

**WSR 13-01-075**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed December 18, 2012, 12:54 p.m., effective January 18, 2013]

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

Purpose: The division of child support (DCS) is adopting new and amended sections in chapter 388-14A WAC, intended as technical corrections to the rules adopted under WSR 11-22-116 which took effect on December 3, 2011. Those rules were adopted to implement changes in the federal regulations concerning establishing and enforcing intergovernmental child support obligations.

AMENDED SECTIONS: WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement?, 388-14A-1025 What are the responsibilities of the division of child support?, 388-14A-1030 What kinds of services can the division of child support provide?, 388-14A-1036 Who can request DCS locate services?, 388-14A-1050 The division of child support cooperates with tribes and other states and (~~(Indian tribes)~~) countries for support enforcement purposes, 388-14A-1055 Can the division of child support collect support owed or assigned to another state, tribe or country?, 388-14A-2000 Who can receive child support enforcement services from the division of child support?, 388-14A-2010 Can I apply for support enforcement services if I do not receive public assistance?, 388-14A-2015 Does DCS accept an application from someone who is not a resident of Washington state?, 388-14A-3350 Are there any limits on how much back support the division of child support can seek to establish?, 388-14A-3370 What legal defenses are available to a noncustodial parent when DCS seeks to enforce a support obligation?, 388-14A-3800 Once a support order is entered, can it be changed?, 388-14A-3810 Once an administrative child support order is entered, how long does the support obligation last?, 388-14A-3900 Does DCS review my support order to see if it should be modified?, 388-14A-3901 Under what circumstances does DCS review a support order for modification?, 388-14A-3925 Who can ask to modify an administrative support order?, 388-14A-7100 The division of child support may register an order from a tribe or another state or country for enforcement or modification, 388-14A-7110 The division of child support may enforce interest on amounts owed under support orders entered or established in a jurisdiction other than Washington state, 388-14A-7115 Are there special rules for a hearing on a notice seeking to enforce interest on a support order?, 388-14A-7120 When does DCS update the interest on an intergovernmental case for enforcement?, 388-14A-7400 What can I do if I want to contest an (~~(interstate)~~) intergovernmental order to withhold income served on my employer?, 388-14A-7500 What can I do if I am concerned about the release of my personal information in an (~~(interstate)~~) intergovernmental referral? and 388-14A-8300 Who pays for genetic testing when paternity is an issue?; and NEW SECTIONS: WAC 388-14A-7600 Does DCS provide the same services in an intergovernmental case as it provides in a case where both parties reside in the state of Washington?, 388-14A-7610 The division of child support complies with federal requirements regarding intergovern-

mental cases, 388-14A-7620 How does DCS provide information to another jurisdiction in an intergovernmental case?, 388-14A-7630 What limited services does DCS provide?, 388-14A-7640 Payment and recovery of costs in intergovernmental IV-D cases, 388-14A-7650 What kind of federal audit requirements are there for intergovernmental cases?, 388-14A-7700 How does the division of child support (DCS) decide that a new case is an intergovernmental case?, 388-14A-7710 What does the division of child support (DCS) do when it decides that a case is an intergovernmental case?, 388-14A-7720 What is the division of child support (DCS) required to do when Washington is the initiating jurisdiction in an intergovernmental case?, 388-14A-7800 What is the division of child support (DCS) required to do when Washington receives a request for intergovernmental child support services?, 388-14A-7810 What is the division of child support (DCS) required to do when DCS receives a request for a determination of controlling order?, and 388-14A-7820 What is the division of child support (DCS) required to do when DCS acts as the responding jurisdiction in an intergovernmental case?

Citation of Existing Rules Affected by this Order: Amending WAC 388-14A-1020, 388-14A-1025, 388-14A-1030, 388-14A-1036, 388-14A-1050, 388-14A-1055, 388-14A-2000, 388-14A-2010, 388-14A-2015, 388-14A-3350, 388-14A-3370, 388-14A-3800, 388-14A-3810, 388-14A-3900, 388-14A-3901, 388-14A-3925, 388-14A-7100, 388-14A-7110, 388-14A-7115, 388-14A-7120, 388-14A-7400, 388-14A-7500, and 388-14A-8300.

