

WSR 24-16-131
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed August 6, 2024, 12:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-13-091.

Title of Rule and Other Identifying Information: Apprenticeship rules; WAC 296-05-008 Meetings and adjudicative proceedings.

Hearing Location(s): On September 10, 2024, at 1:00 p.m., virtual and telephonic hearing. Join electronically <https://lni-wa.gov.zoom.us/j/85786239556?pwd=aSZRbVxW7BE0eszK0ZNslbNYIp6XRd.1>, Meeting ID 857 8623 9556, Passcode Hearing10!; or join by phone (audio only) Dial (US) 253-205-0468, Meeting ID 857 8623 9556, Passcode 6410590116. The virtual/telephonic hearing will begin at 1:00 p.m. and will continue until all oral/spoken comments are received.

Date of Intended Adoption: October 17, 2024.

Submit Written Comments to: Kristin Murphy, Department of Labor and Industries (L&I), Fraud Prevention and Labor Standards, Apprenticeship, P.O. Box 44530, Olympia, WA 98504-4530, email ApprenticeshipRules@lni.wa.gov, beginning August 7, 2024, 8:00 a.m., by September 10, 2024, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 564-999-0975, TTY 1-800-833-6388, email ApprenticeshipRules@lni.wa.gov, by August 25, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposed rule making is to adjust the submission deadline for when an apprenticeship program submits proposed new program standards or changes to their existing apprenticeship program standard(s). The proposed rule change would adjust the submission deadline from 45 days to 60 days before the next regularly scheduled Washington state apprenticeship and training council (WSATC) meeting.

Reasons Supporting Proposal: In 2022, the Washington state legislature passed ESSB 5600 concerning the sustainability and expansion of state-registered apprenticeship programs. In part, the bill established industry sector platforms intended to collaborate and support apprenticeships (RCW 49.04.240). Among the responsibilities, the relevant industry sector platform must review proposed standards when submitted by an apprenticeship program and provide a recommendation to the WSATC for consideration in approving or denying the proposed apprenticeship program standards.

Rule making is needed to adjust the timeline for which an apprenticeship program submits proposed new program standards, or changes to their existing apprenticeship program standard(s). In addition to the staff review process, the change is needed to allow time for industry sector platforms to review and provide recommendations prior to the WSATC meeting materials submission deadline. Currently, apprenticeship program standards requests must be submitted 45 days prior to the next regularly scheduled WSATC quarterly meeting. This rule making is proposing to adjust the submission deadline to 60 days to allow adequate time for the additional level of review.

Statutory Authority for Adoption: RCW 49.04.010.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Kristin Murphy, Tumwater, Washington, 564-999-0975; Implementation and Enforcement: Peter Guzman, Tumwater, Washington, 360-584-3706.

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 making is exempt from preparing a cost-benefit analysis under RCW 34.05.328 (5)(c)(i) because it is procedural and does not independently impose a penalty or sanction on a person or entity.

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.

Explanation of exemptions: This rule proposal is exempt under RCW 19.85.025 based on RCW 34.05.310 (4)(g) because the proposed rule change relates to a filing process requirement.

Scope of exemption for rule proposal:

Is fully exempt.

August 6, 2024
Joel Sacks
Director

OTS-5537.1

AMENDATORY SECTION (Amending WSR 23-09-056, filed 4/18/23, effective 5/19/23)

WAC 296-05-008 Meetings and adjudicative proceedings. (1) Regular meetings: Convened on the third Thursday of January, April, July, and October, held at locations within Washington, and open to the general public. Members of the public cannot be required to register their name, give any information, or fulfill any condition prior to attending council meetings. All council meetings must be conducted according to the provisions of chapter 42.30 RCW, Open Public Meetings Act and chapter 34.05 RCW, Administrative Procedure Act.

(a) Notice of regular meetings: The supervisor must distribute notice not later than 30 calendar days prior to the meeting date to anyone who has requested notice of the regular meetings.

(b) The supervisor must send notices to all WSATC members, including ex officio members, and approved program sponsors.

(c) The following WSATC activities must take place in open public meetings:

- (i) All transactions of official business;
- (ii) All commitments or promises;
- (iii) All collective discussions;
- (iv) All collective decisions; and
- (v) All council actions.

(d) The approval or disapproval of committee programs, plant programs, or amendments to those programs can only occur at regular quarterly meetings unless the council is responding to a court mandate,

which can occur at a special meeting. The approval or disapproval of committee programs, plant programs, or amendments to those programs can also occur at a special meeting when the council considers the record and enters a final order following an adjudication conducted under subsection (6) of this section.

(e) Rescheduling regular meetings: Called at the request of the chair or by a majority of the WSATC members.

(i) When a regular meeting is rescheduled, the rescheduled meeting must occur on a date that is after the original scheduled date of the meeting (and not before the original scheduled date), and no more than 28 calendar days after the original scheduled date.

(ii) Notice of the rescheduled meeting: The supervisor must distribute notice to all WSATC members, including ex officio members, and approved program sponsors. Rescheduling must comply with the provisions of chapter 42.30 RCW, Open Public Meetings Act and chapter 34.05 RCW, Administrative Procedure Act.

