, Vancouver, WA 98683; on July 26, 2023, at 10:00 a.m., at Department of Labor and Industries (L&I), 12806 Gateway Drive South, Tukwila, WA 98168; on July 27, 2023, at 10:00 a.m., at Yakima Valley College, 1405 West Nob Hill Boulevard, Meeting Room 122, Yakima, WA 98902; and on July 28, 2023, at 2:00 p.m., virtual and telephonic hearing. Join electronically <https://lni-wa-gov.zoom.us/j/87690786178?pwd=WWNwTTFzeS9TK0NGVUVNMmJkUmVZZz09>, Password (if prompted) Wildfire@1; or join by phone (audio only) 253-205-0468 or 253-215-8782, Meeting ID 876 9078 6178, Passcode 4682009778. A pre-hearing overview will occur one hour prior to the start of each public hearing. The hearings will begin at the indicated times and will continue until all oral comments are received.

Date of Intended Adoption: August 18, 2023.

Submit Written Comments to: Cynthia Ireland, L&I, Division of Occupation Safety and Health (DOSH), P.O. Box 44620, Olympia, WA 98504-4620, email Cynthia.Ireland@lni.wa.gov, fax 360-902-5619, by August 4, 2023, by 5:00 p.m.

Assistance for Persons with Disabilities: Contact Cynthia Ireland, phone 360-791-5048, fax 360-902-5619, email Cynthia.Ireland@lni.wa.gov, by 5:00 p.m., July 5, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In September 2020, L&I received a petition for rule making requesting immediate rule making to address the hazards associated with wildfire smoke. Wildfire smoke presents hazards that employers and workers in affected regions must understand. Smoke from wildfires contains chemicals, gases, and fine particles that can harm health. Proper protective equipment, exposure controls, and training are needed for employees working in wildfire regions.

L&I issued emergency rules in the summer of 2021 and 2022, and began the permanent rule-making process. Prior to the issuance of the emergency rule in summer 2021, there were no regulations to address the hazard of wildfire smoke inhalation among outdoor workers in Washington state.

Create new chapter 296-820 WAC, Wildfire smoke, and duplicate these new requirements into chapter 296-307 WAC, Part G-1, Safety standards for agriculture.

WAC 296-820-805 and 296-307-09805 Purpose and scope. This section sets the scope of the rule, including exemptions.

WAC 296-820-810 and 296-307-09810 Definitions.

- Add applicable definitions relating to wildfire smoke. These include: Adverse symptoms requiring medical attention, air quality index (AQI), current PM_{2.5}, emergency response, high-efficiency particulate air (HEPA) filter, National Institute for Occupational Safety and Health (NIOSH), NowCast, PM_{2.5}, wildfire smoke, wildlands.
- Add a note relating to the recent proposed revisions to the AQI from the Environmental Protection Agency (EPA) and a link to the specific Federal Register.

WAC 296-820-815 and 296-307-09815 Identification of harmful exposures. Create this section to address methods that can be used by the employer to determine employee exposures to PM_{2.5}.

WAC 296-820-820 and 296-307-09820 Hazard communication. Create this section requiring employers to establish and implement a system for communicating wildfire smoke hazards in a form readily understandable by all affected employees, including provisions designed to encourage employees to inform the employer of wildfire smoke hazards at the worksite without fear of reprisal.

WAC 296-820-825 and 296-307-09825 Information and training. Create this section requiring employers to provide all workers with effective information and training regarding wildfire smoke before work that exposes the worker to a PM_{2.5} concentration of 20.5 µg/m³ (AQI 69) or more. In addition, this training must be provided annually. Additional information is located in Appendix A.

WAC 296-820-830 and 296-307-09830 Exposure symptom response. Create this section requiring employers to:

- Monitor employees displaying symptoms of wildfire smoke exposure.
- Allow employees to seek medical treatment.
- Have effective provisions made in advance for prompt medical treatment of employees who display adverse symptoms of wildfire smoke exposure.
- Ensure workers experiencing adverse symptoms requiring medical attention be moved to a location that ensures sufficient clean air.

WAC 296-820-835 and 296-307-09835 Exposure controls. Create this section requiring employers to implement exposure controls. This includes:

- Encouraging employers to implement exposure controls where the current PM_{2.5} is 20.5 µg/m³ (AQI 69) or more.
- Requiring employers to implement exposure controls where the current PM_{2.5} is 35.5 µg/m³ (AQI 101) or more.

WAC 296-820-840 and 296-307-09840 Respiratory protection. Create this section requiring employers to provide respiratory protection. This includes:

- Encouraging employers to provide respirators at no cost to employees upon request where the current PM_{2.5} is 20.5 µg/m³ (AQI 69) to 35.4 µg/m³ (AQI 100).
- Requiring employers to provide N95 filtering-facepiece respirators at no cost to all exposed employees where the current PM_{2.5} is 35.5 µg/m³ (AQI 101) to 250.4 µg/m³ (AQI 300).

- Requiring employers to distribute N95 filtering-facepiece directly to each exposed employee where the current PM_{2.5} is 250.5 µg/m³ (AQI 301) to 500.3 µg/m³ (AQI 499).
- Requiring employers to have employees enrolled in a complete respiratory program in accordance with chapter 296-842 WAC, Respirators, where the current PM_{2.5} is 500.4 µg/m³ (AQI 500) to 554.9 µg/m³ (beyond the AQI).
- Requiring employers to have employees enrolled in a complete respiratory program in accordance with chapter 296-842 WAC, Respirators. The employer must provide and require to be worn a respirator equipped with P100 filters where the current PM_{2.5} is 555 µg/m³ (beyond the AQI) or more.
- Requiring respirators to be NIOSH-approved devices.
- Requiring respirators to be cleaned, stored, maintained, replaced, and in good working order.

WAC 296-820-845 and 296-307-09845 Measuring PM_{2.5} levels at the worksite. Create this section allowing employers to use a direct-reading particulate monitor to identify harmful exposures as an alternative to WAC 296-820-815 and 296-307-09815 Identification of Harmful Exposures.

- If used, the monitor must comply with this section and the monitor cannot underestimate employee exposures to wildfire smoke; or the employer has obtained information on a possible error of the monitor and has manufacturer or published literature to account for the possible error.
- The monitor must be designed and manufactured to measure the concentration of airborne particle sizes.
- The monitor must be calibrated, maintained, and used in accordance with the manufacturer's instructions.
- The person supervising, directing, or evaluating workplace monitoring must have the training or experience necessary to ensure the correct use of the monitor and can interpret the results.

WAC 296-820-850 and 296-307-09850 Appendix A: Protection from wildfire smoke information and training (mandatory). Create this section to include:

- The health effects and adverse symptoms of wildfire smoke.
- The importance of informing the employer when the employee is experiencing adverse symptoms of wildfire smoke exposure.
- The right to obtain medical treatment without fear of reprisal.
- Add a table summarizing the key requirements of the proposed rule.
- How employees can obtain the current PM_{2.5}, and the employer's methods to communicate the current PM_{2.5}.
- The employer's response plan for wildfire smoke, including methods to protect employees from wildfire smoke, and the exposure symptom response procedures.
- The importance, limitations, and benefits of using a properly fitted respirator when exposed to wildfire smoke.
- The risks and limitations of using an unfitted respirator and the risks of wearing a respirator without a medical evaluation.
- How to properly put on, use, and maintain the respirators provided by the employer.

WAC 296-820-855 and 296-307-09855 Appendix B: Selecting direct-reading particulate monitors (mandatory). Create this section to provide guidance when selecting a direct-reading particulate monitor and determining compliance with WAC 296-820-855 and 296-307-09855.

WAC 296-820-860 and 296-307-09860 Appendix C: Calculating the air quality index for PM_{2.5} (nonmandatory). Create this section to provide a calculation relating to the AQI for PM_{2.5}.

Reasons Supporting Proposal: Wildfire smoke is composed of harmful chemicals and tiny particles suspended in the air that present a significant health hazard for workers exposed to it. These particles can irritate the lungs and cause serious or even fatal health effects, such as reduced lung function, bronchitis, worsening of asthma, and heart failure. Compared with the general public, workers have additional risk factors in that they may spend more time outdoors in the smoke, and have more physical exertion, which increases the amount of smoke that they breathe into their lungs. Individuals considered sensitive to wildfire smoke exposure, such as those with asthma and those who work outdoors, are part of the workforce.

A major component of wildfire smoke is particulate matter with an aerodynamic diameter less than 2.5 micrometers (PM_{2.5}); inhalation of PM_{2.5} can cause cardiovascular health effects and increases the risk of death. PM_{2.5} is elevated during wildfire smoke events, causing a risk to workers. Wildfire smoke can cause mild symptoms like coughing, stinging eyes, runny nose, and scratchy throat. Wildfire smoke can also cause serious and sometimes fatal health effects, including chest pain and heart failure, asthma attacks, trouble breathing, and reduced lung function.

EPA's AQI is an informational tool for reporting air quality and is based, in part, on PM_{2.5} measurements. Under the Clean Air Act, EPA sets and reviews national air quality standards for several air pollutants, including PM_{2.5}. AQI is a level of one to 500 divided into six color-coded categories that correspond to different levels of health concerns (good, moderate, unhealthy for sensitive groups, unhealthy, very unhealthy, and hazardous). EPA categorizes the AQI level of 101 as "unhealthy for sensitive groups" and it corresponds to PM_{2.5} concentrations of 35.5 µg/m³.

California and Oregon are currently the only other states with rules for occupational exposure to wildfire smoke. California's rule requires that employers take preventative measures at a PM_{2.5} of 55.5 µg/m³ (AQI 151), and Oregon requires preventative measures at a PM_{2.5} of 35.5 µg/m³ (AQI 101). California's rule requires employers to implement engineering and administrative controls and make respirators available for voluntary use at a PM_{2.5} of 55.5 µg/m³ (AQI 151). Mandatory respirator use is required when the PM_{2.5} is 500.4 µg/m³ (AQI 501) or greater with an assigned protection factor such that the PM_{2.5} levels inside the respirator are less than 55.5 µg/m³ which would require respirators that are more protective than N95s at 555 µg/m³ (beyond the AQI). When respirators are required, compliance with California's respiratory program rules, including fit testing and medical evaluations, are also required. Oregon's rule requires employers to implement engineering and administrative controls and make respirators available for voluntary use at a PM_{2.5} of 35.5 µg/m³ (AQI 101). Oregon's rule also requires N95 use at 200.9 µg/m³ (AQI 251) without fit-

testing or medical evaluations, and when the PM_{2.5} is 500.4 µg/m³ (AQI 501) or greater, a full respiratory protection program is required, including fit testing and medical evaluations.

For the past several summers, L&I's DOSH received inquiries about wildfire smoke hazards, especially for outdoor workers. DOSH has put out guidance and information on best practices but recognizes there has been a gap under previous rules to adequately protect workers from this hazard and to ensure employers and workers understand what is required. After the unprecedented wildfire smoke events in 2020, L&I reviewed the need for rules and received a petition requesting rule making. L&I determined that rule making was needed to address the hazard and initiated permanent rule making on October 20, 2020, WSR 20-21-093. L&I subsequently filed two separate emergency rule makings, one for summer 2021 filed July 16, 2021, WSR 21-15-067; and the second on June 1, 2022, WSR 22-12-094. Between January 2021 and October 2022, L&I held 10 virtual stakeholder meetings and three in-person stakeholder meetings across the state.

Washington state L&I recognizes that employers and employees need regulations that are clear, actionable, and protective. Consistent with the mandate under the Washington Industrial Safety and Health Act, L&I looked at the best available evidence and determined that there are feasible measures to address the health hazards wildfire smoke presents for workers. The proposed rules:

- Address the current ambiguity regarding allowable exposures to wildfire smoke by specifying threshold-based interventions for PM_{2.5} exposure.
- Provide protections for outdoor workers, who have the highest exposures.

To assist employers with implementation, L&I plans on providing user-friendly tools and templates including training slide decks and templates for the employer's wildfire smoke response plan.

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

Statute Being Implemented: Chapter 49.17 RCW.

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: No additional comments.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Kat Gregersen, Tumwater, Washington, 360-902-5530; Implementation and Enforcement: Craig Blackwood, Tumwater, Washington, 360-902-5828.

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 Cynthia Ireland, Administrative Regulations Analyst, L&I, DOSH, P.O. Box 44620, Olympia, WA 98504-4620, phone 360-791-5048, fax 360-902-5619, email Cynthia.Ireland@lni.wa.gov.

Scope of exemption for rule proposal:

Is not exempt.

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. L&I estimates the total cost of compliance with

the proposed rule to be \$10.7 million to \$14.6 million each year for all affected businesses. Based on this cost range and the share of affected businesses in each industry estimated, the average per-business cost of the proposed rule is in a range of \$196 to \$3,740 depending on the specific industry to which a business belongs. Comparing this per-business cost to the minor cost threshold of one percent of annual payroll for each industry shows this unit cost is far below the minor cost threshold for all industries.

Industry	Per-business cost	Minor cost threshold
Agriculture, Forestry, Fishing and Hunting (11)	\$380 - \$521	\$5,914
Mining, Quarrying, and Oil and Gas Extract (21)	\$332 - \$454	\$12,915
Utilities (22)	\$494 - \$682	\$28,354
Construction (23)	\$232 - \$314	\$5,852
Manufacturing (31-33)	\$650 - \$901	\$29,247
Wholesale Trade (42)	\$276 - \$375	\$10,604
Retail Trade (44-45)	\$614 - \$851	\$22,588
Transportation and Warehousing (48-49)	\$518 - \$715	\$15,969
Information (51)	\$587 - \$812	\$77,467
Finance and Insurance (52)	\$369 - \$506	\$19,916
Real Estate and Rental and Leasing (53)	\$235 - \$318	\$5,647
Professional, Scientific, and Technical Services (54)	\$214 - \$289	\$9,457
Management of Companies and Enterprises (55)	\$1,307 - \$1,824	\$93,730
Administrative and Support and Waste Management (56)	\$318 - \$435	\$8,421
Educational Services (61)	\$1,595 - \$2,227	\$5,617
Health Care and Social Assistance (62)	\$226 - \$306	\$4,513
Arts, Entertainment, and Recreation (71)	\$428 - \$589	\$5,647
Accommodation and Food Services (72)	\$386 - \$530	\$4,733
Other services except public administration (81)	\$196 - \$264	\$2,542
State and Local Governments (99)	\$2,672 - \$3,740	\$203,393
Overall	\$325 - \$444	\$11,968

A copy of the detailed cost calculations may be obtained by contacting Cynthia Ireland, Administrative Regulations Analyst, L&I, DOSH, P.O. Box 44620, Olympia, WA 98504-4620, phone 360-791-5048, fax 360-902-5619, email Cynthia.Ireland@Lni.wa.gov.

May 10, 2023
Joel Sacks
Director

OTS-4362.3

NEW SECTION

WAC 296-307-098 Wildfire smoke.

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NEW SECTION

WAC 296-307-09805 Purpose and scope. WAC 296-307-09805 through 296-307-09860 applies to all workplaces, including those with agricultural activity according to RCW 49.17.020, with the exception of the following:

(1) Enclosed buildings or structures in which the employer ensures that windows, doors, bays, and other exterior openings are kept closed, except when it is necessary to briefly open doors to enter and exit.

(2) Enclosed vehicles in which the air is filtered by a properly maintained cabin air filter and the employer ensures that windows, doors, and other openings are kept closed except when it is necessary to briefly open doors to enter or exit. Buses, light rail, and other enclosed vehicles used for transit systems where doors are frequently opened to board and deboard passengers are not included under this exemption.

(3) Work within the scope of chapter 296-305 WAC, Safety standards for firefighters.

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NEW SECTION

WAC 296-307-09810 Definitions. (1) **Adverse symptoms requiring medical attention.** Adverse symptoms to wildfire smoke exposure requiring medical attention include, but are not limited to: Difficulty breathing or shortness of breath, particularly when accompanied by greater use of accessory muscles; chest pain; nausea; or dizziness.

(2) **Air Quality Index (AQI).** A unitless index used by the U.S. Environmental Protection Agency (EPA) to communicate air quality for several pollutants, including PM_{2.5}. References to the AQI used throughout this chapter means the "NowCast AQI for PM_{2.5}."

Note: The EPA has proposed revisions to the AQI.¹ DOSH will revisit chapter 296-820 WAC Wildfire smoke, and chapter 296-307 WAC Part G-1 if the proposed changes are adopted.

(3) **Current PM_{2.5}.** The concentration of PM_{2.5} for the most current hour available, calculated using an hourly average of PM_{2.5} data.

Note: The NowCast as provided by the Washington state department of ecology, local clean air agency, or U.S. EPA is also acceptable to approximate current PM_{2.5}.

(4) **Emergency response.** Rescue, evacuation, utilities, communications, transportation, and medical operations; when such operations are directly aiding firefighting; protecting public health and safety; or actively protecting, restoring, or maintaining the safe and reliable operation of critical infrastructure at risk.

(5) **High-efficiency particulate air (HEPA) filter.** A filter capable of trapping and retaining at least 99.97 percent of all monodispersed particles of 0.3 micrometers mean aerodynamic diameter or larger.

(6) **NIOSH.** The National Institute for Occupational Safety and Health of the U.S. Centers for Disease Control and Prevention. NIOSH tests and approves respirators for use in the workplace.

(7) **NowCast.** The method used by the U.S. Environmental Protection Agency (EPA), and the Washington state department of ecology to approximate the air quality for the most current hour available by using

a calculation that involves multiple hours of past data. The NowCast uses longer averages during periods of stable air quality and shorter averages when air quality is changing rapidly, such as during a wildfire. The NowCast is generally updated every hour.

(8) **PM_{2.5}**. Solid particles and liquid droplets suspended in air, known as particulate matter, with an aerodynamic diameter of 2.5 micrometers or smaller. Measured in micrograms per cubic meter ($\mu\text{g}/\text{m}^3$).

(9) **Wildfire smoke**. PM_{2.5} which includes emissions from planned or unplanned fires in wildlands, wildland urban interface, agricultural operations, or adjacent developed areas. Wildfire smoke contains a complex mixture of gasses and particulates. Fine particulates such as PM_{2.5} are the primary pollutant in wildfire smoke.

(10) **Wildlands**. Sparsely populated geographical areas covered primarily by grass, brush, trees, crops, or combination thereof.

¹ Federal Register Vol. 88, No. 18, Page 5558, January 2023: <https://www.govinfo.gov/content/pkg/FR-2023-01-27/pdf/2023-00269.pdf>.

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NEW SECTION

WAC 296-307-09815 Identification of harmful exposures. The employer must determine employee exposure to PM_{2.5} for worksites covered by WAC 296-307-09805 through 296-307-09860 periodically as needed. The employer may use any of the following methods to determine employee exposures such that they are able to comply with the requirements in WAC 296-307-09805 through 296-307-09860 Wildfire smoke:

(1) Check PM_{2.5} forecasts and the current PM_{2.5} from any of the following:

- (a) Washington department of ecology website;
- (b) Air Quality WA mobile app;
- (c) Washington smoke information website;
- (d) U.S. EPA AirNow Fire and Smoke Map;
- (e) U.S. EPA AirNow website;
- (f) U.S. EPA AirNow mobile app;
- (g) U.S. Forest Service AirFire website; or
- (h) Local clean air agency website.

(2) Obtain PM_{2.5} forecasts and the current PM_{2.5} directly from the Washington state department of ecology, U.S. EPA, U.S. EPA EnviroFlash.info, or local clean air agency by telephone, email, text, or other effective method; or

(3) Measure current PM_{2.5} levels at the work location in accordance with WAC 296-307-09845 Measuring PM_{2.5} levels at the worksite.

If an index such as the AQI is relied upon, use the following table to find the equivalent PM_{2.5}.

PM _{2.5} IN MICROGRAMS PER CUBIC METER ($\mu\text{g}/\text{m}^3$)	AIR QUALITY INDEX FOR PM _{2.5} (AQI)
20.5 $\mu\text{g}/\text{m}^3$	69
35.5 $\mu\text{g}/\text{m}^3$	101
250.5 $\mu\text{g}/\text{m}^3$	301
500.4 $\mu\text{g}/\text{m}^3$	500

PM _{2.5} IN MICROGRAMS PER CUBIC METER (µg/m ³)	AIR QUALITY INDEX FOR PM _{2.5} (AQI)
555 µg/m ³	Beyond the AQI

- Notes:
- The current PM_{2.5} is updated hourly.
 - Employers are not responsible for tracking employee exposures outside of working hours.

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NEW SECTION

WAC 296-307-09820 Hazard communication. For any worksite covered by WAC 296-307-09805 through 296-307-09860 Wildfire smoke, the employer must establish and implement a system for communicating wildfire smoke hazards in a form readily understandable by all affected employees, including provisions designed to encourage employees to inform the employer of wildfire smoke hazards at the worksite without fear of reprisal.

The system shall include effective procedures for:

(1) Informing employees when the current PM_{2.5} as identified in WAC 296-307-09815 Identification of harmful exposures, exceeds the following thresholds, and the protective measures available to employees to reduce their wildfire smoke exposures:

- (a) When at least two consecutive current PM_{2.5} readings are 20.5 µg/m³ (AQI 69) or more;
- (b) 35.5 µg/m³ (AQI 101) or more;
- (c) 250.5 µg/m³ (AQI 301) or more;
- (d) 500.4 µg/m³ (AQI 500) or more; and
- (e) 555 µg/m³ (beyond the AQI) or more.

(2) Enabling and encouraging employees to inform the employer of:

- (a) Worsening air quality;
- (b) Availability issues of appropriate exposure control measures and respiratory protection required by WAC 296-307-09805 through 296-307-09860 Wildfire smoke; and
- (c) Any adverse symptoms that may be the result of wildfire smoke exposure such as, but not limited to, asthma attacks, difficulty breathing, and chest pain.

(3) A wildfire smoke response plan must be included in the written accident prevention program before work that exposes the worker to a PM_{2.5} concentration of 20.5 µg/m³ (AQI 69) or more. The wildfire smoke response plan must be tailored to the workplace and include at least the following elements:

- (a) The health effects and adverse symptoms of wildfire smoke exposure;
- (b) The importance of informing the employer when the employee is experiencing adverse symptoms of wildfire smoke exposure;
- (c) The right to obtain medical treatment without fear of reprisal;
- (d) The requirements of WAC 296-307-09805 through 296-307-09860 Wildfire smoke;
- (e) How employees can obtain the current PM_{2.5}, and the employers methods to communicate the current PM_{2.5};

(f) The employer's response plan for wildfire smoke including methods to protect employees from wildfire smoke, and the exposure symptom response procedures;

(g) The importance, benefits, and limitations of using a properly fitted respirator when exposed to wildfire smoke;

(h) The risks and limitations of using an unfitted respirator, and the risks of wearing a respirator without a medical evaluation; and

(i) How to properly put on, use, and maintain the respirators provided by the employer.

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NEW SECTION

WAC 296-307-09825 Information and training. The employer must provide all workers with effective information and training regarding wildfire smoke before work that exposes the worker to a PM_{2.5} concentration of 20.5 µg/m³ (AQI 69) or more, and at least annually thereafter.

(1) Information and training must be provided in a manner and language readily understood by the workers.

(2) At a minimum, the training must include the following information found in WAC 296-307-09850 Appendix A:

(a) The health effects and adverse symptoms of wildfire smoke exposure;

(b) The importance of informing the employer when the employee is experiencing adverse symptoms of wildfire smoke exposure;

(c) The right to obtain medical treatment without fear of reprisal;

(d) The requirements of WAC 296-307-09805 through 296-307-09860 Wildfire smoke;

(e) How employees can obtain the current PM_{2.5}, and the employers methods to communicate the current PM_{2.5};

(f) The employer's response plan for wildfire smoke including methods to protect employees from wildfire smoke, and the exposure symptom response procedures;

(g) The importance, benefits, and limitations of using a properly fitted respirator when exposed to wildfire smoke;

(h) The risks and limitations of using an unfitted respirator, and the risks of wearing a respirator without a medical evaluation; and

(i) How to properly put on, use, and maintain the respirators provided by the employer.

(3) Supervisor training. Prior to supervising employees performing work that exposes the worker to PM_{2.5} levels that are 20.5 µg/m³ (AQI 69) or more, supervisors must have training on the information in subsection (2) of this section, and the following topics:

(a) The procedures the supervisor must follow to implement the applicable provisions of WAC 296-307-09805 through 296-307-09860 Wildfire smoke;

(b) The procedures the supervisor must follow if an employee exhibits adverse symptoms of wildfire smoke exposure; and

(c) Procedures for moving or transporting employees to an emergency medical service provider, if necessary.

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NEW SECTION

WAC 296-307-09830 Exposure symptom response. (1) The employer must monitor employees displaying symptoms of wildfire smoke exposure to determine whether medical attention is necessary.

(2) Employers must allow employees who display symptoms of wildfire smoke exposure to seek medical treatment, and may not retaliate against affected employees for seeking such treatment.

(3) Employers must have effective provisions made in advance for prompt medical treatment of employees who display adverse symptoms of wildfire smoke exposure.

(4) Where the current PM_{2.5} is 250.5 µg/m³ (AQI 301) or more, employers must ensure workers experiencing adverse symptoms requiring medical attention be moved to a location that ensures sufficient clean air such as:

(a) Providing a location where the current PM_{2.5} is less than 20.5 µg/m³; or

(b) Providing an enclosed building, structure, or vehicle with HEPA filtration sufficient for the volume of the space.

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NEW SECTION

WAC 296-307-09835 Exposure controls. (1) Where the current PM_{2.5} is 20.5 µg/m³ (AQI 69) or more, the employer is encouraged to implement exposure controls.

(2) Where the current PM_{2.5} is 35.5 µg/m³ (AQI 101) or more, the employer must implement effective exposure controls whenever feasible.

(3) Such controls include, but are not limited to:

(a) Providing enclosed buildings, structures, or vehicles where the air is adequately filtered;

(b) Providing portable HEPA filters in enclosed areas;

(c) Relocating work to a location with a lower ambient air concentration of PM_{2.5};

(d) Changing work schedules to a time with a lower ambient air concentration of PM_{2.5};

(e) Avoiding, or reducing work that creates additional dust, fumes, or smoke;

(f) Reducing work intensity; and

(g) Providing additional rest periods.

(4) WAC 296-307-09835 Exposure controls, is not required during emergency response.

Note: Exposure controls may be implemented to the extent that the work is no longer covered by the scope of this rule as listed in WAC 296-307-09805 (1) or (2), Purpose and scope.

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NEW SECTION

WAC 296-307-09840 Respiratory protection. (1) Where the current $PM_{2.5}$ is $20.5 \mu\text{g}/\text{m}^3$ (AQI 69) to $35.4 \mu\text{g}/\text{m}^3$ (AQI 100), the employer is encouraged to provide respirators at no cost to employees upon request. Employees may provide and wear their own respiratory protection as long as voluntary use of these respirators does not introduce hazards to the work environment.

(2) Where the current $PM_{2.5}$ is $35.5 \mu\text{g}/\text{m}^3$ (AQI 101) to $250.4 \mu\text{g}/\text{m}^3$ (AQI 300), the employer must provide N95 filtering-facepiece respirators at no cost to all exposed employees, and must encourage respirator use. Employers must provide respirators by either of the following methods:

(a) Directly distribute to each exposed employee; or

(b) Maintain a sufficient supply for all exposed employees at each work location where exposure occurs. Such respirator supply availability and locations must be made known, and be readily accessible, to all exposed employees in a manner that does not restrict or hinder employee access to obtain and replace respirators when needed.

(3) Where the current $PM_{2.5}$ is $250.5 \mu\text{g}/\text{m}^3$ (AQI 301) to $500.3 \mu\text{g}/\text{m}^3$ (AQI 499), the employer must distribute N95 filtering-facepiece respirators directly to each exposed employee, and must encourage respirator use.

(4) Where the current $PM_{2.5}$ is $500.4 \mu\text{g}/\text{m}^3$ (AQI 500) to $554.9 \mu\text{g}/\text{m}^3$ (beyond the AQI), employees must be enrolled in a complete respiratory protection program in accordance with WAC 296-307-594 through 296-307-622 Respirators, of this chapter. The employer must provide and require to be worn one of the following respirators:

(a) N95 filtering-facepiece respirator;

(b) Half-facepiece air purifying respirator equipped with P100 filters; or

(c) Other respirators equipped with P100 filters, with an assigned protection factor of 10 or greater as listed in WAC 296-307-60205 Respirators.

Note: Employees exposed to $PM_{2.5}$ for a total of 15 minutes or less during a 24-hour period are exempt from the requirements in WAC 296-307-09840(4).

(5) Where the current $PM_{2.5}$ is $555 \mu\text{g}/\text{m}^3$ (beyond the AQI) or more, employees must be enrolled in a complete respiratory protection program in accordance with WAC 296-307-594 through 296-307-622 Respirators, of this chapter. The employer must provide and require to be worn one of the following respirators equipped with P100 filters:

(a) Loose-fitting powered air purifying respirator;

(b) Full-facepiece air purifying respirator;

(c) Full-facepiece powered air purifying respirator; or

(d) Other respirators with an assigned protection factor of 25 or more as listed in WAC 296-307-60205 Respirators, such that the $PM_{2.5}$ levels inside the respirator are less than $55.5 \mu\text{g}/\text{m}^3$ (AQI 151).

(6) Respirators must be NIOSH-approved devices that effectively protect the wearers from inhalation of wildfire smoke.

(7) The employer must use WAC 296-307-09825 Information and training in lieu of the advisory information in Table 2 of WAC 296-307-59805 Respirators, for training regarding voluntary use of respirators for wildfire smoke.

(8) Respirators must be cleaned, stored, maintained, and replaced so that they are in good working order, and do not present a health hazard to users. Replace or repair any respirator that is not functioning properly, and do not permit their use. Filtering facepiece respirators must not be cleaned, repaired, or shared. Dispose, and replace any filtering facepiece respirator that is dirty, damaged, or difficult to breathe through. Elastomeric respirators must be properly cleaned and disinfected before being worn by another employee.

- Notes:
- Respirator use is not considered voluntary when an employer requires respirators to be used. A complete respiratory protection program in accordance with WAC 296-307-594 through 296-307-622 Respirators, is required if the employer chooses to require respirator use.
 - For voluntary use of filtering facepiece respirators, such as N95 respirators, some of the requirements of WAC 296-307-594 through 296-307-622 Respirators, of this chapter, do not apply, such as fit testing and medical evaluations. Elastomeric respirators equipped with P100 filters may be used in place of N95 filtering facepiece respirators. If elastomeric respirators are used voluntarily, additional requirements apply from WAC 296-307-594 through 296-307-622 Respirators, of this chapter, such as medical evaluations and establishing a respiratory protection program.
 - For voluntary or required use of loose-fitting powered air purifying respirators, some of the requirements of WAC 296-307-594 through 296-307-622 Respirators, of this chapter, do not apply, such as fit testing and requiring workers to be clean shaven.
 - During emergency response, required use of respirators must be implemented to the extent feasible.

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NEW SECTION

WAC 296-307-09845 Measuring PM_{2.5} levels at the worksite. (1) An employer may use a direct-reading particulate monitor to identify harmful exposures as required by WAC 296-307-09815 Identification of harmful exposures, if the employer can demonstrate that it has complied with this section and selected a monitor that:

(a) Does not underestimate employee exposures to wildfire smoke;
or

(b) May underestimate wildfire smoke exposures, but the employer has obtained information on the possible error of the monitor from the manufacturer or other published literature and has accounted for the error of the monitor when determining exposures to PM_{2.5} to ensure that employee exposure levels not be underestimated.

(2) The monitor must be designed and manufactured to measure the concentration of airborne particle sizes ranging from an aerodynamic diameter of 0.3 micrometers or less, up to and including 2.5 micrometers ($\leq 0.3 \mu\text{g}/\text{m}^3$ to $2.5 \mu\text{g}/\text{m}^3$). The employer may use a monitor that measures a particle size range beyond these limits, if the employer treats the results as the PM_{2.5} levels.

(3) The employer must ensure that the monitor it selects be calibrated, maintained, and used, including the use of necessary accessories, in accordance with the manufacturer's instructions for accurately measuring PM_{2.5} concentrations.

(4) The person supervising, directing, or evaluating workplace monitoring for PM_{2.5} must have the training or experience necessary to apply this section and to ensure the correct use of the monitor and the interpretation of the results, so that exposures are not underestimated.

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NEW SECTION

WAC 296-307-09850 Appendix A: Protection from wildfire smoke information and training (mandatory). (1) **The health effects and adverse symptoms of wildfire smoke:**

Symptoms:

Although there are many hazardous chemicals in wildfire smoke, the main harmful pollutant for people who are not very close to the fire is "particulate matter," the tiny particles suspended in the air.

Particulate matter can irritate the eyes and lungs, causing eye irritation, phlegm, and persistent coughing. Particulate matter can also cause difficulty breathing, reduced lung function, bronchitis, worsening of asthma, heart failure, and early death.

Particulate matter is a health risk whether you are exposed over a short period of time or a long period of time. The United States Environmental Protection Agency has determined that particulate matter does cause, or likely causes cardiovascular disease, respiratory disease, cancer, and harm to the nervous system.

Wildfire smoke can harm your health, even if you cannot smell the smoke or do not feel any symptoms. Even healthy people can be harmed by wildfire smoke. The wildfire smoke rule is designed to limit the harm from wildfire smoke, and it is important to consider taking action to reduce your exposure to smoke whenever the rule's protections are in effect.

Watch for symptoms as an additional sign to reduce exposure to smoke, and reduce work intensity.

It is especially important to move to an area with clean air and seek medical attention according to your health care provider's advice, or if you experience any of these symptoms:

- Difficulty breathing;
- Shortness of breath, particularly when accompanied by greater use of accessory muscles;
- Chest pain;
- Nausea; or
- Dizziness.

You have the right to seek medical treatment for any symptoms you may be experiencing related to wildfire smoke exposure, regardless of their severity, and your employer may not retaliate against you for seeking such treatment. This includes, but is not limited to, the symptoms described above.

Sensitive groups:

The Washington state department of health classifies¹ outdoor workers as a sensitive group with increased risk.

Sensitive groups include people who are at higher risk of experiencing adverse health effects as a result of exposure to wildfire smoke, including those with preexisting health conditions; those with increased duration of exposure; and those whose work results in an increased breathing rate, including outdoor workers¹. Although everyone is impacted by wildfire smoke exposure, sensitive groups are among those most likely to experience health problems from exposure to wildfire smoke. Examples of sensitive groups include:

- Outdoor workers;
- People with lung diseases such as asthma or chronic obstructive pulmonary disease (COPD), including bronchitis and emphysema, and those who smoke;
- People with respiratory infections, such as pneumonia, acute bronchitis, bronchiolitis, colds, flu, or those with, or recovering from COVID-19;
- People with existing heart or circulatory problems, such as irregular heart beat, congestive heart failure, coronary artery disease, angina, and those who have had a heart attack or stroke;
- Children under 18 years old, and adults over age 65;
- People who are pregnant;
- People with diabetes;
- People with other medical or health conditions that can be exacerbated by exposure to wildfire smoke as determined by a physician;
- Tribal and indigenous people;
- People with low income.

¹ Washington Department of Health. April 2022, accessed April 2023. Washington Air Quality Guide for Particle Pollution: https://doh.wa.gov/sites/default/files/legacy/Documents/4300/waqa%20infographic_English.pdf?uid=64384c71c8715

(2) The importance of informing the employer when the employee is experiencing adverse symptoms of wildfire smoke exposure:

Watch for symptoms of wildfire smoke exposure, even at lower levels of PM_{2.5}, as a sign to reduce exposure.

It is important to notify your employer when you are experiencing symptoms of wildfire smoke exposure, so your employer can respond appropriately.

Your employer will have provisions made in advance for prompt medical treatment for employees who are experiencing adverse symptoms of wildfire smoke exposure.

Do not ignore your symptoms: Wildfire smoke can be hazardous even when you cannot smell it. Your employer cannot retaliate against you for reporting symptoms, or for seeking medical treatment. This is true whenever the wildfire smoke rule's protections are in effect.

Wildfire smoke is a serious work-related hazard for outdoor workers, and you have the right to file a workers' compensation claim to have your symptoms evaluated. You may file a workers' compensation claim whether or not you have personal health insurance. Your employer cannot prevent you from or retaliate against you for filing a workers' compensation claim.

In most cases, L&I will pay for your initial medical evaluation, even if your claim is denied. If your claim is allowed, the workers' compensation system will cover medical bills directly related to your condition and partial wage replacement benefits if you cannot work.

When the PM_{2.5} is 250.5 µg/m³ or more, your employer must ensure workers experiencing adverse symptoms requiring medical attention be moved to a location that ensures sufficient clean air.

(3) The right to obtain medical treatment without fear of reprisal:

Employers must allow employees who show signs of injury or illness due to wildfire smoke exposure to seek medical treatment, and may not retaliate against affected employees for seeking such treatment.

Employers must also have effective provisions made in advance for prompt medical treatment of employees in the event of serious injury or illness caused by wildfire smoke exposure.

Additionally, when the PM_{2.5} is 250.5 µg/m³ or more, employers must ensure workers experiencing adverse symptoms requiring medical attention be moved to a location that ensures sufficient clean air.

For more information on your workplace safety and health rights, discrimination protections, and to file a discrimination complaint; visit www.Lni.wa.gov/WorkplaceDiscrimination.

(4) The requirements of WAC 296-307-09805 through 296-307-09860, Wildfire smoke rule:

The following table summarizes the key requirements of the rule. This is not an exhaustive list, and additional details are found in WAC 296-307-09805 through 296-307-09860.

Rule summary at each PM_{2.5} breakpoint:

PM _{2.5} BREAKPOINTS	AQI EQUIVALENT	REQUIREMENTS AT CURRENT PM _{2.5} LEVEL
0.0-20.4	0-68	<ul style="list-style-type: none"> • Prepare response plan. • Provide training to employees. • Watch the PM_{2.5} conditions and forecasts. • Implement a two-way communication system. • Make provisions for prompt medical treatment, and permit that treatment without retaliation.
20.5-35.4	69-100	All of the above and: <ul style="list-style-type: none"> • Notify employees of PM_{2.5} conditions. • Ensure only trained employees work outdoors. • Consider implementing exposure controls. • Consider providing voluntary use respirators.
35.5-250.4	101-300	All of the above and: <ul style="list-style-type: none"> • Implement exposure controls. • Make N95 respirators available for voluntary use.
250.5-500.3	301-499	All of the above and: <ul style="list-style-type: none"> • Ensure workers experiencing adverse symptoms requiring medical attention be moved to a location that ensures sufficient clean air. • Directly distribute N95 respirators to employees for voluntary use.
500.4-554.9	500-beyond the AQI	All of the above and: <ul style="list-style-type: none"> • Implement a complete required use respiratory protection program, including fit-testing, medical evaluations, requiring employees to be clean-shaven, and requiring the use of particulate respirators.
	Beyond the AQI	All of the above and: <ul style="list-style-type: none"> • Require respirators with an assigned protection factor (APF) of 25 or more.

(5) How employees can obtain the current PM_{2.5}, and the employer's methods to communicate the current PM_{2.5}:

Various government agencies monitor the air at locations throughout Washington and report the current PM_{2.5} for those places. The Air Quality Index (AQI) uses the air quality data from these regulatory monitors.

Although the government monitoring stations may measure several pollutants, this chapter only uses PM_{2.5}. One way to find the current and forecasted PM_{2.5} is to go to enviwa.ecology.wa.gov and find the nearest sensor on the map, or fire.airnow.gov and enter the zip code of the location where you will be working. The current PM_{2.5} is also available from the Air Quality WA mobile app, or the AirNow mobile app.

Employees who do not have access to the internet can contact their employer for the current PM_{2.5}. The U.S. EPA website www.enviroflash.info can transmit daily and forecasted air quality by email for your city or zip code.

If you choose to use an index such as the AQI, use the following table to find the equivalent AQI for PM_{2.5}.

PM _{2.5} IN MICROGRAMS PER CUBIC METER (µg/m ³)	AIR QUALITY INDEX FOR PM _{2.5} (AQI)
20.5 µg/m ³	69
35.5 µg/m ³	101
250.5 µg/m ³	301
500.4 µg/m ³	500
555 µg/m ³	Beyond the AQI

Your employer will establish a two-way communication system to communicate changing wildfire smoke conditions to you, and allowing you to communicate information to your employer such as; worsening air quality, availability issues of exposure control measures and respirators, and any adverse symptoms of wildfire smoke exposure. Your employer cannot retaliate or discriminate against you for raising safety concerns, or reporting symptoms.