Statutory Authority for Adoption: RCW 26.23.120, 34.05.350 (1)(b), 43.20A.550, 74.04.055, 74.08.090, 74.20.040(9), 74.20A.310.

Other Authority: 45 C.F.R. Parts 301.1, 302.36, 303.7, 303.11, 305.63, and 308.2.

Adopted under notice filed as WSR 12-21-026 on October 9, 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 12, Amended 23, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 12, Amended 23, Repealed 0.

Date Adopted: December 12, 2012.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-01-002, filed 12/7/11, effective 1/7/12)

**WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement?** For purposes of this chapter, the following definitions apply:

**"Absence of a court order"** means that there is no court order setting a support obligation for the noncustodial parent (NCP), or specifically relieving the NCP of a support obligation, for a particular child.

**"Absent parent"** is a term used for a noncustodial parent.

**"Accessible coverage"** means health insurance coverage which provides primary care services to the children with reasonable effort by the custodian.

**"Accrued debt"** means past-due child support which has not been paid.

**"Acknowledged father"** means a man who has established a father-child relationship under RCW 26.26.300 through 26.26.375.

**"Adjudicated parent"** means a person who has been adjudicated by a court of competent jurisdiction to be the parent of a child.

**"Administrative order"** means a determination, finding, decree or order for support issued under RCW 74.20A.055, 74.20A.056, or 74.20A.059 or by the agency of an Indian tribe or another ((state's)) state or country's agency under an administrative process, establishing the existence of a support obligation (including medical support) and ordering the payment of a set or determinable amount of money for current support and/or a support debt. Administrative orders include:

- (1) An order entered under chapter 34.05 RCW;
- (2) An agreed settlement or consent order entered under WAC 388-14A-3600; and
- (3) A support establishment notice which has become final by operation of law.

**"Agency"** means the Title IV-D provider of a state or tribe, or the central authority of another country. In Washington, this is the division of child support (DCS) within the department of social and health services (DSHS).

**"Agreed settlement"** is an administrative order that reflects the agreement of the noncustodial parent, the custodial parent and the division of child support. An agreed settlement does not require the approval of an administrative law judge.

**"Aid" or "public assistance"** means cash assistance under the temporary assistance for needy families (TANF) program, the aid to families with dependent children (AFDC) program, federally funded or state-funded foster care, and includes day care benefits and medical benefits provided to families as an alternative or supplement to TANF.

**"Alternate recipient"** means a child of the employee or retiree named within a support order as being entitled to coverage under an employer's group health plan.

**"Annual fee"** means the twenty-five dollar annual fee charged between October 1 and September 30 each year, required by the federal deficit reduction act of 2005 and RCW 74.20.040.

**"Applicant/custodian"** means a person who applies for nonassistance support enforcement services on behalf of a child or children residing in their household.

**"Applicant/recipient," "applicant," and "recipient"** means a person who receives public assistance on behalf of a child or children residing in their household.

**"Arrears"** means the debt amount owed for a period of time before the current month.

**"Assistance"** means cash assistance under the state program funded under Title IV-A of the federal Social Security Act.

**"Assistance unit"** means a cash assistance unit as defined in WAC 388-408-0005. An assistance unit is the group of people who live together and whose income or resources the department counts to decide eligibility for benefits and the amount of benefits.

**"Birth costs"** means medical expenses incurred by the custodial parent or the state, tribe or country for the birth of a child.

**"Cash medical support"** is a term used in RCW 26.09.105 and certain federal regulations to refer to amounts paid by an obligated parent to the other parent or to the state in order to comply with the medical support obligation stated in a child support order.

**"Central authority"** means the agency designated by a government to facilitate support enforcement with a foreign reciprocating country (FRC) pursuant to section 459A of the federal Social Security Act.

**"Conditionally assigned arrears"** means those temporarily assigned arrears remaining on a case after the period of public assistance ends.

**"Conference board"** means a method used by the division of child support for resolving complaints regarding DCS cases and for granting exceptional or extraordinary relief from debt.