(iii) The rescheduling of a regular meeting does not affect other deadlines in these rules. All deadlines and time frames will remain based on the original scheduled date of the regular meeting; only the date of the regular meeting will be affected by the change.

(2) Special meetings: Called at the request of the chair or by a majority of the WSATC members, and open to the general public.

(a) Procedure for special meetings: To call a special meeting, the calling members must:

(i) Mail a written notice with the date, time, and location of the meeting that specifies the business to be transacted at the meeting, either personally or by mail, at least seven calendar days before the specified date of the meeting, to each member of the WSATC, all approved program sponsors, and those who have requested prior notice of special meetings.

(ii) Waiver: The notice requirements to WSATC members may be waived in writing at or prior to the meeting, but all members must agree to waive notice and file the waiver with the supervisor.

(b) Content of special meetings: The subject matter of the special meeting must not exceed the scope of the written notice. If the WSATC takes action on a matter exceeding the scope of the written notice, the action is not final even if the members waive notice.

(c) Special meetings for rule changes: To call a special meeting to consider rule changes, the WSATC must:

(i) Provide written notice with the date, time, and location of the meeting that specifies the rules to be changed at the meeting, either personally, by mail, or by electronic means at least 20 calendar days before the meeting.

(ii) Waiver: The notice requirements may not be waived for special meetings when rule changes are contemplated.

(3) Registered apprenticeship standards actions: When a party requests specific action from the WSATC related to apprenticeship standards, such request must:

(a) Be in writing; and

(b) Signed by the committee's elected chair and secretary, or by an authorized signer approved by the petitioning sponsor;

(c) Sent to the apprenticeship supervisor at least ((45)) 60 days prior to the date of the regular quarterly meeting.

Requests that are untimely are deferred to the next quarterly meeting.

(4) Other actions: When a party requests specific action or consideration from the WSATC on other issues, such requests must:

(a) Be in writing; and

(b) Sent to the apprenticeship supervisor at least 15 business days prior to the date of the regular quarterly meeting.

Requests that are untimely are deferred to the next quarterly meeting unless waived by the supervisor.

(5) Voting: All council members, except ex officio members, appointed by the director of the department of labor and industries are voting members of the council.

(a) A quorum is two-thirds of the WSATC members entitled to vote.

(b) The chair shall establish a standing tie-breaker committee comprised of three WSATC members entitled to vote:

(i) An employer representative;

(ii) An employee representative; and

(iii) A public member.

(c) The apprenticeship supervisor or designee shall act as secretary to the tie-breaker committee and furnish all information necessary for a decision.

(d) In case of a tie vote on any proposed standards brought before the WSATC, the tie-breaker committee shall meet or confer, review the record, and render a decision within 30 calendar days.

(6) Adjudicative proceedings: All hearings and adjudication, under chapter 49.04 RCW and these rules, shall be conducted according to chapters 34.05 RCW and 10-08 WAC. The chair (or designee) is the presiding officer for adjudicative proceedings held before the WSATC. The WSATC may either adjudicate matter(s) itself, or refer matter(s) to the office of administrative hearings for initial adjudication.

If the initial adjudication is before the WSATC, the WSATC will enter a final order. If the initial adjudication is held at the office of administrative hearings, the administrative hearings judge shall issue an initial order. The WSATC, upon review of the initial order shall enter the final order. An initial order shall become final without further WSATC action five business days after the next regular or rescheduled quarterly meeting unless:

(a) The WSATC upon its own motion determines that the initial order should be reviewed; or

(b) A party to the proceedings files a petition for review of the initial order.

(7) Final WSATC orders or decisions affecting registration and oversight of apprenticeship programs and agreements for federal purposes may be appealed within 30 calendar days to the director of the department pursuant to the following:

(a) An appellant must file with the director an original and four copies of the notice of appeal.

(i) The notice of appeal must specify findings and conclusions at issue in the appeal;

(ii) The director or designee shall serve notice of receipt of the appeal, including copies of the appeal on all parties within five business days from date of receipt;

(iii) The respondent parties may file with the director or designee written arguments within 30 calendar days after the date the notice of receipt of appeal was served upon them.

(b) The director or designee shall review the record in accordance with the Administrative Procedure Act, chapter 34.05 RCW. The director or designee shall issue a final decision affirming, modifying, or reversing the WSATC final order or decision or may remand the matter to the WSATC for further proceedings.

(c) With respect to cancellation of programs only, any aggrieved party may appeal, for federal purposes, a final decision by the director (or director's designee) by following the procedures in 29 C.F.R. 29.8 (b) (5).

(d) Any aggrieved party may appeal the final decision to superior court pursuant to chapter 34.05 RCW. If no party appeals within the period set by RCW 34.05.542, the director's decision is final and binding on all parties.

(8) Limitations: Nothing in this part or in any apprenticeship agreement will operate to invalidate:

(a) Any apprenticeship provision in any collective bargaining agreement between employers and employees establishing higher apprenticeship standards; or

(b) Any special provision for veterans, minority person, or women in the standards, apprentice qualifications or operation of the program, or in the apprenticeship agreement, which is not otherwise prohibited by law, executive order, or authorized regulation.

(9) Retroactivity: The WSATC may make any action or decision which it takes retroactive to the date of the previous business session.