The employer's communication system is: _____

(6) The employer's response plan for wildfire smoke including methods to protect employees from wildfire smoke, and the exposure symptom response procedures:

Your employer will provide training on the specific methods they will implement to protect you as part of their wildfire smoke response plan, and their procedures to respond when employees experience symptoms of wildfire smoke exposure.

The employer's methods to protect employees are: _____

The employer's exposure symptom response procedures are: _____

(7) The importance, limitations, and benefits of using a properly fitted respirator when exposed to wildfire smoke:

Respirators can be an effective way to protect employee health by reducing exposure to wildfire smoke, when they are properly selected and worn. Respirator use can be beneficial even when the PM_{2.5} is less than 35.5 µg/m³.

A respirator needs to be used properly and kept clean. The following precautions must be taken:

(a) Employers must select respirators certified for protection against the specific air contaminants at the workplace. NIOSH, the National Institute for Occupational Safety and Health of the U.S. Centers for Disease Control and Prevention, certifies respirators. A label or statement of certification should appear on the respirator or respirator packaging. It will list what the respirator is designed for (particulates, for example).

Surgical masks or items worn over the nose and mouth such as scarves, t-shirts, and bandannas will not provide protection against wildfire smoke. A NIOSH-approved N95 filtering facepiece respirator, shown in the image below, is the minimum level of protection for wildfire smoke.

(b) Read and follow the manufacturer's instructions on the respirator's use, maintenance, cleaning and care, along with any warnings regarding the respirator's limitations.

The manufacturer's instructions for medical evaluations, fit testing, and shaving must also be followed to ensure the best protection against wildfire smoke. If your respirator is not fit-tested, it cannot be relied upon to protect you from wildfire smoke exposure, and you should take action to reduce your exposure to wildfire smoke in the other ways described in the wildfire smoke rule and in section nine of this appendix; ask your employer to voluntarily arrange for respirator fit-testing; or both.

(c) Do not wear respirators in areas where the air contains contaminants for which the respirator is not designed. A respirator designed to filter particles will not protect you against gases or vapors, and it will not supply oxygen. Some filtering-facepiece respirators are equipped with a sorbent layer for absorbing "nuisance" organic vapors. These can be used for voluntary use, but are not NIOSH certified for protection against hazardous concentrations of organic vapor.

(d) Respirator use is not voluntary, and a complete respiratory protection program in accordance with WAC 296-307-594 through 296-307-622 Respirators, of this chapter is required in any of the following situations:

- The employer chooses to require respirator use;
- A respiratory hazard, such as exposure to a substance over the permissible exposure limit (PEL) or hazardous exposure to an airborne biological hazard, is present. To evaluate respiratory hazards in your workplace, see Part Y-6 of this chapter, Respiratory hazards.

(e) You need to keep track of your respirator, so you do not mistakenly use someone else's respirator.

(f) If you have questions about whether it is safe for you to wear a respirator, you should talk to your doctor, particularly if you have a heart or lung condition, or if you have other medical conditions.

(8) The risks and limitations of using an unfitted respirator, and the risks of wearing a respirator without a medical evaluation:

Respirators such as N95s must form a tight seal to the face to work properly. This is especially important for people at increased risk for severe disease. Wearing a respirator can make it harder to breathe. If you have heart or lung problems, talk to your doctor before using a respirator.

A fit-test is conducted to verify that a respirator is both comfortable and provides the wearer with the expected protection. Voluntary use of respirators, such as those provided by your employer between $PM_{2.5}$ 35.5 and 500.3 $\mu\text{g}/\text{m}^3$ for wildfire smoke, does not require a fit-test if your employer does not require you wear the respirator. Without a fit-test, a respirator cannot be expected to provide reliable protection. Unfitted respirators may not properly seal, allowing wildfire smoke to enter the respirator. You can take steps to improve the respirator seal, and reduce your exposure to wildfire smoke by following the steps in section nine of this appendix.

A medical evaluation is conducted as part of evaluating respirator selection and use to ensure that the wearer is healthy enough to perform work while wearing a respirator. Voluntary use of respirators does not require a medical evaluation. If you have questions about whether it is safe for you to wear a respirator, you should talk to your doctor. This is particularly important if you have a heart or lung condition (including asthma), or if you have other medical conditions of concern.

Follow your health care provider's advice if you have medical conditions that can be worsened by wildfire smoke exposure. And if you have symptoms such as difficulty breathing, shortness of breath, chest pain, nausea, or dizziness, go to an area with clean air, take off the respirator, and get medical help.

(9) How to properly put on, use, and maintain the respirators provided by the employer:

A tight-fitting respirator such as an N95 will not be able to seal to your face if facial hair interferes with the seal. Ensuring that you are clean-shaven will allow a better seal and more reliable protection. Loose-fitting powered air purifying respirators may be worn by people with facial hair, since they do not have seals that are affected by facial hair.

The proper way to put on a respirator depends on the type and model of the respirator. Always inspect your respirator before use, and follow the manufacturer's instructions. Replace respirators that are damaged, dirty, or wet.

For those who use a filtering facepiece respirator such as an N95 that is made of filter material:

(a) With clean, dry hands, place the mask over the nose and under the chin, with one strap placed below the ears and one strap above. Be sure that the nosepiece bar or foam is on top.

(b) Pinch the nosepiece of the respirator over the top of the nose, so it fits securely.

(c) Perform a seal check:

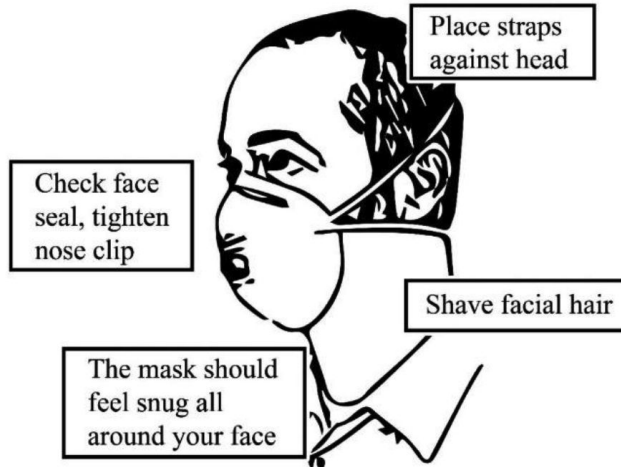
(i) Cover the respirator with both hands and exhale. If air leaks where the respirator seals against the face, adjust the respirator and nosepiece and try again. The respirator should bulge from the face and not leak around the seal.

(ii) Cover the respirator with both hands and inhale. If air leaks where the respirator seals against the face, adjust the respirator and nosepiece and try again. The respirator should collapse slightly and not leak around the seal.

For a respirator that relies on a tight seal to the face, check how well it seals by following the manufacturer's instructions for user seal checks. Adjust the respirator if air leaks between the seal and the face. The more air leaks under the seal, the less protection the user receives.

Respirator filters need to be replaced if they get damaged, deformed, dirty, or difficult to breathe through. Filtering facepiece respirators are disposable respirators that cannot be cleaned or disinfected. A best practice is to replace filtering facepiece respirators at the beginning of each shift.

If you have symptoms such as difficulty breathing, shortness of breath, chest pain, nausea, or dizziness, go to an area with clean air, take off the respirator, and get medical help.



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NEW SECTION

WAC 296-307-09855 Appendix B: Selecting direct-reading particulate monitors (mandatory). The information in this section provides guidance when selecting a direct-reading particulate monitor and determining compliance with the specifications required by WAC 296-307-09845 Measuring PM_{2.5} levels at the worksite:

(1) The South Coast Air Quality Management District's air quality sensor performance evaluation center (AQ-SPEC) www.aqmd.gov/aq-spec publishes field and lab evaluations of many direct-read PM_{2.5} monitors.

(2) The monitor's field R-squared (R²) value must be greater than 0.7 when measuring one-hour average PM_{2.5}.

(3) If the monitor's field R² is 0.7 or less, the employer may use the monitor alongside other data sources listed in WAC 296-307-09815 Identification of harmful exposures, and so long as the employer uses whichever value is higher.

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NEW SECTION

WAC 296-307-09860 Appendix C: Calculating the Air Quality Index for PM_{2.5} (nonmandatory). The Air Quality Index (AQI) for PM_{2.5} is calculated as follows:

$$I_{PM_{2.5}} = \frac{I_{Hi} - I_{Lo}}{BP_{Hi} - BP_{Lo}} (C_p - BP_{Lo}) + I_{Lo}$$

Where:

$I_{PM_{2.5}}$ is the Air Quality Index value for PM_{2.5}

- C_p is the concentration of PM_{2.5} in µg/m³ truncated to 1 decimal place
- BP_{Hi} is the concentration breakpoint that is greater than or equal to C_p
- BP_{Lo} is the concentration breakpoint that is less than or equal to C_p
- I_{Hi} is the AQI value corresponding to BP_{Hi}
- I_{Lo} is the AQI value corresponding to BP_{Lo}

PM _{2.5} BREAKPOINTS ¹	AQI EQUIVALENT ¹	AQI CATEGORY ¹	WA DOH HEALTH MESSAGING ²
0.0-12.0	0-50	Good	It is a great day to be active outside and a good time to make a plan if worse air quality is in the forecast.
12.1-35.4	51-100	Moderate	Some people are especially sensitive to lower levels of particle pollution and should reduce exposure. For example, limit time outside and avoid strenuous outdoor activity. All sensitive groups should watch for symptoms.
35.5-55.4	101-150	Unhealthy for sensitive groups	Sensitive groups should take steps to reduce exposure. Limit time outside, avoid strenuous outdoor activity, and follow tips for cleaner indoor air. Everyone should watch for symptoms as a sign to reduce exposure.
55.5-150.4	151-200	Unhealthy	Everyone should reduce exposure. Limit time outside, avoid strenuous outdoor activity, and follow tips for cleaner indoor air.
150.5-250.4	201-300	Very unhealthy	Everyone should reduce exposure. Stay inside and filter indoor air to keep it cleaner. Go elsewhere for cleaner air, if needed.
250.5-350.4	301-400	Hazardous	Everyone should reduce exposure. Stay inside and filter indoor air to keep it cleaner. Go elsewhere for cleaner air, if needed.
350.5-500.4	401-500	Hazardous	Everyone should reduce exposure. Stay inside and filter indoor air to keep it cleaner. Go elsewhere for cleaner air, if needed.
> 500.4	Beyond the AQI	Hazardous (beyond the AQI)	

¹ U.S. EPA. September 2018. Technical Assistance Document for the Reporting of Daily Air Quality – The Air Quality Index (AQI). EPA 454/B-18-007. Research Triangle Park, North Carolina.

² Washington Department of Health. April 2022, accessed April 2023. Washington Air Quality Guide for Particle Pollution: <https://doh.wa.gov/sites/default/files/legacy/Documents/4300/waq%20infographic%5fEnglish.pdf?uid=64384c71c8715>

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OTS-4363.3

**Chapter 296-820 WAC
WILDFIRE SMOKE**

NEW SECTION

WAC 296-820-805 Purpose and scope. WAC 296-820-805 through 296-820-860 applies to all workplaces, including those with agricultural activity according to RCW 49.17.020, with the exception of the following:

(1) Enclosed buildings or structures in which the employer ensures that windows, doors, bays, and other exterior openings are kept closed, except when it is necessary to briefly open doors to enter and exit.

(2) Enclosed vehicles in which the air is filtered by a properly maintained cabin air filter and the employer ensures that windows, doors, and other openings are kept closed except when it is necessary to briefly open doors to enter or exit. Buses, light rail, and other enclosed vehicles used for transit systems where doors are frequently opened to board and deboard passengers are not included under this exemption.

(3) Work within the scope of chapter 296-305 WAC, Safety standards for firefighters.

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NEW SECTION

WAC 296-820-810 Definitions. (1) **Adverse symptoms requiring medical attention.** Adverse symptoms to wildfire smoke exposure requiring medical attention include, but are not limited to: Difficulty breathing or shortness of breath, particularly when accompanied by greater use of accessory muscles; chest pain; nausea; or dizziness.

(2) **Air Quality Index (AQI).** A unitless index used by the U.S. Environmental Protection Agency (EPA) to communicate air quality for several pollutants, including PM_{2.5}. References to the AQI used throughout this chapter means the "NowCast AQI for PM_{2.5}."

Note: The EPA has proposed revisions to the AQI.¹ DOSH will revisit chapter 296-820 WAC Wildfire smoke, and chapter 296-307 WAC Part G-1 if the proposed changes are adopted.

(3) **Current PM_{2.5}.** The concentration of PM_{2.5} for the most current hour available, calculated using an hourly average of PM_{2.5} data.

Note: The NowCast as provided by the Washington state department of ecology, local clean air agency, or U.S. EPA is also acceptable to approximate current PM_{2.5}.

(4) **Emergency response.** Rescue, evacuation, utilities, communications, transportation, and medical operations; when such operations are directly aiding firefighting; protecting public health and safety; or actively protecting, restoring, or maintaining the safe and reliable operation of critical infrastructure at risk.

(5) **High-efficiency particulate air (HEPA) filter.** A filter capable of trapping and retaining at least 99.97 percent of all monodispersed particles of 0.3 micrometers mean aerodynamic diameter or larger.

(6) **NIOSH.** The National Institute for Occupational Safety and Health of the U.S. Centers for Disease Control and Prevention. NIOSH tests and approves respirators for use in the workplace.

(7) **NowCast.** The method used by the U.S. Environmental Protection Agency (EPA), and the Washington state department of ecology to approximate the air quality for the most current hour available by using

a calculation that involves multiple hours of past data. The NowCast uses longer averages during periods of stable air quality and shorter averages when air quality is changing rapidly, such as during a wildfire. The NowCast is generally updated every hour.

(8) **PM_{2.5}**. Solid particles and liquid droplets suspended in air, known as particulate matter, with an aerodynamic diameter of 2.5 micrometers or smaller. Measured in micrograms per cubic meter ($\mu\text{g}/\text{m}^3$).

(9) **Wildfire smoke**. PM_{2.5} which includes emissions from planned or unplanned fires in wildlands, wildland urban interface, agricultural operations, or adjacent developed areas. Wildfire smoke contains a complex mixture of gases and particulates. Fine particulates such as PM_{2.5} are the primary pollutant in wildfire smoke.

(10) **Wildlands**. Sparsely populated geographical areas covered primarily by grass, brush, trees, crops, or combination thereof.

¹ Federal Register Vol. 88, No. 18, Page 5558, January 2023: <https://www.govinfo.gov/content/pkg/FR-2023-01-27/pdf/2023-00269.pdf>.

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NEW SECTION

WAC 296-820-815 Identification of harmful exposures. The employer must determine employee exposure to PM_{2.5} for worksites covered by WAC 296-820-805 through 296-820-860 periodically as needed. The employer may use any of the following methods to determine employee exposures such that they are able to comply with the requirements in WAC 296-820-805 through 296-820-860 Wildfire smoke:

(1) Check PM_{2.5} forecasts and the current PM_{2.5} from any of the following:

- (a) Washington department of ecology website;
- (b) Air Quality WA mobile app;
- (c) Washington smoke information website;
- (d) U.S. EPA AirNow Fire and Smoke Map;
- (e) U.S. EPA AirNow website;
- (f) U.S. EPA AirNow mobile app;
- (g) U.S. Forest Service AirFire website; or
- (h) Local clean air agency website.

(2) Obtain PM_{2.5} forecasts and the current PM_{2.5} directly from the Washington state department of ecology, U.S. EPA, U.S. EPA EnviroFlash.info, or local clean air agency by telephone, email, text, or other effective method; or

(3) Measure current PM_{2.5} levels at the work location in accordance with WAC 296-820-845 Measuring PM_{2.5} levels at the worksite.

If an index such as the AQI is relied upon, use the following table to find the equivalent PM_{2.5}.

PM _{2.5} IN MICROGRAMS PER CUBIC METER ($\mu\text{g}/\text{m}^3$)	AIR QUALITY INDEX FOR PM _{2.5} (AQI)
20.5 $\mu\text{g}/\text{m}^3$	69
35.5 $\mu\text{g}/\text{m}^3$	101
250.5 $\mu\text{g}/\text{m}^3$	301
500.4 $\mu\text{g}/\text{m}^3$	500

PM _{2.5} IN MICROGRAMS PER CUBIC METER (µg/m ³)	AIR QUALITY INDEX FOR PM _{2.5} (AQI)
555 µg/m ³	Beyond the AQI

- Notes:
- The current PM_{2.5} is updated hourly.
 - Employers are not responsible for tracking employee exposures outside of working hours.

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NEW SECTION

WAC 296-820-820 Hazard communication. For any worksite covered by WAC 296-820-805 through 296-820-860 Wildfire smoke, the employer must establish and implement a system for communicating wildfire smoke hazards in a form readily understandable by all affected employees, including provisions designed to encourage employees to inform the employer of wildfire smoke hazards at the worksite without fear of reprisal.

The system shall include effective procedures for:

(1) Informing employees when the current PM_{2.5} as identified in WAC 296-820-815 Identification of harmful exposures, exceeds the following thresholds, and the protective measures available to employees to reduce their wildfire smoke exposures:

(a) When at least two consecutive current PM_{2.5} readings are 20.5 µg/m³ (AQI 69) or more;

(b) 35.5 µg/m³ (AQI 101) or more;

(c) 250.5 µg/m³ (AQI 301) or more;

(d) 500.4 µg/m³ (AQI 500) or more; and

(e) 555 µg/m³ (beyond the AQI) or more.

(2) Enabling and encouraging employees to inform the employer of:

(a) Worsening air quality;

(b) Availability issues of appropriate exposure control measures and respiratory protection required by WAC 296-820-805 through 296-820-860 Wildfire smoke; and

(c) Any adverse symptoms that may be the result of wildfire smoke exposure such as, but not limited to, asthma attacks, difficulty breathing, and chest pain.

(3) A wildfire smoke response plan must be included in the written accident prevention program before work that exposes the worker to a PM_{2.5} concentration of 20.5 µg/m³ (AQI 69) or more. The wildfire smoke response plan must be tailored to the workplace and include at least the following elements:

(a) The health effects and adverse symptoms of wildfire smoke exposure;

(b) The importance of informing the employer when the employee is experiencing adverse symptoms of wildfire smoke exposure;

(c) The right to obtain medical treatment without fear of reprisal;

(d) The requirements of WAC 296-820-805 through 296-820-860 Wildfire smoke;

(e) How employees can obtain the current PM_{2.5}, and the employers methods to communicate the current PM_{2.5};

(f) The employer's response plan for wildfire smoke including methods to protect employees from wildfire smoke, and the exposure symptom response procedures;

(g) The importance, benefits, and limitations of using a properly fitted respirator when exposed to wildfire smoke;

(h) The risks and limitations of using an unfitted respirator, and the risks of wearing a respirator without a medical evaluation; and

(i) How to properly put on, use, and maintain the respirators provided by the employer.

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NEW SECTION

WAC 296-820-825 Information and training. The employer must provide all workers with effective information and training regarding wildfire smoke before work that exposes the worker to a PM_{2.5} concentration of 20.5 µg/m³ (AQI 69) or more, and at least annually thereafter.

(1) Information and training must be provided in a manner and language readily understood by the workers.

(2) At a minimum, the training must include the following information found in WAC 296-820-850 Appendix A:

(a) The health effects and adverse symptoms of wildfire smoke exposure;

(b) The importance of informing the employer when the employee is experiencing adverse symptoms of wildfire smoke exposure;

(c) The right to obtain medical treatment without fear of reprisal;

(d) The requirements of WAC 296-820-805 through 296-820-860 Wildfire smoke;

(e) How employees can obtain the current PM_{2.5}, and the employers methods to communicate the current PM_{2.5};

(f) The employer's response plan for wildfire smoke including methods to protect employees from wildfire smoke, and the exposure symptom response procedures;

(g) The importance, benefits, and limitations of using a properly fitted respirator when exposed to wildfire smoke;

(h) The risks and limitations of using an unfitted respirator, and the risks of wearing a respirator without a medical evaluation; and

(i) How to properly put on, use, and maintain the respirators provided by the employer.

(3) Supervisor training. Prior to supervising employees performing work that exposes the worker to PM_{2.5} levels that are 20.5 µg/m³ (AQI 69) or more, supervisors must have training on the information in subsection (2) of this section, and the following topics:

(a) The procedures the supervisor must follow to implement the applicable provisions of WAC 296-820-805 through 296-820-860 Wildfire smoke;

(b) The procedures the supervisor must follow if an employee exhibits adverse symptoms of wildfire smoke exposure; and

(c) Procedures for moving or transporting employees to an emergency medical service provider, if necessary.

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NEW SECTION

WAC 296-820-830 Exposure symptom response. (1) The employer must monitor employees displaying symptoms of wildfire smoke exposure to determine whether medical attention is necessary.

(2) Employers must allow employees who display symptoms of wildfire smoke exposure to seek medical treatment, and may not retaliate against affected employees for seeking such treatment.

(3) Employers must have effective provisions made in advance for prompt medical treatment of employees who display adverse symptoms of wildfire smoke exposure.

(4) Where the current PM_{2.5} is 250.5 µg/m³ (AQI 301) or more, employers must ensure workers experiencing adverse symptoms requiring medical attention be moved to a location that ensures sufficient clean air such as:

(a) Providing a location where the current PM_{2.5} is less than 20.5 µg/m³; or

(b) Providing an enclosed building, structure, or vehicle with HEPA filtration sufficient for the volume of the space.

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NEW SECTION

WAC 296-820-835 Exposure controls. (1) Where the current PM_{2.5} is 20.5 µg/m³ (AQI 69) or more, the employer is encouraged to implement exposure controls.

(2) Where the current PM_{2.5} is 35.5 µg/m³ (AQI 101) or more, the employer must implement effective exposure controls whenever feasible.

(3) Such controls include, but are not limited to:

(a) Providing enclosed buildings, structures, or vehicles where the air is adequately filtered;

(b) Providing portable HEPA filters in enclosed areas;

(c) Relocating work to a location with a lower ambient air concentration of PM_{2.5};

(d) Changing work schedules to a time with a lower ambient air concentration of PM_{2.5};

(e) Avoiding, or reducing work that creates additional dust, fumes, or smoke;

(f) Reducing work intensity; and

(g) Providing additional rest periods.

(4) WAC 296-820-835 Exposure controls, is not required during emergency response.

Note: Exposure controls may be implemented to the extent that the work is no longer covered by the scope of this rule as listed in WAC 296-820-805 (1) or (2), Purpose and scope.

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NEW SECTION

WAC 296-820-840 Respiratory protection. (1) Where the current $PM_{2.5}$ is $20.5 \mu\text{g}/\text{m}^3$ (AQI 69) to $35.4 \mu\text{g}/\text{m}^3$ (AQI 100), the employer is encouraged to provide respirators at no cost to employees upon request. Employees may provide and wear their own respiratory protection as long as voluntary use of these respirators does not introduce hazards to the work environment.

(2) Where the current $PM_{2.5}$ is $35.5 \mu\text{g}/\text{m}^3$ (AQI 101) to $250.4 \mu\text{g}/\text{m}^3$ (AQI 300), the employer must provide N95 filtering-facepiece respirators at no cost to all exposed employees, and must encourage respirator use. Employers must provide respirators by either of the following methods:

(a) Directly distribute to each exposed employee; or

(b) Maintain a sufficient supply for all exposed employees at each work location where exposure occurs. Such respirator supply availability and locations must be made known, and be readily accessible, to all exposed employees in a manner that does not restrict or hinder employee access to obtain and replace respirators when needed.

(3) Where the current $PM_{2.5}$ is $250.5 \mu\text{g}/\text{m}^3$ (AQI 301) to $500.3 \mu\text{g}/\text{m}^3$ (AQI 499), the employer must distribute N95 filtering-facepiece respirators directly to each exposed employee, and must encourage respirator use.

(4) Where the current $PM_{2.5}$ is $500.4 \mu\text{g}/\text{m}^3$ (AQI 500) to $554.9 \mu\text{g}/\text{m}^3$ (beyond the AQI), employees must be enrolled in a complete respiratory protection program in accordance with chapter 296-842 WAC Respirators. The employer must provide and require to be worn one of the following respirators:

(a) N95 filtering-facepiece respirator;

(b) Half-facepiece air purifying respirator equipped with P100 filters; or

(c) Other respirators equipped with P100 filters, with an assigned protection factor of 10 or greater as listed in WAC 296-842-13005 Respirators.

Note: Employees exposed to $PM_{2.5}$ for a total of 15 minutes or less during a 24-hour period are exempt from the requirements in WAC 296-820-840(4).

(5) Where the current $PM_{2.5}$ is $555 \mu\text{g}/\text{m}^3$ (beyond the AQI) or more, employees must be enrolled in a complete respiratory protection program in accordance with chapter 296-842 WAC. The employer must provide and require to be worn one of the following respirators equipped with P100 filters:

(a) Loose-fitting powered air purifying respirator;

(b) Full-facepiece air purifying respirator;

(c) Full-facepiece powered air purifying respirator; or

(d) Other respirators with an assigned protection factor of 25 or more as listed in WAC 296-842-13005 Respirators, such that the $PM_{2.5}$ levels inside the respirator are less than $55.5 \mu\text{g}/\text{m}^3$ (AQI 151).

(6) Respirators must be NIOSH-approved devices that effectively protect the wearers from inhalation of wildfire smoke.

(7) The employer must use WAC 296-820-825 Information and training, in lieu of the advisory information in Table 2 of WAC 296-842-11005 Respirators, for training regarding voluntary use of respirators for wildfire smoke.

(8) Respirators must be cleaned, stored, maintained, and replaced so that they are in good working order, and do not present a health hazard to users. Replace or repair any respirator that is not functioning properly, and do not permit their use. Filtering facepiece respirators must not be cleaned, repaired, or shared. Dispose, and replace any filtering facepiece respirator that is dirty, damaged, or difficult to breathe through. Elastomeric respirators must be properly cleaned and disinfected before being worn by another employee.

- Notes:
- Respirator use is not considered voluntary when an employer requires respirators to be used. A complete respiratory protection program in accordance with chapter 296-842 WAC Respirators, is required if the employer chooses to require respirator use.
 - For voluntary use of filtering facepiece respirators, such as N95 respirators, some of the requirements of chapter 296-842 WAC Respirators, do not apply, such as fit testing and medical evaluations. Elastomeric respirators equipped with P100 filters may be used in place of N95 filtering facepiece respirators. If elastomeric respirators are used voluntarily, additional requirements apply from chapter 296-842 WAC Respirators, such as medical evaluations and establishing a respiratory protection program.
 - For voluntary or required use of loose-fitting powered air purifying respirators, some of the requirements of chapter 296-842 WAC Respirators, do not apply, such as fit testing and requiring workers to be clean shaven.
 - During emergency response, required use of respirators must be implemented to the extent feasible.

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NEW SECTION

WAC 296-820-845 Measuring PM_{2.5} levels at the worksite. (1) An employer may use a direct-reading particulate monitor to identify harmful exposures as required by WAC 296-820-815 Identification of harmful exposures, if the employer can demonstrate that it has complied with this section and selected a monitor that:

(a) Does not underestimate employee exposures to wildfire smoke;
or

(b) May underestimate wildfire smoke exposures, but the employer has obtained information on the possible error of the monitor from the manufacturer or other published literature and has accounted for the error of the monitor when determining exposures to PM_{2.5} to ensure that employee exposure levels not be underestimated.

(2) The monitor must be designed and manufactured to measure the concentration of airborne particle sizes ranging from an aerodynamic diameter of 0.3 micrometers or less, up to and including 2.5 micrometers ($\leq 0.3 \mu\text{g}/\text{m}^3$ to $2.5 \mu\text{g}/\text{m}^3$). The employer may use a monitor that measures a particle size range beyond these limits, if the employer treats the results as the PM_{2.5} levels.

(3) The employer must ensure that the monitor it selects be calibrated, maintained, and used, including the use of necessary accessories, in accordance with the manufacturer's instructions for accurately measuring PM_{2.5} concentrations.

(4) The person supervising, directing, or evaluating workplace monitoring for PM_{2.5} must have the training or experience necessary to apply this section and to ensure the correct use of the monitor and the interpretation of the results, so that exposures are not underestimated.

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NEW SECTION**WAC 296-820-850 Appendix A: Protection from wildfire smoke information and training (mandatory). (1) The health effects and adverse symptoms of wildfire smoke:****Symptoms:**

Although there are many hazardous chemicals in wildfire smoke, the main harmful pollutant for people who are not very close to the fire is "particulate matter," the tiny particles suspended in the air.

Particulate matter can irritate the eyes and lungs, causing eye irritation, phlegm, and persistent coughing. Particulate matter can also cause difficulty breathing, reduced lung function, bronchitis, worsening of asthma, heart failure, and early death.

Particulate matter is a health risk whether you are exposed over a short period of time or a long period of time. The United States Environmental Protection Agency has determined that particulate matter does cause, or likely causes cardiovascular disease, respiratory disease, cancer, and harm to the nervous system.

Wildfire smoke can harm your health, even if you cannot smell the smoke or do not feel any symptoms. Even healthy people can be harmed by wildfire smoke. The wildfire smoke rule is designed to limit the harm from wildfire smoke, and it is important to consider taking action to reduce your exposure to smoke whenever the rule's protections are in effect.

Watch for symptoms as an additional sign to reduce exposure to smoke, and reduce work intensity.

It is especially important to move to an area with clean air and seek medical attention according to your health care provider's advice, or if you experience any of these symptoms:

- Difficulty breathing;
- Shortness of breath, particularly when accompanied by greater use of accessory muscles;
- Chest pain;
- Nausea; or
- Dizziness.

You have the right to seek medical treatment for any symptoms you may be experiencing related to wildfire smoke exposure, regardless of their severity, and your employer may not retaliate against you for seeking such treatment. This includes, but is not limited to, the symptoms described above.

Sensitive groups:

The Washington state department of health classifies¹ outdoor workers as a sensitive group with increased risk.

Sensitive groups include people who are at higher risk of experiencing adverse health effects as a result of exposure to wildfire smoke, including those with preexisting health conditions; those with increased duration of exposure; and those whose work results in an increased breathing rate, including outdoor workers¹. Although everyone is impacted by wildfire smoke exposure, sensitive groups are among those most likely to experience health problems from exposure to wildfire smoke. Examples of sensitive groups include:

- Outdoor workers;
- People with lung diseases such as asthma or chronic obstructive pulmonary disease (COPD), including bronchitis and emphysema, and those who smoke;

- People with respiratory infections, such as pneumonia, acute bronchitis, bronchiolitis, colds, flu, or those with, or recovering from COVID-19;
- People with existing heart or circulatory problems, such as irregular heart beat, congestive heart failure, coronary artery disease, angina, and those who have had a heart attack or stroke;
- Children under 18 years old, and adults over age 65;
- People who are pregnant;
- People with diabetes;
- People with other medical or health conditions that can be exacerbated by exposure to wildfire smoke as determined by a physician;
- Tribal and indigenous people;
- People with low income.

¹ Washington Department of Health. April 2022, accessed April 2023. Washington Air Quality Guide for Particle Pollution: https://doh.wa.gov/sites/default/files/legacy/Documents/4300/waqa%20infographic_English.pdf?uid=64384c71c8715

(2) The importance of informing the employer when the employee is experiencing adverse symptoms of wildfire smoke exposure:

Watch for symptoms of wildfire smoke exposure, even at lower levels of PM_{2.5}, as a sign to reduce exposure.

It is important to notify your employer when you are experiencing symptoms of wildfire smoke exposure, so your employer can respond appropriately.

Your employer will have provisions made in advance for prompt medical treatment for employees who are experiencing adverse symptoms of wildfire smoke exposure.

Do not ignore your symptoms: Wildfire smoke can be hazardous even when you cannot smell it. Your employer cannot retaliate against you for reporting symptoms, or for seeking medical treatment. This is true whenever the wildfire smoke rule's protections are in effect.

Wildfire smoke is a serious work-related hazard for outdoor workers, and you have the right to file a workers' compensation claim to have your symptoms evaluated. You may file a workers' compensation claim whether or not you have personal health insurance. Your employer cannot prevent you from or retaliate against you for filing a workers' compensation claim.

In most cases, L&I will pay for your initial medical evaluation, even if your claim is denied. If your claim is allowed, the workers' compensation system will cover medical bills directly related to your condition and partial wage replacement benefits if you cannot work.

When the PM_{2.5} is 250.5 µg/m³ or more, your employer must ensure workers experiencing adverse symptoms requiring medical attention be moved to a location that ensures sufficient clean air.

(3) The right to obtain medical treatment without fear of reprisal:

Employers must allow employees who show signs of injury or illness due to wildfire smoke exposure to seek medical treatment, and may not retaliate against affected employees for seeking such treatment.

Employers must also have effective provisions made in advance for prompt medical treatment of employees in the event of serious injury or illness caused by wildfire smoke exposure.

Additionally, when the PM_{2.5} is 250.5 µg/m³ or more, employers must ensure workers experiencing adverse symptoms requiring medical attention be moved to a location that ensures sufficient clean air.

For more information on your workplace safety and health rights, discrimination protections, and to file a discrimination complaint; visit www.Lni.wa.gov/WorkplaceDiscrimination.

(4) The requirements of WAC 296-820-805 through 296-820-860 Wild-fire smoke rule:

The following table summarizes the key requirements of the rule. This is not an exhaustive list, and additional details are found in WAC 296-820-805 through 296-820-860.

Rule summary at each PM_{2.5} breakpoint:

PM _{2.5} BREAKPOINTS	AQI EQUIVALENT	REQUIREMENTS AT CURRENT PM _{2.5} LEVEL
0.0-20.4	0-68	<ul style="list-style-type: none"> • Prepare response plan. • Provide training to employees. • Watch the PM_{2.5} conditions and forecasts. • Implement a two-way communication system. • Make provisions for prompt medical treatment, and permit that treatment without retaliation.
20.5-35.4	69-100	All of the above and: <ul style="list-style-type: none"> • Notify employees of PM_{2.5} conditions. • Ensure only trained employees work outdoors. • Consider implementing exposure controls. • Consider providing voluntary use respirators.
35.5-250.4	101-300	All of the above and: <ul style="list-style-type: none"> • Implement exposure controls. • Make N95 respirators available for voluntary use.
250.5-500.3	301-499	All of the above and: <ul style="list-style-type: none"> • Ensure workers experiencing adverse symptoms requiring medical attention be moved to a location that ensures sufficient clean air. • Directly distribute N95 respirators to employees for voluntary use.
500.4-554.9	500-beyond the AQI	All of the above and: <ul style="list-style-type: none"> • Implement a complete required use respiratory protection program, including fit-testing, medical evaluations, requiring employees to be clean-shaven, and requiring the use of particulate respirators.
	Beyond the AQI	All of the above and: <ul style="list-style-type: none"> • Require respirators with an assigned protection factor (APF) of 25 or more.

(5) How employees can obtain the current PM_{2.5}, and the employer's methods to communicate the current PM_{2.5}:

Various government agencies monitor the air at locations throughout Washington and report the current PM_{2.5} for those places. The Air Quality Index (AQI) uses the air quality data from these regulatory monitors.

Although the government monitoring stations may measure several pollutants, this chapter only uses PM_{2.5}. One way to find the current and forecasted PM_{2.5} is to go to enviwa.ecology.wa.gov and find the nearest sensor on the map, or fire.airnow.gov and enter the zip code of the location where you will be working. The current PM_{2.5} is also available from the Air Quality WA mobile app, or the AirNow mobile app.

Employees who do not have access to the internet can contact their employer for the current PM_{2.5}. The U.S. EPA website www.enviroflash.info can transmit daily and forecasted air quality by email for your city or zip code.

If you choose to use an index such as the AQI, use the following table to find the equivalent AQI for PM_{2.5}.

PM _{2.5} IN MICROGRAMS PER CUBIC METER (µg/m ³)	AIR QUALITY INDEX FOR PM _{2.5} (AQI)
20.5 µg/m ³	69
35.5 µg/m ³	101
250.5 µg/m ³	301
500.4 µg/m ³	500
555 µg/m ³	Beyond the AQI

Your employer will establish a two-way communication system to communicate changing wildfire smoke conditions to you, and allowing you to communicate information to your employer such as; worsening air quality, availability issues of exposure control measures and respirators, and any adverse symptoms of wildfire smoke exposure. Your employer cannot retaliate or discriminate against you for raising safety concerns, or reporting symptoms.

The employer's communication system is: _____

(6) The employer's response plan for wildfire smoke including methods to protect employees from wildfire smoke, and the exposure symptom response procedures:

Your employer will provide training on the specific methods they will implement to protect you as part of their wildfire smoke response plan, and their procedures to respond when employees experience symptoms of wildfire smoke exposure.

The employer's methods to protect employees are: _____

The employer's exposure symptom response procedures are: _____

(7) The importance, limitations, and benefits of using a properly fitted respirator when exposed to wildfire smoke:

Respirators can be an effective way to protect employee health by reducing exposure to wildfire smoke, when they are properly selected and worn. Respirator use can be beneficial even when the PM_{2.5} is less than 35.5 µg/m³.

A respirator needs to be used properly and kept clean. The following precautions must be taken:

(a) Employers must select respirators certified for protection against the specific air contaminants at the workplace. NIOSH, the National Institute for Occupational Safety and Health of the U.S. Centers for Disease Control and Prevention, certifies respirators. A label or statement of certification should appear on the respirator or respirator packaging. It will list what the respirator is designed for (particulates, for example).

Surgical masks or items worn over the nose and mouth such as scarves, t-shirts, and bandannas will not provide protection against wildfire smoke. A NIOSH-approved N95 filtering facepiece respirator, shown in the image below, is the minimum level of protection for wildfire smoke.

(b) Read and follow the manufacturer's instructions on the respirator's use, maintenance, cleaning and care, along with any warnings regarding the respirator's limitations.

The manufacturer's instructions for medical evaluations, fit testing, and shaving must also be followed to ensure the best protection against wildfire smoke. If your respirator is not fit-tested, it cannot be relied upon to protect you from wildfire smoke exposure, and you should take action to reduce your exposure to wildfire smoke in the other ways described in the wildfire smoke rule and in section nine of this appendix; ask your employer to voluntarily arrange for respirator fit-testing; or both.

(c) Do not wear respirators in areas where the air contains contaminants for which the respirator is not designed. A respirator designed to filter particles will not protect you against gases or vapors, and it will not supply oxygen. Some filtering-facepiece respirators are equipped with a sorbent layer for absorbing "nuisance" organic vapors. These can be used for voluntary use, but are not NIOSH certified for protection against hazardous concentrations of organic vapor.

(d) Respirator use is not voluntary, and a complete respiratory protection program in accordance with chapter 296-842 WAC Respirators, is required in any of the following situations:

- The employer chooses to require respirator use;
- A respiratory hazard, such as exposure to a substance over the permissible exposure limit (PEL) or hazardous exposure to an airborne biological hazard, is present. To evaluate respiratory hazards in your workplace, see chapter 296-841 WAC, Airborne contaminants.

(e) You need to keep track of your respirator, so you do not mistakenly use someone else's respirator.

(f) If you have questions about whether it is safe for you to wear a respirator, you should talk to your doctor, particularly if you have a heart or lung condition, or if you have other medical conditions.

(8) The risks and limitations of using an unfitted respirator, and the risks of wearing a respirator without a medical evaluation:

Respirators such as N95s must form a tight seal to the face to work properly. This is especially important for people at increased risk for severe disease. Wearing a respirator can make it harder to breathe. If you have heart or lung problems, talk to your doctor before using a respirator.

A fit-test is conducted to verify that a respirator is both comfortable and provides the wearer with the expected protection. Voluntary use of respirators, such as those provided by your employer between $PM_{2.5}$ 35.5 and 500.3 $\mu\text{g}/\text{m}^3$ for wildfire smoke, does not require a fit-test if your employer does not require you wear the respirator. Without a fit-test, a respirator cannot be expected to provide reliable protection. Unfitted respirators may not properly seal, allowing wildfire smoke to enter the respirator. You can take steps to improve the respirator seal, and reduce your exposure to wildfire smoke, by following the steps in section nine of this appendix.

A medical evaluation is conducted as part of evaluating respirator selection and use to ensure that the wearer is healthy enough to perform work while wearing a respirator. Voluntary use of respirators does not require a medical evaluation. If you have questions about whether it is safe for you to wear a respirator, you should talk to your doctor. This is particularly important if you have a heart or

lung condition (including asthma), or if you have other medical conditions of concern.

Follow your health care provider's advice if you have medical conditions that can be worsened by wildfire smoke exposure. And if you have symptoms such as difficulty breathing, shortness of breath, chest pain, nausea, or dizziness, go to an area with clean air, take off the respirator, and get medical help.