**"Consent order"** means a support order that reflects the agreement of the noncustodial parent, the custodial parent and the division of child support. A consent order requires the approval of an administrative law judge.

**"Controlling order"** means the only order issued or, where multiple orders exist, the order determined by a tribunal to control prospective current support pursuant to the uniform interstate family support act (UIFSA), chapter 26.21A RCW.

**"Controlling order state"** means the state in which the only order was issued or, where multiple orders exist, the state in which the order determined by a tribunal to control prospective current support pursuant to the UIFSA was issued.

**"Country"** means a foreign country (or a political subdivision thereof) declared to be a Foreign Reciprocating Country (FRC) under 42 USC 659A and any foreign country (or political subdivision thereof) with which the state has entered into a reciprocal arrangement for the establishment and enforcement of support obligations to the extent consistent with federal law pursuant to 42 USC 659A.

**"Court order"** means a judgment, decree or order of a Washington state superior court, ((another state's)) or a court of comparable jurisdiction((, or a tribal court)) of an Indian tribe or another state or country.

**"Current support"** or **"current and future support"** means the amount of child support which is owed for each month.

**"Custodial parent or CP"** means the person, whether a parent or not, with whom a dependent child resides the majority of the time period for which the division of child support seeks to establish or enforce a support obligation.

**"Date the state assumes responsibility for the support of a dependent child on whose behalf support is sought"** means the date that the TANF or AFDC program grant is effective. For purposes of this chapter, the state remains responsible for the support of a dependent child until public assistance terminates, or support enforcement services end, whichever occurs later.

**"Delinquency"** means failure to pay current child support when due.

**"Department"** means the Washington state department of social and health services (DSHS).

**"Dependent child"** means a person:

(1) Seventeen years of age or younger who is not self-supporting, married, or a member of the United States armed forces;

(2) Eighteen years of age or older for whom a court order requires support payments past age eighteen;

(3) Eighteen years of age or older, but under nineteen years of age, for whom an administrative support order exists if the child is participating full-time in a secondary school program or the same level of vocational or technical training.

**"Determination of parentage"** means the establishment of the parent-child relationship by the signing of a valid acknowledgment of paternity under RCW 26.26.300 through 26.26.375 or adjudication by the court.

**"Differentiated support amount"** means an amount of child support that represents a parent's support obligation for more than one child and may justifiably be divided into "per child" amounts for each child covered by the support order, based on information contained in the support order.

**"Differentiated support order"** means a child support order which provides a monthly amount of child support for two or more children, and either provides a specific support obligation for each child or provides enough information in the order so that the monthly amount may justifiably be divided into a "per child" amount for each child covered by the support order.

**"Disbursement"** means the amount of child support distributed to a case that is paid to the family, state, other child support enforcement agency in another state or foreign country, Indian tribe, or person or entity making the payment.

**"Disposable earnings"** means the amount of earnings remaining after the deduction of amounts required by law to be withheld.

**"Distribution"** means how a collection is allocated or split within a case or among multiple cases.

**"Domestic partner"** means a state registered domestic partner as defined in chapter 26.60 RCW.

**"Earnings"** means compensation paid or payable for personal service. Earnings include:

- (1) Wages or salary;
- (2) Commissions and bonuses;

(3) Periodic payments under pension plans, retirement programs, and insurance policies of any type;

(4) Disability payments under Title 51 RCW;

(5) Unemployment compensation under RCW 50.40.-020, 50.40.050 and Title 74 RCW;

(6) Gains from capital, labor, or a combination of the two; and

(7) The fair value of nonmonetary compensation received in exchange for personal services.

**"Employee"** means a person to whom an employer is paying, owes, or anticipates paying earnings in exchange for services performed for the employer.

**"Employer"** means any person or organization having an employment relationship with any person. This includes:

(1) Partnerships and associations;

(2) Trusts and estates;

(3) Joint stock companies and insurance companies;

(4) Domestic and foreign corporations;

(5) The receiver or trustee in bankruptcy; and

(6) The trustee or legal representative of a deceased person.