(9) How to properly put on, use, and maintain the respirators provided by the employer:

A tight-fitting respirator such as an N95 will not be able to seal to your face if facial hair interferes with the seal. Ensuring that you are clean-shaven will allow a better seal and more reliable protection. Loose-fitting powered air purifying respirators may be worn by people with facial hair, since they do not have seals that are affected by facial hair.

The proper way to put on a respirator depends on the type and model of the respirator. Always inspect your respirator before use, and follow the manufacturer's instructions. Replace respirators that are damaged, dirty, or wet.

For those who use a filtering facepiece respirator such as an N95 that is made of filter material:

(a) With clean, dry hands, place the mask over the nose and under the chin, with one strap placed below the ears and one strap above. Be sure that the nosepiece bar or foam is on top.

(b) Pinch the nosepiece of the respirator over the top of the nose, so it fits securely.

(c) Perform a seal check:

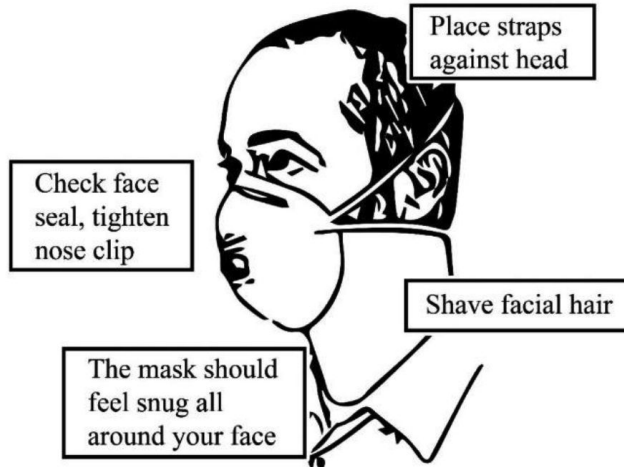
(i) Cover the respirator with both hands and exhale. If air leaks where the respirator seals against the face, adjust the respirator and nosepiece and try again. The respirator should bulge from the face and not leak around the seal.

(ii) Cover the respirator with both hands and inhale. If air leaks where the respirator seals against the face, adjust the respirator and nosepiece and try again. The respirator should collapse slightly and not leak around the seal.

For a respirator that relies on a tight seal to the face, check how well it seals by following the manufacturer's instructions for user seal checks. Adjust the respirator if air leaks between the seal and the face. The more air leaks under the seal, the less protection the user receives.

Respirator filters need to be replaced if they get damaged, deformed, dirty, or difficult to breathe through. Filtering facepiece respirators are disposable respirators that cannot be cleaned or disinfected. A best practice is to replace filtering facepiece respirators at the beginning of each shift.

If you have symptoms such as difficulty breathing, shortness of breath, chest pain, nausea, or dizziness, go to an area with clean air, take off the respirator, and get medical help.



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NEW SECTION

WAC 296-820-855 Appendix B: Selecting direct-reading particulate monitors (mandatory). The information in this section provides guidance when selecting a direct-reading particulate monitor and determining compliance with the specifications required by WAC 296-820-845 Measuring PM_{2.5} levels at the worksite:

(1) The South Coast Air Quality Management District's air quality sensor performance evaluation center (AQ-SPEC) www.aqmd.gov/aq-spec publishes field and lab evaluations of many direct-read PM_{2.5} monitors.

(2) The monitor's field R-squared (R²) value must be greater than 0.7 when measuring one-hour average PM_{2.5}.

(3) If the monitor's field R² is 0.7 or less, the employer may use the monitor alongside other data sources listed in WAC 296-820-815 Identification of harmful exposures, and so long as the employer uses whichever value is higher.

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NEW SECTION

WAC 296-820-860 Appendix C: Calculating the Air Quality Index for PM_{2.5} (nonmandatory). The Air Quality Index (AQI) for PM_{2.5} is calculated as follows:

$$I_{PM_{2.5}} = \frac{I_{Hi} - I_{Lo}}{BP_{Hi} - BP_{Lo}} (C_p - BP_{Lo}) + I_{Lo}$$

Where:

$I_{PM_{2.5}}$ is the Air Quality Index value for PM_{2.5}

- C_p is the concentration of PM_{2.5} in µg/m³ truncated to 1 decimal place
- BP_{Hi} is the concentration breakpoint that is greater than or equal to C_p
- BP_{Lo} is the concentration breakpoint that is less than or equal to C_p
- I_{Hi} is the AQI value corresponding to BP_{Hi}
- I_{Lo} is the AQI value corresponding to BP_{Lo}

PM _{2.5} BREAKPOINTS ¹	AQI EQUIVALENT ¹	AQI CATEGORY ¹	WA DOH HEALTH MESSAGING ²
0.0-12.0	0-50	Good	It is a great day to be active outside and a good time to make a plan if worse air quality is in the forecast.
12.1-35.4	51-100	Moderate	Some people are especially sensitive to lower levels of particle pollution and should reduce exposure. For example, limit time outside and avoid strenuous outdoor activity. All sensitive groups should watch for symptoms.
35.5-55.4	101-150	Unhealthy for sensitive groups	Sensitive groups should take steps to reduce exposure. Limit time outside, avoid strenuous outdoor activity, and follow tips for cleaner indoor air. Everyone should watch for symptoms as a sign to reduce exposure.
55.5-150.4	151-200	Unhealthy	Everyone should reduce exposure. Limit time outside, avoid strenuous outdoor activity, and follow tips for cleaner indoor air.
150.5-250.4	201-300	Very unhealthy	Everyone should reduce exposure. Stay inside and filter indoor air to keep it cleaner. Go elsewhere for cleaner air, if needed.
250.5-350.4	301-400	Hazardous	Everyone should reduce exposure. Stay inside and filter indoor air to keep it cleaner. Go elsewhere for cleaner air, if needed.
350.5-500.4	401-500	Hazardous	Everyone should reduce exposure. Stay inside and filter indoor air to keep it cleaner. Go elsewhere for cleaner air, if needed.
> 500.4	Beyond the AQI	Hazardous (beyond the AQI)	

¹ U.S. EPA. September 2018. Technical Assistance Document for the Reporting of Daily Air Quality – The Air Quality Index (AQI). EPA 454/B-18-007. Research Triangle Park, North Carolina.

² Washington Department of Health. April 2022, accessed April 2023. Washington Air Quality Guide for Particle Pollution: <https://doh.wa.gov/sites/default/files/legacy/Documents/4300/waqa%20infographic%5fEnglish.pdf?uid=64384c71c8715>

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WSR 23-11-037
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT
[Filed May 11, 2023, 9:34 a.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 357-01-1745 Fully vaccinated, 357-04-125 Must an employee provide proof of being fully vaccinated as a condition of employment?, 357-16-197 Must an employer require an eligible candidate to provide proof of being fully vaccinated?, 357-19-413 What are the requirements for a nonpermanent employee to be fully vaccinated or for an employer to require an eligible candidate to provide proof of being fully vaccinated?, 357-46-165 When may an employer separate an employee in accordance with WAC 357-46-160?, 357-46-195 May an employer separate an employee for nondisciplinary reasons?, and 357-58-190 What must be addressed in agency's WMS recruitment and selection policy and/or procedure?

Hearing Location(s): On July 24, 2023, at 10:00 a.m., Zoom meeting (with call-in option), ID 852 5838 8489, Call in 253-215-8782, Passcode 537604, Zoom link <https://ofm-wa-gov.zoom.us/j/85258388489?pwd=UUovdENzQXorVnhFNzdUUUV3SHNLdz09>.

Date of Intended Adoption: August 3, 2023.

Submit Written Comments to: Brandy Chinn, Office of Financial Management (OFM), Raad Building, 128 10th Avenue S.W., P.O. Box 47500, Olympia, WA 98504, email brandy.chinn@ofm.wa.gov, by July 17, 2023.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by July 17, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Effective May 11, 2023, Governor Jay Inslee rescinded Directive 22-13.1, COVID-19 Vaccination Standards for State Employees, which directed a COVID-19 vaccination requirement as a condition of employment for state executive and small cabinet agencies. This rule making will remove provisions in Title 357 WAC which were filed in WSR 22-20-091, specifically removing the following provisions:

1. The requirement for nonrepresented state employees who are employed by general government executive and small cabinet agencies, or an eligible candidate for such position, to be fully vaccinated against COVID-19 as a condition of employment, or granted an exemption and approved for an accommodation due to a disability and/or medical condition or sincerely held religious belief that prevents them from receiving the COVID-19 vaccine;
2. The requirement for employers to separate an employee, or not hire an eligible candidate, if they cannot provide proof that they are fully vaccinated and the employer cannot provide an accommodation; and
3. Language that made the above requirements optional for higher education employers, independent agencies, boards, councils, commissions, and separately elected officials.

Reasons Supporting Proposal: The World Health Organization ended the global emergency status for COVID-19 on May 5, 2023. The Biden Administration is ending the national COVID-19 public health emergency on May 11, 2023. To align Washington state policy with the ending of the national public health emergency, Governor Jay Inslee is rescind-

ing Directive 22-13.1, effective May 11, 2023, which directed a requirement that employees of executive and small cabinet state agencies be fully vaccinated against COVID-19 as a condition of employment. Repeal of the rules implementing Directive 22-13.1 is necessary to ensure that the civil service rules also align with the current public health policies of the World Health Organization, the federal government, and state of Washington.

Statutory Authority for Adoption: RCW 41.06.133 and 41.06.150.

Statute Being Implemented: RCW 41.06.133 and 41.06.150.

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

Name of Proponent: Office of financial management, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 128 10th Avenue S.W., 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.

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.

Scope of exemption for rule proposal:

Is fully exempt.

May 11, 2023

Nathan Sherrard

Assistant Legal Affairs Counsel

OTS-4587.1

AMENDATORY SECTION (Amending WSR 22-20-091, filed 10/4/22, effective 11/4/22)

WAC 357-46-165 When may an employer separate an employee in accordance with WAC 357-46-160? An employer may separate an employee due to disability when any of the following circumstances exist:

(1) The employer is unable to reasonably accommodate the employee.

(2) The employer has medical documentation of the employee's inability to work in any capacity.

(3) The employee requests separation due to disability and the employer has medical information which documents that the employee cannot perform the essential functions of the employee's position or class.

~~((4) The employer must separate an employee from employment for failure to comply with the COVID-19 vaccination requirements set forth in WAC 357-04-125 where an exemption was approved due to a disability and/or medical condition and the employer is unable to reasonably accommodate the employee.))~~

[Statutory Authority: RCW 41.06.133 and 41.06.150. WSR 22-20-091, § 357-46-165, filed 10/4/22, effective 11/4/22. Statutory Authority: Chapter 41.06 RCW. WSR 04-18-114, § 357-46-165, filed 9/1/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 22-20-091, filed 10/4/22, effective 11/4/22)

WAC 357-46-195 May an employer separate an employee for nondisciplinary reasons? An employer **may** separate a permanent employee from a position or from employment for nondisciplinary reasons such as failure to comply with the conditions of employment which may or may not have existed at the time of initial appointment or failure to authorize or to pass a background check required by the position.

The employer may consider other employment options such as transfer or voluntary demotion in lieu of separation.

~~((The employer must separate an employee from employment for nondisciplinary reasons for failure to comply with the COVID-19 vaccination requirements set forth in WAC 357-04-125.))~~

[Statutory Authority: RCW 41.06.133 and 41.06.150. WSR 22-20-091, § 357-46-195, filed 10/4/22, effective 11/4/22. Statutory Authority: Chapter 41.06 RCW. WSR 04-18-114, § 357-46-195, filed 9/1/04, effective 7/1/05.]

OTS-4588.1

AMENDATORY SECTION (Amending WSR 22-20-091, filed 10/4/22, effective 11/4/22)

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 and/or procedure 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;

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

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

(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 (~~and~~

~~(10) Ensure compliance with the COVID-19 vaccination requirements in accordance with WAC 357-04-125 and 357-16-197).~~

[Statutory Authority: RCW 41.06.133 and 41.06.150. WSR 22-20-091, § 357-58-190, filed 10/4/22, effective 11/4/22. Statutory Authority: Chapter 41.06 RCW. WSR 22-12-074, § 357-58-190, filed 5/27/22, effective 7/1/22. 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.]

OTS-4583.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 357-01-1745 Fully vaccinated.

OTS-4584.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 357-04-125 Must an employee provide proof of being fully vaccinated as a condition of employment?

OTS-4585.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 357-16-197

Must an employer require an eligible candidate to provide proof of being fully vaccinated?

OTS-4586.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 357-19-413

What are the requirements for a nonpermanent employee to be fully vaccinated or for an employer to require an eligible candidate to provide proof of being fully vaccinated?

WSR 23-11-066

PROPOSED RULES

PENINSULA COLLEGE

[Filed May 15, 2023, 12:05 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-11-014.

Title of Rule and Other Identifying Information: Withholding services for outstanding debts.

Hearing Location(s): On Monday, July 10, 2023, at 10:00 a.m., at Peninsula College, Cornaby Center A-12, 1502 East Lauridsen Boulevard, Port Angeles, WA 98362.

Date of Intended Adoption: July 25, 2023.

Submit Written Comments to: Trisha Haggerty, 1502 East Lauridsen Boulevard, Port Angeles, WA 98382, email thaggerty@pencol.edu, by July 5, 2023.

Assistance for Persons with Disabilities: Contact Krista Francis, phone 360-417-6347, email ssd@pencol.edu, by July 5, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This WAC needs to be updated in accordance with state law that prohibits withholding official transcripts to collect debt.

Reasons Supporting Proposal: Washington's 34 community and technical colleges have worked together to establish a statewide infrastructure to effectively implement SSHB [2SHB] 2513 as codified in RCW 28B.10.293 and 28B.10.294.

Statutory Authority for Adoption: RCW 28B.10.293; SSHB [2SHB] 2513 (2020).

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

Name of Proponent: Peninsula College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Krista Francis, 1502 East Lauridsen Boulevard, Peninsula College, 360-417-6225.

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(4).

Explanation of exemptions: This rule change is intended to bring Peninsula College into compliance with SSHB [2SHB] 2513 effective June 11, 2020. That bill prohibits higher education institutions from withholding a student's official transcript as a debt-collection tool when the transcript is requested by a student or third party. This rule change does not impact small businesses relations.

Scope of exemption for rule proposal:

Is fully exempt.

May 10, 2023
Trisha Haggerty
Rules Coordinator

OTS-4594.1

AMENDATORY SECTION (Amending WSR 99-15-072, filed 7/20/99, effective 8/20/99)

WAC 132A-122-011 Policy. ~~If any student or former student ((is indebted to the institution for an outstanding overdue debt, the institution need not provide services of any kind to such individual, including, but not limited to, conferring degrees and transmitting files, records, transcripts or other services which have been requested by such person))~~ fails to meet financial obligations to the college, the college shall not provide further services except as required by applicable laws or regulations, or as approved by the president or president's designee.

[Statutory Authority: RCW 28B.50.140 and chapter 28B.50 RCW. WSR 99-15-072, § 132A-122-011, filed 7/20/99, effective 8/20/99.]

OTS-4595.2

AMENDATORY SECTION (Amending WSR 99-15-072, filed 7/20/99, effective 8/20/99)

WAC 132A-122-021 Withholding services for outstanding debts.

~~((Upon receipt of a request for services where there is an outstanding debt due the institution from the requesting person, the institution shall notify the person in writing by certified mail to the last known address, that the services will not be provided since there is an outstanding debt due the institution, and further that until that debt is satisfied, no such services will be provided to the individual.~~

~~Notification that services will be withheld shall also inform the individual that he or she has a right to a hearing before a person designated by the president of the institution if he or she believes that no debt is owed. Notification shall also indicate that the request for the hearing must be made within fifteen days from the date such notice is received. Upon receipt of a timely request for a hearing, the person designated by the president shall have the records and files of the institution available for review and, at that time, shall hold a brief adjudicative proceeding concerning whether the individual owes or owed any outstanding debts to the institution. After the brief adjudicative proceeding, an order shall be entered by the president's designee indicating whether the institution is correct in withholding services and/or applying off set for outstanding debt. If the outstanding debt is owed by the individual involved, no further services shall be provided. Notification of the decision shall be sent to the individual within ten days after the hearing. This hearing shall constitute a brief adjudicative proceeding in accordance with RCW 34.05.482 through 34.05.494.)~~

Upon notification of an outstanding financial obligation to the enrollment services office or another authorized college department, an administrative hold will be placed on the student's records and/or access to registration. The extent of the hold will be recommended by the reporting department and, once approved by enrollment services in compliance with applicable laws and regulations, may include denial of access to:

Student files.

Registration.

Financial aid.

(1) Student notification of debts: Pursuant to SSHB 2513 (effective June 11, 2020) and consistent with SBCTC guidelines, students with debts to the college shall be notified of the following through either a secure portal or college email (the college may additionally notify the student through first-class mail):

(a) The amount of debt owed.

(b) What services will be denied.

(c) Information on payment of the debt, including whom to contact to set up a payment plan.

(d) Any consequences that will result from the nonpayment of the debt.

(e) Right of appeal and how to request a hearing.

The notification will further state that specified services will not be provided until the obligation is satisfied or arrangements have been made under terms and conditions, which are satisfactory to the college.

(2) Student's right to an informal hearing: The notification shall inform the individual of their right to an informal hearing before the president's designee for the purpose of challenging the validity of the debt. The notification shall inform the individual that any request for such a hearing must be made within 15 workdays from the sending of said notice and that the request for a hearing must state the individual's reasons for challenging the financial obligation.

(3) Procedure for informal hearing: Upon receipt of a timely request for a hearing, president's designee shall hold an informal hearing with the student as soon as practicable to evaluate the validity of the outstanding debt. The designee shall ensure that the appropriate records and files of the institution are available for review at the time of the informal hearing. Within 10 workdays after the informal hearing, the designee shall determine whether the outstanding debt is owed to the college and provide the individual with written notification of the decision.

(4) Formal hearing: Within 10 workdays of the designee's communication that the student's request was denied, in an informal hearing, the student may request a formal hearing. The formal hearing will include the president's designee, representatives of the office(s) reporting or maintaining record of debt, and the student. Detailed records documenting the debt shall be provided to all in attendance.

(5) Withholding services: If the individual fails to request or participate in an informal hearing within 15 workdays of initial notification of the debt, or fails to request a formal hearing within 10 workdays after the decision of the president's designee to deny the student's appeal, or if both the informal and formal hearings uphold the validity of the debt, the college will continue to withhold services as indicated above.

(6) Reporting: The business services office shall report annually to the state board for community and technical colleges, which will forward to the governor's office and legislature. The annual report shall include data related to:

(a) The use of transcript holds (this should be zero due to debt).

(b) Registration holds, number of student accounts denied registration privileges.

(c) Student debt levels for financial obligations to the college.

(d) Collection practices, including the number of student accounts referred to outside collection agencies and the dollar threshold for which a student account is referred to a collection agency.

[Statutory Authority: RCW 28B.50.140 and chapter 28B.50 RCW. WSR 99-15-072, § 132A-122-021, filed 7/20/99, effective 8/20/99.]

WSR 23-11-096

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed May 18, 2023, 3:12 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-18-050.

Title of Rule and Other Identifying Information: WAC 182-501-0135 Patient review and coordination (PRC).

Hearing Location(s): On June 27, 2023, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_Y517j7-oTzq4pOEKrmh1bg. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: No sooner than June 28, 2023.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by June 27, 2023, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.Larson@hca.wa.gov, by June 16, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending WAC 182-501-0135 to: (a) Add clarity between fee-for-service clients and managed care organization enrollees being reviewed for or placed on the PRC program; (b) state that HCA may determine on a case-by-case basis that a client may obtain certain prescription items at any pharmacy; and (c) add that HCA may remove a client from PRC placement if the client has successfully stabilized due to the utilization of treatment medications, including but not limited to, buprenorphine. During the course of this review, HCA made additional related changes required to improve clarity or update policy.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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 Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Crabbe, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9563; Implementation and Enforcement: Dianne Baum, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-2028.

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 HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

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 revised rule does not impose more-than-minor costs on small businesses.

May 18, 2023
Wendy Barcus
Rules Coordinator

OTS-4327.2

AMENDATORY SECTION (Amending WSR 21-08-090, filed 4/7/21, effective 5/8/21)

WAC 182-501-0135 Patient review and coordination (PRC). (1) **Patient review and coordination (PRC)** is a health and safety program that coordinates care and ensures clients enrolled in PRC use services appropriately and in accordance with agency rules and policies.

(a) PRC applies to medical assistance fee-for-service (FFS) clients and managed care ~~((clients))~~ organization (MCO) enrollees.

(b) PRC is authorized under federal medicaid law by 42 U.S.C. 1396n (a) (2) and 42 C.F.R. 431.54.

(2) **Definitions.** Definitions found in chapter 182-500 WAC and WAC 182-526-0010 apply to this section. The following definitions apply to this section ~~((only))~~:

"Agency's designee" - See WAC 182-500-0010.

"Appropriate use" - Use of health care services that are safe and effective for a client's health care needs.

"Assigned provider" - An agency-enrolled health care provider or one participating with an agency-contracted managed care organization (MCO) who agrees to be assigned as a primary provider and coordinator of services for ~~((a fee-for-service))~~ an FFS client or ~~((managed care client))~~ MCO enrollee in the PRC program. Assigned providers can include a primary care provider (PCP), a pharmacy, a prescriber of controlled substances, and a hospital for nonemergency services.

"At-risk" - A term used to describe one or more of the following:

(a) A client with a medical history of:

(i) Seeking and obtaining health care services at a frequency or amount that is not medically necessary; or
(ii) Potential life-threatening events or life-threatening conditions that required or may require medical intervention.

(b) Behaviors or practices that could jeopardize a client's medical treatment or health including, but not limited to:

(i) Indications of forging or altering prescriptions;
(ii) Referrals from medical personnel, social services personnel, or MCO personnel about inappropriate behaviors or practices that place the client at risk;
(iii) Noncompliance with medical or drug and alcohol treatment;
(iv) Paying cash for medical services that result in a controlled substance prescription or paying cash for controlled substances;
(v) Arrests for diverting controlled substance prescriptions;
(vi) Positive urine drug screen for illicit street drugs or non-prescribed controlled substances;

(vii) Negative urine drug screen for prescribed controlled substances; or

(viii) Unauthorized use of a client's services card for an unauthorized purpose.

"Care management" - Services provided to ((clients)) MCO enrollees with multiple health, behavioral, and social needs to improve care coordination, client education, and client self-management skills.

"Client" - See WAC 182-500-0020.

"Conflicting" - Drugs or health care services that are incompatible or unsuitable for use together because of undesirable chemical or physiological effects.

"Contraindicated" - A medical treatment, procedure, or medication that is inadvisable or not recommended or warranted.

"Duplicative" - Applies to the use of the same or similar drugs and health care services without due medical justification. Example: A client receives health care services from two or more providers for the same or similar condition(s) in an overlapping time frame, or the client receives two or more similarly acting drugs in an overlapping time frame, which could result in a harmful drug interaction or an adverse reaction.

"Emergency department information exchange (EDIE)" - An internet-delivered service that enables health care providers to better identify and treat high users of the emergency department and special needs patients. When patients enter the emergency room, EDIE can proactively alert health care providers through different venues such as fax, phone, email, or integration with a facility's current electronic medical records.

"Emergency medical condition" - See WAC 182-500-0030.

"Emergency services" - See 42 C.F.R. 438.114.

"Fee-for-service" or **"FFS"** - See WAC 182-500-0035.

"Fee-for-service client" or **"FFS client"** - A client not enrolled in an agency-contracted MCO.

"Just cause" - A legitimate reason to justify the action taken((7)) including, but not limited to, protecting the health and safety of the client.

"Managed care ((client)) organization (MCO) enrollee" - A medical assistance client enrolled in, and receiving health care services from, an agency-contracted managed care organization (MCO).

"Prescriber of controlled substances" - Any of the following health care professionals who, within their scope of professional practice, are licensed to prescribe and administer controlled substances (see chapter 69.50 RCW, Uniform Controlled Substance Act) for a legitimate medical purpose:

(a) A physician under chapter 18.71 RCW;

(b) A physician assistant under chapter 18.71A RCW;

(c) An osteopathic physician under chapter 18.57 RCW;

(d) An osteopathic physician assistant under chapter 18.57A RCW;

and

(e) An advanced registered nurse practitioner under chapter 18.79 RCW.

"Primary care provider" or **"PCP"** - A person licensed or certified under Title 18 RCW including, but not limited to, a physician, an advanced registered nurse practitioner (ARNP), or a physician assistant (PA) who supervises, coordinates, and provides health care services to a client, initiates referrals for specialty and ancillary care, and maintains the client's continuity of care.

(3) **Clients selected for PRC review.** The agency or (~~(MCO)~~) agency's designee selects a client for PRC review when either or both of the following occur:

(a) (~~(A-usage)~~) An agency or MCO claims utilization review report indicates the client has not used health care services appropriately; or

(b) Medical providers, social service agencies, or other concerned parties have provided direct referrals to the agency or MCO.

(4) **Clients not selected for PRC review.** Clients (~~(who have comprehensive, private medical insurance (not casualty))~~) are not reviewed or placed into the PRC program when they:

(a) Are in foster care;

(b) Are covered under state-only funded programs;

(c) Do not have medicaid as the primary payor; or

(d) Are covered under the alien emergency medical (AEM) program, according to WAC 182-507-0115.

(5) **Prior authorization.** When (~~(a fee-for-service)~~) an FFS client is selected for PRC review, the prior authorization process as defined in WAC 182-500-0085 may be required:

(a) (~~(Prior to)~~) Before or during a PRC review; or

(b) When the FFS client is currently in the PRC program.

(6) **Review for placement in the PRC program.** When the agency or MCO selects a client for PRC review, the agency or MCO staff, with clinical oversight, reviews either the client's medical history or billing history, or both, to determine if the client has used health care services at a frequency or amount that is not medically necessary (42 C.F.R. 431.54(e)).

(7) **Usage guidelines for PRC placement.** Agency or MCO staff use the following usage guidelines to initiate review for PRC placement. A client may be (~~(placed)~~) reviewed for placement in the PRC program when the review shows the usage is not medically necessary and either the client's medical history or billing history, or both, documents any of the following:

(a) Any two or more of the following conditions occurred in a period of (~~(ninety)~~) 90 consecutive calendar days in the previous (~~(twelve)~~) 12 months. The client:

(i) Received services from four or more different providers, including physicians, ARNPs, and PAs not located in the same clinic or practice;

(ii) Had prescriptions filled by four or more different pharmacies;

(iii) Received (~~(ten)~~) 10 or more prescriptions;

(iv) Had prescriptions written by four or more different prescribers not located in the same clinic or practice;

(v) Received similar services in the same day not located in the same clinic or practice; or

(vi) Had (~~(ten)~~) 10 or more office visits;

(b) Any one of the following occurred within a period of (~~(ninety)~~) 90 consecutive calendar days in the previous (~~(twelve)~~) 12 months. The client:

(i) Made two or more emergency department visits;

(ii) Exhibits "at-risk" usage patterns;

(iii) Made repeated and documented efforts to seek health care services that are not medically necessary; or

(iv) Was counseled at least once by a health care provider, or an agency or MCO staff member with clinical oversight, about the appropriate use of health care services;

(c) The client received prescriptions for controlled substances from two or more different prescribers not located in the same clinic or practice in any one month within the ~~((ninety-day))~~ 90-day review period; or

(d) The client has either a medical history or billing history, or both, that demonstrates a pattern of the following at any time in the previous ~~((twelve))~~ 12 months:

(i) Using health care services in a manner that is duplicative, excessive, or contraindicated; or

(ii) Seeking conflicting health care services, drugs, or supplies that are not within acceptable medical practice.

(8) **PRC review results.** As a result of the PRC review, the agency or MCO may take any of the following steps:

(a) Determine that no action is needed and close the client's file;

(b) Send the client and, if applicable, the client's authorized representative a one-time only written notice of concern with information on specific findings and notice of potential placement in the PRC program; or

(c) Determine that the usage guidelines for PRC placement establish that the client has used health care services at an amount or frequency that is not medically necessary, in which case ~~((the agency or MCO will take))~~ one or more of the following actions take place:

(i) The MCO:

(A) Refers the ((client)) MCO enrollee:

(I) For education on appropriate use of health care services; or

~~((ii) Refer the client))~~ (II) To other support services or agencies; or

~~((iii))~~ (B) Places the MCO enrollee into the PRC program for an initial placement period of no less than 24 months. For MCO enrollees younger than 18 years of age, the MCO must get agency approval before placing the MCO enrollee into the PRC program; or

(ii) The agency places the FFS client into the PRC program for an initial placement period of no less than ~~((twenty-four))~~ 24 months. ~~((For clients younger than eighteen years of age, the MCO must get agency approval prior to placing the client into the PRC program.))~~

(9) **Initial placement in the PRC program.**

(a) When ((a)) an FFS client is initially placed in the PRC program

~~((a)),~~ the agency ~~((or MCO))~~ places the FFS client for no less than ~~((twenty-four))~~ 24 months with a primary care provider (PCP) for care coordination and a pharmacy for all medication prescriptions and one or more of the following types of health care providers:

~~((i) ((Primary care provider (PCP));~~

~~((ii) Pharmacy for all prescriptions;~~

~~((iii))~~ Prescriber of controlled substances if different than PCP;

~~((iv))~~ (ii) Hospital for nonemergency services unless referred by the assigned PCP or a specialist. ((A)) An FFS client may receive covered emergency services from any hospital; ~~((or~~

~~((v))~~ (iii) Another qualified provider type, as determined by agency ~~((or MCO))~~ program staff on a case-by-case basis

~~((b) The managed care client will)); or~~

(iv) Additional pharmacies on a case-by-case basis.

(b) Based on a medical necessity determination, the agency may make an exception to PRC rules when in the best interest of the client. See WAC 182-501-0165 and 182-501-0160.

(c) When an MCO enrollee is initially placed in the PRC program, the MCO restricts the MCO enrollee for no less than 24 months with a primary care provider (PCP) for care coordination and a primary pharmacy for all medication prescriptions and one or more of the following types of health care providers:

- (i) Prescriber of controlled substances if different than PCP;
- (ii) Hospital for nonemergency services unless referred by the assigned PCP or a specialist. An MCO enrollee may receive covered emergency services from any hospital;
- (iii) Another qualified provider type, as determined by MCO program staff on a case-by-case basis; or
- (iv) Additional pharmacies on a case-by-case basis.

(10) MCO enrollees changing MCOs. MCO enrollees:

(a) Remain in the same MCO for no less than ~~((twelve))~~ 12 months for initial placement and whenever the enrollee changes MCOs, unless:

- (i) The ~~((client))~~ MCO enrollee moves to a residence outside the MCO's service area and the MCO is not available in the new location; ~~((or))~~
- (ii) The ~~((client's))~~ MCO enrollee's assigned PCP no longer participates with the MCO and is available in another MCO, and the ~~((client))~~ MCO enrollee wishes to remain with the current provider;
- (iii) The ~~((client))~~ MCO enrollee is in a voluntary enrollment program or a voluntary enrollment county;
- (iv) The ~~((client))~~ MCO enrollee is in the address confidentiality program (ACP), indicated by P.O. Box 257, Olympia, WA 98507; or
- (v) The ~~((client))~~ MCO enrollee is an American Indian/Alaska Native.

~~((c) A managed care client))~~ (b) Placed in the PRC program must remain in the PRC program for no less than ~~((twenty-four))~~ 24 months regardless of whether the ~~((client))~~ MCO enrollee changes MCOs or becomes ~~((a fee-for-service))~~ an FFS client.

~~((10))~~ **(11) Notifying the client about placement in the PRC program.** When the client is initially placed in the PRC program, the agency or the MCO sends the client and, if applicable, the client's authorized representative, a written notice that:

- (a) Informs the client of the reason for the PRC program placement;
- ~~((Directs the client to respond to the agency or MCO within ten calendar days of the date of the written notice;))~~ Informs the client of the providers the client has been assigned to;
- (c) Directs the client to respond to the agency or MCO to take the following actions if applicable:
 - (i) ~~((Select))~~ Change assigned providers, subject to agency or MCO approval;
 - (ii) Submit additional health care information, justifying the client's use of health care services; or
 - (iii) Request assistance, if needed, from ~~((the))~~ agency or MCO program staff~~((-))~~; and
 - (d) Informs the client of administrative hearing or appeal rights (see subsection ~~((15))~~ (16) of this section).

~~((e) Informs the client that if a response is not received within ten calendar days of the date of the written notice, the client will be assigned a provider(s) by the agency or MCO.~~

~~((11))~~ **(12) Selection and role of assigned provider.** A client ~~((will have))~~ has a limited choice of providers.

- (a) The following providers are not available:

- (i) A provider who is being reviewed by the agency or licensing authority regarding quality of care;
 - (ii) A provider who has been suspended or disqualified from participating as an agency-enrolled or MCO-contracted provider; or
 - (iii) A provider whose business license is suspended or revoked by the licensing authority.
- (b) For a client placed in the PRC program, the assigned:
- (i) Provider(s) must be located in the client's local geographic area, in the client's selected MCO, and be reasonably accessible to the client.
 - (ii) PCP supervises and coordinates health care services for the client, including continuity of care and referrals to specialists when necessary.
 - (A) The PCP:
 - (I) Provides the plan of care for clients that have documented use of the emergency department for a reason that is not deemed to be an emergency medical condition;
 - (II) Files the plan of care with each emergency department that the client is using or with the emergency department information exchange; and
 - (III) ~~((Makes referrals to substance abuse treatment for clients who are using the emergency department for substance abuse issues; and~~
 - ~~(IV))~~ Makes referrals to ~~((mental))~~ behavioral health treatment for clients who are using the emergency department for ~~((mental))~~ behavioral health treatment issues.
 - (B) The assigned PCP must be one of the following:
 - (I) A physician;
 - (II) An advanced registered nurse practitioner (ARNP); or
 - (III) A licensed physician assistant (PA), practicing with a supervising physician.
 - (iii) Prescriber of controlled substances prescribes all controlled substances for the client;
 - (iv) Pharmacy fills all prescriptions for the client; and
 - (v) Hospital provides all hospital nonemergency services.
- (c) A client placed in the PRC program must remain with the assigned providers for ~~((twelve))~~ 12 months after the assignments are made, unless:
- (i) The client moves to a residence outside the provider's geographic area;
 - (ii) The provider moves out of the client's local geographic area and is no longer reasonably accessible to the client;
 - (iii) The provider refuses to continue to serve the client;
 - (iv) The client did not select the provider. The client may request to change an assigned provider once within ~~((thirty))~~ 30 calendar days of the assignment;
 - (v) The ~~((client's))~~ MCO enrollee's assigned PCP no longer participates with the MCO. In this case, the ~~((client))~~ MCO enrollee may select a new provider from the list of available providers in the MCO network or follow the assigned provider to the new MCO; or
 - (vi) The client is in the address confidentiality program (ACP), indicated by P.O. Box 257, Olympia, WA 98507.
- (d) When an assigned prescribing provider no longer contracts with the agency or the MCO:
- (i) All prescriptions from the provider are invalid ~~((thirty))~~ 30 calendar days following the date the contract ends; and

(ii) ~~((All prescriptions from the provider are subject to applicable prescription drugs (outpatient) rules in chapter 182-530 WAC or appropriate MCO rules; and~~

~~(iii))~~) The client must choose or be assigned another provider according to the requirements in this section.

~~((12))~~ **(13) PRC placement.**

(a) The initial PRC placement is no less than ~~((twenty-four))~~ 24 consecutive months.

(b) The second PRC placement is no less than an additional ~~((thirty-six))~~ 36 consecutive months.

(c) Each subsequent PRC placement is no less than ~~((seventy-two))~~ 72 consecutive months.

~~((13))~~ **(14) Agency or MCO review of a PRC placement period.** The agency or MCO reviews a client's use of health care services ~~((prior to))~~ before the end of each PRC placement period described in subsection ~~((12))~~ (13) of this section using the guidelines in subsection (7) of this section.

(a) The agency or MCO assigns the next PRC placement if the usage guidelines for PRC placement in subsection (7) of this section apply to the client.

(b) When the agency or MCO assigns a subsequent PRC placement, the agency or MCO sends the client and, if applicable, the client's authorized representative, a written notice informing the client:

(i) Of the reason for the subsequent PRC program placement;

(ii) Of the length of the subsequent PRC placement;

(iii) That the current providers assigned to the client continue to be assigned to the client during the subsequent PRC placement;

(iv) That all PRC program rules continue to apply;

(v) Of administrative hearing or appeal rights (see subsection ~~((15))~~ (16) of this section); and

(vi) Of the rules that support the decision.

(c) The agency or MCO may remove a client from PRC placement if the client:

(i) Successfully completes a treatment program that is provided by a substance use disorder (SUD) service provider certified by the agency under chapter 182-538D WAC;

(ii) Submits documentation of completion of the approved treatment program to the agency; and

(iii) Maintains appropriate use of health care services within the usage guidelines described in subsection (7) of this section for six consecutive months after the date the treatment ends; or

(iv) Successfully stabilizes due to the usage of treatment medications including, but not limited to, Buprenorphine.

(d) The agency or MCO determines the appropriate placement for a client who has been placed back into the program.

(e) A client ~~((will))~~ remains placed in the PRC program regardless of change in eligibility program type or change in address.

~~((14))~~ **(15) Client financial responsibility.** A client placed in the PRC program may be billed by a provider and held financially responsible for nonemergency health care services obtained from a non-pharmacy provider when the provider is not an assigned or appropriately referred provider as described in subsection ~~((11))~~ (12) of this section. See WAC 182-502-0160.

~~((15))~~ **(16) Right to administrative hearing or appeal.**

(a) ~~((A fee-for-service))~~ An FFS client who disagrees with an agency decision regarding placement or continued placement in the PRC program has the right to an administrative hearing regarding this

placement. ((A)) An FFS client must request an administrative hearing from the agency within ~~((ninety))~~ 90 days of the written notice of placement or continued placement to exercise this right.

(b) ~~((A managed care client))~~ An MCO enrollee who disagrees with an MCO decision regarding placement or continued placement in the PRC program has a right to appeal this decision in the same manner as an adverse benefit determination under ~~((WAC 182-538-110))~~ chapter 182-538 WAC.

~~((i))~~ An appeal must be filed with the MCO within sixty calendar days of the written notice of the MCO's decision.

~~((ii))~~ A client must exhaust the right to appeal through the MCO prior to requesting an administrative hearing.

~~((iii))~~ A client who disagrees with the resolution of the appeal by the MCO may request an administrative hearing.

~~((iv))~~ A client may exercise the right to an administrative hearing by filing a request within one hundred twenty calendar days from the written notice of resolution of the appeal by the MCO.

~~((c))~~ A client enrolled in an MCO cannot change MCOs until the MCO appeal and any administrative hearing process has been completed and a final order entered.

~~((d))~~ (c) The agency conducts an administrative hearing according to chapter 182-526 WAC.

~~((e))~~ (d) A client who requests an administrative hearing or appeal within ~~((ten))~~ 10 calendar days from the date of the written notice of an initial PRC placement will not be placed in the PRC program until ordered by an administrative law judge (ALJ) or review judge.

~~((f))~~ (e) A client who requests an administrative hearing or appeal more than ~~((ten))~~ 10 calendar days from the date of the written notice of initial PRC placement will remain placed in the PRC program until a final administrative order is entered that orders the client's removal from the program.

~~((g))~~ (f) A client who requests an administrative hearing or appeal in all other cases and who has already been assigned providers will remain placed in the PRC program unless a final administrative order is entered that orders the client's removal from the program.

~~((h))~~ (g) An ALJ may rule the client be placed in the PRC program prior to the date the record is closed and ~~((prior to))~~ before the date the initial order is issued based on a showing of just cause.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-08-090, § 182-501-0135, filed 4/7/21, effective 5/8/21; WSR 18-08-075, § 182-501-0135, filed 4/3/18, effective 5/4/18. Statutory Authority: RCW 41.05.021 and 2011 1st sp.s. c 50. WSR 13-05-006, § 182-501-0135, filed 2/6/13, effective 3/9/13. WSR 11-14-075, recodified as § 182-501-0135, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090. WSR 10-19-057, § 388-501-0135, filed 9/14/10, effective 10/15/10. Statutory Authority: RCW 74.08.090 and 42 C.F.R. 431.51, 431.54(e) and 456.1; 42 U.S.C. 1396n. WSR 08-05-010, § 388-501-0135, filed 2/7/08, effective 3/9/08. Statutory Authority: RCW 74.08.090, 74.09.520, 74.04.055, and 42 C.F.R. 431.54. WSR 06-14-062, § 388-501-0135, filed 6/30/06, effective 7/31/06. Statutory Authority: RCW 74.08.090, 74.04.055, and 42 C.F.R. Subpart B 431.51, 431.54 (e) and (3), and 456.1. WSR 04-01-099, § 388-501-0135, filed 12/16/03, effective 1/16/04. Statutory Authority: RCW 74.08.090. WSR 01-02-076, § 388-501-0135, filed 12/29/00, effective 1/29/01. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, §

388-501-0135, filed 7/31/98, effective 9/1/98. Statutory Authority: RCW 74.08.090 and 74.09.522. WSR 97-03-038, § 388-501-0135, filed 1/9/97, effective 2/9/97. Statutory Authority: RCW 74.08.090. WSR 94-10-065 (Order 3732), § 388-501-0135, filed 5/3/94, effective 6/3/94. Formerly WAC 388-81-100.]

WSR 23-11-107
PROPOSED RULES
GAMBLING COMMISSION
[Filed May 19, 2023, 1:17 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-07-105.

Hearing Location(s): On July 20, 2023, at 9:30 a.m., at Washington State Gambling Commission, 4565 7th Avenue S.E., Lacey, WA 98503. The meeting time and location will be posted approximately one week prior to the meeting on our website at www.wsgc.wa.gov. Select "The Commission" and then select "Public Meetings" to confirm the hearing date, location, start time, and agenda items.

Date of Intended Adoption: July 20, 2023.

Submit Written Comments to: Lisa C. McLean, P.O. Box 42400, Olympia, WA 98504-2400, email rules.coordinator@wsgc.wa.gov, www.wsgc.wa.gov, by July 19, 2023.

Assistance for Persons with Disabilities: Contact Julie Anderson, phone 360-486-3453, TTY 360-486-3637, email Julie-anderson@wsgc.wa.gov, www.wsgc.wa.gov, by July 19, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule would allow the connection of more than one progressive jackpot on different card games, which the petitioner explains would provide more options to players interested in placing wagers on progressive jackpots.

Reasons Supporting Proposal: At present, players can wager on: (1) Multiple progressive jackpots at a single gambling table; (2) multiple progressive jackpots connected to the same game across multiple gambling tables; and (3) different gambling tables offering different card games connected to **one** progressive jackpot. Allowing connection of more than one progressive jackpot across different card games at different gambling tables would not alter in any way the existing gambling commission's regulatory framework related to progressive jackpots.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: RCW 9.46.070.

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

Name of Proponent: Tiffini Cox, Galaxy Gaming, Inc. of Las Vegas, NV, public.

Name of Agency Personnel Responsible for Drafting: Lisa C. McLean, Legislative and Policy Manager, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3454; Implementation: Tina Griffin, Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3456; and Enforcement: Gary Drumheller, Assistant Director, 4565 7th Avenue S.E., Lacey, WA 98503, 509-325-7904.

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. A cost-benefit analysis is not required per RCW 34.05.328 (5) (a) (i).

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.

Scope of exemption for rule proposal:

Is fully exempt.

May 19, 2023

Lisa C. McLean
Legislative and Policy Manager

OTS-4601.1

AMENDATORY SECTION (Amending WSR 21-11-057, filed 5/14/21, effective 6/14/21)

WAC 230-15-685 Restrictions on progressive jackpots. House-banked card room licensees operating progressive jackpots must follow these restrictions and procedures:

(1) Progressive jackpot funds must accrue according to the rules of the game.

(2) At each gambling table, licensees must prominently post the amount of the progressive jackpot that players can win along with any associated pay tables.

(3) Licensees may establish a maximum limit on a progressive jackpot prize. If licensees establish a limit, they must make the amount equal to, or greater than, the amount of the jackpot when they imposed the limit. They must prominently post a notice of the limit at or near the game.

(4) Licensees may connect progressive jackpots. Progressive jackpots are considered "connected" when jackpot prize displays at gaming tables incrementally increase at the same time after players place jackpot wagers. Connected progressive jackpot displays must show the same prize amounts. Licensees may only connect progressive jackpots:

(a) When offered on the same card game on multiple tables within the same licensed location; or

(b) When offered on different card games on multiple tables within the same licensed location (~~when the following requirements are met. Only one progressive jackpot may be operated on a card game at a time and the card games~~). The card games offering the progressive jackpot(s) must have:

(i) The same probability of winning the jackpot prize; and

(ii) The same winning hand.

(5) When gambling equipment will allow a progressive jackpot between different manufacturers, the gambling equipment must be submitted for testing for interoperability in accordance with WAC 230-06-050.

[Statutory Authority: RCW 9.46.070. WSR 21-11-057, § 230-15-685, filed 5/14/21, effective 6/14/21. Statutory Authority: RCW 9.46.070 and 9.46.0282. WSR 15-21-005 (Order 715), § 230-15-685, filed 10/8/15, effective 11/8/15; WSR 13-13-060 (Order 688), § 230-15-685, filed 6/18/13, effective 7/19/13. Statutory Authority: RCW 9.46.070. WSR 07-09-033 (Order 608), § 230-15-685, filed 4/10/07, effective 1/1/08.]

WSR 23-11-115

PROPOSED RULES

BATES TECHNICAL COLLEGE

[Filed May 22, 2023, 10:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-06-046.

Title of Rule and Other Identifying Information: Time and place of board meetings.

Hearing Location(s): On June 27, 2023, at 9 a.m., virtual.

Date of Intended Adoption: July 1, 2023.

Submit Written Comments to: Nick Lutes, 1101 South Yakima Avenue, Tacoma, WA 98405, email nlutes@Batestech.edu.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Allowing flexibility in establishing the time and location will assist in ensuring trustees can be fully engaged in college governance.

Reasons Supporting Proposal: The fixed timing of the current rule has created challenges for the board in obtaining a quorum due to board members being unavailable at the established time. The fixed location also limits the college governing body from meeting at other campus locations. When the rule was written, there was only one Bates campus, and now there are three.

Statutory Authority for Adoption: RCW 28B.50.100.

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

Name of Proponent: Bates Technical College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Nicholas Lutes, 1101 South Yakima Avenue, Tacoma, WA, 253-680-7123.

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(4).

Scope of exemption for rule proposal:

Is fully exempt.

May 19, 2023

Nicholas Lutes

Vice President for Administrative Services

OTS-4475.1

AMENDATORY SECTION (Amending WSR 20-09-030, filed 4/6/20, effective 5/7/20)

WAC 495A-104-015 Time and place of board meetings. The board of trustees shall hold ~~((one regular meeting on the third Monday of each month except for the month of August.))~~ regular meetings in accordance with the Open Public Meetings Act, chapter 42.30 RCW, and other applicable law. These meetings will be scheduled throughout the year (except August) on the third Monday of a scheduled month. If needed,

meetings will begin with a study session at 2:00 p.m., followed by the business meeting at 3:00 p.m. Special meetings, as may be requested by the chair of the board or by a majority of the members of the board, shall be announced in accordance with applicable open public meetings requirements.

All regular and special meetings of the board of trustees shall be held at one of the Bates Technical College campuses, ((Downtown Campus, 1101 South Yakima Avenue, Tacoma, WA 98405)) as designated by the board, unless scheduled elsewhere and so noted in accordance with the requirements of the Open Public Meetings Act ~~((, chapter 42.30 RCW))~~. Notices of the time and place of all regular and special meetings shall be governed by the requirements of chapter 42.30 RCW, Open Public Meetings Act. Board meetings are open to the general public, except for lawful executive sessions.

No official business may be conducted by the board of trustees except during a regular or special meeting.

[Statutory Authority: RCW 42.30.075 and chapter 34.05 RCW. WSR 20-09-030, § 495A-104-015, filed 4/6/20, effective 5/7/20.]

WSR 23-11-121
PROPOSED RULES
RENTON TECHNICAL COLLEGE
[Filed May 22, 2023, 3:38 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-07-122.

Title of Rule and Other Identifying Information: The college is adding and amending rules to chapter 495E-110 WAC, Student conduct code and hearing procedure, rules for compliance with HB [2SHB] 1751.

Hearing Location(s): On July 10, 2023, at 3:00 p.m., at C-111 and on Zoom. Zoom link [https://rtcedu.zoom.us/j/81833617941?pwd=OGx5dzFRSW9ld2daMHliZGpBTmE1UT09; Meeting ID 818 3361 7941, Pass-code 879426, One-tap mobile +12532158782,,81833617941# US \(Tacoma\), +12532050468,,81833617941# US](https://rtcedu.zoom.us/j/81833617941?pwd=OGx5dzFRSW9ld2daMHliZGpBTmE1UT09; Meeting ID 818 3361 7941, Pass-code 879426, One-tap mobile +12532158782,,81833617941# US (Tacoma), +12532050468,,81833617941# US). Please contact Jake Swanke, director for disability resources, at 425-235-6618 as soon as possible for disability accommodation requests.

Date of Intended Adoption: September 20, 2023.

Submit Written Comments to: Matt Wurz, Executive Assistant, Vice President of Student Services and Dean of Student Success, 3000 N.E. 4th Street, Renton, WA 98056, email mgwurz@rtc.edu, by July 7, 2023.

Assistance for Persons with Disabilities: Contact Jake Swanke, director, disability resource services, phone 425-235-6618, Washington relay service 711 or 800-833-6388, email jswanke@rtc.edu, by July 3, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule changes support requirements laid out in HB [2SHB] 1751 (also known as "Sam's Law") and support existing efforts to protect students from dangers of hazing.

Reasons Supporting Proposal: To incorporate the requirements from HB 1751, Hazing prevention legislation, into the student conduct code and hearing procedures. The updated rules incorporate new prohibited student conduct, statement of jurisdiction, definitions, and hazing prohibited sanctions.

Statutory Authority for Adoption: RCW 28B.50.140; and 2SHB 1751.

Statute Being Implemented: RCW 28B.10.900 - [28B.10.]908.

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: None.

Name of Proponent: Renton Technical College, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jessica Gilmore English, 3000 N.E. 4th Street, Renton, WA 98056, 425-235-2463.

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. Does not apply to college rules.

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.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: Revisions impact college-specific internal policies.

Scope of exemption for rule proposal:
Is fully exempt.

May 22, 2023
Jacob Jackson

Vice President of Administration and Finance

OTS-4286.1

AMENDATORY SECTION (Amending WSR 21-10-038, filed 4/28/21, effective 5/29/21)

WAC 495E-110-030 Prohibited student conduct. The college may impose disciplinary sanctions against a student or student group, who commits (~~((or attempts to commit), or)~~), attempts to commit, aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct, which include, but are not limited to, the following:

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

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

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

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

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

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

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

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

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

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

(a) Instruction, research, administration, disciplinary proceeding, or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) **Assault, intimidation, harassment.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this section, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully, or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(7) **Failure to comply with directive.** Failure to comply with the directive of a college officer or employee who is acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) A student with a valid concealed weapons permit may store a pistol in their vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

(d) This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.

(9) **Hazing.** (~~Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged~~

in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.)

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

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

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

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

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

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

(ii) Humiliation by ritual act;

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

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

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

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

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

(10) **Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** The use, possession, delivery, or sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

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

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

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

(11) **Lewd conduct.** Conduct which is lewd or obscene that is not otherwise protected under the law.

(12) **Discriminatory conduct.** Discriminatory conduct which harms or adversely affects any member of the college community because of their race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital

status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. (Supplemental Title IX student conduct procedures.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(I) The length of the relationship;

(II) The type of relationship; and

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

(vii) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) Fear for their safety or the safety of others; or

(B) Suffer substantial emotional distress.

(d) For purposes of this chapter, "consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

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

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

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

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

- (b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;
- (c) Unauthorized use or distribution of someone else's password or other identification;
- (d) Use of such time or resources to interfere with someone else's work;
- (e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;
- (f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;
- (g) Use of such time or resources in violation of applicable copyright or other law;
- (h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or
- (i) Failure to comply with the college's electronic use policy.
- (17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.
- (18) **Safety violations.** Nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.
- (19) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.
- (20) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

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

[Statutory Authority: Title IX of Education Amendments of 1972 and RCW 28B.50.140. WSR 21-10-038, § 495E-110-030, filed 4/28/21, effective 5/29/21. Statutory Authority: RCW 28B.50.140(13), Violence Against Women Act of 1994, and Title IX of Education Amendments of 1972. WSR 15-11-013, § 495E-110-030, filed 5/8/15, effective 6/8/15.]

NEW SECTION

WAC 495E-110-045 Hazing prohibited, sanctions. (1) Hazing by a student or a student group is prohibited pursuant to WAC 495E-110-030(9).

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

(3) Washington state law provides that:

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

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

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

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

[]

AMENDATORY SECTION (Amending WSR 21-10-038, filed 4/28/21, effective 5/29/21)

WAC 495E-110-050 Statement of jurisdiction. (1) The student conduct code shall apply to (~~student~~) conduct by students and student groups that occurs:

(a) On college premises;

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

(c) To off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives.

(2) Jurisdiction extends to, but is not limited to, locations in which students or student groups are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities and college-sanctioned housing.

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

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

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

[Statutory Authority: Title IX of Education Amendments of 1972 and RCW 28B.50.140. WSR 21-10-038, § 495E-110-050, filed 4/28/21, effective 5/29/21. Statutory Authority: RCW 28B.50.140(13), Violence Against Women Act of 1994, and Title IX of Education Amendments of 1972. WSR 15-11-013, § 495E-110-050, filed 5/8/15, effective 6/8/15.]

AMENDATORY SECTION (Amending WSR 21-10-038, filed 4/28/21, effective 5/29/21)

WAC 495E-110-060 Definitions. The following definitions shall apply for purpose of this student conduct code:

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

(2) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(3) A "complainant" is an alleged victim of sexual misconduct.

(4) "Conduct review officer" is the vice president of student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code.

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

(6) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of (~~ten~~) 10 instructional days or an expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

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

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

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

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(8) "Respondent" is the student against whom disciplinary action is initiated.

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

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

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

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

(10) "Sexual misconduct" has the meaning ascribed to this term in WAC 495E-110-030(13).

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

(12) "Student conduct officer" is a college administrator designated by the president or vice president of student services to be responsible for implementing and enforcing the student conduct code.

(13) "Student group" for purposes of this code, is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups within student housing.

(14) "The president" is the president of the college. The president is authorized to:

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

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

[Statutory Authority: Title IX of Education Amendments of 1972 and RCW 28B.50.140. WSR 21-10-038, § 495E-110-060, filed 4/28/21, effective 5/29/21. Statutory Authority: RCW 28B.50.140(13), Violence Against Women Act of 1994, and Title IX of Education Amendments of 1972. WSR 15-11-013, § 495E-110-060, filed 5/8/15, effective 6/8/15.]

WSR 23-11-122
PROPOSED RULES
WASHINGTON STATE
SCHOOL DIRECTORS' ASSOCIATION
 [Filed May 22, 2023, 4:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-07-035.

Title of Rule and Other Identifying Information: Chapter 430-01
WAC.

Hearing Location(s): On July 12, 2023, at 10 a.m., at Washington State School Directors' Association Headquarters, P.O. Box 5248, Lacey, WA 98509.

Date of Intended Adoption: July 15, 2023.

Submit Written Comments to: Kelsey C. Winters, P.O. Box 5248, Lacey, WA 98509, email k.winters@wssda.org, by July 12, 2023.

Assistance for Persons with Disabilities: Contact Kelsey C. Winters, phone 360-252-3018, email k.winters@wssda.org, by July 5, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amendments would update, and bring further clarity to, provisions based on statute.

Statutory Authority for Adoption: Chapter 42.56 RCW, Public Records Act.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Abigail Westbrook, P.O. Box 5248, Lacey, WA 98509, 360-252-3018.

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 relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

May 18, 2023
 Tim Garchow
 Executive Director

OTS-4571.1

AMENDATORY SECTION (Amending WSR 18-09-072, filed 4/16/18, effective 5/17/18)

WAC 430-01-010 Authority and purpose. (1) ((~~EHB-1595~~)) RCW 42.56.070(1) requires state agencies to make available for inspection and copying nonexempt "public records" in accordance with published rules. In compliance, this chapter is approved and adopted by the board of directors of Washington state school directors' association

(WSSDA) to ~~((inform, facilitate, and regulate the collection of allowed charges for public records requests))~~ establish the procedures the Washington state school directors' association will follow to provide full access to public records. These rules provide information to persons wishing to request access to public records of the Washington state school directors' association and establish processes for both requestors and Washington state school directors' association staff designed to best assist members of the public in obtaining access.

(2) These rules will be interpreted in favor of disclosure. Prompt assistance to the public shall be provided without affecting WSSDA's primordial mission of providing leadership, advocacy, and empowerment to its members.

[Statutory Authority: Chapters 28A.345 and 42.56 RCW. WSR 18-09-072, § 430-01-010, filed 4/16/18, effective 5/17/18.]

AMENDATORY SECTION (Amending WSR 18-09-072, filed 4/16/18, effective 5/17/18)

WAC 430-01-020 Definitions. (1) "Business days" are weekdays, Monday through Friday, excluding official Washington state holidays and state agency closures for any reason.

(2) "Public Records Act" or "act" means chapter 42.56 RCW.

(3) "WSSDA" means Washington state school directors' association established under chapter 28A.345 RCW.

(4) "Public records" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by ~~((the agency))~~ WSSDA.

(5) "Public records officer" means the employee designated by the WSSDA executive director under RCW 42.56.580(1) responsible for overseeing WSSDA's compliance with the Public Records Act.

(6) "Standard page" is an 8 × 11 size paper.

[Statutory Authority: Chapters 28A.345 and 42.56 RCW. WSR 18-09-072, § 430-01-020, filed 4/16/18, effective 5/17/18.]

AMENDATORY SECTION (Amending WSR 18-09-072, filed 4/16/18, effective 5/17/18)

WAC 430-01-030 Relevant training. (1) Pursuant to RCW 42.56.152, WSSDA's public records officer will complete a training course regarding the act and records retention within 90 days of assuming their responsibilities as public records officer. Thereafter, the public records officer will complete refresher courses every four years that they maintain the designation.

(2) All new WSSDA employees will receive basic training on public records, open government meeting, and records retention within ~~((nine-ty))~~ 90 days from date of hire. Such training includes access to publications, online classes, and tutorials on the subject published and offered by different agencies of the state.

[Statutory Authority: Chapters 28A.345 and 42.56 RCW. WSR 18-09-072, § 430-01-030, filed 4/16/18, effective 5/17/18.]

AMENDATORY SECTION (Amending WSR 18-09-072, filed 4/16/18, effective 5/17/18)

WAC 430-01-040 Access to public records. ((The public records are available for public access according to these rules, except as otherwise provided by law.)) **(1) Making requests for public records.**

(a) Any person wishing to inspect or copy public records of the agency must make the request in writing on WSSDA's request form or through the online portal located on WSSDA's website, or by letter addressed to the public records officer at the address listed in WAC 430-01-050(3), or by email to the public records officer at the email address listed in WAC 430-01-050(3), or by submitting the request in person at the address listed in WAC 430-01-050(3), and must include the following information:

(i) Name of requestor;

(ii) Address of requestor;

(iii) Other contact information, including telephone number and any email address;

(iv) Identification of the public records adequate for the public records officer or designee to locate the records; and

(v) The date and time of day of the request.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, they should so indicate and make arrangements to pay for copies of the records or a deposit in accordance with the allowable costs under WAC 430-01-090.

(c) A records request form is available for use by requestors at the WSSDA office and online at www.wssda.org.

(d) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, they will confirm receipt of the information and the substance of the request in writing.

(2) Hours for inspection of public records. Public records are available for inspection and copying during WSSDA normal business hours, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays. Records must be inspected at the WSSDA office. Many public records are also available for inspection and copying on the WSSDA website, www.wssda.org, at any time, at no cost.

(3) Organization of public records. WSSDA will maintain its records in a reasonably organized manner. WSSDA will take reasonable actions to protect records from damage or disorganization. When inspecting records in person, a requestor must comply with the protection requirements of WAC 430-01-130 and must make reasonable efforts to maintain the organization of the public records.

[Statutory Authority: Chapters 28A.345 and 42.56 RCW. WSR 18-09-072, § 430-01-040, filed 4/16/18, effective 5/17/18.]

AMENDATORY SECTION (Amending WSR 18-09-072, filed 4/16/18, effective 5/17/18)

WAC 430-01-050 Agency description—Contact information—Public records ((address)) officer. (1) WSSDA is an agency charged with the coordination of programs and procedures about policymaking and control and management among the school districts of Washington state. The powers and duties of WSSDA are described in chapter 28A.345 RCW.

(2) WSSDA's administrative offices are located at: 225 College Street N.E., Olympia, WA 98516.

(3) WSSDA's public records officer is available at the following address, telephone and fax numbers or email address:

Office of Public Records/Open Public Meetings
221 College Street N.E.
Olympia, WA 98516-5313

WSSDA Public Records Officer

Phone: 360-493-9231

Fax: 360-252-3022

Attn: Public Records Officer

Email: PublicRecordsRequest@wssda.org

Information and records are also available at the WSSDA website at www.wssda.org.

(4) The public records officer will oversee compliance with the act, but other WSSDA staff members may assist in processing the request. Therefore, these rules will refer to the public records officer or designee. The public records officer or designee and WSSDA will provide the fullest assistance to requestors and prevent fulfilling public records requests from causing excessive interference with WSSDA's essential functions.

[Statutory Authority: Chapters 28A.345 and 42.56 RCW. WSR 18-09-072, § 430-01-050, filed 4/16/18, effective 5/17/18.]

AMENDATORY SECTION (Amending WSR 18-09-072, filed 4/16/18, effective 5/17/18)

WAC 430-01-070 Responses to public records requests. ~~((In general,))~~ (1) Acknowledging receipt of the request. The public records officer shall respond within five business days from receipt of a request by doing one or more of the following:

~~((1))~~ (a) Provide copies of the records requested or make the record available for inspection;

~~((2))~~ (b) Provide an internet address and link to WSSDA's website where the specific record can be accessed;

~~((3))~~ (c) Acknowledge that WSSDA received the request and provide a reasonable estimate of the time to fully respond;

~~((4))~~ (d) Acknowledge that WSSDA received the request and ask the requestor to clarify a request that is unclear, while providing to the greatest extent possible, a reasonable estimate of the time WSSDA needs to respond to the request if it is not clarified; or

~~((5))~~ (e) Deny the request((÷

~~(6) When a requestor fails to respond to WSSDA's request for clarification within thirty days and the entire request is unclear, WSSDA may close the request without further response;~~

~~(7) When a requestor fails to respond to WSSDA's request for clarification within thirty days and only part of the request is unclear, WSSDA will respond to the portion of the request that is clear and may close the remainder of the request;~~

~~(8) In certain cases, WSSDA shall seek a court order enjoining disclosure pursuant to law;~~

~~(9))~~.

(2) **Requests for clarification.** In acknowledging receipt of a public record request that is unclear, WSSDA may ask the requestor to clarify what information the requestor is seeking.

(3) **Additional time.** Additional time required to respond to a request may be based upon the following:

(a) The need to clarify the intent of the request;

(b) The need to locate and assemble the information requested;

(c) The need to notify third persons or agencies affected by the request; or

(d) The need to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the requested.

(4) **Processing requests.** WSSDA will process requests in the order in which they are received. WSSDA may modify this approach as necessary to ensure that requests that seek larger volumes of records, require closer review, or are otherwise more time consuming, do not unreasonably delay simpler, more routine requests.

(5) **Providing records in installments.** When the number of responsive records to a request is voluminous and the time for locating, assembling, or reviewing the records is considerable, the public records officer may choose to respond in installments.

(6) **Providing electronic records.**

(a) When electronic records are requested, WSSDA will provide:

(i) The nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by WSSDA and is generally commercially available; or

(ii) At WSSDA's discretion, in a format that is reasonably translatable from the format in which WSSDA keeps the records.

(b) WSSDA is under no obligation to convert electronic records to a specific format identified by the requestor.

(c) When metadata is requested, the agency will provide the records in a native file format that preserves metadata where technically feasible. Metadata may be unavailable for records that require conversion to a nonnative format in order to apply exemptions.

(7) **Bot requests.** WSSDA shall deny a computer-generated bot request that is one of multiple requests from the requestor within a ((twenty-four)) 24 hour period whenever WSSDA establishes that responding to the multiple bot requests would cause excessive interference with WSSDA's other essential functions;

~~((10) When)~~ (8) If WSSDA inadvertently fails to respond in writing within five business days of receipt of the request for disclosure, the requestor can contact the public records officer or executive director to determine the reason for the failure to respond;

~~((11) When the number of responsive records to a request is voluminous and the time for locating, assembling, or reviewing the records is considerable, the public records officer may choose to re-~~

~~spend in installments treating each installment as a separate public records request.))~~

[Statutory Authority: Chapters 28A.345 and 42.56 RCW. WSR 18-09-072, § 430-01-070, filed 4/16/18, effective 5/17/18.]

AMENDATORY SECTION (Amending WSR 18-09-072, filed 4/16/18, effective 5/17/18)

WAC 430-01-080 Records exemption and court protection. WSSDA reserves the right to exempt public records from disclosure in accordance with chapter 42.56 RCW or other statutes which exempt or prohibit disclosure of specific information or records.

Whenever WSSDA believes that a record is exempt from disclosure and should be withheld, the public records officer shall specify in writing the exemption explaining how the exemption applies to the record withheld or redacted.

When only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer shall first redact the exempt portions; second, provide the nonexempt portions; and finally, explain in writing why portions of the record are exempt and redacted.

If the requested records contain information that may affect rights of others and the information is exempt from disclosure, the public records officer may, prior to providing the records, notify those affected to enable them to contact the requestor and ask (~~him or her~~) them to revise the request, or, if necessary, seek a court order to prevent or limit the disclosure. The notice to the affected persons may also include a copy of the request.

WSSDA is prohibited by statute from disclosing lists of individuals for commercial purposes.

[Statutory Authority: Chapters 28A.345 and 42.56 RCW. WSR 18-09-072, § 430-01-080, filed 4/16/18, effective 5/17/18.]

AMENDATORY SECTION (Amending WSR 18-09-072, filed 4/16/18, effective 5/17/18)

WAC 430-01-090 Costs of providing copies of public records. (1) ~~((Costs for paper copies))~~ **Inspections.** There is no fee for inspecting public records ~~((and charges can be waived for humanitarian reasons. However, a requestor may obtain photocopies or printed copies for a fee of fifteen cents per standard 8 x 11 page.~~

~~WSSDA reserves [the right] to charge a flat rate of two dollars if the fees allowed under this procedure to provide the records are equal to, or more than, two dollars.~~

~~Before making the copies, the public records officer may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor and the balance to be paid before completion of the records request.~~

~~If requested, calculations of the costs excluding sales tax shall be shown to the requestor.~~

~~(2) **Costs for electronic records.** The actual costs for electronic records are as follows:~~

~~(a) Ten cents per page for public records scanned into an electronic format or for the use of WSSDA equipment to scan the records;~~

~~(b) Five cents per each four electronic files or attachment uploaded to email, cloud-based data storage service, or other means of electronic delivery;~~

~~(c) Ten cents per gigabyte for the transmission of public records in an electronic format or for the use of WSSDA equipment to send the records electronically; AND~~

~~(d) The actual cost of any digital storage media or device provided by WSSDA, the actual cost of any container or envelope used to mail the copies to the requestor, and the actual postage or delivery charge.~~

~~There is no charge for the emailing of electronic records to a requestor, unless another cost applies such as a scanning fee.~~

~~(3) **Costs of mailing.** WSSDA shall charge actual costs of mailing, including the cost of shipping.), either in person or on WSSDA's website.~~

(2) **Statutory default costs.** Pursuant to RCW 42.56.120(2), WSSDA declares for the following reasons that it would be unduly burdensome to calculate the actual costs it charges for providing copies of public records:

(a) Funds were not allocated for performing a study to calculate such actual costs and WSSDA lacks the necessary funds to perform a study and calculations;

(b) Staff resources are insufficient to perform a study and to calculate such actual costs; and

(c) A study would interfere with and disrupt other essential agency functions.

(3) **Fee scheduling.**

(a) WSSDA will charge for copies of public records pursuant to the default fee schedule in RCW 42.56.120 (2)(b) and (c).

(b) Under RCW 42.56.130, WSSDA may charge other copying fees authorized by statutes outside of chapter 42.56 RCW.

(c) WSSDA may enter into an alternative fee agreement with a requestor under RCW 42.56.120(4).

(d) The charges for copying methods used by WSSDA are summarized in the fee schedule available on the WSSDA website at www.wssda.org.

(e) WSSDA will charge the actual amount charged by an external vendor for records copied by an external vendor including records in nonstandard sizes or formats.

(4) **Payment.** Payment is made by cash, check, or money order to WSSDA. Before copying public records, the public records officer or designee may require a deposit of up to 10 percent of the estimated costs of copying all of the records. The public records officer or designee may require payment of the remainder of the copying costs before providing all of the records, or the payment of costs of copying an installment before providing the installment. WSSDA will not charge sales tax when it makes copies of public records.

(5) **Customized charges.** A customized service charge is imposed by WSSDA when outside information technology experts are needed to prepare data compilations or to customize electronic access services when the compilations and customized access services are not used by WSSDA.

No customized service charge is applicable unless WSSDA notifies beforehand the requestor of the customized service charge explaining

its reason, a description of the specific expertise needed, and a reasonable estimate of the charge.

~~((These costs and charges are not exclusive and subject to change upon prior notice.))~~ (6) **Costs of mailing.** WSSDA will also charge actual costs of mailing, including the costs of the shipping container.

(7) **Payment of fees.** WSSDA will not release any requested copies of public records unless and until the requestor has paid all copying and other charges as set forth in this section.

(8) **Waiver of fees.** WSSDA may waive any charges for providing public records at the discretion of the public records officer. This determination will be made on a case-by-case basis.

[Statutory Authority: Chapters 28A.345 and 42.56 RCW. WSR 18-09-072, § 430-01-090, filed 4/16/18, effective 5/17/18.]

AMENDATORY SECTION (Amending WSR 18-09-072, filed 4/16/18, effective 5/17/18)

WAC 430-01-110 Closing and compliance of public records requests. (1) **Closing requests.** The request is deemed closed once the requested records or last installment of the request has been provided with the requestor expressly or impliedly acknowledging receipt without further follow-up communication being made. The public records officer or designee will communicate with the requestor indicating that WSSDA has completed a reasonable search for the requested records and made any located nonexempt records available for inspection or disclosure.

~~((Other closing conditions. A request is also deemed closed:~~

~~(1) When the requestor fails to make the required deposit of up to ten percent of the estimated costs of copying including the cost of customized service charge;~~

~~(2) When the requestor fails to timely respond to a notice of availability to inspect the records requested;~~

~~(3) When the requestor failed to inspect, pay, and/or pick up any or all of the requested records within fifteen business days of issuance of such notice of availability;))~~ (2) **Closing withdrawn or abandoned requests.** The public records officer or designee will close a request and indicate to the requestor that WSSDA has closed the request:

(a) When the requestor withdraws the request;

(b) When the requestor fails to clarify a request within 30 days after being asked to clarify the information the requestor is seeking;

(c) When the requestor fails to comply with WSSDA's guidelines for inspecting public records;

(d) When the requestor fails to pay any copying or other charges;

or

(e) When the requestor fails to claim or inspect an installment within 30 days after the public records officer or designee provides notice of the installment's availability.

(3) **Records retention.** Once closed, the records of the public records request is retained and the originals of any records assembled in response to the request refiled. Any duplicate copies of records may be destroyed in accordance with the records retention schedule.

[Statutory Authority: Chapters 28A.345 and 42.56 RCW. WSR 18-09-072, § 430-01-110, filed 4/16/18, effective 5/17/18.]

AMENDATORY SECTION (Amending WSR 18-09-072, filed 4/16/18, effective 5/17/18)

WAC 430-01-120 Review of denials of public records requests.

~~((The requestor may submit a petition for reconsideration either with the records officer or executive director of WSSDA for any denial of a public records request.~~

~~Upon receipt of the petition, the public records officer or executive director of WSSDA will review the petition the approval or disapproval of which constitute the final action of WSSDA.))~~ **(1) Petition for internal administrative review of denial of access.** Any person who objects to the initial denial or partial denial of a records request may submit a petition in writing, including email, to the public records officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) Consideration of petition for review. The public records officer must promptly provide the petition and any other relevant information to the executive director of WSSDA or their designee. The executive director or designee must consider the petition and either affirm or reverse the denial within two business days following WSSDA's receipt of the petition, or within such other time as WSSDA and the requestor mutually agree to.

(3) Review by attorney general's office. Pursuant to RCW 42.56.530, if WSSDA denies a requestor access to public records because WSSDA claims the records is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter under WAC 44-06-160.

(4) Judicial review. Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 regardless of any internal administrative appeal.

[Statutory Authority: Chapters 28A.345 and 42.56 RCW. WSR 18-09-072, § 430-01-120, filed 4/16/18, effective 5/17/18.]

NEW SECTION

WAC 430-01-130 Protection of public records. In order to adequately protect WSSDA's public records, requestors must comply with the following requirements while inspecting public records:

(1) Requestors may not remove any public record from WSSDA's premises.

(2) Requestors must have a designated WSSDA employee present while inspecting a public record.

(3) Requestors may not mark or deface a public record in any manner during inspection.

(4) Requestors may not dismantle public records that are maintained in a file or jacket, or in chronological or other filing order,

or those records that, if lost or destroyed, would constitute excessive interference with WSSDA's essential functions.

(5) Access to agency file cabinets, shelves, vaults, or other storage areas is restricted to agency personnel, unless other arrangements are made with the public records officer or designee.

[]

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 430-01-060 Requests for public records.
- WAC 430-01-100 General rules for charging.

WSR 23-11-123

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed May 22, 2023, 5:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-05-080.

Title of Rule and Other Identifying Information: WAC 182-540-030
Kidney disease program (KDP)—Resource eligibility.

Hearing Location(s): On June 27, 2023, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_Y517j7-oTzq4pOEKrMh1bg. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: June 28, 2023.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by June 27, 2023, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.Larson@hca.wa.gov, by June 9, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending this rule to remove the website link referencing where the qualified medicare beneficiary (QMB) resource standards for an individual and a couple are listed. Under recent legislation, ESSB 5693, section 205(26), chapter 297, Laws of 2022, countable resources are no longer required for other eligibility programs. As a result, HCA removed the QMB resource standards chart from its website. There is still a resource standard for the kidney disease program (KDP); since QMB no longer has a resource standard as of January 1, 2023, HCA will amend the rule to include that the KDP resource standard is based on the federal low-income subsidy (LIS) program with a hyperlink to HCA's program standard for income and resources website.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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: None.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Stefanie Slakey, P.O. Box 55644, Olympia, WA 98504-5644, 360-725-1243.

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 HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

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 rule is being revised to remove language about the QMB resource standard and add/clarify that KDP still has a resource standard which is based on the federal LIS program. The proposed rule pertains to clients and therefore does not impose any costs on businesses.

May 22, 2023
Wendy Barcus
Rules Coordinator

OTS-4458.2

AMENDATORY SECTION (Amending WSR 16-01-033, filed 12/8/15, effective 1/8/16)

WAC 182-540-030 Kidney disease program (KDP)—Resource eligibility. (1) The person's household must have countable resources at or below the limits established (~~for the qualified medicare beneficiary (QMB)~~) in the federal low-income subsidy (LIS) program for the person to be eligible for the kidney disease program. (~~QMB resource standards for an individual and a couple are listed at: <http://www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx>)~~) LIS resource standards are listed at <https://www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources>.

(2) See WAC 182-540-021 to determine who must be included in the household when making a determination of whose resources count.

(3) The following resources are not counted:

(a) A home, defined as real property owned by a client as their principal place of residence together with surrounding and contiguous property;

(b) Household furnishings;

(c) One burial plot per household member or irrevocable burial plans with a mortuary;

(d) Up to (~~one thousand five hundred dollars~~) \$1,500 for a person or (~~three thousand dollars~~) \$3,000 for a couple set aside in a revocable burial account;

(e) Any resource which is specifically excluded by federal law.

(4) The agency follows rules for SSI-related medicaid determinations described in WAC 182-512-0200 through 182-512-0550 when determining whether any other resources are countable with the exception of subsection (5) of this section.

(5) The agency follows rules in chapter 182-516 WAC when a person owns a trust, an annuity, or a life estate.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 16-01-033, § 182-540-030, filed 12/8/15, effective 1/8/16. Statutory Authority: RCW 41.05.021. WSR 13-23-065, § 182-540-030, filed 11/18/13, effective 1/1/14.]

WSR 23-11-134

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed May 23, 2023, 12:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-05-066.

Title of Rule and Other Identifying Information: WAC 182-552-0005 Respiratory care—Definitions, 182-552-0200 Respiratory care—Provider requirements, and 182-552-0800 Respiratory care—Covered—Oxygen and oxygen equipment.

Hearing Location(s): On June 27, 2023, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_Y517j7-oTzq4pOEKMrMh1bg. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: June 28, 2023.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by June 27, 2023, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.larson@hca.wa.gov, by June 16, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is:

- Removing clinical criteria for coverage of oxygen and oxygen equipment for Groups I and II oxygen clients. The outdated clinical criteria will be replaced with medicaid's current clinical criteria from the Centers for Medicare and Medicaid Services;
- Adding a definition and clinical criteria for Group III oxygen clients;
- Clarifying when and how the agency makes prior authorization determinations;
- Clarifying when 36-month equipment rentals restart; and
- Clarifying how the agency's maintenance fee payments apply to equipment.

Reasons Supporting Proposal: The clinical criteria in the current rules are more restrictive than medicare's current clinical criteria, which causes providers to request prior authorization more frequently than necessary.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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: None.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Erin Mayo, P.O. Box 45506, Olympia, WA 98504-5506, 360-725-1729.

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 HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

Scope of exemption for rule proposal:

Is not exempt.

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 any costs on businesses.

May 23, 2023
Wendy Barcus
Rules Coordinator

OTS-4476.2

AMENDATORY SECTION (Amending WSR 12-14-022, filed 6/25/12, effective 8/1/12)

WAC 182-552-0005 Respiratory care—Definitions. The following definitions and those in chapter 182-500 WAC apply to this chapter.

"Adult family home" - A residential home licensed to care for up to six residents that provides rooms, meals, laundry, supervision, assistance with activities of daily living, and personal care. In addition to these services, some homes provide nursing or other special care and services.

"Apnea" - The cessation of airflow for at least ~~((ten))~~ 10 seconds.

"Apnea-hypopnea index (AHI)" - The average number of episodes of apnea and hypopnea per hour of sleep without the use of a positive airway pressure device. For purposes of this chapter, respiratory effort related arousals (RERAs) are not included in the calculation.

"Arterial PaO₂" - Measurement of partial pressure of arterial oxygen.

"Authorized prescriber" - A health care practitioner authorized by law or rule in the state of Washington to prescribe oxygen and respiratory care equipment, supplies, and services.

"Base year" - As used in this chapter, means the year in which the respiratory care ~~((medicaid provider guide's))~~ current fee schedule is adopted.

"Bi-level respiratory assist device with backup rate" - A device that allows independent setting of inspiratory and expiratory pressures to deliver positive airway pressure (within a single respiratory cycle) by way of tubing and a noninvasive interface (such as a nasal or oral facial mask) to assist spontaneous respiratory efforts and supplement the volume of inspired air into the lungs. In addition, these devices have a timed backup feature to deliver this air pressure whenever sufficient spontaneous inspiratory efforts fail to occur.

"Bi-level respiratory assist device without backup rate" - A device that allows independent setting of inspiratory and expiratory pressures to deliver positive airway pressure (within a single respiratory cycle) by way of tubing and a noninvasive interface (such as a

nasal, oral, or facial mask) to assist spontaneous respiratory efforts and supplement the volume of inspired air into the lungs.

"Blood gas study" - For the purposes of this chapter, is either an oximetry test or an arterial blood gas test.

"Boarding home" - Adult residential care (ARC) facility, enhanced adult residential care (EARC) facility, or assisted living (AL) facility.

"Central sleep apnea (CSA)" - Is defined as:

- (1) An apnea-hypopnea index (AHI) greater than or equal to five; and
- (2) Central apneas/hypopneas greater than ((fifty)) 50 percent of the total apneas/hypopneas; and
- (3) Central apneas or hypopneas greater than or equal to five times per hour; and
- (4) Symptoms of either excessive sleepiness or disrupted sleep.