**"Employment"** means personal services of whatever nature, including service in interstate commerce, performed for earnings or under any contract for personal services. Such a contract may be written or oral, express or implied.

**"Family"** means the person or persons on whose behalf support is sought, which may include a custodial parent and one or more children, or a child or children in foster care placement. The family is sometimes called the assistance unit.

**"Family arrears"** means the amount of past-due support owed to the family, which has not been conditionally, temporarily or permanently assigned to a state. Also called "nonassistance arrears."

**"Family member"** means the caretaker relative, the child(ren), and any other person whose needs are considered in determining eligibility for assistance.

**"Foreign order"** means a court or administrative order entered by a tribunal other than one in the state of Washington, including an order entered by a tribunal in an Indian tribe or another state or country.

**"Foreign reciprocating country"** or FRC means a country which the federal government has declared to be a foreign reciprocating country, which means that the foreign country has established, or undertakes to establish, procedures for the establishment and enforcement of duties of support owed to custodial parents who are residents of the United States, and that such procedures are substantially in conformity with the standards prescribed under title IV-D of the federal Social Security Act.

**"Foster care case"** means a case referred to the Title IV-D agency by the Title IV-E agency, which is the state division of child and family services (DCFS).

**"Fraud,"** for the purposes of vacating an agreed settlement or consent order, means:

(1) The representation of the existence or the nonexistence of a fact;

(2) The representation's materiality;

(3) The representation's falsity;

(4) The speaker's knowledge that the representation is false;

(5) The speaker's intent that the representation should be acted on by the person to whom it is made;

(6) Ignorance of the falsity on the part of the person to whom it is made;

(7) The latter's:

(a) Reliance on the truth of the representation;

(b) Right to rely on it; and

(c) Subsequent damage.

**"Full support enforcement services"** means the entire range of services available in a Title IV-D case.

**"Good cause"** for the purposes of late hearing requests and petitions to vacate orders on default means a substantial reason or legal justification for delay, including but not limited to the grounds listed in civil rule 60. The time periods used in civil rule 60 apply to good cause determinations in this chapter.

**"Head of household"** means the parent or parents with whom the dependent child or children were residing at the time of placement in foster care.

**"Health care costs"** means medical expenses. Certain statutes in chapter 26.19 RCW refer to medical expenses as health care costs.

**"Health insurance"** means insurance coverage for all medical services related to an individual's general health and well being. These services include, but are not limited to: Medical/surgical (inpatient, outpatient, physician) care, medical equipment (crutches, wheel chairs, prosthesis, etc.), pharmacy products, optometric care, dental care, orthodontic care, preventive care, mental health care, and physical therapy. Health insurance coverage does not include medical assistance provided under chapter 74.09 RCW.

**"Hearing"** means an adjudicative proceeding authorized by this chapter, or chapters 26.23, 74.20 and 74.20A RCW, conducted under chapter 388-02 WAC and chapter 34.05 RCW.

**"I/me"** means the person asking the question which appears as the title of a rule.

**"Income"** includes:

(1) All gains in real or personal property;

(2) Net proceeds from the sale or exchange of real or personal property;

(3) Earnings;

(4) Interest and dividends;

(5) Proceeds of insurance policies;

(6) Other periodic entitlement to money from any source; and

(7) Any other property subject to withholding for support under the laws of this state.

**"Income withholding action"** includes all withholding actions which DCS is authorized to take, and includes but is not limited to the following actions:

(1) Asserting liens under RCW 74.20A.060;

(2) Serving and enforcing liens under chapter 74.20A RCW;

(3) Issuing orders to withhold and deliver under chapter 74.20A RCW;

(4) Issuing notices of payroll deduction under chapter 26.23 RCW; and

(5) Obtaining wage assignment orders under RCW 26.18.080.

**"Initiating agency" or "initiating jurisdiction"** means a state or Tribal IV-D agency or the central authority of another country, as defined in this rule, in which an individual has applied for or is receiving services.

**"Intergovernmental IV-D case"** means a IV-D case in which the noncustodial parent lives and/or works in a different jurisdiction than the custodial parent and child(ren) that has been referred by an initiating agency to a responding agency for services. An intergovernmental IV-D case may include any combination of referrals between states, tribes, and countries. An intergovernmental IV-D case also may include cases in which a state agency is seeking only to collect support arrearages, whether owed to the family or assigned to the state.

**"Locate"** can mean efforts to obtain service of a support establishment notice in the manner prescribed by WAC 388-14A-3105.

**"Medical assistance"** means medical benefits under Title XIX of the federal Social Security Act provided to families as an alternative or supplement to TANF.

**"Medical expenses"** for the purpose of establishing support obligations under RCW 26.09.105, 74.20A.055 and 74.20A.056, or for the purpose of enforcement action under chapters 26.23, 74.20 and 74.20A RCW, including the notice of support debt and the notice of support owed, means medical costs incurred on behalf of a child, which include:

- Medical services related to an individual's general health and well-being, including but not limited to, medical/surgical care, preventive care, mental health care and physical therapy; and

- Prescribed medical equipment and prescribed pharmacy products;

- Health care coverage, such as coverage under a health insurance plan, including the cost of premiums for coverage of a child;

- Dental and optometrical costs incurred on behalf of a child; and

- Copayments and/or deductibles incurred on behalf of a child.

Medical expenses are sometimes also called health care costs or medical costs.

**"Medical support"** means any combination of the following:

(1) Health insurance coverage for a dependent child;

(2) Amounts owed by one parent to the other parent as a monthly payment toward the premium paid by the other parent for health insurance coverage for a dependent child;

(3) Amounts owed by a noncustodial parent to the state as a monthly payment toward the cost of managed care coverage for the child by the state, if the child receives state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment; and

(4) Amounts owed by one parent to the other parent as his or her proportionate share of uninsured medical expenses for a dependent child.

**"Monthly payment toward the premium"** means a parent's contribution toward:

- Premiums paid by the other parent for insurance coverage for the child; or

- Amounts paid for managed care coverage for the child by the state, if the child receives state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment.

This contribution is based on the obligated parent's proportionate share of the premium paid, but may not exceed twenty-five percent of the obligated parent's basic support obligation.

**"National Medical Support Notice"** or **"NMSN"** is a federally mandated form that DCS uses to enforce a health insurance support obligation; the NMSN is a notice of enrollment as described in RCW 26.18.170.

**"Noncustodial parent or NCP"** means the natural or biological parent, adoptive parent, adjudicated parent, presumed parent, responsible stepparent or person who signed and filed an affidavit acknowledging paternity, from whom the state seeks support for a dependent child. A parent is considered to be an NCP when for the majority of the time during the period for which support is sought, the dependent child resided somewhere other than with that parent.

**"Nonmedical expenses"** means amounts incurred on behalf of a child which are not medical expenses as defined in this chapter. Nonmedical expenses include, but are not limited to, day care or other special childrearing expenses such as tuition and long-distance transportation costs to and from the parents for visitation purposes.

**"Obligated parent"** means a parent who is required under a child support order to provide health insurance coverage or to reimburse the other parent for his or her share of medical expenses for a dependent child. The obligated parent could be either the NCP or the CP.

**"Other ordinary expense"** means an expense incurred by a parent which:

- (1) Directly benefits the dependent child; and
- (2) Relates to the parent's residential time or visitation with the child.

**"Parent"** means an individual who has established a parent-child relationship under RCW 26.26.101.

**"Parent-child relationship"** means the legal relationship between a child and a parent of the child. The term includes the mother-child relationship and the father-child relationship.

**"Participant"** means an employee or retiree who is eligible for coverage under an employer group health plan.

**"Pass-through"** means the portion of a support collection distributed to assigned support that the state pays to a family currently receiving TANF.

**"Past support"** means support arrears.

**"Paternity testing"** means blood testing or genetic tests of blood, tissue or bodily fluids. This is also called genetic testing.

**"Payment services only"** or **"PSO"** means a case on which the division of child support's activities are limited to recording and distributing child support payments, and maintaining case records. A PSO case is not a IV-D case.

**"Permanently assigned arrears"** means those arrears which the state may collect and retain up to the amount of unreimbursed assistance.