"Chronic obstructive pulmonary disease (COPD)" - Any disorder that persistently obstructs bronchial airflow. COPD mainly involves two related diseases: Chronic bronchitis and emphysema. Both cause chronic obstruction of air flowing through the airways and in and out of the lungs. The obstruction is generally permanent and worsens over time.

"Complex sleep apnea (CompSA)" - A form of central apnea specifically identified by the persistence or emergence of central apneas or hypopneas, upon exposure to CPAP or a bi-level respiratory assist device without a back-up rate feature, when obstructive events have disappeared. These clients have predominantly obstructive or mixed apneas during the diagnostic sleep study occurring at greater than or equal to five times per hour. With use of a CPAP or bi-level respiratory assist device without a back-up rate feature, the client shows a pattern of apneas and hypopneas that meets the definition of central sleep apnea (CSA).

"Continuous positive airway pressure (CPAP)" - A single-level device which delivers a constant level of positive air pressure (within a single respiratory cycle) by way of tubing and an interface to assist spontaneous respiratory efforts and supplement the volume of inspired air into the lungs.

"Dependent edema" - Fluid in the tissues, usually ankles, wrists, and the arms.

"Emergency oxygen" - The immediate, short-term administration of oxygen to a client who normally does not receive oxygen((,)) but is experiencing an acute episode which requires oxygen.

"Erythrocythemia" - More hematocrit (red blood cells) than normal.

"FIO₂" - The fractional concentration of oxygen delivered to the client for inspiration. For the purpose of this policy, the client's prescribed FIO₂ refers to the oxygen concentration the client normally breathes when not undergoing testing to qualify for coverage of a respiratory assist device (RAD). That is, if the client does not normally use supplemental oxygen, their prescribed FIO₂ is that found in room air.

"FEV₁" - The forced expired volume in one second.

"FVC" - The forced vital capacity.

"Group I" - Clinical criteria, set by medicare, to identify ((chronic oxygen)) clients ((with obvious respiratory challenges as evidenced by low oxygen saturation. The clinical criteria for Group I include any of the following:

~~• An arterial PaO₂ at or below fifty-five mm Hg or an arterial oxygen saturation (SaO₂) at or below eighty-eight percent taken at rest (awake); or~~

~~• An arterial PaO₂ at or below fifty-five mm Hg, or an arterial oxygen saturation at or below eighty-eight percent for at least five minutes taken during sleep for a client who demonstrates an arterial PaO₂ at or above fifty-six mm Hg or an arterial oxygen saturation at or above eighty-nine percent while awake; or~~

~~• A decrease in arterial PaO₂ more than ten mm Hg, or a decrease in arterial oxygen saturation more than five percent from baseline saturation for at least five minutes taken during sleep associated with symptoms (e.g., impairment of cognitive processes and nocturnal restlessness or insomnia) or signs (e.g., cor pulmonale, "P" pulmonale on EKG, documented pulmonary hypertension and erythrocytosis) reasonably attributable to hypoxemia; or~~

~~• An arterial PaO₂ at or below fifty-five mm Hg or an arterial oxygen saturation at or below eighty-eight percent, taken during exercise for a client who demonstrates an arterial PaO₂ at or above fifty-six mm Hg or an arterial oxygen saturation at or above eighty-nine percent during the day while at rest. In this case, oxygen is provided during exercise if it is documented that the use of oxygen improves the hypoxemia that was demonstrated during exercise when the client was breathing room air)) requiring oxygen. The agency follows the Group I clinical criteria listed in the Centers for Medicare and Medicaid Services National Coverage Determination for Home Use of Oxygen, which is found in the Medicare Coverage Database.~~

"Group II" - Clinical criteria, set by medicare, to identify ((borderline oxygen clients. Their blood saturation levels seem to be within the normal range, but there are additional extenuating issues that suggest a need for oxygen. The clinical criteria for Group II include any of the following:

~~• The presence of an arterial PaO₂ of fifty-six to fifty-nine mm Hg or an arterial blood oxygen saturation of eighty-nine percent at rest (awake), during sleep for at least five minutes, or during exercise (as described under Group I criteria); and~~

~~• Any of the following:~~

~~- Dependent edema suggesting congestive heart failure; or~~

~~- Pulmonary hypertension or cor pulmonale, determined by measurement of pulmonary artery pressure, gated blood pool scan, echocardiogram, or "P" pulmonale on EKG (P wave greater than three mm in standard leads II, III, or AVF); or~~

~~- Erythrocythemia with a hematocrit greater than fifty-six percent.) clients who require oxygen. Their blood oxygen levels may be within normal range, however, they have complicating conditions that require supplemental oxygen use. The agency follows the Group II clinical criteria listed in the Centers for Medicare and Medicaid Services National Coverage Determination for Home Use of Oxygen, which is found in the Medicare Coverage Database.~~

"Group III" - Clients for whom intermittent home oxygen therapy is considered medically necessary to treat cluster headaches. These clients also have a documented clinical history that includes all of the following:

• At least five attacks of severe, strictly unilateral pain that is orbital, supraorbital, temporal, or in any combination of these

sites, lasting 15 to 180 minutes, and occurring at least once every other day up to eight times a day;

• At least one of the following symptoms or signs, ipsilateral to the headache:

- Conjunctival injection and/or lacrimation;

- Nasal congestion and/or rhinorrhea;

- Eyelid edema;

- Forehead and facial sweating; or

- Miosis and/or ptosis;

• Occurring with a frequency at least once every other day up to eight times per day;

• Not better accounted for by another ICHD-3 diagnosis;

• Prevents ability to function in all activities; and

• Other treatment has failed.

"Home and community residential settings" - In-home, adult family home, or boarding home.

"Hypopnea" - A temporary reduction of airflow lasting at least ten seconds and accompanied with a ((~~thirty~~)) 30 percent reduction in thoracoabdominal movement or airflow as compared to baseline, and with at least a four percent decrease in oxygen saturation. The AHI is the average number of episodes of apnea and hypopnea per hour of sleep without the use of a positive airway pressure device.

"Hypoxemia" - Less than normal level of oxygen in the blood.

"Maximum allowable" - The maximum dollar amount the medicaid agency reimburses a provider for a specific service, supply, or piece of equipment.

"Month" - For the purposes of this chapter, means ((~~thirty~~)) 30 days.

"Nebulizer" - A medical device which administers drugs for inhalation therapy for clients with respiratory conditions such as asthma or emphysema.

"Obstructive sleep apnea (OSA)" - This syndrome refers to the interruption of breathing during sleep, due to obstructive tissue in the upper airway that collapses into the air passage with respiration.

"Oxygen" - Medical grade liquid or gaseous oxygen.

"Oxygen concentrator" - A medical device that removes nitrogen from room air and retains almost pure oxygen ((~~eighty-seven~~)) 87 percent to ((~~ninety-five~~)) 95 percent) for delivery to a client.

"Oxygen system" - All equipment necessary to provide oxygen to a client.

"Portable oxygen system" - A system which allows the client to be independent of the stationary system for several hours, thereby providing mobility for the client.

"Pulmonary hypertension" - High blood pressure in the vessels that feed through the lungs, causing the right side of the heart to work harder to oxygenate blood.

"Respiratory care" - The care of a client with respiratory needs and all related equipment, oxygen, services, and supplies.

~~(**"Respiratory care medicaid provider guide"** - A manual containing procedures for billing, which is available online at <http://maa.dshs.wa.gov/download>.)~~

"Respiratory care practitioner" - A person licensed by the department of health according to chapter 18.89 RCW and chapter 246-928 WAC as a respiratory therapist (RT) or respiratory care practitioner (RCP).

"Respiratory effort related arousals (RERA)" - These occur when there is a sequence of breaths that lasts at least ((~~ten~~)) 10 seconds,

characterized by increasing respiratory effort or flattening of the nasal pressure waveform, which lead to an arousal from sleep. However, they do not meet the criteria of an apnea or hypopnea.

"Restrictive thoracic disorders" - This refers to a variety of neuromuscular and anatomical anomalies of the chest/rib cage area that may result in hypoventilation, particularly while the client sleeps at night.

"Reasonable useful lifetime (RUL)" - For ~~((thirty-six))~~ 36 month capped oxygen equipment, the RUL is five years. The RUL is not based on the chronological age of the equipment. It starts on the initial date of the rental and runs for five years from that date.

"Stationary oxygen system" - Equipment designed to be used in one location, generally for the purpose of continuous use or frequent intermittent use.

[Statutory Authority: RCW 41.05.021. WSR 12-14-022, § 182-552-0005, filed 6/25/12, effective 8/1/12.]

AMENDATORY SECTION (Amending WSR 12-14-022, filed 6/25/12, effective 8/1/12)

WAC 182-552-0200 Respiratory care—Provider requirements. (1)

To receive payment for respiratory care equipment and supplies under this chapter, a provider must:

- (a) Meet the general provider requirements in chapter 182-502 WAC;
- (b) Obtain prior authorization from the medicaid agency, if required, before delivery to the client and before billing the agency;
- (c) Keep initial and subsequent prescriptions according to the requirements within this chapter;
- (d) Provide instructions to the client and/or caregiver on the safe and proper use of equipment provided;
- (e) Have a licensed health care professional whose scope of practice allows for the provision of respiratory care. The licensed health care professional must also:
 - (i) Check equipment and ensure equipment settings continue to meet the client's needs; and
 - (ii) Communicate with the client's authorized prescriber if there are any concerns or recommendations.
- (f) Verify that the client has a valid prescription.
 - (i) To be valid, a prescription must:
 - (A) Be written, and signed and dated by a physician, advanced registered nurse practitioner (ARNP), or physician's assistant certified (PAC); and
 - (B) State the specific items or services requested, including the quantity, frequency, and duration/length of need. Prescriptions that only state "as needed" or "PRN" are not sufficient; and
 - (C) For an initial prescription, not be older than three months from the date the prescriber signed the prescription; or
 - (D) For subsequent prescriptions, not be older than one year from the date the ~~((prescriber signs the))~~ initial prescription ~~((see WAC 182-552-0800 for exception to this time frame for oxygen)).~~
 - ~~(ii) If oxygen is prescribed:~~
 - ~~(A) The following additional information is required:~~

- ~~(I) Flow rate of oxygen;~~
 - ~~(II) Estimated length of need;~~
 - ~~(III) Frequency and duration of oxygen use; and~~
 - ~~(IV) The client's oxygen saturation level.~~
- ~~(B) For clients who meet:~~

~~(I) Group I clinical criteria, recertification is required one year after initial certification.~~

~~(II) Group II clinical criteria, recertification is required three months after the initial certification and annually thereafter.~~

~~(C) Providers may use the client's oxygen saturation or laboratory values to meet recertification requirements.)) was signed. (See WAC 182-552-0800 for exceptions.)~~

(2) The medicaid agency does not pay for respiratory care equipment and/or supplies furnished to the agency's clients when:

(a) The authorized prescriber who provides medical justification to the agency for the item provided to the client is an employee of, has a contract with, or has any financial relationship with the provider of the item; or

(b) The authorized prescriber who performs a client evaluation is an employee of, has a contract with, or has any financial relationship with a provider of respiratory care equipment, supplies, and related items.

[Statutory Authority: RCW 41.05.021. WSR 12-14-022, § 182-552-0200, filed 6/25/12, effective 8/1/12.]

AMENDATORY SECTION (Amending WSR 12-14-022, filed 6/25/12, effective 8/1/12)

WAC 182-552-0800 Respiratory care—Covered—Oxygen and oxygen equipment. ((The medicaid agency follows medicare clinical guidelines for respiratory care, unless otherwise described in this chapter.))

(1) The medicaid agency covers ((, without prior authorization,)) oxygen and oxygen equipment as provided in this chapter.

(2) The agency pays for the rental of a stationary oxygen system and/or a portable oxygen system, as follows:

(a) For clients, ((twenty years of)) age 20 and younger, when prescribed by the client's treating practitioner; or

(b) For clients, ((twenty-one years of)) age 21 and older, when prescribed by a practitioner and the client meets ((medicare)):

(i) Medicare's Group I or Group II clinical criteria ((as defined in WAC 182-552-005.)); or

(ii) The Group III clinical criteria described in WAC 182-552-0005.

(c) If a client age 21 and older does not meet the clinical criteria in this subsection, prior authorization is required ((for clients, twenty-one years of age and older, who do not meet medicare clinical criteria.

(2)). The agency reviews requests for prior authorization under WAC 182-501-0165.

(3) Oxygen and oxygen equipment - Capped rental:

(a) Capped rental applies to in-home oxygen use ((by medical assistance clients)) only;

(b) The medicaid agency's payment for stationary oxygen system equipment and/or portable oxygen system equipment is limited to ~~((thirty-six))~~ 36-monthly rental payments. During the rental period, the medicaid agency's payment includes any supplies, accessories, oxygen contents, delivery and associated costs, instructions, maintenance, servicing, and repairs;

(c) Oxygen systems are deemed capped rental (provider continues to own the equipment) after ~~((thirty-six))~~ 36 months.

(i) The supplier who provides the oxygen equipment for the first month must continue to provide any necessary oxygen equipment and related items and services through the ~~((thirty-six))~~ 36-month rental period unless one of the exceptions in (e) of this subsection is met.

(ii) The same provider is required to continue to provide the client with properly functioning oxygen equipment (including maintenance and repair), and associated supplies for the remaining ~~((twenty-four))~~ 24 months of the equipment's reasonable useful lifetime (RUL).

(iii) The same provider may bill the medicaid agency for oxygen contents, disposable supplies, and maintenance fees only. Maintenance fee payment is limited to one every six months.

(d) At any time after the end of the five-year RUL for the oxygen equipment, the provider may replace the equipment, thus beginning a new ~~((thirty-six))~~ 36-month rental period.

(e) A ~~((thirty-six))~~ 36-month rental period may restart before the end of the five-year RUL in the following situations only. Providers must follow the medicaid agency's expedited prior authorization process, see WAC 182-552-1300, Respiratory care—Authorization.

(i) The initial provider is no longer providing oxygen equipment or services;

(ii) The initial provider's core provider agreement with the medicaid agency is terminated or expires;

(iii) The client moves to an area which is not part of the provider's service area (this applies to medicaid only clients);

(iv) The client moves into a permanent residential setting; or

(v) The pediatric client is transferred to an adult provider.

(f) The medicaid agency may ~~((authorize a))~~ restart ~~((of))~~ the ~~((thirty-six))~~ 36-month rental period when ~~((extenuating circumstances exist that result in a loss or destruction of oxygen equipment that occurred while the client was exercising reasonable care under the circumstances (e.g., fire, flood, etc.) (see))~~ equipment is replaced under WAC 182-501-0050(7) ~~((+))~~. Providers must obtain prior authorization from the medicaid agency.

~~((+3))~~ (4) Stationary oxygen systems/contents.

(a) The medicaid agency pays a maximum of one rental payment for stationary oxygen systems including contents, per client, every ~~((thirty))~~ 30 days. The medicaid agency considers a stationary oxygen system as one of the following:

(i) Compressed gaseous oxygen;

(ii) Stationary liquid oxygen; or

(iii) A concentrator.

(b) Contents only: The medicaid agency pays a maximum of one payment for stationary oxygen contents, per client, every ~~((thirty))~~ 30 days, when the client owns the stationary oxygen system or the capped monthly rental period is met.

(c) Maintenance: The medicaid agency pays for one maintenance fee of 50 percent of the monthly rental rate for a stationary oxygen concentrator and oxygen transfilling equipment every six months only when

the capped rental period is met or the client owns the stationary oxygen concentrator (~~(. The maintenance fee is fifty percent of the monthly rental rate)~~).

~~((4))~~ (5) Portable oxygen systems/oxygen contents:

(a) The medicaid agency pays a maximum of one rental payment for portable oxygen systems including oxygen contents, per client, every ~~((thirty))~~ 30 days. The medicaid agency considers a portable oxygen system to be either gas or liquid.

(b) Contents only: The medicaid agency pays a maximum of one payment for portable oxygen contents, per client, every ~~((thirty))~~ 30 days, when the client owns the portable oxygen system or when the capped monthly rental period is met.

(c) Maintenance: The medicaid agency pays for one maintenance fee of 50 percent of the monthly rental rate for a portable oxygen concentrator and oxygen transfilling equipment every six months only when the capped rental period is met or the client owns the portable oxygen concentrator (~~(. The maintenance fee is fifty percent of the monthly rental rate)~~).

~~((5))~~ (6) The medicaid agency does not pay for oxygen therapy and related services, equipment or supplies for clients ~~((twenty-one))~~ 21 years of age and older, with, but not limited to, the following conditions:

(a) Angina pectoris in the absence of hypoxemia;

(b) Dyspnea without cor pulmonale or evidence of hypoxemia; and

(c) Severe peripheral vascular disease resulting in clinically evident desaturation in one or more extremities but in the absence of systemic hypoxemia.

~~((6))~~ (7) The medicaid agency does not pay separately for humidifiers with rented oxygen equipment. All accessories, such as humidifiers necessary for the effective use of oxygen equipment are included in the monthly rental payment.

~~((7))~~ (8) The medicaid agency does not pay separately for spare tanks of oxygen and related supplies as backup or for travel.

~~((8))~~ (9) The medicaid agency requires a valid prescription for oxygen in accordance with WAC 182-552-200. ~~((In addition,))~~

(a) For both initial and ongoing prescriptions for the use of oxygen, the medicaid agency requires ~~((the following:~~

~~(a) For clients who meet medicare's group I criteria (chronic oxygen clients):~~

~~(i) A prescription for the initial twelve months or the authorized prescriber's specified length of need, whichever is shorter, and a renewed prescription at least every twelve months thereafter; and~~

~~(ii)) documented verification(, at least every twelve months,) that oxygen saturations or lab values substantiate the need for continued oxygen use for each client(. For ongoing coverage, the provider may perform the oxygen saturation measurements)).~~

(b) The medicaid agency does not accept lifetime certificates of medical need (CMNs).

~~((b) For clients who meet medicare's group II criteria (border-line oxygen clients):~~

~~(i) A prescription for the initial three months or the authorized prescriber's specified length of need, whichever is shorter and a renewed prescription is required three months after the initial certification and annually thereafter.~~

~~(ii) Verification that oxygen saturations or lab values substantiate the need for continued oxygen use must be documented in the client's file. For ongoing coverage, the provider may perform the oxygen~~

saturation measurements. The medicaid agency does not accept lifetime CMNs.

~~(9))~~ (10) The medicaid agency requires that documentation of oxygen saturation and lab values taken to substantiate the medical necessity of continued oxygen be kept in the client's record.

~~((10))~~ (11) Oxygen supplies - Replacement. The medicaid agency pays for replacement oxygen supplies after the ~~((thirty-six))~~ 36 month capped rental period or if the client owns the equipment as follows:

(a) Nasal cannula, limited to two per client every ~~((thirty))~~ 30 days;

(b) Tubing (oxygen), limited to one replacement per client every ~~((thirty))~~ 30 days; and

(c) Variable concentration mask, limited to two per client every ~~((thirty))~~ 30 days.

~~((11))~~ (12) See WAC 182-552-1200, Respiratory care—Noncovered services.

[Statutory Authority: RCW 41.05.021. WSR 12-14-022, § 182-552-0800, filed 6/25/12, effective 8/1/12.]

WSR 23-11-146
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed May 24, 2023, 9:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-07-113.

Title of Rule and Other Identifying Information: WAC 308-56A-140, 308-56A-420, and 308-56A-425.

Hearing Location(s): On June 27, 2023, at 1:00 p.m., join Zoom meeting [https://dol-wa.zoom.us/j/81420275485?](https://dol-wa.zoom.us/j/81420275485?pwd=U3czbDR3VHM0T2hqTWdINFVJY0RlUT09) Meeting ID 814 2027 5485, Passcode 229458; One-tap mobile, +12532158782,,81420275485#,,,,*229458# US (Tacoma), +12532050468,,81420275485#,,,,*229458# US; dial by your location +1 253 215 8782 US (Tacoma), +1 253 205 0468 US, +1 346 248 7799 US (Houston), +1 408 638 0968 US (San Jose), +1 669 444 9171 US, +1 669 900 6833 US (San Jose), +1 719 359 4580 US, +1 305 224 1968 US, +1 309 205 3325 US, +1 312 626 6799 US (Chicago), +1 360 209 5623 US, +1 386 347 5053 US, +1 507 473 4847 US, +1 564 217 2000 US, +1 646 876 9923 US (New York), +1 646 931 3860 US, +1 689 278 1000 US, +1 301 715 8592 US (Washington DC), Meeting ID 814 2027 5485, Passcode 229458. Find your local number [https://dol-wa.zoom.us/j/81420275485?](https://dol-wa.zoom.us/j/81420275485?pwd=U3czbDR3VHM0T2hqTWdINFVJY0RlUT09) If you are having difficulty joining the Zoom meeting at the time of the public hearing, please call 360-902-0131. An in-person option is available at Highways-Licenses Building, 1125 Washington Street S.E., Olympia, WA 98504.

Date of Intended Adoption: June 28, 2023.

Submit Written Comments to: Kelsey Stone, 1125 Washington Street S.E., Olympia, WA 98504, email rulescoordinator@dol.wa.gov, by June 27, 2023.

Assistance for Persons with Disabilities: Contact Kelsey Stone, phone 360-902-0131, email rulescoordinator@dol.wa.gov, by June 19, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updates to current rules are required to enact and memorialize the statutory changes resulting from HB [SHB] 1790, passed in 2022.

Reasons Supporting Proposal: These rule updates will align rule with statute and provide greater clarity on the requirements and procedures for issuing temporary license plates.

Statutory Authority for Adoption: RCW 46.01.110.

Statute Being Implemented: RCW 46.16A.300, 46.16A.305.

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 Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Carl Backen, 1125 Washington Street S.E., Olympia, WA 98501, 360-902-3843; Implementation and Enforcement: George Price, 1125 Washington Street S.E., Olympia, WA 98501, 360-902-0120.

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 does not meet the criteria under RCW 34.05.328(5) requiring a cost-benefit analysis.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

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 amendatory rule language generally clarifies the procedures and requirements for the use of a temporary license plate by a licensed vehicle dealer. There are two policy changes included that differ from current practice. First, the amended rule requires all temporary license plates to be printed through the e-permitting system by a licensed vehicle dealer rather than being available for purchase from vehicle licensing offices. All licensed vehicle dealers currently use and have access to the e-permitting system which does not result in a cost increase to small businesses. The second change limits the number of unassigned temporary license plates that a licensed vehicle dealer may hold and leave unassigned for offline use. No additional cost is imposed on licensed vehicle dealers for purchasing additional unassigned temporary license plates.

May 24, 2023
Ellis Starrett
Rules and Policy Manager

OTS-4621.1

AMENDATORY SECTION (Amending WSR 07-22-090, filed 11/6/07, effective 12/7/07)

WAC 308-56A-140 Department temporary ((permit)) license plate.

(1) **What is a department temporary ((permit)) license plate?** A department temporary ((~~permit consists of a system-generated permit and a cardboard temporary "plate"~~)) license plate is a system-generated license plate printed on durable paper material which may be issued in lieu of a registration certificate and license plates when:

(a) The vehicle is not currently licensed in Washington; and
((~~For the purposes of this section, a vehicle may be considered unlicensed if the current license expires within sixty days of application for the department temporary permit, or the vehicle's license plates are missing or unreadable; and~~))

(b) Appropriate vehicle documentation to title and license the vehicle is not immediately available but is likely to be available within ((~~sixty~~)) 60 days; and

(c) The vehicle was purchased from someone other than a licensed Washington dealer or is scheduled for inspection by the Washington state patrol; and

(d) For the purposes of this section, a vehicle may be considered unlicensed if the current license expires within 60 days of application for the department temporary license plate, or the vehicle's license plates are missing or unreadable.

(2) **How long is a department temporary ((permit)) license plate valid?** The department temporary ((~~permit~~)) license plate is valid for no longer than ((~~sixty~~)) 60 days from the date of application.

(3) **Where do I apply for and obtain a department temporary ((permit)) license plate?** You may apply for a department temporary ((permit)) license plate at any Washington vehicle licensing office.

(4) **What fees are due when applying for a department temporary ((permit)) license plate?** All applicable taxes, title, license fees and inspection fees are due when the department temporary ((permit)) license plate is issued. Any fees for permanent license plates are due when the department temporary ((permit)) license plate is cleared.

(5) **How do I display the ((cardboard)) temporary license plate?** You must display the ((cardboard)) temporary license plate ~~((where it is visible from outside of the vehicle or towed vehicle (such as on the inside left side of the rear window), or you may weatherproof the plate and place it in the license plate holder. Carry the cardboard temporary plate in the vehicle or the towing vehicle))~~ the same as described for a permanent license plate in RCW 46.16A.200 (5)(a), in the same location or locations where permanent license plates are displayed for vehicles. The temporary license plate must be secured so as to remain stable and readable during movement or in windy conditions.

(6) **If my vehicle is eligible for monthly gross weight, how many months of gross weight must I purchase with a department temporary ((permit)) license plate?** If your vehicle is eligible for monthly gross weight, you must purchase a minimum of two months' gross weight license to correspond with the duration of the department temporary ((permit)) license plate. You may receive credit as described in WAC 308-96A-220(7) for gross weight license already purchased.

(7) **How do I clear the department temporary ((permit)) license plate and obtain a registration certificate and license plates for my vehicle?** You may obtain a registration certificate and license plates for your vehicle at any vehicle licensing office by submitting:

- (a) An application for certificate of ownership; and
- (b) An odometer disclosure statement, if applicable; and
- (c) License plate fees; and
- (d) Other applicable documentation, fees, and taxes.

(8) **What fees are due when clearing a department temporary ((permit)) license plate?** In addition to other fees as prescribed by law, the title application fee and license plate fees are due when the department temporary ((permit)) license plate is cleared.

(9) **How do I obtain a replacement department temporary ((permit)) license plate?** You may obtain a ~~((photocopy of the))~~ replacement department temporary ((permit)) license plate by contacting any vehicle licensing office ~~((who will acquire the photocopy from the department))~~. You must provide the vehicle identification number or the department temporary ((permit)) license plate number. The replacement department temporary ((permit)) license plate will retain the same expiration date as the original.

(10) ~~((How do I obtain a replacement cardboard temporary "plate"?~~ You may obtain a replacement cardboard temporary "plate" at any Washington vehicle license office where it was purchased. You must provide the vehicle identification number or the department temporary permit number.

~~(11))~~ **May ((a)) another department temporary ((permit)) license plate be ((extended)) issued after the expiration of the first? Yes, ((a)) when necessary, another department temporary ((permit)) license plate may be ((extended)) issued on a case-by-case basis upon departmental approval.**

An extension of a department temporary ((permit)) license plate cannot be granted for vehicles described in subsection (6) of this

section when no more than two months' gross weight was purchased. Additional gross weight cannot be issued until the department temporary (~~permit~~) license plate is cleared.

[Statutory Authority: RCW 46.01.110. WSR 07-22-090, § 308-56A-140, filed 11/6/07, effective 12/7/07; WSR 04-08-080, § 308-56A-140, filed 4/6/04, effective 5/7/04. Statutory Authority: RCW 46.01.110, 46.12.040, 46.16.216. WSR 03-12-006, § 308-56A-140, filed 5/22/03, effective 6/22/03; WSR 99-12-031, § 308-56A-140, filed 5/25/99, effective 6/25/99. Statutory Authority: RCW 46.01.110. WSR 93-14-084, § 308-56A-140, filed 6/30/93, effective 7/31/93. Statutory Authority: RCW 46.01.110, 46.12.151 and 46.12.050. WSR 92-03-077, § 308-56A-140, filed 1/14/92, effective 2/14/92; Order MV 208, § 308-56A-140, filed 7/31/74.]

AMENDATORY SECTION (Amending WSR 11-18-047, filed 8/31/11, effective 10/1/11)

WAC 308-56A-420 Delivery of vehicle on dealer temporary (~~permit~~) license plate. (~~(+)~~) **How does a Washington licensed vehicle dealer deliver a vehicle using a dealer temporary (~~permit~~) license plate?**

(~~(a)~~) (1) Washington licensed vehicle dealers may deliver a vehicle that is not currently registered, or that does not have valid Washington license plates, tabs, decals, or gross weight, or the current tabs will expire within (~~forty-five~~) 45 days of the date of delivery, by using (~~an e-permit or a hard copy (paper/card stock) dealer temporary permit~~) a dealer temporary license plate.

(~~(b)~~) (2) The application for title part of the dealer temporary (~~permit~~) license plate form must be properly and completely filled out by the selling or leasing dealer, including the dealer's report of sale and the date on which the vehicle is physically delivered to the purchaser or lessee. If license based on gross weight is required, the amount of gross weight purchased must be clearly shown. The application must be signed by the registered owner(s) or lessee.

(~~(c)~~) (3) The Washington licensed vehicle dealer must collect all fees required for titling and registration of a vehicle.

(~~(d) For e-permits, the permit printed by the e-permitting system must display the expiration date and e-permit number.~~) (4) All temporary license plates must be printed through the e-permitting system. The date of expiration is (~~forty-five~~) 45 calendar days from the date the vehicle is physically delivered to the purchaser or lessee.

(~~(e) For hard copy (paper/card stock) permits, the Washington licensed vehicle dealer must detach the card stock portion of the dealer temporary permit and record the date of expiration in dark, bold letters and numbers on the permit side of that copy. The date of expiration is forty-five calendar days from the date the vehicle is physically delivered to the purchaser or lessee.~~)

(f) (5) A dealer may preprint and hold up to 10 temporary license plates purchased through the e-permitting system for off-line use, with the expiration date to be manually recorded in dark, bold letters and numbers upon use. The date of expiration for preprinted temporary license plates is 45 calendar days from the date the vehicle is physically delivered to the purchaser or lessee. A dealer may not

have more than 10 preprinted temporary license plates at one time unless an exception is approved by the department. The e-permitting system will not allow a dealer to preprint additional temporary license plates, beyond the 10 allowed, until the previously issued temporary license plates are properly filed in the e-permitting system and all required information is recorded with the department.

(6) The application copies must be used by the Washington licensed dealer to apply for title and to complete licensing of the vehicle. Except as provided in RCW 46.70.180(8), when a second temporary ((permit)) license plate is authorized; the selling dealer must submit the application and all titling and licensing fees to the department of licensing or an authorized licensing agent within ((forty-five)) 45 calendar days from the date the vehicle is physically delivered to the purchaser or lessee. The date that the selling or leasing dealer physically delivers the vehicle to the purchaser or lessee will start the ((forty-five)) 45 day interval of an application for a certificate of title in the purchaser's or lessee's name. Additionally, the director may excuse late applications only in situations where applications are delayed, for reasons beyond the control of the dealer.

((g)) (7) The ((e-permit or hard copy (paper/card stock) dealer temporary permit)), temporary vehicle registration((r)) and a purchase order identifying the vehicle and the date that the vehicle was physically delivered to the purchaser or lessee must be carried in the vehicle or the towing vehicle at all times the vehicle is operated on the dealer temporary permit.

((h)) (8) The ((e-permit or hard copy (paper/card stock))) dealer temporary ((permit)) license plate must be displayed ((on the inside of the rear window in the lower left corner, or enclosed in a moisture proof protective case securely attached in the rear license plate holder, with the expiration date visible to one standing behind the vehicle)) in a manner consistent with the requirements in RCW 46.16A.200 (5) (a) for a permanent license plate, in the same location or locations where permanent license plates are displayed for vehicles. The dealer temporary license plate must be secured so as to remain stable and readable during movement or in windy conditions.

((i)) (9) The ((e-permit or hard copy (paper/card stock))) dealer temporary ((permit)) license plate is valid for not more than ((forty-five)) 45 calendar days starting with the date that the vehicle is physically delivered to the purchaser or lessee.

((j)) (10) The ((e-permit or hard copy (paper/card stock))) dealer temporary ((permit)) license plate will not be issued:

((i)) (a) For a dealer inventoried vehicle that has not been sold or a dealer or dealer-employee operated vehicle;

((ii)) (b) As a demonstration permit;

((iii)) (c) For a vehicle processed as a courtesy delivery;

((iv)) (d) For out-of-state residents unless Washington registration is intentionally being obtained.

((k)) (11) Fees ((paid for e-permit or hard copy (paper/card stock))) for dealer temporary ((permit)) license plate application forms are not refundable unless the dealer ceases doing business as a vehicle dealer.

((l)) (12) Washington licensed dealers must maintain a record of each dealer temporary ((permit)) license plate acquisition and distribution including the following:

((i)) (a) Date and location of purchase of each ((permit)) temporary license plate and the ((permit)) plate number;

- ~~((i))~~ (b) Identification of vehicles delivered on temporary ~~((permits))~~ license plates;
- ~~((iii))~~ (c) Dates of vehicle sales, leases, and deliveries ~~((2))~~;
- (d) Customer's complete name.

[Statutory Authority: RCW 46.01.110. WSR 11-18-047, § 308-56A-420, filed 8/31/11, effective 10/1/11; WSR 09-16-017, § 308-56A-420, filed 7/24/09, effective 8/24/09. Statutory Authority: RCW 46.70.160. WSR 05-14-092, § 308-56A-420, filed 6/30/05, effective 7/31/05. Statutory Authority: RCW 46.70.160 and 46.70.110. WSR 99-02-049, § 308-56A-420, filed 1/5/99, effective 2/5/99. Statutory Authority: RCW 46.70.160 and 46.70.124. WSR 94-21-055, § 308-56A-420, filed 10/13/94, effective 11/13/94. Statutory Authority: RCW 46.01.110. WSR 93-14-084, § 308-56A-420, filed 6/30/93, effective 7/31/93. Statutory Authority: RCW 46.70.160. WSR 90-10-013, § 308-56A-420, filed 4/20/90, effective 5/21/90; Order MV 208, § 308-56A-420, filed 7/31/74.]

AMENDATORY SECTION (Amending WSR 11-18-047, filed 8/31/11, effective 10/1/11)

WAC 308-56A-425 Obtaining dealer temporary ~~((permits))~~ license plates. (1) **What is a dealer temporary ~~((permit))~~ license plate?** For the purposes of vehicles, a dealer temporary ~~((permit))~~ license plate is a combination title application and temporary registration used by Washington licensed vehicle dealers when delivering a vehicle that is not currently registered, or does not have valid Washington license plates, tabs, decals, or gross weight, or the current tabs will expire within ~~((forty-five))~~ 45 days of the date of delivery.

(2) **How does a Washington licensed vehicle dealer obtain dealer temporary ~~((permits))~~ license plates?** Washington licensed vehicle dealers may purchase dealer temporary ~~((permits))~~ license plates at any Washington vehicle licensing office for the fee required in RCW 46.17.400.

(3) **What will Washington licensed vehicle dealers receive when purchasing dealer temporary ~~((permits))~~ license plates?** Washington licensed vehicle dealers will receive ~~((either:~~

- ~~(a) Hard copy (paper/card stock) dealer temporary permits; or~~
- ~~(b) Electronic dealer temporary permits (e-permits).~~

~~(4) What are e-permits, and when are Washington licensed vehicle dealers required to use them?~~ E-permits are dealer temporary permits issued through an online e-permitting system required by RCW 46.16A.300. All Washington licensed vehicle dealers must use the e-permitting system by July 1, 2011.

~~(5) Will Washington licensed vehicle dealers be able to use and issue hard copy (paper/card stock) dealer temporary permits after July 1, 2011?~~ Washington licensed vehicle dealers will be able to use and issue hard copy (paper/card stock) dealer temporary permits after July 1, 2011, only if signed up for the e-permitting system.

~~(6) What are Washington licensed vehicle dealers required to do beginning July 1, 2011, when using and issuing hard copy (paper/card stock) dealer temporary permits?~~ In addition to the requirements in WAC 308-56A-420, Washington licensed vehicle dealers who issue hard copy (paper/card stock) dealer temporary permits must enter the hard copy (paper/card stock) dealer temporary permit information into the

~~department's e-permitting system within twenty-four hours of issuance or hardware/software resolution or within twenty-four hours of returning to the office if the hard copy was issued off-site) access to printable temporary license plates through the department's e-permitting system.~~

(4) **Will Washington licensed dealers be able to obtain unassigned temporary license plates for off-line use?** A dealer may preprint and hold up to 10 unassigned temporary license plates purchased through the e-permitting system for off-line use, with the expiration date to be manually recorded in dark, bold letters and numbers upon use. A dealer may not have more than 10 unassigned temporary license plates at one time, unless an exception is approved by the department. The e-permitting system will not allow a dealer to preprint additional unassigned temporary license plates, beyond the 10 allowed, until the previously issued unassigned temporary license plates are properly filed in the e-permitting system and all required information is recorded with the department.

(5) **What are the requirements for using unassigned temporary license plates?** Washington licensed dealers who issue unassigned temporary license plates must enter the dealer temporary license plate information into the department's e-permitting system within 24 hours of issuance or hardware/software resolution, or within 24 hours of returning to the office if the hard copy was issued off-site. Failure to properly record the required information into the department's e-permitting system may result in a Washington licensed dealer being unable to preprint additional unassigned temporary license plates until the previously issued unassigned temporary license plates are accounted for.

(6) **Will Washington licensed vehicle dealers be able to use previously purchased hard copy (paper/card stock) dealer temporary permits after July 1, 2023?** Washington licensed dealers will no longer be able to purchase hard copy dealer temporary permits after July 1, 2023, but may issue any remaining stocks until July 15, 2023. After July 15, 2023, Washington licensed dealers must fully transition to using dealer temporary license plates printed through the department's e-permitting system. Dealer temporary permits issued by dealers will no longer be valid for unregistered vehicle use on public highways after September 1, 2023.

[Statutory Authority: RCW 46.01.110. WSR 11-18-047, § 308-56A-425, filed 8/31/11, effective 10/1/11.]

WSR 23-11-151
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed May 24, 2023, 9:41 a.m.]

Supplemental Notice to WSR 23-05-078.

Preproposal statement of inquiry was filed as WSR 22-11-025.

Title of Rule and Other Identifying Information: Law enforcement officers' and firefighters' (LEOFF) plan 2 return to work options; creating WAC 415-104-109.

Hearing Location(s): On July 14, 2023, at 9:00 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/81333341230>, Meeting ID 813 3334 1230, Dial-In 1 360 209 5623 US.

Date of Intended Adoption: July 19, 2023.

Submit Written Comments to: Bianca Stoner, Department of Retirement Systems (DRS), P.O. Box 48380, Olympia, WA 98504-8380, email drs.rules@drs.wa.gov, by July 7, 2023.

Assistance for Persons with Disabilities: Contact Bianca Stoner, phone 360-664-7291, TTY 711, email drs.rules@drs.wa.gov, by July 7, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify language regarding the benefit options available to LEOFF Plan 2 retirees and members who return to work in DRS-covered positions.

Statutory Authority for Adoption: RCW 41.50.050.

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 DRS is not voluntarily making it applicable to 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: Rules from DRS only affect members and beneficiaries of the state retirement systems and participating public employers. As a result, the rules do not affect small businesses.

Scope of exemption for rule proposal:

Is fully exempt.

May 24, 2023
Bianca Stoner
Rules Coordinator

OTS-3799.4

NEW SECTION

WAC 415-104-109 How will my retirement membership be determined if I separate from my LEOFF 2 position and begin employment with a new employer in a position that is eligible for a different retirement system administered by DRS, such as PERS, PSERS, TRS, or SERS? (1) If you separate from LEOFF employment, but are not yet eligible to commence a normal retirement benefit, you will become a member in another DRS retirement system, if you meet the eligibility qualifications in that new system for purposes of your new position. You will become a dual member.

When you apply to begin your LEOFF 2 pension once you qualify for normal retirement, your membership in the new retirement system will end. You will not be eligible to begin collecting your pension in your other retirement plan until you have separated employment from that employer.

If you do not apply for your LEOFF pension immediately upon meeting normal retirement, your pension benefit will be paid retroactively following your application for your LEOFF benefit.

Example: After 20 years of service as a firefighter for the city of Spokane, at age 51 you separate from employment with the city and choose not to begin collecting an early retirement from LEOFF 2. You accept a PERS eligible position with Spokane County, at which point you are mandated into PERS membership. You will qualify as a dual member. At normal retirement age, you will be able to begin your LEOFF pension; however, if you do so your PERS membership will end, and you will not begin to draw a pension from PERS until you separate from employment with the county. If you do not begin your LEOFF pension at normal retirement age, you will continue to accrue PERS service credit and be able to retire from both systems when you separate employment. Your LEOFF pension will also be paid retroactively to normal retirement age.