**"Physical custodian"** means custodial parent (CP).

**"Plan administrator"** means the person or entity which performs those duties specified under 29 USC 1002 (16)(A) for a health plan. If no plan administrator is specifically so designated by the plan's organizational documents, the plan's sponsor is the administrator of the plan. Sometimes an employer acts as its own plan administrator.

**"Presumed parent"** means a person who, by operation of law under RCW 26.26.116, is recognized as the parent of a child until that status is rebutted or confirmed in a judicial proceeding.

**"Private insurance"** means accessible health insurance for a child provided by a parent without the need for service of a national medical support notice, and does not include health insurance provided by the state without a contribution from either parent.

**"Proportionate share"** or **"proportional share"** means an amount equal to a parent's percentage share of the combined monthly net income of both parents as computed on the worksheets when determining a parent's child support obligation under chapter 26.19 RCW.

**"Putative father"** includes all men who may possibly be the father of the child or children on whose behalf the application for assistance or support enforcement services is made.

**"Reasonable efforts to locate"** means any of the following actions performed by the division of child support:

(1) Mailing a support establishment notice to the noncustodial parent in the manner described in WAC 388-14A-3105;

(2) Referral to a sheriff or other server of process, or to a locate service or department employee for locate activities;

(3) Tracing activity such as:

(a) Checking local telephone directories and attempts by telephone or mail to contact the custodial parent, relatives of the noncustodial parent, past or present employers, or the post office;

(b) Contacting state agencies, unions, financial institutions or fraternal organizations;

(c) Searching periodically for identification information recorded by other state agencies, federal agencies, credit bureaus, or other record-keeping agencies or entities; or

(d) Maintaining a case in the division of child support's automated locate program, which is a continuous search process.

(4) Referral to the state or federal parent locator service;

(5) Referral to the attorney general, prosecuting attorney, the IV-D agency of another state, or the Department of the Treasury for specific legal or collection action;

(6) Attempting to confirm the existence of and to obtain a copy of a paternity acknowledgment; or

(7) Conducting other actions reasonably calculated to produce information regarding the NCP's whereabouts.

**"Required support obligation for the current month"** means the amount set by a superior court order, tribal court order, or administrative order for support which is due in the month in question.

**"Resident"** means a person physically present in the state of Washington who intends to make their home in this

state. A temporary absence from the state does not destroy residency once it is established.

**"Residential care"** means foster care, either state or federally funded.

**"Residential parent"** means the custodial parent (CP), or the person with whom the child resides that majority of the time.

**"Responding agency"** or **"responding jurisdiction"** means the agency that is providing services in response to a referral from an initiating agency in an intergovernmental IV-D case.

**"Responsible parent"** is a term sometimes used for a noncustodial parent.

**"Responsible stepparent"** means a stepparent who has established an in loco parentis relationship with the dependent child.

**"Retained support"** means a debt owed to the division of child support by anyone other than a noncustodial parent.

**"Satisfaction of judgment"** means payment in full of a court-ordered support obligation, or a determination that such an obligation is no longer enforceable.

**"Secretary"** means the secretary of the department of social and health services or the secretary's designee.

**"Self-support reserve"** or **"self support reserve"** means an amount equal to one hundred twenty-five percent of the federal poverty guideline for a one-person family.

**"State"** means a state or political subdivision, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a federally recognized Indian tribe or a foreign country.

**"Superior court order"** means a judgment, decree or order of a Washington state superior court, or of ((another state's)) a court of comparable jurisdiction in an Indian tribe or another state or country.

**"Support debt"** means support which was due under a support order but has not been paid. This includes:

- (1) Delinquent support;
- (2) A debt for the payment of expenses for the reasonable or necessary care, support and maintenance including medical expenses, birth costs, child care costs, and special child rearing expenses of a dependent child or other person;
- (3) A debt under RCW 74.20A.100 or 74.20A.270; or
- (4) Accrued interest, fees, or penalties charged on a support debt, and attorney's fees and other litigation costs awarded in an action under Title IV-D to establish or enforce a support obligation.

**"Support enforcement services"** means all actions the Title IV-D agency is required to perform under Title IV-D of the Social Security Act and state law.

**"Support establishment notice"** means a notice and finding of financial responsibility under WAC 388-14A-3115, a notice and finding of parental responsibility under WAC 388-14A-3120, or a notice and finding of medical responsibility under WAC 388-14A-3125.

**"Support money"** means money paid to satisfy a support obligation, whether it is called child support, spousal support, alimony, maintenance, enforcement of medical expenses, health insurance, or birth costs.

**"Support obligation"** means the obligation to provide for the necessary care, support and maintenance of a dependent child or other person as required by law, including health insurance coverage, medical expenses, birth costs, and child care or special child rearing expenses.

dent child or other person as required by law, including health insurance coverage, medical expenses, birth costs, and child care or special child rearing expenses.

**"Support order"** means a court order, administrative order or tribal court order which contains a determination, finding, decree or order that sets a child support obligation (including medical support) and orders either the payment of a set or determinable amount of money for current support and/or a support debt, or the provision of medical support, or both.

**"Temporarily assigned arrears"** means those arrears which accrue prior to the family receiving assistance, for assistance applications dated on or after October 1, 1997, but before October 1, 2008. After the family terminates assistance, temporarily assigned arrears become conditionally assigned arrears.

**"Temporary assistance for needy families,"** or "TANF" means cash assistance under the temporary assistance for needy families (TANF) program under Title IV-A of the Social Security Act.

**"Title IV-A"** means Title IV-A of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 USC.

**"Title IV-A agency"** means the part of the department of social and health services which carries out the state's responsibilities under the temporary assistance for needy families (TANF) program (and the aid for dependent children (AFDC) program when it existed).

**"Title IV-D"** means Title IV-D of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 USC.

**"Title IV-D agency"** or **"IV-D agency"** means the division of child support, which is the agency responsible for carrying out the Title IV-D plan in the state of Washington. Also refers to the Washington state support registry (WSSR).

**"Title IV-D case"** is a case in which the division of child support provides services which qualifies for funding under the Title IV-D plan.

**"Title IV-D plan"** means the plan established under the conditions of Title IV-D and approved by the secretary, Department of Health and Human Services.

**"Title IV-E"** means Title IV-E of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 U.S.C.

**"Title IV-E case"** means a foster care case.

**"Tribal TANF"** means a temporary assistance for needy families (TANF) program run by a tribe.

**"Tribunal"** means a state court, tribal court, administrative agency, or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage, and includes such courts, agencies or entities in other states or countries.

**"Underlying order"** means an existing child support order for which DCS serves a notice of support owed under RCW 26.23.110 to determine a sum certain support obligation.

**"Undifferentiated support amount"** means an amount of child support that represents a parent's support obligation for more than one child which cannot justifiably be divided

into "per child" amounts for each child covered by the support order.

**"Undifferentiated support order"** means a child support order which provides a monthly amount of child support for two or more children, but does not provide a specific support obligation for each child or does not contain enough information in either the order or the worksheets associated with the order to justify dividing the monthly amount into "per child" amounts for each child covered by the support order.

**"Uninsured medical expenses"**: For the purpose of establishing or enforcing support obligations means:

(1) Medical expenses not paid by insurance for medical, dental, prescription and optometrical costs incurred on behalf of a child; and

(2) Premiums, copayments, or deductibles incurred on behalf of a child.

**"Unreimbursed assistance"** means the cumulative amount of assistance which was paid to the family and which has not been reimbursed by assigned support collections.

**"Unreimbursed medical expenses"** means any amounts paid by one parent for uninsured medical expenses, which that parent claims the obligated parent owes under a child support order, which percentage share is stated in the child support order itself, not just in the worksheets.

**"We"** means the division of child support, part of the department of social and health services of the state of Washington.