Example: After 20 years of service as a firefighter for the Benton County, at age 45 you accept a PERS eligible position with the same employer (Benton County), and you are mandated into PERS membership. You will qualify as a dual member. At normal retirement age, you will not be able to begin your LEOFF pension since you have not yet separated employment with the county. When you do separate employment, your LEOFF pension will be paid prospectively based on your separation from employment with your employer.

(2) If you separate from LEOFF employment and are eligible to commence a normal retirement benefit, you will have the same requirements and options outlined in WAC 415-104-111(2).

Example: After 20 years of service as a police officer with the city of Seattle, you separate from employment with the city at age 56. Prior to commencing your LEOFF pension, you accept a SERS covered position with the Seattle public schools. You have two options:

(a) You can begin your LEOFF pension at any point and forgo membership in SERS.

(b) You can join SERS membership. You will not be able to begin your LEOFF pension until you have separated employment with the school district at which point you will receive a retroactive payment for the LEOFF pension payments you missed and your SERS pension benefit would begin if you qualify.

[]

WSR 23-11-153

PROPOSED RULES

SECRETARY OF STATE

[Filed May 24, 2023, 10:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-07-018.

Title of Rule and Other Identifying Information: General elections rule updates via citation corrections.

Hearing Location(s): On June 27, 2023, at 10:00 - 11:00 a.m., at Washington Secretary of State, Legislative Building, 416 Sid Snyder Avenue S.W., Olympia, WA 98504-0220. The hearing will be conducted using Microsoft Teams. To join the hearing, call 1-206-899-2560 and enter conference ID 160 989 358#. People will be able to listen to the hearing and comment.

Date of Intended Adoption: June 28, 2023.

Submit Written Comments to: Fina Ormond, P.O. Box 40229, Olympia, WA 98504, email fina.ormond@sos.wa.gov, fax 360-664-4169.

Assistance for Persons with Disabilities: Contact Fina Ormond, phone 360-902-4146, fax 360-664-4169, email fina.ormond@sos.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Citation updates in Title 434 WAC to update rules referencing recodified RCW and U.S.C.

Reasons Supporting Proposal: Consistency in administrative rules to align with RCW and U.S.C. to ensure all elections offices within the state are utilizing the correct citations and processes in administering elections.

Statutory Authority for Adoption: RCW 29A.04.611.

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: Stuart Holmes, Olympia, 360-902-4151.

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 relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Scope of exemption for rule proposal:

Is fully exempt.

May 24, 2023

Randy Bolerjack

Deputy Secretary of State

OTS-4413.1

AMENDATORY SECTION (Amending WSR 19-01-102, filed 12/18/18, effective 1/18/19)

WAC 434-215-180 Write-in candidates. A candidate desiring to file as a write-in candidate must file the write-in declaration of candidacy no later than 8:00 p.m. on election day. If a write-in declaration of candidacy is filed with the filing officer after the close of the regular candidate filing period per RCW 29A.24.050 and more than ~~((eighteen))~~ 18 days before a primary or election, no filing fee is required.

Candidates filing a write-in declaration of candidacy on or after the ~~((eighteenth))~~ 18th day before a primary or election must pay a filing fee at the time of filing the declaration. Offices with a fixed annual salary of more than ~~((one thousand dollars))~~ \$1,000 must pay a filing fee equal to one percent of the annual salary at the time of the regular filing period as per RCW ~~((29A.24.050))~~ 29A.24.091. For all other offices, a filing fee of ~~((twenty-five dollars))~~ \$25 is required.

[Statutory Authority: RCW 29A.04.611, 29A.24.091, 29A.24.311, 29A.60.021, 29A.60.185, 29A.60.170, 29A.60.110, and 29A.60.235. WSR 19-01-102, § 434-215-180, filed 12/18/18, effective 1/18/19. Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630. WSR 11-24-064, § 434-215-180, filed 12/6/11, effective 1/6/12.]

OTS-4414.1

AMENDATORY SECTION (Amending WSR 19-20-115, filed 10/2/19, effective 11/2/19)

WAC 434-219-120 Certification of candidates. (1) Per ~~((chapter 29A.56 RCW (section 2, chapter 7, Laws of 2019)))~~ RCW 29A.56.031, the party chair for each major party must provide that party's official list of candidates to the secretary of state no later than ~~((sixty-three))~~ 63 days prior to the primary. This list must include the full name of each candidate, the form of the candidate's name as it will appear on the ballot and a signature of the party chair certifying the list as the official party candidates.

(2) Per RCW 29A.56.040(4) each major party may request that the ballot for that party include a response position allowing the voter to indicate the voter's preference for having delegates to the party's national convention remain uncommitted.

(3) Immediately following the receipt of each major party's official list of candidates, the secretary of state shall certify to the county auditors the final list of candidates who will appear on the presidential primary ballot and a response position for uncommitted if requested by either party.

(4) Per ~~((chapter 29A.56 RCW (section 2, chapter 7, Laws of 2019)))~~ RCW 29A.56.031, if a major party chooses to accept votes for write-in candidates in the primary, the party chair for that major party must provide that party's official list of write-in candidates no later than the seventh day prior to the primary. This list must include the full name of each write-in candidate, and a signature of the

party chair certifying the list as the official party write-in candidates.

(5) Immediately following the last day for major political parties to submit write-in candidates, the secretary of state shall certify to the county auditors the final list of official write-in candidates to be counted for each party for the presidential primary.

[Statutory Authority: RCW 29A.04.611. WSR 19-20-115, § 434-219-120, filed 10/2/19, effective 11/2/19; WSR 15-24-001, § 434-219-120, filed 11/18/15, effective 12/19/15; WSR 07-24-044, § 434-219-120, filed 11/30/07, effective 12/31/07. Statutory Authority: RCW 29.19.070. WSR 00-03-003, § 434-219-120, filed 1/6/00, effective 2/6/00; WSR 96-03-141, recodified as § 434-219-120, filed 1/24/96, effective 2/24/96; WSR 91-18-012, § 434-75-120, filed 8/26/91, effective 9/26/91.]

OTS-4415.3

AMENDATORY SECTION (Amending WSR 21-21-001, filed 10/6/21, effective 11/6/21)

WAC 434-230-015 Ballots and instructions. (1) Each ballot shall specify the county, the date, and whether the election is a primary, special or general.

(2) Each ballot must include instructions directing the voter how to mark the ballot, including write-in votes if candidate races appear on the ballot.

(3) Instructions that accompany a ballot must:

(a) Instruct the voter how to cancel a vote by drawing a line through the text of the candidate's name or ballot measure response;

(b) Notify the voter that, unless specifically allowed by law, more than one vote for an office or ballot measure will be an overvote and no votes for that office or ballot measure will be counted;

(c) Explain how to complete and sign the ballot declaration. The following declaration must accompany the ballot:

"I do solemnly swear or affirm under penalty of perjury that I am:

A United States citizen;

A Washington state resident that meets the requirements for voting mandated by state law;

At least 18 years old on election day, or 17 years old at the primary and 18 years old by the day of the November general election;

Voting only once in this election and not voting in any other United States jurisdiction;

Not serving a sentence of total confinement under the jurisdiction of the Department of Corrections for a Washington felony conviction or currently incarcerated for a federal or out-of-state felony conviction;

Not disqualified from voting due to a court order; and

Aware it is illegal to forge a signature or cast another person's ballot and that attempting to vote when not qualified, attempting to vote more than once, or falsely signing this declaration is a felony

punishable by a maximum imprisonment of five years, a maximum fine of \$10,000, or both."

The declaration must include space for the voter to sign and date the declaration, for the voter to write his or her phone number, and for two witnesses to sign if the voter is unable to sign.

(d) Explain how the voter may make a mark, witnessed by two other people, if the voter is unable to write their signature;

(e) Explain that a power of attorney cannot be used to sign a ballot for someone else;

(f) Explain how to place the ballot in the security envelope/sleeve and place the security envelope/sleeve in the return envelope;

(g) Explain how to obtain a replacement ballot if the original ballot is destroyed, spoiled, or lost;

(h) Explain how the voter may update their address;

(i) If applicable, include language with the reissued ballot notifying the voter that the reissued ballot is their current ballot;

(j) If applicable, explain that postage is required, or exactly how much postage is required. See WAC 434-250-200 on return postage;

(k) Explain that, in order for the ballot to be counted, it must be either postmarked no later than election day or deposited at a ballot drop box no later than 8:00 p.m. election day;

(l) Explain how to learn about the locations, hours, and services of voting centers and ballot drop boxes, including the availability of accessible voting equipment;

(m) Include, for a primary election that includes a partisan office other than a presidential primary race, a notice on an insert explaining:

"In each race, you may vote for any one candidate listed. The two candidates who receive the most votes in the primary will advance to the general election.

Each candidate for partisan office may state a political party that (~~he or she~~) the candidate prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(n)(i) Include, for a general election that includes a partisan office, the following explanation:

"If a primary election was held for an office, the two candidates who received the most votes in the primary advanced to the general election.

Each candidate for partisan office may state a political party that (~~he or she~~) the candidate prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(ii) In a year that president and vice president appear on the general election ballot, the following must be added to the statement required by (n)(i) of this subsection:

"The election for president and vice president is different. Candidates for president and vice president are the official nominees of their political party."

(4) Instructions that accompany a special absentee ballot authorized by RCW 29A.40.050 must also explain that the voter may request and subsequently vote a regular ballot, and that if the regular ballot

is received by the county auditor, the regular ballot will be tabulated and the special absentee ballot will be voided.

(5) Each ballot must explain, either in the general instructions or in the heading of each race, the number of candidates for whom the voter may vote (e.g., "vote for one").

(6) (a) If the ballot includes a partisan office other than a presidential primary race, the ballot must include the following notice in bold print immediately above the first partisan congressional, state or county office: "**READ: Each candidate for partisan office may state a political party that ((he or she)) the candidate prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate.**"

(b) When the race for president and vice president appears on a general election ballot, instead of the notice required by (a) of this subsection, the ballot must include the following notice in bold print after president and vice president but immediately above the first partisan congressional, state or county office: "**READ: Each candidate for president and vice president is the official nominee of a political party. For other partisan offices, each candidate may state a political party that ((he or she)) the candidate prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate.**"

(c) The same notice may also be listed in the ballot instructions.

(7) Counties may use varying sizes and colors of ballots, provided such size and color is used consistently throughout a region, area or jurisdiction (e.g., legislative district, commissioner district, school district, etc.). Varying color and size may also be used to designate various types of ballots.

(8) Ballots shall be formatted as provided in RCW 29A.36.161 and 29A.36.170.

(9) Removable stubs are not considered part of the ballot.

(10) If ballots are printed with sequential numbers or other sequential identifiers, the county auditor must take steps to prevent ballots from being issued sequentially, in order to protect secrecy of the ballot.

~~((Counties may use ballot envelopes with the previous declaration through December 2021.))~~

[Statutory Authority: RCW 29A.04.611. WSR 21-21-001, § 434-230-015, filed 10/6/21, effective 11/6/21; WSR 19-12-115, § 434-230-015, filed 6/5/19, effective 7/6/19; WSR 18-24-007, § 434-230-015, filed 11/26/18, effective 12/27/18; WSR 18-10-003, § 434-230-015, filed 4/19/18, effective 5/20/18; WSR 17-12-090, § 434-230-015, filed 6/6/17, effective 7/7/17; WSR 15-24-001, § 434-230-015, filed 11/18/15, effective 12/19/15; WSR 14-06-040, § 434-230-015, filed 2/26/14, effective 3/29/14. Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630. WSR 11-24-064, § 434-230-015, filed 12/6/11, effective 1/6/12. Statutory Authority: RCW 29A.04.611. WSR 09-18-098, § 434-230-015, filed 9/1/09, effective 10/2/09; WSR 08-15-052, § 434-230-015, filed 7/11/08, effective 8/11/08.]

OTS-4416.1

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

WAC 434-230-100 Political party precinct committee officer. (1)

The election of major political party precinct committee officers is established in RCW 29A.52.171 and 29A.80.051.

(2) The election of precinct committee officer is an intraparty election; candidates compete against other candidates in the same political party.

(a) If only one candidate files for a position, that candidate is deemed elected without appearing on the ballot and the county auditor shall issue a certificate of election.

(b) If more than one candidate files for a position, the contested race must appear on the ballot at the primary and the candidate who receives the most votes is declared elected.

(c) If no candidates file during the regular filing period, the race does not appear on the ballot and the position may be filled by appointment pursuant to RCW ((~~29A.28.071~~) 29A.80.031).

(d) No write-in line may be printed on the ballot for a contested race, and no write-in votes may be counted.

(3) If both major political parties have contested races on the ballot in the same precinct, the political party that received the highest number of votes from the electors of this state for the office of president at the last presidential election must appear first, with the other political party appearing second. Within each party, candidates shall be listed in the order determined by lot.

(4) (a) The position of political party precinct committee officer must appear following all measures and public offices.

(b) The following explanation must be printed before the list of candidates: "For this office only: In order to vote for precinct committee officer, a partisan office, you must affirm that you are a Democrat or a Republican and may vote only for one candidate from the party you select. Your vote for a candidate affirms your affiliation with the same party as the candidate. This preference is private and will not be matched to your name or shared."

(c) (i) If all candidates are listed under one heading, the applicable party abbreviation "Dem" or "Rep" must be printed next to each candidate's name, with the first letter of the abbreviation capitalized. For example:

John Smith Dem

Jane Doe Dem

(ii) If candidates are listed under a major political party heading, the applicable heading of either "democratic party candidates" or "republican party candidates" must be printed above each group of candidates. The first letter of each word must be capitalized.

(d) One of the following statements, as applicable, must be printed directly below each candidate's name: "I affirm I am a Democrat." or "I affirm I am a Republican."

(5) A voter may vote for only one candidate, regardless of party, for precinct committee officer. If a voter votes for more than one candidate, the votes must be treated as overvotes.

[Statutory Authority: RCW 29A.04.611. WSR 14-06-040, § 434-230-100, filed 2/26/14, effective 3/29/14; WSR 12-14-074, § 434-230-100, filed

7/2/12, effective 8/2/12. Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630. WSR 11-24-064, § 434-230-100, filed 12/6/11, effective 1/6/12. Statutory Authority: RCW 29A.04.611. WSR 08-15-052, § 434-230-100, filed 7/11/08, effective 8/11/08.]

OTS-4581.1

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

WAC 434-235-010 Scope. (1) This chapter implements the Uniformed and Overseas Citizens Absentee Voting Act, ((42)) 52 U.S.C. Sec. ((1973ff)) 20301, the Military and Overseas Voter Empowerment Act, ((42)) 52 U.S.C. Sec. ((1973ff)) 20301, and the provisions for service and overseas voters in Title 29A RCW.

(2) Absent uniformed service voter is defined in ((42)) 52 U.S.C. Sec. ((1973ff-6(1))) 20310(1) as:

(a) A member of a uniformed service on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote;

(b) A member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; ((or)) and

(c) A spouse or dependent of a member referred to in (a) or (b) of this subsection who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.

(3) Service voter is defined in RCW 29A.04.163 as any elector of the state of Washington who:

(a) Is a member of the armed forces under ((42)) 52 U.S.C. Sec. ((1973ff-6)) 20301(1) while in active service;

(b) Is a member of a reserve component of the armed forces;

(c) Is a student or member of the faculty at a United States military academy;

(d) Is a member of the merchant marine of the United States; or

(e) Is a member of a religious group or welfare agency officially attached to and serving with the armed forces of the United States.

(4) References in Title 434 WAC to "service voter" include voters who meet either the federal definition for "uniformed service voter" or the state definition for "service voter."

(5) Overseas voter is defined in ((42)) 52 U.S.C. Sec. ((1973ff-6(5))) 20310(5) as:

(a) An absent uniformed services voter who, by reason of active duty or service is absent from the United States on the date of the election involved;

(b) A person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or

(c) A person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States.

(6) Overseas voter is defined in RCW 29A.04.109 as any elector of the state of Washington outside the territorial limits of the United States.

[Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630. WSR 11-24-064, § 434-235-010, filed 12/6/11, effective 1/6/12. Statutory Authority: RCW 29A.04.611, 29A.04.255. WSR 11-05-008, § 434-235-010, filed 2/3/11, effective 3/6/11. Statutory Authority: RCW 29A.04.611. WSR 07-20-074, § 434-235-010, filed 10/1/07, effective 11/1/07.]

OTS-4582.1

AMENDATORY SECTION (Amending WSR 20-19-045, filed 9/10/20, effective 10/11/20)

WAC 434-250-350 Student engagement hubs. Pursuant to ((chapter 29A.40 RCW, section 10, chapter 208, Laws of 2020 (ESB 6313))) RCW 29A.40.180, the county auditor and any educational institution within the county that are statutorily required to host a hub must enter a contract to operate a student engagement hub.

(1) For all institutions operating student engagement hubs, the contract must include:

(a) A method for voters to download and print the voter's ballot for the exact precinct and precinct split from the voter's county of registration from an online portal;

(b) Provisions for protecting the privacy and secrecy of any voted ballot;

(c) Provision of instruction for voters on how to return a ballot;

(d) Provision of services to those in line at 8:00 p.m. on election day to obtain a ballot, vote, and deposit their voted ballot;

(e) Provision of a secured ballot drop box at the hub, following current ballot drop box procedures for emptying the contents and closing the box at the conclusion of hub operations;

(f) Ensuring that when a voter is in line at the hub at 8:00 p.m. or earlier on election day, their ballot may be deposited in the drop box after 8:00 p.m., but no other voters can use the drop box after 8:00 p.m.

(g) Ensuring operation of the hub in a nonpartisan manner while allowing no campaign materials or campaigning within a minimum of at least ((twenty-five)) 25 feet of the entrances and exits of the hub facility, or within the hub;

(h) Provision of accessible facilities compliant with the Americans with Disabilities Act.

(2) For institutions operating student engagement hubs that are statutorily required to include voter registration services, the contract must also include:

(a) An agreed upon method of voter registration services for all eligible citizens at the hub;

(b) Setting the hours of operation as the county auditor's normal working hours and, on Election Day, starting at normal business opening and extended until 8:00 p.m.;

- (c) An agreement detailing the days that the hub will be in operation up to the statutory maximum of eight days prior to the election;
- (d) Provision to the hub of at least the following services by agreement between the county auditor and the university or college:
- (i) Staffing;
 - (ii) Availability of provisional ballots;
 - (iii) Provision of notice of the availability of services;
 - (iv) Provision of appropriate voter information including voter pamphlets; and
 - (v) Provision of services to those in line at 8:00 p.m. on election day to register to vote, obtain a ballot, vote, and deposit their voted ballot.
- (3) The prohibitions listed in chapter 29A.84 RCW for voting centers and ballot drop boxes also apply to student engagement hubs.
- (4) Hub staff may provide postage stamps for voters that choose to mail their ballot.

[Statutory Authority: RCW 29A.04.611. WSR 20-19-045, § 434-250-350, filed 9/10/20, effective 10/11/20.]

OTS-4417.3

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

WAC 434-261-125 Free access system for provisional ballots. (1)

Each county shall establish a free access system, as required by the Help America Vote Act, (~~(42 U.S.C. sec. 15482 (a)(5))~~) 52 U.S.C. § 21082 (a)(5)(B), and RCW 29A.60.195 for provisional ballot voters.

(2) The free access system must employ measures to ensure that access is free of cost to the voter and restricted to the individual who cast the ballot, and that the voter's personal information is secure and confidential.

(3) For provisional ballots sent to other counties in the state, the free access system must provide the voter with information as to where the ballot was sent and how to find out if the ballot was counted in that county.

(4) For ballots received from another county, the free access system must provide the voter with information as to whether the ballot was counted and, if not, why. The county may send instructions to the voter on how to access the information.

(5) Provisional ballot disposition information must be available on a county's free access system no later than one week following certification of the election.

[Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630. WSR 11-24-064, § 434-261-125, filed 12/6/11, effective 1/6/12.]

OTS-4418.3

AMENDATORY SECTION (Amending WSR 04-16-037, filed 7/27/04, effective 8/27/04)

WAC 434-263-005 Purpose. The purpose of these rules is to adopt an administrative complaint procedure mandated by (~~42 U.S.C. § 15512(a)~~) 52 U.S.C. § 21112, relating only to state implementation of Title III of the Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), for both state and federal elections. This process may not be used for the purpose of contesting the results of any primary or election. Election contests are governed by chapter 29A.68 RCW.

[Statutory Authority: RCW 29A.04.610. WSR 04-16-037, § 434-263-005, filed 7/27/04, effective 8/27/04.]

OTS-4419.3

AMENDATORY SECTION (Amending WSR 04-16-037, filed 7/27/04, effective 8/27/04)

WAC 434-263-010 Definitions. For purposes of this chapter, the following terms shall have the following meanings:

- (1) "Complainant" means the person who files a complaint under this chapter.
- (2) "Election" means a special, primary or general election.
- (3) "Respondent" means any state or local election official whose actions are asserted, in a complaint under this chapter, to be in violation of Title III.
- (4) "Secretary" means the secretary of state or his or her designee.
- (5) "State or local election official" means the secretary of state, any county auditor, or any person employed by either the secretary or an auditor whose responsibilities include or directly relate to the administration of any election.
- (6) "Title III" means Title III of the Help America Vote Act of 2002, (~~Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 United States Code §§ 15481-15485~~) 52 U.S.C. §§ 21081-21102. Violations include, but are not limited to, voting system standards, provisional voting, accessibility for individuals with disabilities, and voter registration.

[Statutory Authority: RCW 29A.04.610. WSR 04-16-037, § 434-263-010, filed 7/27/04, effective 8/27/04.]

OTS-4420.2

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

WAC 434-324-031 Electronic voter registration. (1) The secretary of state's electronic voter registration web page must have the capability to:

- (a) Reject applicants without a Washington state driver's license, state identification card, or valid tribal identification as ((defined)) required by RCW 29A.08.123 ((and 29A.40.160));
- (b) Require the applicant to affirmatively assent to the use of the applicant's driver's license, state identification card, or valid tribal identification card signature for voter registration purposes;
- (c) Require the applicant to attest to the truth of the information provided on the application;
- (d) Retrieve a digital copy of each applicant's driver's license or state identification card signature from the department of licensing or from an issuer of tribal identification that has agreed to make digitized signature information available for this purpose, and include it with the other information required for each applicant's voter registration; and
- (e) Electronically transfer all information required for each applicant's voter registration to their county auditor for entry into the statewide voter registration database.

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

[Statutory Authority: RCW 29A.04.611. WSR 20-13-043, § 434-324-031, filed 6/10/20, effective 7/11/20; WSR 19-12-115, § 434-324-031, filed 6/5/19, effective 7/6/19. Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630. WSR 11-24-064, § 434-324-031, filed 12/6/11, effective 1/6/12. Statutory Authority: RCW 29A.04.611. WSR 07-24-044, § 434-324-031, filed 11/30/07, effective 12/31/07.]

OTS-4424.1

AMENDATORY SECTION (Amending WSR 22-10-041, filed 4/27/22, effective 5/28/22)

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

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

may verify or send additional information. The identification notice must include:

- (a) A statement explaining that because the applicant's identity cannot be verified with the information provided on the application, they have been provisionally registered to vote.
- (b) A statement explaining that if this additional information is not provided, the applicant's ballot will not be counted.
- (c) A statement explaining that federal law requires the applicant to provide their driver's license number, state identification card number, valid tribal identification card number or the last four digits of their Social Security number, or a copy of one of the following forms of identification, either before or when they vote:
 - (i) Valid photo identification;
 - (ii) A valid enrollment card of a federally recognized tribe in Washington;
 - (iii) A current utility bill, or a current bank statement;
 - (iv) A current government check;
 - (v) A current paycheck; or
 - (vi) A government document, other than a voter registration card, which shows both the registrant's name and current address.
- (3) If the applicant responds with updated driver's license, state identification card, valid tribal identification card, or Social Security information, or with a copy of one of the alternative forms of identification, the flag on the voter registration record must be removed, allowing the applicant's ballot to otherwise be counted the first time they vote after registering.
- (4) If the applicant fails to respond with adequate documentation to verify the applicant's identity, the applicant's voter registration record must remain flagged. The applicant must be notified at the time of each election that the ballot will not be counted unless adequate verification of identity is provided.
- (5) A provisional registration must remain on the official list of registered voters for at least two general elections for federal office. If, after two general elections for federal office, the voter still has not verified or provided information to verify identity, the provisional registration shall be canceled.
- (6) The county auditor shall mail an identification notice to a primary-only voter, as defined in WAC 434-232-010, no earlier than 90 days before the primary that they are eligible to participate in.
- (7) The county auditor shall not mail an identification notice to a participant in the future voter program established under RCW 29A.08.170 until the participant becomes a registered voter.

[Statutory Authority: RCW 29A.04.611. WSR 22-10-041, § 434-324-045, filed 4/27/22, effective 5/28/22; WSR 20-13-043, § 434-324-045, filed 6/10/20, effective 7/11/20; WSR 14-06-040, § 434-324-045, filed 2/26/14, effective 3/29/14. Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630. WSR 11-24-064, § 434-324-045, filed 12/6/11, effective 1/6/12. Statutory Authority: RCW 29A.04.611. WSR 09-18-098, § 434-324-045, filed 9/1/09, effective 10/2/09; WSR 09-12-078, § 434-324-045, filed 5/29/09, effective 6/29/09; WSR 09-03-110, § 434-324-045, filed 1/21/09, effective 2/21/09; WSR 07-24-044, § 434-324-045, filed 11/30/07, effective 12/31/07; WSR 07-02-100, § 434-324-045, filed 1/3/07, effective 2/3/07.]

OTS-4425.1

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

WAC 434-324-108 Incapacitated persons lacking voting rights—Notice from court. Upon receipt of a court order declaring an incapacitated person does not retain voting rights as outlined in RCW (~~(11.88.010)~~) 11.130.310, the auditor must search the state election management system to determine whether the person is a registered voter. If the auditor determines the incapacitated person's name and other identifying information match, they must cancel the incapacitated person's voter registration and send a cancellation notice to the incapacitated person using the last known address.

[Statutory Authority: RCW 29A.04.611. WSR 20-13-043, § 434-324-108, filed 6/10/20, effective 7/11/20; WSR 12-14-074, § 434-324-108, filed 7/2/12, effective 8/2/12; WSR 06-11-041, § 434-324-108, filed 5/10/06, effective 6/10/06.]

OTS-4423.1

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

WAC 434-335-280 Logic and accuracy test conduct. The county must provide adequate personnel to properly operate the ballot tabulation system. Whenever possible, the system shall be operated during the test by the same person or persons who will be responsible for operating the system on election day. The official logic and accuracy test shall be conducted as follows:

(1) Every ballot tabulator and scanner to be used in the primary or election shall be tested. Digital scan test decks shall be scanned during the official logic and accuracy test.

(2) Undervotes recorded by a digital scan system used to resolve or adjudicate ballots digitally shall be auto-resolved. Some undervotes may be manually resolved to demonstrate the process.

(3) Optical scan tabulators and digital scan tabulators not used to resolve or adjudicate ballots digitally shall be set to out-stack blank ballots, overvotes, and write-in votes.

(4) A printout of the test results shall be produced and compared to the expected test results. If the test results do not match the expected test results, the reason for the discrepancy must be satisfactorily determined and corrections made, if necessary.

(5) The upload of results to the secretary of state's office shall be tested and verified. If the upload of results cannot be completed, the results shall be transmitted to the office of the secretary of state through other means, and the county auditor shall work with the secretary of state to upload the results as soon as practicable.

[Statutory Authority: RCW 29A.04.611 and 29A.04.620. WSR 16-13-063, § 434-335-280, filed 6/13/16, effective 7/14/16. Statutory Authority: RCW 29A.04.611. WSR 14-06-040, § 434-335-280, filed 2/26/14, effective 3/29/14; WSR 05-18-022, § 434-335-280, filed 8/29/05, effective 9/29/05.]

WSR 23-11-158

PROPOSED RULES

SECRETARY OF STATE

[Filed May 24, 2023, 10:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-05-070.

Title of Rule and Other Identifying Information: Chapter 434-112 WAC, Corporations and charities division program services, procedures and fees.

Hearing Location(s): On June 27, 2023, at 10:00 a.m., virtual Microsoft Teams meeting, Meeting ID 266 901 734 230, Passcode 32GW2S; call in (audio only) +1 206-899-2560,,443816603#, Phone Conference ID 443 816 603#.

Date of Intended Adoption: June 28, 2023.

Submit Written Comments to: Scott Douglas, P.O. Box 40234 Olympia, WA 98504, email Scott.Douglas@sos.wa.gov, by June 26, 2023.

Assistance for Persons with Disabilities: Contact Melissa Harris, phone 360-725-0312, email Melissa.Harris@sos.wa.gov, by June 25, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update and clarify division filing procedures; correct and update RCW references; increase annual report filing fee and expedited service fees.

Statutory Authority for Adoption: Chapters 11.110, 18.100, 19.77, 19.09, 23.86, 23.90, 23B.01, 24.03, 24.06, 25.10, 25.15, 43.07, 46.64 RCW. Current WAC do not accurately reflect the division's online filing procedures; the division has not increased fees in 12 years, and current revenue will not keep pace with rising personnel and administrative costs.

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

Name of Proponent: Office of the secretary of state, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Scott Douglas, 801 Capitol Way South, Olympia, WA 98504, 360-725-0310.

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. These rule changes do not fall under RCW 34.05.328(5).

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 set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Scope of exemption for rule proposal:

Is partially exempt:

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 increase in cost to businesses will be \$10 per year.

May 24, 2023
Randy Bolerjack

OTS-4608.2

AMENDATORY SECTION (Amending WSR 19-16-130, filed 8/6/19, effective 9/6/19)

WAC 434-112-010 Services provided by the corporations and charities division, "the division". The corporations and charities division provides the following services:

- (1) Filing business records under chapter ~~((s))~~ 18.100 ~~((, 23.78, 23.86, 23.90))~~ RCW, and Titles 23, 23B, and 25 RCW ~~((, and chapter 176, Laws of 2015))~~;
- (2) Filing nonprofit ~~((organization))~~ entity records under Title 24 RCW ~~((and chapter 176, Laws of 2015))~~;
- (3) Filing ~~((charities program))~~ registrations for charitable organizations, charitable trusts, and commercial fund-raisers under chapters 11.110 and 19.09 RCW and 434-120 WAC;
- (4) Filing trademark registrations ~~((records))~~ under chapters 19.77 RCW and 434-12 WAC;
- (5) Filing registration records of international student exchange programs under chapters 19.166 RCW and 434-166 WAC;
- (6) ~~((Apostilles))~~ Providing apostille certification of documents under RCW ~~((42.44.180))~~ 43.07.032 and the Hague Conference 1961 Apostille Convention;
- (7) Agent for service of process on nonresident motorists under RCW 46.64.040;
- (8) Agent for service of process on defendants in actions for recovery of damages for motor vehicle theft, as authorized by RCW 9A.56.078;
- (9) Agent for service of process for those entities and under those circumstances listed in ~~((section 1411(4), chapter 176, Laws of 2015))~~ RCW 23.95.450 and 23B.18.040;
- (10) Agent for service of process in civil actions relating to acting as an athlete agent under RCW 19.225.020;
- (11) Filing registration records of state registered domestic partnerships under chapter 26.60 RCW and RCW 43.07.400.

[Statutory Authority: RCW 19.34.030, 43.07.120 and chapter 19.34 RCW. WSR 19-16-130, § 434-112-010, filed 8/6/19, effective 9/6/19. Statutory Authority: 2015 c 176, and chapters 11.110, 18.100, 19.77, 23.86, 23.90, 23B.01, 24.03, 24.06, 25.10, 25.15, 43.07, and 46.64 RCW. WSR 15-22-047, § 434-112-010, filed 10/29/15, effective 1/1/16. Statutory Authority: RCW 11.110.070, 18.100.035, 19.77.015, [19.77.]030, [19.77.]050, [19.77.]060, 23.86.075, 23.90.050, 23B.01.200, [23B.01.]220, 24.03.007, [24.03.]302, [24.03.]405, [24.03.]410, 24.06.290, [24.06.]440, [24.06.]445, [24.06.]450, [24.06.]455, [24.06.]485, 25.10.006, [25.10.]171, [25.10.]605, [25.10.]610, [25.10.]916, [25.10.]921, 25.15.007, [25.15.]810, 43.07.120, [43.07.]128, [43.07.]130, 46.64.040. WSR 10-20-150, § 434-112-010, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 43.07.400 and 9A.56.078. WSR 07-20-065, § 434-112-010, filed 9/28/07, effective 10/29/07. Statutory Authority: RCW 23B.01.200(2), 24.03.007,

[24.03.]008, 25.15.007, 19.09.020(15), [19.09].315, 19.77.115, and 43.07.170. WSR 04-04-018, § 434-112-010, filed 1/23/04, effective 2/23/04.]

AMENDATORY SECTION (Amending WSR 15-22-047, filed 10/29/15, effective 1/1/16)

WAC 434-112-028 Name reservation. (1) ~~((Paper))~~ Requests for a name reservation submitted on paper are completed in order of date received unless immediate or expedited service is requested, and after payment has been made. A name reservation may be made by completing the form provided by the division or in a letter clearly containing all the following information:

(a) ~~The ((corporate name desired))~~ preferred entity name, and up to three alternate names in order of preference;

(b) The entity type or entity structure for which a name reservation is sought;

(c) ~~The name, address, and ((telephone number))~~ email address of the applicant;

~~((e))~~ (d) The signature of the applicant; and

~~((d))~~ (e) The application date.

An application on behalf of a client should also include the client's name and complete address.

(2) If subsequent documents are submitted citing the name reservation number or reserved entity name, the name and/or address of the applicant, or the client on whose behalf the reservation was submitted, must appear in the submitted document, or a transfer of reservation will be required.

(3) ~~A name reservation expires ((in one hundred eighty))~~ 180 days after filing, and may not be renewed. A new filing may be made after the expiration date.

~~((3))~~ (4) Requests for a name reservation may be filed online, when the system is available.

[Statutory Authority: 2015 c 176, and chapters 11.110, 18.100, 19.77, 23.86, 23.90, 23B.01, 24.03, 24.06, 25.10, 25.15, 43.07, and 46.64 RCW. WSR 15-22-047, § 434-112-028, filed 10/29/15, effective 1/1/16. Statutory Authority: RCW 11.110.070, 18.100.035, 19.77.015, [19.77.]030, [19.77.]050, [19.77.]060, 23.86.075, 23.90.050, 23B.01.200, [23B.01.]220, 24.03.007, [24.03.]302, [24.03.]405, [24.03.]410, 24.06.290, [24.06.]440, [24.06.]445, [24.06.]450, [24.06.]455, [24.06.]485, 25.10.006, [25.10.]171, [25.10.]605, [25.10.]610, [25.10.]916, [25.10.]921, 25.15.007, [25.15.]810, 43.07.120, [43.07.]128, [43.07.]130, 46.64.040. WSR 10-20-150, § 434-112-028, filed 10/6/10, effective 11/6/10.]

AMENDATORY SECTION (Amending WSR 15-22-047, filed 10/29/15, effective 1/1/16)

WAC 434-112-030 Certificates. Certificates issued by the secretary of state or the secretary's designee in furtherance of duties under Titles 18, 19, 23, 23B, 24, 25, 26 RCW ~~((7))~~ and chapter ((42.44)) 42.45 RCW ~~((, and chapter 176, Laws of 2015,))~~ will:

- (1) Contain a rendition of the Washington state seal;
- (2) Contain a mechanical or electronic reproduction of the secretary's signature; and
- (3) Be regarded as the secretary of state's official certification of the matters itemized in the certificate(~~(~~and~~)~~).
- (4) Types of certificates issued include, but are not limited to:
 - (a) Certificate of existence;
 - (b) Certificate of registration;
 - (c) Certificate of fact or record;
 - (d) Duplicate certificate of registration or formation.

[Statutory Authority: 2015 c 176, and chapters 11.110, 18.100, 19.77, 23.86, 23.90, 23B.01, 24.03, 24.06, 25.10, 25.15, 43.07, and 46.64 RCW. WSR 15-22-047, § 434-112-030, filed 10/29/15, effective 1/1/16. Statutory Authority: RCW 11.110.070, 18.100.035, 19.77.015, [19.77.]030, [19.77.]050, [19.77.]060, 23.86.075, 23.90.050, 23B.01.200, [23B.01.]220, 24.03.007, [24.03.]302, [24.03.]405, [24.03.]410, 24.06.290, [24.06.]440, [24.06.]445, [24.06.]450, [24.06.]455, [24.06.]485, 25.10.006, [25.10.]171, [25.10.]605, [25.10.]610, [25.10.]916, [25.10.]921, 25.15.007, [25.15.]810, 43.07.120, [43.07.]128, [43.07.]130, 46.64.040. WSR 10-20-150, § 434-112-030, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 23.86.070, 23B.01.200, 23B.01.220, 24.03.405, 25.10.600, 43.07.120. WSR 09-06-036, § 434-112-030, filed 2/24/09, effective 3/27/09. Statutory Authority: RCW 23B.01.200(2), 24.03.007, [24.03.]008, 25.15.007, 19.09.020(15), [19.09].315, 19.77.115, and 43.07.170. WSR 04-04-018, § 434-112-030, filed 1/23/04, effective 2/23/04.]

AMENDATORY SECTION (Amending WSR 21-04-056, filed 1/27/21, effective 2/27/21)

WAC 434-112-040 Standards for confirmation of filed records.

Confirmation of filing of all paper or electronic ((business-related)) records ((are returned)) filed by the division is sent to the registered agent's email address on behalf of the entity when processing is completed ((unless the record indicates otherwise)), and to the return email address for the entity, if provided. Date-stamped copies of all records filed by the division are maintained in the online filing system and can be viewed and downloaded from that site.

[Statutory Authority: RCW 29A.04.611. WSR 21-04-056, § 434-112-040, filed 1/27/21, effective 2/27/21. Statutory Authority: 2015 c 176, and chapters 11.110, 18.100, 19.77, 23.86, 23.90, 23B.01, 24.03, 24.06, 25.10, 25.15, 43.07, and 46.64 RCW. WSR 15-22-047, § 434-112-040, filed 10/29/15, effective 1/1/16. Statutory Authority: RCW 11.110.070, 18.100.035, 19.77.015, [19.77.]030, [19.77.]050, [19.77.]060, 23.86.075, 23.90.050, 23B.01.200, [23B.01.]220, 24.03.007, [24.03.]302, [24.03.]405, [24.03.]410, 24.06.290, [24.06.]440, [24.06.]445, [24.06.]450, [24.06.]455, [24.06.]485, 25.10.006, [25.10.]171, [25.10.]605, [25.10.]610, [25.10.]916, [25.10.]921, 25.15.007, [25.15.]810, 43.07.120, [43.07.]128, [43.07.]130, 46.64.040. WSR 10-20-150, § 434-112-040, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 23.86.070, 23B.01.200, 23B.01.220, 24.03.405, 25.10.600, 43.07.120. WSR 09-06-036, § 434-112-040, filed

2/24/09, effective 3/27/09. Statutory Authority: RCW 23B.01.200(2), 24.03.007, [24.03.]008, 25.15.007, 19.09.020(15), [19.09].315, 19.77.115, and 43.07.170. WSR 04-04-018, § 434-112-040, filed 1/23/04, effective 2/23/04.]

AMENDATORY SECTION (Amending WSR 21-04-056, filed 1/27/21, effective 2/27/21)

WAC 434-112-045 Rejection of records. (1) The ~~((corporations program))~~ division may reject paper or electronic records that:

- (a) Are not legible; or
- (b) Are not able to be recorded as an image with adequate resolution and clarity; or
- (c) Are incomplete; or
- (d) Are not permitted to be filed ~~((in the corporations office; or~~
- ~~(e) Paper records completed in pencil or faxed will not be accepted for filing))~~ with the division.

(2) Additional information, clarification, corrections, or payment may be requested by division staff via telephone, email, or letter.

(3) The ~~((corporations program))~~ division may hold records for up to ~~((thirty))~~ 60 days after rejection to await additional information or funds needed to complete the filing process. After ~~((thirty))~~ 60 days, new records and fees may be required.

(4) Records that do not include a return mailing address ~~((will))~~ and email address may not be accepted for filing.

[Statutory Authority: RCW 29A.04.611. WSR 21-04-056, § 434-112-045, filed 1/27/21, effective 2/27/21. Statutory Authority: 2015 c 176, and chapters 11.110, 18.100, 19.77, 23.86, 23.90, 23B.01, 24.03, 24.06, 25.10, 25.15, 43.07, and 46.64 RCW. WSR 15-22-047, § 434-112-045, filed 10/29/15, effective 1/1/16. Statutory Authority: RCW 11.110.070, 18.100.035, 19.77.015, [19.77.]030, [19.77.]050, [19.77.]060, 23.86.075, 23.90.050, 23B.01.200, [23B.01.]220, 24.03.007, [24.03.]302, [24.03.]405, [24.03.]410, 24.06.290, [24.06.]440, [24.06.]445, [24.06.]450, [24.06.]455, [24.06.]485, 25.10.006, [25.10.]171, [25.10.]605, [25.10.]610, [25.10.]916, [25.10.]921, 25.15.007, [25.15.]810, 43.07.120, [43.07.]128, [43.07.]130, 46.64.040. WSR 10-20-150, § 434-112-045, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 23B.01.200(2), 24.03.007, [24.03.]008, 25.15.007, 19.09.020(15), [19.09].315, 19.77.115, and 43.07.170. WSR 04-04-018, § 434-112-045, filed 1/23/04, effective 2/23/04.]

AMENDATORY SECTION (Amending WSR 21-04-056, filed 1/27/21, effective 2/27/21)

WAC 434-112-050 Filing procedure. (1) Persons submitting paper ~~((business))~~ records under chapters 18.100, 19.77 RCW, or Titles 23, 23B, 24, and 25 RCW, ~~((and chapter 176, Laws of 2015,))~~ must submit one copy of the record for filing.

(2) ~~((The corporations program))~~ Once filed, the division will retain a digital image of the paper or electronic record ((submitted for filing)). The ~~((corporations program))~~ division will, ((en)) upon completion of the filing, send a confirmation per WAC 434-112-040.

(3) ~~((The corporations program may return the completed filed record via email or other electronic means if the record indicates that an electronic response is acceptable.~~

~~(4))~~ If a record submitted for filing contains more than ((one hundred)) 100 governors as defined in RCW 23.95.105(12), ((that record must be submitted by)) the person submitting the record must add each governor's name using the online filing system.

[Statutory Authority: RCW 29A.04.611. WSR 21-04-056, § 434-112-050, filed 1/27/21, effective 2/27/21. Statutory Authority: 2015 c 176, and chapters 11.110, 18.100, 19.77, 23.86, 23.90, 23B.01, 24.03, 24.06, 25.10, 25.15, 43.07, and 46.64 RCW. WSR 15-22-047, § 434-112-050, filed 10/29/15, effective 1/1/16. Statutory Authority: RCW 11.110.070, 18.100.035, 19.77.015, [19.77.]030, [19.77.]050, [19.77.]060, 23.86.075, 23.90.050, 23B.01.200, [23B.01.]220, 24.03.007, [24.03.]302, [24.03.]405, [24.03.]410, 24.06.290, [24.06.]440, [24.06.]445, [24.06.]450, [24.06.]455, [24.06.]485, 25.10.006, [25.10.]171, [25.10.]605, [25.10.]610, [25.10.]916, [25.10.]921, 25.15.007, [25.15.]810, 43.07.120, [43.07.]128, [43.07.]130, 46.64.040. WSR 10-20-150, § 434-112-050, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 23B.01.200(2), 24.03.007, [24.03.]008, 25.15.007, 19.09.020(15), [19.09].315, 19.77.115, and 43.07.170. WSR 04-04-018, § 434-112-050, filed 1/23/04, effective 2/23/04.]

AMENDATORY SECTION (Amending WSR 15-22-047, filed 10/29/15, effective 1/1/16)

WAC 434-112-055 Registered agent—Designation, statement of change, resignation. (1) A domestic entity and a foreign registered entity must designate a registered agent. A registered agent may be a noncommercial or commercial registered agent.

(2) To be designated as a commercial registered agent, a person must deliver to the secretary of state via the online filing system a commercial-registered-agent-listing statement ~~((accompanied by a list of all entities'))~~, and must enter the names and unified business identifier numbers of all entities which the commercial registered agent represents in this state.

(3) When completing and submitting an online filing for any entity required by Washington law to appoint a registered agent, the filing party shall affirm under oath that they have obtained and have in their possession the signed, written consent of the person appointed as registered agent.

(4) When the person submitting the filing online is the person appointed as registered agent, a separate written consent is not required.

(5) Submitting a false affirmation is punishable as a gross misdemeanor under RCW 43.07.210.

(6) The entity required to maintain a registered agent must:

(a) Retain the registered agent's signed consent;

(b) Make the registered agent's signed consent available for inspection upon request; and

(c) Submit the registered agent's signed consent to the division or the office of the attorney general within 10 business days upon demand.

(7) A statement of change to update the registered agent name or contact information may be completed online by:

(a) An authorized person acting on behalf of the entity;

(b) A noncommercial registered agent; or

(c) A commercial registered agent.

(8) When a statement of change is filed by a noncommercial or commercial registered agent, the agent making the change must give each entity represented a notice of a record relating to the change.

(9) A registered agent may resign as the agent for a represented entity by delivering to the secretary of state via the online filing system a statement of resignation, executed by the agent.

(10) A statement of resignation takes effect on the 31st day after the day on which it is filed by the division, or the designation of a new registered agent, whichever is earlier.

(11) A resigning registered agent must promptly furnish each represented entity notice in a record of the date on which a statement of resignation was filed. Notice must include the warning that the entity may be administratively dissolved if a new registered agent is not appointed within 60 days of the resignation of the agent.

[Statutory Authority: 2015 c 176, and chapters 11.110, 18.100, 19.77, 23.86, 23.90, 23B.01, 24.03, 24.06, 25.10, 25.15, 43.07, and 46.64 RCW. WSR 15-22-047, § 434-112-055, filed 10/29/15, effective 1/1/16. Statutory Authority: RCW 11.110.070, 18.100.035, 19.77.015, [19.77.]030, [19.77.]050, [19.77.]060, 23.86.075, 23.90.050, 23B.01.200, [23B.01.]220, 24.03.007, [24.03.]302, [24.03.]405, [24.03.]410, 24.06.290, [24.06.]440, [24.06.]445, [24.06.]450, [24.06.]455, [24.06.]485, 25.10.006, [25.10.]171, [25.10.]605, [25.10.]610, [25.10.]916, [25.10.]921, 25.15.007, [25.15.]810, 43.07.120, [43.07.]128, [43.07.]130, 46.64.040. WSR 10-20-150, § 434-112-055, filed 10/6/10, effective 11/6/10.]

AMENDATORY SECTION (Amending WSR 15-22-047, filed 10/29/15, effective 1/1/16)

WAC 434-112-060 Annual reports. ~~((All business entities, as defined in section 1102(6), chapter 176, Laws of 2015,))~~ (1) An entity defined by RCW 23.95.105(6) and subject to RCW 23.95.255 must file an annual report((s)) accompanied by the ((statutory)) fee established under WAC 434-112-085 ((and are due)) by the last day of the month that the ((business)) entity was formed or registered ((in)) by the ((secretary of state's office)) division.

(2) An annual report may be filed up to 180 days prior to the due date.

(3) Any entity formed under Title((s)) 23, 23B, ((and)) 24, or 25 RCW must disclose any transfer in the controlling interest of the entity and any interest in real property on the annual report, ((under)) pursuant to RCW 43.07.390.

[Statutory Authority: 2015 c 176, and chapters 11.110, 18.100, 19.77, 23.86, 23.90, 23B.01, 24.03, 24.06, 25.10, 25.15, 43.07, and 46.64 RCW. WSR 15-22-047, § 434-112-060, filed 10/29/15, effective 1/1/16. Statutory Authority: RCW 11.110.070, 18.100.035, 19.77.015, [19.77.]030, [19.77.]050, [19.77.]060, 23.86.075, 23.90.050, 23B.01.200, [23B.01.]220, 24.03.007, [24.03.]302, [24.03.]405, [24.03.]410, 24.06.290, [24.06.]440, [24.06.]445, [24.06.]450, [24.06.]455, [24.06.]485, 25.10.006, [25.10.]171, [25.10.]605, [25.10.]610, [25.10.]916, [25.10.]921, 25.15.007, [25.15.]810, 43.07.120, [43.07.]128, [43.07.]130, 46.64.040. WSR 10-20-150, § 434-112-060, filed 10/6/10, effective 11/6/10.]

AMENDATORY SECTION (Amending WSR 15-22-047, filed 10/29/15, effective 1/1/16)

WAC 434-112-070 Online filing—For foreign entity registration—Certificate of existence. (1) When a foreign entity as defined by (~~(section 1102(6), chapter 176, Laws of 2015)~~) RCW 23.95.105, submits an online foreign entity registration statement, the filing party may meet the statutory requirement for submitting a certificate of existence by submitting a digital image of a certificate of existence or document of similar import no older than (~~(sixty)~~) 60 days before the date of submission.

(2) The image must be in a format specified as acceptable on the online filing website.

(3) The entity must:

(a) Retain the original certificate of existence;

(b) Make the original certificate of existence available for inspection (~~(on)~~) upon request; and

(c) Submit the original to the (~~(corporations program)~~) division or the office of the attorney general within (~~(ten)~~) 10 business days upon demand.

[Statutory Authority: 2015 c 176, and chapters 11.110, 18.100, 19.77, 23.86, 23.90, 23B.01, 24.03, 24.06, 25.10, 25.15, 43.07, and 46.64 RCW. WSR 15-22-047, § 434-112-070, filed 10/29/15, effective 1/1/16. Statutory Authority: RCW 11.110.070, 18.100.035, 19.77.015, [19.77.]030, [19.77.]050, [19.77.]060, 23.86.075, 23.90.050, 23B.01.200, [23B.01.]220, 24.03.007, [24.03.]302, [24.03.]405, [24.03.]410, 24.06.290, [24.06.]440, [24.06.]445, [24.06.]450, [24.06.]455, [24.06.]485, 25.10.006, [25.10.]171, [25.10.]605, [25.10.]610, [25.10.]916, [25.10.]921, 25.15.007, [25.15.]810, 43.07.120, [43.07.]128, [43.07.]130, 46.64.040. WSR 10-20-150, § 434-112-070, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 23B.01.200(2), 24.03.007, [24.03.]008, 25.15.007, 19.09.020(15), [19.09].315, 19.77.115, and 43.07.170. WSR 04-04-018, § 434-112-070, filed 1/23/04, effective 2/23/04.]

AMENDATORY SECTION (Amending WSR 21-04-056, filed 1/27/21, effective 2/27/21)

WAC 434-112-075 Online services. (1) Online filings ~~((+ (a-)))~~ will be subject to an online processing fee of ~~((twenty dollars))~~ \$20, with the exception of:

(a) Annual reports ~~((7))~~;
(b) Statements of change, designation, or resignation of registered agent ~~((7, resignation of registered agent, articles of dissolution or statement of withdrawal, requested certificates or certified copies; and (b-Be))~~;
(c) Requested certificates; and
(d) Charitable organization, charitable trust, and commercial fund-raiser filings.

(2) Online filings will be treated as received when the division's filing system records receipt of the completed transaction including payment authorization.

~~((2))~~ (3) When submitting an online filing, the person completing the filing shall sign the application by ~~((Typing))~~ recording their full name ~~((in the space provided on the web form; stating their capacity with the entity addressed in the filing; and following the directions for signing the web form.~~

~~(3-))~~ within the authorized person/signature attestation section of the web form.

(4) Online processing fees ~~((may))~~ are not ~~((be))~~ refundable.

[Statutory Authority: RCW 29A.04.611. WSR 21-04-056, § 434-112-075, filed 1/27/21, effective 2/27/21. Statutory Authority: 2015 c 176, and chapters 11.110, 18.100, 19.77, 23.86, 23.90, 23B.01, 24.03, 24.06, 25.10, 25.15, 43.07, and 46.64 RCW. WSR 15-22-047, § 434-112-075, filed 10/29/15, effective 1/1/16. Statutory Authority: RCW 11.110.070, 18.100.035, 19.77.015, [19.77.]030, [19.77.]050, [19.77.]060, 23.86.075, 23.90.050, 23B.01.200, [23B.01.]220, 24.03.007, [24.03.]302, [24.03.]405, [24.03.]410, 24.06.290, [24.06.]440, [24.06.]445, [24.06.]450, [24.06.]455, [24.06.]485, 25.10.006, [25.10.]171, [25.10.]605, [25.10.]610, [25.10.]916, [25.10.]921, 25.15.007, [25.15.]810, 43.07.120, [43.07.]128, [43.07.]130, 46.64.040. WSR 10-20-150, § 434-112-075, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 23.86.070, 23B.01.200, 23B.01.220, 24.03.405, 25.10.600, 43.07.120. WSR 09-06-036, § 434-112-075, filed 2/24/09, effective 3/27/09. Statutory Authority: RCW 23B.01.200(2), 24.03.007, [24.03.]008, 25.15.007, 19.09.020(15), [19.09].315, 19.77.115, and 43.07.170. WSR 04-04-018, § 434-112-075, filed 1/23/04, effective 2/23/04.]

AMENDATORY SECTION (Amending WSR 21-04-056, filed 1/27/21, effective 2/27/21)

WAC 434-112-080 Immediate and expedited service—Special fees.

(1) Immediate service is available at the division's front counter for an immediate service fee of ~~((fifty dollars))~~ \$150 for single or multiple transactions on paper within each new or existing division program filing. In addition, the filing fee for each transaction applies.

(2) There is no immediate service fee for records dropped off in-person for processing with nonexpedited records received that day.

(3) Expedited service requests for filing (~~(paper)~~) records (~~(received by mail,)~~) will be completed within (~~(two)~~) three working days of submission for an expedited service fee of (~~(fifty dollars)~~) \$100. If a request is made for immediate service on an expedited record, an additional immediate service fee of \$50 may be assessed.

(4) Nonexpedited service requests for filing paper records received by mail are processed within (~~(fifteen)~~) 15 business days. If a request is made for (~~(expedite)~~) expedited or immediate service, the applicable fee may be assessed.

(5) If (~~(an online)~~) a record submitted online is subsequently requested to be filed immediately, (~~(an additional)~~) the \$150 immediate service fee may be required.

(6) The filing party may (~~(indicate)~~) request expedited service (~~(is requested)~~) on mailed records by placing the word "expedite" in bold letters on either the envelope, the face of the record to be filed, or on any cover letter submitted with the record.

(7) (~~(Customers who resubmit rejected records that were expedited the first time they were submitted, may be charged an additional expedite fee upon resubmission.~~)

(~~(8)~~) Emergency services outside regular business hours requiring employee overtime are (~~(one hundred fifty dollars)~~) \$200 per hour (minimum fee of \$200/one hour's rate) plus transaction fees due on any filing. When the division receives a request for emergency services, staff will notify the customer of the service fee and any other reasonable conditions set by the director. The customer must agree to pay the fees or have received a fee waiver before emergency services are provided.

(~~(9)~~) A customer may make alternate arrangements with the director prior to bringing or sending in records, if a sudden, unexpected situation occurs during the business day.

(~~(10)~~) (8) A customer may submit a written request to waive emergency, expedited, or penalty fees, which must include the special circumstances justifying the fee waiver. The director or deputy director will make the determination to waive fees or not.

(~~(11)~~) (9) Immediate, online, or expedited service fees (~~(may not be)~~) are not refundable.

[Statutory Authority: RCW 29A.04.611. WSR 21-04-056, § 434-112-080, filed 1/27/21, effective 2/27/21. Statutory Authority: 2015 c 176, and chapters 11.110, 18.100, 19.77, 23.86, 23.90, 23B.01, 24.03, 24.06, 25.10, 25.15, 43.07, and 46.64 RCW. WSR 15-22-047, § 434-112-080, filed 10/29/15, effective 1/1/16. Statutory Authority: RCW 11.110.070, 18.100.035, 19.77.015, [19.77.]030, [19.77.]050, [19.77.]060, 23.86.075, 23.90.050, 23B.01.200, [23B.01.]220, 24.03.007, [24.03.]302, [24.03.]405, [24.03.]410, 24.06.290, [24.06.]440, [24.06.]445, [24.06.]450, [24.06.]455, [24.06.]485, 25.10.006, [25.10.]171, [25.10.]605, [25.10.]610, [25.10.]916, [25.10.]921, 25.15.007, [25.15.]810, 43.07.120, [43.07.]128, [43.07.]130, 46.64.040. WSR 10-20-150, § 434-112-080, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 23.86.070, 23B.01.200, 23B.01.220, 24.03.405, 25.10.600, 43.07.120. WSR 09-06-036, § 434-112-080, filed 2/24/09, effective 3/27/09. Statutory Authority: RCW 23B.01.200(2), 24.03.007, [24.03.]008, 25.15.007, 19.09.020(15), [19.09.]315, 19.77.115, and 43.07.170. WSR 04-04-018, § 434-112-080, filed 1/23/04, effective 2/23/04.]

AMENDATORY SECTION (Amending WSR 21-04-056, filed 1/27/21, effective 2/27/21)

WAC 434-112-085 Fees and penalties. (1) Fees paid under WAC 434-112-085 are not refundable.

(2) For each certified copy of any record the fee is \$20.

(3) For noncertified copies of records, refer to fees established under WAC 434-12A-100.

(4) For any service of process, the fee is \$50 per individual, marital community, or entity, per address.

(5) Dishonored checks will be assessed a penalty of \$25.

(6) For fees for expedited and immediate processing, refer to WAC 434-112-080.

(7) For domestic and foreign business entities (~~(, formed)~~) under Title 23B RCW, chapters 23.78, (~~(25.15, 25.10)~~) 23.86, 25.05, 25.10, 25.15, and 25.05 RCW, fees and penalties are:

((a)	Public organic record including cooperatives	One hundred eighty dollars
(b)	Foreign registration statement	One hundred eighty dollars (may include back fees)
(c)	Articles of amendment or amendment of foreign registration statement	Thirty dollars
(d)	Articles of restatement	Thirty dollars
(e)	Statement of correction	Thirty dollars
(f)	Revocation of voluntary dissolution	Thirty dollars
(g)	Delinquent fee	Twenty-five dollars
(h)	Annual report including cooperatives	Sixty dollars plus business licensing services fee when applicable
(i)	Reinstatement from administrative dissolution	One hundred forty dollars plus all delinquent license or annual fees
(j)	Requalification from administrative termination	One hundred eighty dollars plus all delinquent fees or penalties
(k)	Articles of merger or exchange	Twenty dollars for each listed company
(l)	Resignation of registered agent	No fee
(m)	Initial report filed with public organic record	No fee
(n)	Initial report filed separate	Ten dollars
(o)	Amended annual report	Ten dollars

(p)	Change of registered agent	No fee
(q)	Registration, reservation, or transfer of name	Thirty dollars
(r)	Articles of dissolution or voluntary termination of statement	No fee
(s)	Agent's consent to act as agent	No fee
(t)	Agent's resignation if appointed without consent	No fee
(u)	Other statement or report	Ten dollars))
(a)	<u>Public organic record</u>	<u>One hundred eighty dollars</u>
(b)	<u>Foreign registration statement</u>	<u>One hundred eighty dollars (plus applicable back fees)</u>
(c)	<u>Articles of amendment or amendment of foreign registration statement</u>	<u>Thirty dollars</u>
(d)	<u>Statement of correction</u>	<u>Thirty dollars</u>
(e)	<u>Articles of validation</u>	<u>Thirty dollars</u>
(f)	<u>Articles of restatement</u>	<u>Thirty dollars</u>
(g)	<u>Articles of merger or exchange</u>	<u>Twenty dollars for each listed company</u>
(h)	<u>Articles of Conversion</u>	<u>Ten dollars</u>
(i)	<u>Certificate of Existence – long form</u>	<u>Thirty dollars</u>
(j)	<u>Certificate of existence – short form/certificate of good standing</u>	<u>Twenty dollars</u>
(k)	<u>Registration, reservation, or transfer of name</u>	<u>Thirty dollars</u>
(l)	<u>Articles of dissolution or voluntary termination of statement</u>	<u>No fee</u>
(m)	<u>Revocation of voluntary dissolution</u>	<u>Thirty dollars</u>
(n)	<u>Initial report filed with public organic record</u>	<u>No fee</u>
(o)	<u>Initial report filed at a later date (deferred)</u>	<u>Ten dollars</u>
(p)	<u>Annual report</u>	<u>Seventy dollars</u>

(q)	<u>Amended annual report</u>	<u>Ten dollars</u>
(r)	<u>Delinquent fee</u>	<u>Twenty-five dollars</u>
(s)	<u>Reinstatement from administrative dissolution</u>	<u>One hundred forty dollars plus all delinquent annual report fees</u>
(t)	<u>Requalification from administrative termination</u>	<u>One hundred eighty dollars plus all delinquent annual report fees</u>
(u)	<u>Designation or statement of change of registered agent</u>	<u>No fee</u>
(v)	<u>Resignation of registered agent</u>	<u>No fee</u>
(w)	<u>Agent's resignation if appointed without consent</u>	<u>No fee</u>
(x)	<u>Other statement or report</u>	<u>Ten dollars</u>

~~((2))~~ (8) For domestic and foreign nonprofit entities under Title 24 RCW ~~((and chapter 23.86 RCW))~~, fees and penalties are:

((a)) (a)	Public organic record	Thirty dollars
(b)	Foreign registration statement	Thirty dollars
(c)	Cooperative association	Twenty-five dollars
(d)	Articles of amendment	Twenty dollars
(e)	Restatement	Twenty dollars
(f)	Annual report	Ten dollars
(g)	Articles of voluntary dissolution, statement of withdrawal	No fee
(h)	Reinstatement from administrative dissolution	Thirty dollars plus all delinquent annual fees and five dollar penalty
(i)	Articles of merger or exchange	Twenty dollars for each listed corporation
(j)	Amended annual report	Ten dollars
(k)	Change of registered agent	No fee
(l)	Change of registered agent address	No fee
(m)	Resignation of registered agent	No fee
(n)	Registration, reservation, or transfer of reservation of name	Twenty dollars
(o)	Certificate of election adopting provisions of chapter 24.03 RCW	Thirty dollars
(p)	Other statement or report filed	Ten dollars))

(a)	<u>Public organic record</u>	<u>Thirty dollars, plus the Charitable Asset Protection Account fee</u>
(b)	<u>Foreign registration statement</u>	<u>Thirty dollars</u>
(c)	<u>Articles of amendment or amendment of foreign registration statement</u>	<u>Twenty dollars</u>
(d)	<u>Statement of correction</u>	<u>Thirty dollars</u>
(e)	<u>Articles of restatement</u>	<u>Twenty dollars</u>
(f)	<u>Articles of merger or exchange</u>	<u>Twenty dollars for each listed corporation</u>
(g)	<u>Articles of domestication</u>	<u>Ten dollars</u>
(h)	<u>Articles of domestication and conversion</u>	<u>Ten dollars</u>
(i)	<u>Registration, reservation, or transfer of reservation of name</u>	<u>Twenty dollars</u>
(j)	<u>Certificate of existence/certificate of good standing</u>	<u>Twenty dollars</u>
(k)	<u>Articles of voluntary dissolution, statement of withdrawal</u>	<u>No fee</u>
(l)	<u>Revocation of voluntary dissolution</u>	<u>Twenty dollars</u>
(m)	<u>Annual report</u>	<u>Ten dollars, plus the Charitable Asset Protection Account fee</u>
(n)	<u>Amended annual report</u>	<u>Ten dollars</u>
(o)	<u>Reinstatement from administrative dissolution</u>	<u>Thirty-five dollars plus all delinquent annual report fees</u>
(p)	<u>Requalification from administrative termination</u>	<u>Thirty dollars plus all delinquent annual report fees</u>
(q)	<u>Designation as a public benefit corporation</u>	<u>Twenty dollars</u>
(r)	<u>Registration as a host home</u>	<u>Twenty dollars</u>
(s)	<u>Designation or statement of change of registered agent</u>	<u>No fee</u>
(t)	<u>Resignation of registered agent</u>	<u>No fee</u>

- (u) Agent's resignation if appointed without consent No fee
- (v) Other statement or report filed Ten dollars

~~((3))~~ (9) For registering trademarks for use within the state, the fees are as follows:

- (a) Five year registration Fifty-five dollars ~~((includes five dollars heritage center fee))~~ for each class)) per classification registered
- (b) Five year renewal Fifty dollars ~~((for each class))~~ per classification registered
- (c) Assignment of trademark Ten dollars
- (d) New certificate with name of assignee Five dollars
- (e) Reservation of trademark Thirty dollars for each ~~((class))~~ classification reserved((, for one hundred eighty days))
- (f) Amendment of trademark Fifty dollars ~~((for each class))~~ per classification added
- (g) Cancellation of trademark No fee
- (h) Other statement or report filed Ten dollars

~~((4))~~ (10) For filings related to state registered domestic partnership, the fees are:

- (a) Registration Fifty dollars
- (b) Name change No fee
- (c) Address change No fee
- (d) ~~((Notice of termination by reason of death))~~ Additional or replacement certificate of domestic partnership (paper or electronic) ~~((No fee))~~ Five dollars
- (e) Replacement wallet card Ten dollars
- (f) Notice of termination by reason of death, divorce, or marriage No fee

~~((5) Fees paid under WAC 434-112-085 may not be refundable.))~~
(11) For apostille certification of documents, the fee is \$15 per document apostilled.

[Statutory Authority: RCW 29A.04.611. WSR 21-04-056, § 434-112-085, filed 1/27/21, effective 2/27/21. Statutory Authority: 2015 c 176, and

chapters 11.110, 18.100, 19.77, 23.86, 23.90, 23B.01, 24.03, 24.06, 25.10, 25.15, 43.07, and 46.64 RCW. WSR 15-22-047, § 434-112-085, filed 10/29/15, effective 1/1/16. Statutory Authority: RCW 23B.01.220, 25.15.805, and 25.10.916. WSR 11-12-020, § 434-112-085, filed 5/24/11, effective 7/1/11. Statutory Authority: RCW 11.110.070, 18.100.035, 19.77.015, [19.77.]030, [19.77.]050, [19.77.]060, 23.86.075, 23.90.050, 23B.01.200, [23B.01.]220, 24.03.007, [24.03.]302, [24.03.]405, [24.03.]410, 24.06.290, [24.06.]440, [24.06.]445, [24.06.]450, [24.06.]455, [24.06.]485, 25.10.006, [25.10.]171, [25.10.]605, [25.10.]610, [25.10.]916, [25.10.]921, 25.15.007, [25.15.]810, 43.07.120, [43.07.]128, [43.07.]130, 46.64.040. WSR 10-20-150, § 434-112-085, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 23.86.070, 23B.01.200, 23B.01.220, 24.03.405, 25.10.600, 43.07.120. WSR 09-06-036, § 434-112-085, filed 2/24/09, effective 3/27/09. Statutory Authority: RCW 43.07.400 and 9A.56.078. WSR 07-20-065, § 434-112-085, filed 9/28/07, effective 10/29/07. Statutory Authority: RCW 23B.01.200(2), 24.03.007, [24.03.]008, 25.15.007, 19.09.020(15), [19.09].315, 19.77.115, and 43.07.170. WSR 04-04-018, § 434-112-085, filed 1/23/04, effective 2/23/04.]

AMENDATORY SECTION (Amending WSR 15-22-047, filed 10/29/15, effective 1/1/16)

WAC 434-112-100 State registered domestic partnerships. (1)

State registered domestic partnerships will be registered by (~~the corporations program, in~~) the corporations and charities division of the office of the secretary of state.

(2) Declarations of state registered domestic partnerships may be submitted to the division by mail, or in person.

(3) The paper record standards in WAC 434-112-040 apply to declarations of state registered domestic partnerships.

(4) At the time of registration of a declaration of state registered domestic partnership the (~~corporations program~~) division will provide to the state registered domestic (~~partnership~~) partners:

(a) One original certificate of registration. (~~Further certificates or~~) Additional certificates requested after registration are available subject to the fees set forth in WAC ((434-112-090)) 434-112-085.

(b) Two wallet sized cards documenting registration of the state registered domestic partnership.

(5) Registrations of state registered domestic partnerships are public records and all records related to the registration are subject to public disclosure.

(6) Notice of termination of domestic partnership by reason of death (~~only~~), dissolution, or marriage may be submitted to the (~~corporations program~~) division by email, (~~regular~~) postal mail, or in person and must include a copy of the death certificate, decree of dissolution, or marriage certificate. There is no fee for filing a notice of termination.

[Statutory Authority: 2015 c 176, and chapters 11.110, 18.100, 19.77, 23.86, 23.90, 23B.01, 24.03, 24.06, 25.10, 25.15, 43.07, and 46.64 RCW. WSR 15-22-047, § 434-112-100, filed 10/29/15, effective 1/1/16. Statutory Authority: RCW 11.110.070, 18.100.035, 19.77.015, [19.77.]030, [19.77.]050, [19.77.]060, 23.86.075, 23.90.050,

23B.01.200, [23B.01.]220, 24.03.007, [24.03.]302, [24.03.]405, [24.03.]410, 24.06.290, [24.06.]440, [24.06.]445, [24.06.]450, [24.06.]455, [24.06.]485, 25.10.006, [25.10.]171, [25.10.]605, [25.10.]610, [25.10.]916, [25.10.]921, 25.15.007, [25.15.]810, 43.07.120, [43.07.]128, [43.07.]130, 46.64.040. WSR 10-20-150, § 434-112-100, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 23.86.070, 23B.01.200, 23B.01.220, 24.03.405, 25.10.600, 43.07.120. WSR 09-06-036, § 434-112-100, filed 2/24/09, effective 3/27/09. Statutory Authority: RCW 43.07.400 and 9A.56.078. WSR 07-20-065, § 434-112-100, filed 9/28/07, effective 10/29/07.]

NEW SECTION

WAC 434-112-110 Apostille certification of documents. (1) The division will provide apostille certification pursuant to RCW 43.07.032 and standard protocols under the Hague Conference 1961 Apostille Convention.

(2) The division can provide apostille certification for certified government documents from the state of Washington and its political subdivisions, including state agencies, courts, institutions of higher education, public school systems, and county and municipal government offices.

(3) The division can provide apostille certification for documents properly notarized by a licensed Washington notary, subject to RCW 43.07.032.

(4) The division will not provide apostille certification for documents notarized by an out-of-state notary.

(5) Documents issued by a government of another state, territory, or nation, or by the United States federal government or the United States military will not be apostilled by the secretary of state. Apostilles should be sought from the government which holds the original record or document.

(6) The division will not provide apostille certification of records recorded with county auditors or other political subdivisions of the state of Washington if the underlying document cannot be apostilled pursuant to subsections (4) and (5) of this section.

[]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-112-056	Statement of change for registered agent name and address.
WAC 434-112-057	Resignation of agent.
WAC 434-112-058	Service of process.
WAC 434-112-065	Online filing—Designation of registered agent.
WAC 434-112-090	Miscellaneous fees.

WSR 23-11-163
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD

[Filed May 24, 2023, 10:35 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: The Washington state liquor and cannabis board (board) proposes to amend the following rule sections to implement statutory mandates of SSB 5448, (chapter 279, Laws of 2023), effective July 1, 2023, concerning outside or extended alcohol service, the extension of a temporary alcohol delivery endorsement, and an alcohol takeout endorsement:

Chapter 314-03 WAC, Allowed Activities: Amending WAC 314-03-200 Outside or extended alcohol service, 314-03-205 Rules for outdoor alcohol service by on-premises licensees, 314-03-500 Temporary and permanent endorsements for sale of manufacturer-sealed alcohol products through takeout, or delivery service, 314-03-505 Temporary and permanent endorsements for sale of premixed cocktails, cocktail kits, wine by the glass, premixed wine and spirits cocktails, or premixed wine drinks through curbside, takeout, or delivery service, and 314-03-510 Temporary endorsement for sale of growlers through curbside, takeout, or delivery service.

Hearing Location(s): On June 27, 2023, at 10:00 a.m. All public board activity will be held in a "hybrid" environment. This means that the public will have options for in-person or virtual attendance. The Boardroom at the headquarters building, 1025 Union Avenue, Olympia, WA 98504, will be open for in-person attendance. The public may also 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. TVW also regularly airs these meetings. Please note that although the Boardroom will be staffed during a meeting, board members and agency participants may continue to appear virtually. For more information about board meetings, please visit https://lcb.wa.gov/Boardmeetings/Board_meetings.

Date of Intended Adoption: No earlier than July 5, 2023.

Submit Written Comments to: Dr. Kathy Hoffman, Research Manager, P.O. Box 43080, Olympia, WA 98504-3080, email rules@lcb.wa.gov, fax 360-704-5027, by June 27, 2023.

Assistance for Persons with Disabilities: Contact Anita Bingham, ADA coordinator, human resources director, phone 360-664-1739, fax 360-664-9689, TTY 711 or 1-800-833-6388, email anita.bingham@lcb.wa.gov, by June 22, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule proposal is to implement and incorporate by reference without material change the technical provisions of SSB 5448, which become effective July 1, 2023, as follows:

- Makes outside or extended alcohol service permanent.
- Makes an endorsement for the sale of manufacturer sealed alcohol products, premixed cocktails, wine by the glass, premixed wine and spirits cocktails, or premixed wine drinks available through *takeout* service.
- Makes an endorsement for the sale of manufacturer sealed alcohol products, premixed cocktails, wine by the glass, premixed wine

and spirits cocktails, or premixed wine drinks available through *delivery* service until July 1, 2025.

- Makes an endorsement for the sale of growlers available through *takeout* service.
- Makes an endorsement for the sale of growlers available through *delivery* service until July 1, 2025.
- Removes all reference to curbside service.
- Removes all reference to cocktail kits and mini-bottles.

Reasons Supporting Proposal: The proposed rule amendments are needed to align existing rules with the statutory mandates of SSB 5448, (chapter 279, Laws of 2023), which become effective July 1, 2023. The proposed rule amendments are anticipated to support regulatory stability and business continuity.

Statutory Authority for Adoption: SSB 5448 (chapter 279, Laws of 2023); RCW 66.08.071, 66.08.030.

Statute Being Implemented: SSB 5448, (chapter 279, Laws of 2023).

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: None.

Name of Proponent: Washington state liquor and cannabis board, governmental.

Name of Agency Personnel Responsible for Drafting: Dr. Kathy Hoffman, Research Manager, 1025 Union Avenue, Olympia, WA 98501, 360-664-1622; Implementation: Rebecca Smith, Director of Licensing, 1025 Union Avenue, Olympia, WA 98501, 360-664-1753; and Enforcement: Chandra Brady, Director of Education and Enforcement, 1025 Union Avenue, 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 proposed rules do not qualify as a type of rule requiring a cost-benefit analysis under RCW 34.05.328(5). The board is not listed as an agency under RCW 34.05.328 (5) (a) (i), so the cost-benefit analysis requirements in RCW 34.05.328 are not applicable to the proposed rules unless voluntarily applied or made applicable by the joint administrative rules review committed under RCW 34.05.328 (5) (a) (ii).

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 rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rules are exempt from the Regulatory Fairness Act's (RFA) small business economic impact statement (SBEIS) requirement under RCW 34.05.310 (4) (c) and (e). The proposed rules incorporate by reference the statutory mandates of SSB 5448 (chapter 279, Laws of 2023) without material change.

Scope of exemption for rule proposal:
Is fully exempt.

May 24, 2023
David Postman
Chair

OTS-4600.1

AMENDATORY SECTION (Amending WSR 22-01-052, filed 12/8/21, effective 1/8/22)

WAC 314-03-200 Outside or extended alcohol service. A licensee must request approval from the board's licensing division for ongoing outside or extended alcohol service. Except as provided in ~~((the temporary))~~ rules for outdoor alcohol service in WAC 314-03-205 ~~((that are effective until July 1, 2023, unless extended by law))~~, the following conditions must be met:

(1) The area must be enclosed with a permanent or movable barrier a minimum of 42 inches in height.

(2) There must be an interior access to the licensed premises. If the interior access is from a minor restricted area of the premises, minors are prohibited in the outside or extended alcohol service area.

(3) There must be an attendant, wait staff, or server dedicated to the outside service area when patrons are present.

(4) Must have leasehold rights to the area and have and be connected to the licensed premises.

(5) Openings into and out of the outside area cannot exceed 10 feet. If there is more than one opening along one side, the total combined opening may not exceed 10 feet.

(6) **Exception.** For sidewalk cafe outside service, the board allows local regulations that, in conjunction with a local sidewalk cafe permit, requires a 42 inch barrier or permanent demarcation of the designated alcohol service areas for continued enforcement of the boundaries.

(a) The permanent demarcation must be at all boundaries of the outside service area;

(b) The permanent demarcation must be at least six inches in diameter;

(c) The permanent demarcation must be placed no more than 10 feet apart;

(d) There must be an attendant, wait staff, or server dedicated to the outside service area when patrons are present;

(e) This exception only applies to restaurant liquor licenses with sidewalk cafe service areas contiguous to the liquor licensed premises. "Contiguous" means touching along a boundary or at a point;

(f) This exception does not apply to beer gardens, standing room only venues, and permitted special events. Board approval is still required with respect to sidewalk cafe barrier requirements.

(7) **Limited exception.** The board may grant limited exceptions to the required 42 inch high barrier for outside alcohol service areas.

(a) The licensee must have exclusive leasehold rights to the outside service area.

(b) There must be permanent demarcations at all boundaries of the outside service area for continued enforcement of the boundaries.

[Statutory Authority: 2021 c 48 § 2, RCW 66.08.071, 66.08.030 and 2021 c 48. WSR 22-01-052, § 314-03-200, filed 12/8/21, effective 1/8/22. Statutory Authority: RCW 66.08.030 and 66.44.310. WSR 20-03-180, § 314-03-200, filed 1/22/20, effective 2/22/20. Statutory Authority: RCW 66.08.030. WSR 17-12-030, § 314-03-200, filed 5/31/17, effective 7/1/17.]

AMENDATORY SECTION (Amending WSR 22-01-052, filed 12/8/21, effective 1/8/22)

WAC 314-03-205 ((Temporary rules for)) Outdoor alcohol service ((by)) for on-premises licensees. (1) ((As authorized in section 2(8), chapter 48, Laws of 2021, the temporary rules for outdoor alcohol service described in this section are effective until July 1, 2023, unless extended by law. These rules create a temporary exception to the requirements in WAC 314-03-200. These rules apply to all on-premises licensees.

~~(2))~~ **Outdoor alcohol services in privately owned spaces.** For ongoing outdoor alcohol service located in privately owned spaces, a licensee must request approval from the board's licensing division and meet the following requirements:

(a) The licensee must have legal authority to use the outdoor alcohol service area including, but not limited to, ownership or leasehold rights;

(b) The licensee must have a building that provides indoor dining or production in order to qualify for an outdoor alcohol service area;

(c) The outdoor alcohol service area must be (i) contiguous to the licensed business, or (ii) located on the same property or parcel of land as the licensed business;

(d) The outdoor alcohol service area must have an attendant, wait staff, or server dedicated to the area when patrons are present;

(e) Interior access to the licensed premises from the outdoor alcohol service area is not required. However, unless there is (i) interior access to the licensed premises from the outdoor alcohol service area, or (ii) an unobstructed direct line of sight from inside the licensed premises to the outdoor alcohol service area, an employee with a mandatory alcohol server training (MAST) permit under chapter 314-17 WAC must be present in the outdoor alcohol service area at all times that patrons are present, in order to monitor alcohol consumption. This requirement is in addition to the requirement in (d) of this subsection that the outdoor alcohol service area must have an attendant, wait staff, or server dedicated to the area when patrons are present;

(f) The same food service offered inside the licensed premises must also be offered in the outdoor alcohol service area;

(g) The outdoor alcohol service area must be enclosed with a permanent or movable barrier a minimum of 42 inches in height. The board may grant limited exceptions to the required 42 inch high barrier for outdoor alcohol service areas if the licensee has permanent boundaries for the outdoor alcohol service area;

(h) Openings into and out of the outdoor alcohol service area cannot exceed 10 feet. If there is more than one opening along one side, the total combined opening may not exceed 10 feet; and

(i) Licensees must comply with local building codes, local health jurisdiction requirements, department of labor and industries requirements, and any other applicable laws and rules.

~~((3))~~ (2) Outdoor alcohol services in public spaces. For ongoing outdoor alcohol service located in public spaces, a licensee must request approval from the board's licensing division and meet the following requirements:

(a) The licensed business must have a permit from their local jurisdiction allowing the business to use the public space as a service area, such as a sidewalk cafe permit or other similar outdoor area permit authorized by local regulation;

(b) The licensee must have a building that provides indoor dining or production in order to qualify for an outdoor alcohol service area;

(c) (i) Except as provided in (c) (ii) of this subsection, the outdoor alcohol service area must be enclosed with a permanent or movable barrier a minimum of 42 inches in height. Openings into and out of the outdoor alcohol service area cannot exceed 10 feet. If there is more than one opening along one side, the total combined opening may not exceed 10 feet;

(ii) Licensees with outdoor alcohol service areas contiguous to the licensed premises may use a permanent demarcation of the designated alcohol service area for continued enforcement of the boundaries, instead of a permanent or movable barrier a minimum of 42 inches in height. If a permanent demarcation is used, the permanent demarcation must be at all boundaries of the outdoor alcohol service area, must be at least six inches in diameter, and must be placed no more than 10 feet apart;

(d) The outdoor alcohol service area must have an attendant, wait staff, or server dedicated to the area when patrons are present;

(e) The same food service offered inside the licensed premises must also be offered in the outdoor alcohol service area; and

(f) Licensees must comply with local building codes, local health jurisdiction requirements, department of labor and industries requirements, and any other applicable laws and rules.

~~((4))~~ (3) For multiple licensees to share an outdoor alcohol service area, the licensees must request approval from the board's licensing division and meet the following requirements:

(a) The licensees' property parcels or buildings must be located in direct physical proximity to one another. For the purposes of this subsection, "direct physical proximity" means that the property parcels or buildings are physically connected or touching each other along a boundary or at a point;

(b) (i) If the shared outdoor alcohol service area is located on public space, the licensees sharing the space must meet all of the requirements in subsection ~~((3))~~ (2) of this section and shared use of the outdoor service area must be authorized by the licensees' local jurisdiction permits; or

(ii) If the shared outdoor alcohol service area is located in a privately owned space, the licensees sharing the space must meet all of the requirements in subsection ~~((2))~~ (1) of this section and must have legal authority to share use of the outdoor service area including, but not limited to, ownership or leasehold rights;

(c) The licensees must maintain separate storage of products and separate financial records for the shared outdoor alcohol service area. If licensees share any point of sale system, the licensees must keep complete documentation and records for the shared point of sale

system showing clear separation as to what sales items and categories belong to each respective licensee;

(d) The licensees must use distinctly marked glassware or serving containers in the shared outdoor alcohol service area to identify the source of any alcohol product being consumed. The distinctive markings may be either permanent or temporary. Any temporary markings must remain on the glassware or serving containers through the duration of use by the customer;

(e) The licensees must complete an operating plan for the shared outdoor alcohol service area. The operating plan should demonstrate in general how responsibility for the outdoor alcohol service area is shared among the licensees. Licensees are required to submit the operating plan to the board's licensing division at the time of application or alteration and must keep documentation of an up-to-date plan available for inspection on premises; and

(f) Consistent with WAC 314-11-065, a licensee may not permit the removal of alcohol in an open container from the shared outdoor alcohol service area, except to reenter the licensed premises where the alcohol was purchased. Signage prohibiting the removal of alcohol in an open container must be visible to patrons in the shared outdoor alcohol service area.

~~((5))~~ (4) If multiple licensees use a shared outdoor alcohol service area as described in subsection ~~((4))~~ (3) of this section, all participating licensees are jointly responsible for any violation or enforcement issues unless it can be demonstrated that the violation or enforcement issue was due to one or more licensee's specific conduct or action, in which case the violation or enforcement action applies only to those identified licensees.

~~((6))~~ (5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Alcohol service" means service of liquor as defined in RCW 66.04.010.

(b) "Contiguous" means touching along a boundary or at a point.

(c) "Sidewalk cafe" means a designated seating area on the sidewalk, curb space, or other public space where a business provides table service and seating for their patrons during business hours.

~~((7) This section expires July 1, 2023, pursuant to section 2(11), chapter 48, Laws of 2021, unless extended by law.)~~

[Statutory Authority: 2021 c 48 § 2, RCW 66.08.071, 66.08.030 and 2021 c 48. WSR 22-01-052, § 314-03-205, filed 12/8/21, effective 1/8/22.]

AMENDATORY SECTION (Amending WSR 22-01-052, filed 12/8/21, effective 1/8/22)

WAC 314-03-500 ((Temporary)) Endorsement for sale of manufacturer sealed alcohol products through ~~(curbside)~~ takeout~~((7))~~ or delivery service. (1) ~~((As authorized in section 2, chapter 48, Laws of 2021, the temporary endorsement described in this section is available until July 1, 2023, unless extended by law.))~~ An endorsement for the sale of manufacturer sealed alcohol products is available through takeout and delivery service as set forth in section 1(5)(d), chapter 279, Laws of 2023. There is no fee for a licensee to apply for and obtain this endorsement.

(2) (a) (~~Consistent with section 2(2), chapter 48, Laws of 2021,~~) An endorsement to sell manufacturer sealed alcohol products at retail through (~~curbside,~~) takeout(~~,~~) or delivery service is available to the following licensees: Beer and wine restaurants; spirits, beer, and wine restaurants; taverns; domestic wineries; domestic breweries and microbreweries; distilleries; snack bars; nonprofit arts licensees; and caterers.

(b) This endorsement is separate from the endorsements in WAC 314-03-505 and 314-03-510 that authorize the sale through (~~curbside,~~) takeout(~~,~~) or delivery service of nonmanufacturer or nonfactory sealed premixed cocktails, (~~cocktail kits,~~) wine by the glass, premixed wine and spirits cocktails, premixed wine drinks, or growlers.

(3) In order to obtain and maintain the endorsement described in this section, licensees must meet the following requirements:

(a) Alcohol products must be sold in closed, factory or manufacturer sealed packages or containers, such as cans, bottles, and kegs. Licensees may only sell the types of manufacturer sealed alcohol products under this endorsement that they are authorized to sell under the terms of their license.

(b) (i) Except as provided in (b) (ii) of this subsection, if an alcohol product authorized for sale under this endorsement is enclosed inside a bag, box, or other packaging before the alcohol product is provided to the customer through (~~curbside,~~) takeout(~~,~~) or delivery service, the exterior of the bag, box, or other packaging must be clearly marked or labeled with the words "CONTAINS ALCOHOL, FOR PERSONS 21+" in a size that is legible and readily visible.

(ii) Brewery, winery, and distillery licensees are not required to mark or label the exterior of the bag, box, or other packaging as described in (b) (i) of this subsection if the alcohol product is provided to the customer through takeout service.

(c) If the alcohol products authorized for sale under this endorsement are sold through delivery service:

(i) Licensees must comply with the requirements in the consumer orders, internet sales, and delivery rules in this title. For these requirements, see WAC 314-03-020 through 314-03-040. (~~Delivery by third-party service providers is allowed with approval by the board's licensing division of an added activity application requesting internet sales privileges.~~)

(ii) At the time of delivery, the employee making the delivery must verify that the person receiving the delivery is at least (~~twenty-one~~) 21 years of age using an acceptable form of identification in WAC 314-11-025. See RCW 66.44.270.

(iii) (~~Consistent with section 2(9), chapter 48, Laws of 2021~~) As set forth in section 1(8), chapter 279, Laws of 2023, upon delivery of the alcohol product, the signature of the person age (~~twenty-one~~) 21 or over receiving the delivery must be obtained. Delivery sales records must meet the requirements in the consumer orders, internet sales, and delivery rules. For general record retention requirements, see WAC 314-11-095.

(iv) If no person age (~~twenty-one~~) 21 or over is present to accept the alcohol product at the time of delivery, the alcohol product must be returned. An alcohol product may not be left unattended at a delivery location.

(v) Delivery of an alcohol product may not be made to any person who shows signs of intoxication. See RCW 66.44.200.

(d)(i) In addition to the signs required by WAC 314-11-060, signs provided electronically by the board regarding public consumption and transportation of any alcohol products sold through ~~((curbside,))~~ takeout~~((,))~~ or delivery service must be posted in plain view at:

(A) The main entrance to the area of the premises where alcohol products are sold; and

(B) The areas of the premises where alcohol products are picked up for takeout~~((,curbside,))~~ or delivery service.

(ii) The signs will be designed to remind customers purchasing alcohol products through ~~((curbside,))~~ takeout~~((,))~~ or delivery service that they must comply with applicable laws and rules including, but not limited to, restrictions on consuming alcohol in public in RCW 66.44.100 and restrictions on drinking or having an open container in a vehicle in RCW 46.61.519.

(4) In addition to the requirements listed in this section, licensees must comply with all applicable requirements in Title 66 RCW, Title 314 WAC, and any other applicable laws and rules including, but not limited to: Keg sale requirements in WAC 314-02-115 and restrictions on sales to minors and intoxicated persons in chapter 66.44 RCW and WAC 314-16-150.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Alcohol product" means liquor as defined in RCW 66.04.010.

(b) "Factory sealed" or "manufacturer sealed" means that a package or container is in ~~((one hundred))~~ 100 percent resalable condition, with all manufacturer's seals intact.

(6) ~~((This section expires July 1, 2023, pursuant to section 2(11), chapter 48, Laws of 2021, unless extended by law.))~~ The delivery service endorsement described in this section expires July 1, 2025, as set forth in section 1(3), chapter 279, Laws of 2023.

[Statutory Authority: 2021 c 48 § 2, RCW 66.08.071, 66.08.030 and 2021 c 48. WSR 22-01-052, § 314-03-500, filed 12/8/21, effective 1/8/22.]

AMENDATORY SECTION (Amending WSR 22-01-052, filed 12/8/21, effective 1/8/22)

WAC 314-03-505 ((Temporary)) Endorsement for sale of premixed cocktails, ~~((cocktail kits,))~~ wine by the glass, premixed wine and spirits cocktails, or premixed wine drinks through ~~((curbside,))~~ takeout~~((,))~~ or delivery service. (1) ~~((As authorized in section 2, chapter 48, Laws of 2021, the temporary endorsement described in this section is available until July 1, 2023, unless extended by law.))~~ An endorsement is available for the sale of premixed cocktails, wine by the glass, premixed wine and spirits cocktails, or premixed wine drinks through takeout and delivery service as set forth in section 1(3), chapter 279, Laws of 2023. There is no fee for a licensee to apply for and obtain this endorsement.

(2) ~~((Consistent with section 2(3) and (4), chapter 48, Laws of 2021))~~ As set forth in section 1(2) and (3), chapter 279, Laws of 2023:

(a) An endorsement is available to spirits, beer, and wine restaurants to sell premixed cocktails, ~~((cocktail kits,))~~ wine by the glass, or premixed wine and spirits cocktails through ~~((curbside,))~~ takeout~~((,))~~ or delivery service. This endorsement does not authorize

the sale of full bottles of spirits for off-premises consumption (~~(~~ although mini-bottles may be sold as part of cocktail kits. Consistent with section 2(3), chapter 48, Laws of 2021, mini-bottle sales as part of cocktail kits are exempt from the spirits license issuance fee under RCW 66.24.630 (4) (a) and the tax on each retail sale of spirits under RCW 82.08.150).

(b) An endorsement is also available to beer and wine restaurant licensees to sell wine or premixed wine drinks by the glass through (~~(~~ ~~eurbside~~) takeout (~~(~~ ~~)~~) or delivery service.

(3) In order to obtain and maintain the endorsement described in this section, licensees must meet the following requirements:

(a) (i) For spirits, beer, and wine restaurants, food that qualifies as a complete meal under WAC 314-02-010 must be sold with the premixed cocktails, (~~(~~ ~~cocktail-kits~~) wine by the glass, or premixed wine and spirits cocktails authorized for sale through (~~(~~ ~~eurbside~~) takeout (~~(~~ ~~)~~) or delivery service under this endorsement. Spirits, beer, and wine restaurants can sell up to ((3)) three ounces of spirits per complete meal.

(ii) For beer and wine restaurants, a food item that qualifies as minimum food service under WAC 314-02-010 must be sold with the wine or premixed wine drinks by the glass authorized for sale through (~~(~~ ~~eurbside~~) takeout (~~(~~ ~~)~~) or delivery service under this endorsement.

(b) The alcohol products authorized for sale through (~~(~~ ~~eurbside~~) takeout (~~(~~ ~~)~~) or delivery service under this endorsement must be prepared the same day they are sold.

(c) The alcohol products authorized for sale through (~~(~~ ~~eurbside~~) takeout (~~(~~ ~~)~~) or delivery service under this endorsement must be packaged in a container that has been sealed in a manner designed to prevent consumption without removal of the tamper-evident lid, cap, or seal. For the purposes of this subsection, "tamper-evident" means a lid, cap, or seal that visibly demonstrates when a container has been opened. Tape is not a tamper-evident seal. The following list of examples is not comprehensive and is not intended to capture all of the possible types of allowed or disallowed containers:

(i) Examples of containers that are allowed:

(A) Containers with a screw top cap or lid that breaks apart when the container is opened.

(B) Containers with a plastic heat shrink wrap band, strip, or sleeve extending around the cap or lid to form a seal that must be broken when the container is opened.

(C) Vacuum or heat-sealed pouches without holes or openings for straws.

(ii) Examples of containers that are not allowed:

(A) Containers with lids with sipping holes or openings for straws.

(B) Containers such as styrofoam, paper, or plastic cups that lack a tamper-evident lid, cap, or seal.

(d) The containers that the alcohol products authorized for sale under this endorsement are packaged in must be clearly marked or labeled with the words "CONTAINS ALCOHOL, FOR PERSONS 21+" in a size and manner that is legible and readily visible. If a container of alcohol authorized for sale under this endorsement is enclosed inside a bag, box, or other packaging before it is provided to the customer through (~~(~~ ~~eurbside~~) takeout (~~(~~ ~~)~~) or delivery service, the exterior of the bag, box, or other packaging must be clearly marked or labeled with the words "CONTAINS ALCOHOL, FOR PERSONS 21+" in a size and manner that is legible and readily visible.

(e) To deter public consumption or consumption in a vehicle of premixed cocktails, ~~((cocktail-kits))~~ wine by the glass, premixed wine and spirits cocktails, and premixed wine drinks sold through ~~((curbside))~~ takeout~~((r))~~ or delivery service, licensees may not put ice directly into the containers that the alcohol products authorized for sale under this endorsement are packaged in, except for frozen or blended drinks. Ice may be provided separately along with the ~~((curbside))~~ takeout~~((r))~~ or delivery order.

(f) The premixed cocktails, ~~((cocktail-kits))~~ wine by the glass, premixed wine and spirits cocktails, and premixed wine drinks authorized for sale through ~~((curbside))~~ takeout~~((r))~~ or delivery service under this endorsement must be placed in the trunk of the vehicle or beyond the immediate reach of the driver or any passengers in compliance with open container requirements in RCW 46.61.519 before being transported off the licensee's premises.

(g) If the premixed cocktails, ~~((cocktail-kits))~~ wine by the glass, premixed wine and spirits cocktails, and premixed wine drinks authorized for sale under this endorsement are sold through delivery service:

(i) Licensees must comply with the requirements in the consumer orders, internet sales, and delivery rules in this title, except to the extent that those rules ~~((allow delivery by third-party service providers and))~~ prohibit the sale of nonfactory sealed containers. For these requirements, see WAC 314-03-020 through 314-03-040.

(ii) Delivery must be made by an employee of the licensed business who is at least ~~((twenty-one))~~ 21 years of age and holds a class 12 mandatory alcohol server training (MAST) permit under chapter 314-17 WAC. Delivery may not be made by third-party service providers.

(iii) At the time of delivery, the employee making the delivery must verify that the person receiving the delivery is at least ~~((twenty-one))~~ 21 years of age using an acceptable form of identification in WAC 314-11-025. See RCW 66.44.270.

(iv) ~~((Consistent with section 2(9), chapter 48, Laws of 2021))~~ As set forth in section 1(8), chapter 279, Laws of 2023, upon delivery of the alcohol product, the signature of the person age ~~((twenty-one))~~ 21 or over receiving the delivery must be obtained. Delivery sales records must meet the requirements in the consumer orders, internet sales, and delivery rules. For general record retention requirements, see WAC 314-11-095.

(v) If no person age ~~((twenty-one))~~ 21 or over is present to accept the alcohol product at the time of delivery, the alcohol product must be returned. An alcohol product may not be left unattended at a delivery location.

(vi) Delivery of an alcohol product may not be made to any person who shows signs of intoxication. See RCW 66.44.200.

(h)(i) In addition to the signs required by WAC 314-11-060, signs provided electronically by the board regarding public consumption and transportation of any alcohol products sold through ~~((curbside))~~ takeout~~((r))~~ or delivery service must be posted in plain view at:

(A) The main entrance to the area of the premises where alcohol products are sold; and

(B) The areas of the premises where alcohol products are picked up for takeout~~((r-curbside))~~ or delivery service.

(ii) The signs will be designed to remind customers purchasing alcohol products through ~~((curbside))~~ takeout~~((r))~~ or delivery service that they must comply with applicable laws and rules including, but not limited to, restrictions on consuming alcohol in public in RCW

66.44.100 and restrictions on drinking or having an open container in a vehicle in RCW 46.61.519.

(4) In addition to the requirements listed in this section, licensees must comply with all applicable requirements in Title 66 RCW, Title 314 WAC, and any other applicable laws and rules including, but not limited to, restrictions on sales to minors and intoxicated persons in chapter 66.44 RCW and WAC 314-16-150.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Alcohol product" or "alcoholic beverage" means liquor as defined in RCW 66.04.010.

~~(b) ("Mini-bottles" has the same meaning as defined in section 2(10), chapter 48, Laws of 2021: Original factory-sealed containers holding not more than 50 milliliters of a spirituous beverage.~~

~~(e-))~~ "Premixed cocktail" means a drink made by combining spirits with other alcoholic or nonalcoholic beverages and ingredients including, but not limited to, fruit juice, carbonated beverages, flavorings, or cream.

~~((d-))~~ (c) "Premixed wine and spirits cocktail" means a drink made by combining wine and spirits with other alcoholic or nonalcoholic beverages and ingredients including, but not limited to, fruit juice, carbonated beverages, flavorings, or cream.

~~((e-))~~ (d) "Premixed wine drink" means a drink made by combining wine with nonalcoholic beverages and ingredients including, but not limited to, fruit juice, carbonated beverages, flavorings, or cream. A premixed wine drink may not include alcoholic beverages other than wine.

~~((f-))~~ (e) "Spirits" has the same meaning as defined in RCW 66.04.010.

~~((g-))~~ (f) "Wine" has the same meaning as defined in RCW 66.04.010.

(6) ~~((This section expires July 1, 2023, pursuant to section 2(11), chapter 48, Laws of 2021, unless extended by law.))~~ The delivery service endorsement described in this section expires July 1, 2025, as set forth in section 1(3), chapter 279, Laws of 2023.

[Statutory Authority: 2021 c 48 § 2, RCW 66.08.071, 66.08.030 and 2021 c 48. WSR 22-01-052, § 314-03-505, filed 12/8/21, effective 1/8/22.]

AMENDATORY SECTION (Amending WSR 22-01-052, filed 12/8/21, effective 1/8/22)

WAC 314-03-510 ((Temporary)) Endorsement for sale of growlers through ~~((curbside,))~~ takeout~~((,))~~ or delivery service. (1) ~~((As authorized in section 2, chapter 48, Laws of 2021, the temporary endorsement described in this section is available until July 1, 2023, unless extended by law.))~~ An endorsement is available for the sale of growlers through takeout and delivery service as set forth in section 1(4), chapter 279, Laws of 2023. There is no fee for a licensee to apply for and obtain this endorsement.

(2) ~~((Consistent with section 2(5), chapter 48, Laws of 2021))~~ As set forth in section 1(4), chapter 279, Laws of 2023, an endorsement to sell growlers for off-premises consumption through ~~((curbside,))~~ takeout~~((,))~~ or delivery service is available to licensees that were

authorized by statute or rule before January 1, 2020, to sell growlers.

(a) Licensees eligible for this endorsement include: Taverns; beer and wine restaurants; spirits, beer, and wine restaurants; grocery stores; beer and wine specialty shops; breweries; microbreweries; wineries; combination spirits, beer, and wine licensees; and hotel licensees.

(b) For a beer and wine specialty shop to be eligible for the endorsement described in this section, the beer and wine specialty shop must meet the requirement in RCW 66.24.371(3), as it existed on December 31, 2019, that the licensee's beer and/or wine sales must be more than ~~((fifty))~~ 50 percent of the licensee's total sales.

(3) In order to obtain and maintain this endorsement, licensees must meet the following requirements:

(a) Sale of growlers must meet federal alcohol and tobacco tax and trade bureau requirements.

(b) (i) Growlers must be filled at the tap by the licensee at the time of sale, except that beer and wine specialty shops licensed under RCW 66.24.371 and domestic breweries and microbreweries with this endorsement may sell prefilled growlers ~~((consistent with section 2(7), chapter 48, Laws of 2021))~~ as set forth in section 1(4), chapter 279, Laws of 2023. Prefilled growlers must be sold the same day they are prepared for sale and not stored overnight for sale on future days.

(ii) Brewery and microbrewery products that meet federal alcohol and tobacco tax and trade bureau labeling requirements are not considered prefilled growlers and are not subject to the overnight storage prohibition.

(c) Growlers must be filled with alcohol products, such as beer, wine, or cider, that the licensee was authorized by statute or rule before January 1, 2020, to sell in growlers.

(d) If the growlers authorized for sale under this endorsement are sold through delivery service:

(i) Licensees must comply with the requirements in the consumer orders, internet sales, and delivery rules in this title, except to the extent that those rules allow delivery by third-party service providers and prohibit the delivery of growlers. For these requirements, see WAC 314-03-020 through 314-03-040.

(ii) Delivery must be made by an employee of the licensed business who is at least ~~((twenty-one))~~ 21 years of age. Delivery may not be made by third-party service providers.

(iii) At the time of delivery, the employee making the delivery must verify that the person receiving the delivery is at least ~~((twenty-one))~~ 21 years of age using an acceptable form of identification in WAC 314-11-025. See RCW 66.44.270.

(iv) ~~((Consistent with section 2(9), chapter 48, Laws of 2021))~~ As set forth in section 1(8), chapter 279, Laws of 2023, upon delivery of the alcohol product, the signature of the person age ~~((twenty-one))~~ 21 or over receiving the delivery must be obtained. Delivery sales records must meet the requirements in the consumer orders, internet sales, and delivery rules. For general record retention requirements, see WAC 314-11-095.

(v) If no person age ~~((twenty-one))~~ 21 or over is present to accept the alcohol product at the time of delivery, the alcohol product must be returned. An alcohol product may not be left unattended at a delivery location.

(vi) Delivery of an alcohol product may not be made to any person who shows signs of intoxication. See RCW 66.44.200.

(e) (i) In addition to the signs required by WAC 314-11-060, signs provided electronically by the board regarding public consumption and transportation of any alcohol products sold through ~~((curbside,))~~ takeout~~((,))~~ or delivery service must be posted in plain view at:

(A) The main entrance to the area of the premises where alcohol products are sold; and

(B) The areas of the premises where alcohol products are picked up for takeout~~((,curbside,))~~ or delivery service.

(ii) The signs will be designed to remind customers purchasing alcohol products through ~~((curbside,))~~ takeout~~((,))~~ or delivery service that they must comply with applicable laws and rules including, but not limited to, restrictions on consuming alcohol in public in RCW 66.44.100 and restrictions on drinking or having an open container in a vehicle in RCW 46.61.519.

(4) In addition to the requirements listed in this section, licensees must comply with all applicable requirements in Title 66 RCW, Title 314 WAC, and any other applicable laws and rules including, but not limited to, restrictions on sales to minors and intoxicated persons in chapter 66.44 RCW and WAC 314-16-150.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Alcohol product" means liquor as defined in RCW 66.04.010.

(b) "Beer" has the same meaning as defined in RCW 66.04.010.

(c) "Cider" has the same meaning as defined in RCW 66.24.210.

(d) "Growlers" has the same meaning as defined in section 2(10), chapter 48, Laws of 2021: Sanitary containers brought to the premises by the purchaser or furnished by the licensee and filled by the retailer at the time of sale.

(e) "Wine" has the same meaning as defined in RCW 66.04.010.

(6) ~~((This section expires July 1, 2023, pursuant to section 2(11), chapter 48, Laws of 2021, unless extended by law.))~~ The delivery service endorsement described in this section expires July 1, 2025, as set forth in section 1(4), chapter 279, Laws of 2023.

[Statutory Authority: 2021 c 48 § 2, RCW 66.08.071, 66.08.030 and 2021 c 48. WSR 22-01-052, § 314-03-510, filed 12/8/21, effective 1/8/22.]

WSR 23-11-166

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed May 24, 2023, 11:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-03-011.

Title of Rule and Other Identifying Information: WAC 246-976-580 Trauma designation process; the department of health (department) is proposing to amend WAC 246-976-580 to establish clear requirements and criteria for assessing the need for additional level I and II trauma services in the state.

Hearing Location(s): On July 11, 2023, at 1:00 p.m. The department of health will hold a virtual public hearing. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_-7yZrJ11SZOj-ibkP4UPOQ. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: July 18, 2023.

Submit Written Comments to: Anthony Partridge, P.O. Box 47853, Olympia, WA 98504-7853, email TraumaDesignation@doh.wa.gov, by July 11, 2023.

Assistance for Persons with Disabilities: Contact Anthony Partridge, phone 360-584-6232, TTY 1-800-833-6388, email TraumaDesignation@doh.wa.gov, by June 27, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing amendments to WAC 246-976-580 Trauma designation process, to establish clear requirements and criteria for assessing the need for additional level I and II trauma services in the state. The proposed amendments also include technical changes such as renumbering of subsections as the result of new subsections being added and reformatting spelled out numbers to numerals.

Reasons Supporting Proposal: Since the state trauma system's inception, there has not been a formalized process or set of criteria by which the department makes decisions about minimum and maximum numbers. As the trauma system continues to mature, trauma-designated facilities have expressed interest in applying for new level I or II designations. However, there is currently no formalized process or set of criteria that enables the objective evaluation of the need for additional higher levels of trauma service designations and the potential impact on the state trauma system.

The criteria outlined in the proposed rule will help ensure that Washingtonians have optimal access to trauma care services while maintaining a robust trauma system that balances access with other important considerations, such as maintenance of subspecialty volume and patient outcomes. Furthermore, the proposed amendments to the rule will ensure that trauma services are not overburdened or underutilized and are able to provide effective patient care that best supports the trauma system.

Statutory Authority for Adoption: RCW 70.168.050, 70.168.060, and 70.168.100.

Statute Being Implemented: RCW 70.168.060.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Anthony Partridge, 111 Israel Road S.E., Tumwater, WA 98501, 360-584-6232.

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 Anthony Partridge, P.O. Box 47853, Olympia, WA 98504-7853, phone 360-584-6232, TTY 1-800-833-6388, email anthony.partridge@doh.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).

Explanation of exemptions: The proposed rule does not impose any anticipated new costs on designated trauma service facilities unless they volunteer to change their designation level. The potentially impacted facilities do not meet the definition of a small business (50 or less employees). Thus, this rule making does not require a small business economic impact statement.

Scope of exemption for rule proposal:

Is fully exempt.

May 24, 2023
 Kristin Peterson, JD
 Chief of Policy
 for Umair A. Shah, MD, MPH
 Secretary

OTS-4369.2

AMENDATORY SECTION (Amending WSR 18-24-082, filed 12/3/18, effective 1/3/19)

WAC 246-976-580 Trauma designation process. The department designates health care facilities to provide adult and pediatric acute care trauma services ("trauma services") and adult and pediatric trauma rehabilitation services ("trauma rehabilitation services") as part of the statewide emergency medical services and trauma care (EMS&TC) system. This section describes the designation process.

(1) The department must:

(a) Provide written notification to all licensed hospitals and to other health care facilities that a new designation period is beginning. The written notification and the EMS&TC regional plans are posted on the department's website;

(b) Provide a trauma designation application schedule outlining the steps and timeline requirements for a facility to apply for trauma service designation. The schedule must provide each facility at least ((ninety)) 90 days to complete an application for trauma designation. The application schedule is posted on the department's website;

(c) Provide an application for each level, type and combination of designation. Designation applications are released region by region, according to the established schedule;

(d) Conduct a site review for any hospital applying for level I, II, or III adult and pediatric trauma service designation to determine compliance with required standards;

(e) Initiate a three-year contract with successful applicants to authorize participation in the trauma system.

(2) To apply for ~~((trauma service designation the health care facility must do the following according to the application schedule:))~~ a new trauma service designation or a renewal for an existing trauma service designation, the health care facility must complete the steps in (a) through (d) of this subsection according to the application schedule. A health care facility applying for a new level I designation must meet the requirements of subsection (4) or (5) of this section. A health care facility applying for a new level II designation must meet the requirements of subsection (6) or (7) of this section.

A health care facility applying for trauma service designation must:

(a) Request an application;

(b) Submit a letter of intent to apply for trauma service designation indicating what level they are applying for;

(c) Submit a completed application(s);

(d) For health care facilities applying for level I, II, III adult and pediatric trauma service designation, the facility must complete a site review arranged and conducted by the department according to the following process:

(i) The department will contract with trauma surgeons and trauma nurses to conduct the site review. The review team members must:

(A) Work outside the state of Washington, for level I and II site reviews;

(B) Work outside the applicant's EMS&TC region, for level III site reviews;

(C) Maintain the confidentiality of all documents examined, in accordance with RCW 70.41.200 and 70.168.070. This includes, but is not limited to, all trauma patient data, staff discussions, patient, provider, and facility care outcomes, and any reports resulting from the site review;

(D) Present their preliminary findings to the health care facility at the end of the site review visit;

(ii) The department will provide the applicant the names of review team members prior to the site review. Any objections must be sent to the department within ~~((ten))~~ 10 days of receiving the department's notification of review team members;

(iii) A site review fee, as established in WAC 246-976-990, is charged and must be paid by the health care facility to the department prior to the site review. A standard fee schedule is posted on the department's website. For facilities applying for more than one type of designation or for joint designation, fee rates can be obtained by contacting the department;

(iv) The applicant must provide the department and the site review team full access to the facility, facility staff, and all records and documents concerning trauma care including trauma patient data, education, training and credentialing documentation, standards of care, policies, procedures, protocols, call schedules, medical records, quality improvement materials, receiving facility patient feedback, and other relevant documents;

(e) For health care facilities applying for level IV or V trauma service designation, level I or II trauma rehabilitation service designation or level I pediatric trauma rehabilitation service designa-

tion, the department may, at its discretion, conduct a site review as part of the application process to determine compliance with required standards. If a site review is conducted, the process will be the same as identified in (d) of this subsection, except a site review fee will not be charged.

(3) A trauma system assessment conducted by the department, including geospatial analysis conducted by the department, will be used to evaluate access to care at level I and II trauma services and identify areas where trauma services are needed. An optimal trauma system is one where level I and II trauma services are not overburdened or under-utilized and are able to provide effective patient care to best support the trauma system.

(4) A health care facility that is located in a geographic area where access to a level I trauma service is limited and cannot be reached within 60 minutes average ground transport time from the point of injury, may apply for a new designation as a level I trauma service in accordance with subsection (2) of this section.

(5) A health care facility that is not located within the geographic area described in subsection (4) of this section may apply for a new designation as a level I trauma service in accordance with subsection (2) of this section if:

(a) The facility is farther than 30 minutes average ground transport time from an existing level I service; and

(b) In accordance with its transfer-in and transfer-out guidelines required under WAC 246-976-700 (8) and (9), the facility has a minimum of 240 annual trauma patient admissions with an injury severity score of more than 15 or admits at least 1,200 trauma patients annually; and

(c) The facility meets all level I designation standards and has been fully designated and substantially in compliance as a level II trauma service for at least one full three-year designation period immediately prior to applying for a new level I designation.

(6) A health care facility that is located in a geographic area where access to a level II trauma service is limited and cannot be reached within 60 minutes average ground transport time from the point of injury, may apply for a new designation as a level II trauma service in accordance with subsection (2) of this section.

(7) A health care facility that is not located within the geographic area described in subsection (6) of this section may apply for a new designation as a level II trauma service under subsection (2) of this section if:

(a) The facility is farther than 30 minutes average ground transport time from an existing level I or II service; and

(b) The facility meets all level II designation standards and has been fully designated and substantially in compliance as a level III trauma service for at least one full three-year designation period immediately prior to applying for a new level II designation.

(8) The department will designate the health care facilities it considers most qualified to provide trauma care services including when there is competition for trauma service designation ((within a region)). There is competition for designation ((within a region)) when the number of applications for a level and type of designation is more than the maximum number of trauma services identified by the department and in the approved EMS&TC regional plan. The department will evaluate, at a minimum, the following in making its decisions:

(a) The quality of the health care facility's performance based on:

(i) The submitted application, attachments, and any other information the department requests from the facility to verify compliance, or the ability to comply with trauma standards;

(ii) Recommendations from the site review team;

(iii) Trauma patient outcomes during the previous designation period, if applicable;

(iv) Compliance with the contract during the previous designation period, if applicable;

(b) The health care facility's conformity with the EMS&TC regional and state plans, based on:

(i) The impact of the facility's designation on the effectiveness of the trauma system;

(ii) Patient volumes for the area;

(iii) The number, level, and distribution of trauma services identified in the state and approved regional plans;

(iv) The facility's ability to comply with state and regional EMS&TC plan goals.

~~((4))~~ (9) After trauma service designation decisions are made in a region, the department will:

(a) Notify each applicant in writing of the department's designation decision;

(b) Send each applicant a written report summarizing the department's findings, recommendations and additional requirements to maintain designation. If a site review was conducted as part of the application process, the review team findings and recommendations are also included in the written report. Reports are sent:

(i) Within ~~((sixty))~~ 60 days of announcing designation decisions for level IV and V trauma services and trauma rehabilitation services;

(ii) Within ~~((one hundred twenty))~~ 120 days of the site review for level I, II and III adult and pediatric trauma services and any other facility that received a site review as part of the application process;

(c) Notify the EMS&TC regional council of designation decisions within the region and all subsequent changes in designation status;

(d) Initiate a trauma designation contract with successful applicants. The contract will include:

(i) Authority from the department to participate in the state trauma system, receive trauma patients from EMS agencies, and provide trauma care services for a three-year period;

(ii) The contractual and financial requirements and responsibilities of the department and the trauma service;

(iii) A provision to allow the department to monitor compliance with trauma service standards;

(iv) A provision to allow the department to have full access to trauma patient data, the facility, equipment, staff and their credentials, education, training documentation, and all trauma care documents such as: Standards of care, policies, procedures, protocols, call schedules, medical records, quality improvement documents, receiving facility patient feedback, and other relevant documents;

(v) The requirement to maintain confidentiality of information relating to individual patient's, provider's and facility's care outcomes under RCW 70.41.200 and 70.168.070;

(e) Notify the designated trauma service and other interested parties in the region of the next trauma designation application process at least ~~((one hundred fifty))~~ 150 days before the contract expires.

~~((5))~~ (10) Designated trauma services may ask the department to conduct a site review for technical assistance at any time during the designation period. The department has the right to require reimbursement for the costs of conducting the site review.

~~((6))~~ (11) The department will not approve an application for trauma service designation if the applicant:

(a) Is not the most qualified, when there is competition for designation; or

(b) Does not meet the trauma care standards for the level applied for; or

(c) Does not meet the requirements of the approved EMS&TC regional plan; or

(d) Has made a false statement about a material fact in its designation application; or

(e) Refuses to permit the department to examine any part of the facility that relates to the delivery of trauma care services ~~((7))~~ including, but not limited to, records, documentation, or files.

~~((7))~~ (12) If the department denies an application, the department will send the facility a written notice to explain the reasons for denial and to explain the facility's right to appeal the department's decision in accordance with chapters 34.05 RCW and 246-10 WAC.

~~((8))~~ (13) To ensure adequate trauma care in the state, the department may:

(a) Provisionally designate health care facilities that are not able to meet all the requirements of this chapter. The provisional designation will not be for more than two years. A department-approved plan of correction must be prepared by the health care facility specifying steps necessary to bring the facility into compliance and an expected date of compliance. The department may conduct a site review to verify compliance with required standards. If a site review is conducted, the department has the right to require reimbursement for the cost of conducting the site review;

(b) Consider additional applications at any time, regardless of the established schedule, if necessary to attain the numbers and levels of trauma services identified by the department and in the approved EMS&TC regional and state plan;

(c) Consider applications from hospitals located and licensed in adjacent states. The department will evaluate an out-of-state application in the same manner as all other applications. However, if the out-of-state applicant is designated as a trauma service in an adjacent state with an established trauma system whose standards meet or exceed Washington's standards and there is no competition for designation at that level, then the department may use the administrative findings, conclusions, and decisions of the adjacent state's designation evaluation to make the decision to designate. Additional information may be requested by the department to make a final decision.

~~((9))~~ (14) The department may suspend or revoke a trauma designation if the facility or any owner, officer, director, or managing employee:

(a) Is substantially out of compliance with trauma care standards WAC 246-976-700 through 246-976-800 or chapter 70.168 RCW and has refused or is unwilling to comply after a reasonable period of time;

(b) Makes a false statement of a material fact in the designation application, or in any document required or requested by the department, or in a matter under investigation;

(c) Prevents, interferes with, or attempts to impede in any way, the work of a department representative in the lawful enforcement of chapter 246-976 WAC, 34.05 RCW, 246-10 WAC, or 70.168 RCW;

(d) Uses false, fraudulent, or misleading advertising, or makes any public claims regarding the facility's ability to care for non-trauma patients based on its trauma designation status;

(e) Misrepresents or is fraudulent in any aspect of conducting business.

~~((10))~~ (15) The Administrative Procedure Act, chapter 34.05 RCW, and chapter 246-10 WAC govern the suspension and revocation process. The department will use the following process to suspend or revoke a facility's trauma designation:

(a) The department will send the facility a written notice to explain the reasons it intends to suspend or revoke the designation and to explain the facility's right to a hearing to contest the department's intended action under WAC 246-10-201 through 246-10-205;

(b) The notice will be sent at least ~~((twenty-eight))~~ 28 days before the department takes action, unless it is a summary suspension, as provided for in the Administrative Procedure Act, chapter 34.05 RCW and WAC 246-10-301 through 246-10-306;

(c) If a facility requests a hearing within ~~((twenty-eight))~~ 28 days of the date the notice was mailed, a hearing before a health law judge will be scheduled. If the department does not receive the facility's request for a hearing within ~~((twenty-eight))~~ 28 days of the date the notice was mailed, the facility will be considered in default under WAC 246-10-204;

(d) For nonsummary suspensions, in addition to its request for a hearing, the facility may submit a plan within ~~((twenty-eight))~~ 28 days of receiving the notice of the department's intent to suspend, describing how it will correct deficiencies:

(i) The department will approve or disapprove the plan within ~~((thirty))~~ 30 days of receipt;

(ii) If the department approves the plan, the facility must begin to implement it within ~~((thirty))~~ 30 days;

(iii) The facility must notify the department when the problems are corrected;

(iv) If, prior to ~~((sixty))~~ 60 days before the scheduled hearing, the facility is able to successfully demonstrate to the department that it is meeting the requirements of chapters 246-976 WAC and 70.168 RCW, which may require a site review at the facility's expense, the department will withdraw its notice of intent to suspend designation;

(e) The department will notify the regional EMS&TC council of the actions it has taken.

~~((11))~~ (16) A facility may seek judicial review of the department's final decision under the Administrative Procedure Act, RCW 34.05.510 through 34.05.598.

~~((12))~~ (17) A newly designated or upgraded trauma service must meet education requirements for all applicable personnel according to the following schedule:

(a) At the time of the new designation, ~~((twenty-five))~~ 25 percent of all personnel must meet the education and training requirements in WAC 246-976-700 through 246-976-800;

(b) At the end of the first year of designation, ~~((fifty))~~ 50 percent of all personnel must meet the education and training requirements in WAC 246-976-700 through 246-976-800;

(c) At the end of the second year of designation, (~~seventy-five~~) 75 percent of all personnel must meet the education and training requirements defined in WAC 246-976-700 through 246-976-800;

(d) At the end of the third year of designation, and all subsequent designation periods, (~~ninety~~) 90 percent of all personnel must meet the education and training requirements defined in WAC 246-976-700 through 246-976-800.

(~~(13)~~) 18 All currently designated trauma services must have a written education plan with a process for tracking and assuring that new physicians and staff meet all trauma education requirements within the first (~~eighteen~~) 18 months of employment.

[Statutory Authority: RCW 70.168.060 and 70.168.070. WSR 18-24-082, § 246-976-580, filed 12/3/18, effective 1/3/19. Statutory Authority: RCW 70.168.050, 70.168.060, and 70.168.070. WSR 09-23-085, § 246-976-580, filed 11/16/09, effective 12/17/09.]