**"WSSR"** is the Washington state support registry.

**"You"** means the reader of the rules, a member of the public, or a recipient of support enforcement services.

**AMENDATORY SECTION** (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

**WAC 388-14A-1025 What are the responsibilities of the division of child support?** (1) The division of child support (DCS) provides support enforcement services when:

(a) The department of social and health services pays public assistance or provides foster care services;

(b) A former recipient of public assistance is eligible for services, as provided in WAC 388-14A-2000 (2)(c);

(c) A custodial parent (CP) or noncustodial parent (NCP) requests nonassistance support enforcement services under RCW 74.20.040 and WAC 388-14A-2000;

(d) A support order or wage assignment order under chapter 26.18 RCW directs the NCP to make support payments through the Washington state support registry (WSSR);

(e) A support order under which there is a current support obligation for dependent children is submitted to the WSSR;

(f) A former custodial parent (CP) requests services to collect a support debt accrued under a court or administrative support order while the child(ren) resided with the CP;

(g) A child support enforcement agency in another state or foreign country requests support enforcement services; or

(h) A child support agency of an Indian tribe requests support enforcement services.

(2) DCS takes action under chapters 26.23 and 74.20A RCW to establish, enforce and collect child support obligations.

(a) DCS refers cases to the county prosecuting attorney or attorney general's office when judicial action is required.

(b) If DCS has referred a case to the county prosecuting attorney or attorney general's office and the CP has been granted good cause level A, DCS does not share funding under Title IV-D for any actions taken by the prosecutor or attorney general's office once DCS advises them of the good cause finding.

(3) DCS does not take action on cases where the community services office (CSO) has granted the CP good cause not to cooperate under WAC 388-422-0020, when the CSO grants "level A good cause." If the CSO grants "level B good cause," DCS proceeds to establish and/or enforce support obligations but does not require the CP to cooperate with DCS. WAC 388-14A-2065 and 388-14A-2070 describe the way DCS handles cases with good cause issues.

(4) DCS establishes, maintains, retains and disposes of case records in accordance with the department's records management and retention policies and procedures adopted under chapter 40.14 RCW.

(5) DCS establishes, maintains, and monitors support payment records.

(6) DCS receives, accounts for and distributes child support payments required under court or administrative orders for support.

(7) DCS charges and collects fees as required by federal and state law regarding the Title IV-D child support enforcement program.

(8) DCS files a satisfaction of judgment when we determine that a support obligation is either paid in full or no longer legally enforceable. WAC 388-14A-2099 describes the procedures for filing a satisfaction of judgment. WAC 388-14A-2099(4) describes how DCS determines a support obligation is satisfied or no longer legally enforceable.

(9) Based on changes in federal statutes and regulations, DCS establishes or changes the rules regarding its responsibilities when acting as either the initiating agency or responding agency in an intergovernmental child support case.

**AMENDATORY SECTION** (Amending WSR 03-20-072, filed 9/29/03, effective 10/30/03)

**WAC 388-14A-1030 What kinds of services can the division of child support provide?** The services provided by the division of child support include, but are not limited to the following:

(1) Receiving payments and distributing the payments (see WAC 388-14A-5000);

(2) Establishing or modifying administrative child support orders (see WAC 388-14A-3100 and 388-14A-3925);

(3) Enforcing and modifying court orders for child support or maintenance (see WAC 388-14A-3304, 388-14A-3310 and 388-14A-3900);

(4) Referral to the prosecuting attorney for establishment of paternity;

(5) Providing locate services as provided in WAC 388-14A-1035;

(6) Referral for welfare to work services in conjunction with other parts of DSHS, the employment security department (ESD) and private contractors;

(7) Cooperation with the IV-D agencies of Indian tribes and other states, and ((Indian tribes)) the central authorities of other countries (see WAC 388-14A-1060); and

(8) Providing any other services allowed by the state plan and applicable state and federal law.

**AMENDATORY SECTION** (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

**WAC 388-14A-1036 Who can request DCS locate services?** DCS provides locate services for:

(1) Persons receiving public assistance for the benefit of dependent children;

(2) Any agency or attorney of another state or country seeking to collect support obligations under an agreement entered into with DCS;

(3) A court which has the authority to issue an order against a noncustodial parent (NCP) for the support and maintenance of a child;

(4) The custodial parent (CP), legal guardian, attorney or agent of a child who does not receive public assistance, and has not applied for full support enforcement services;

(5) The IV-D agency of another state;

(6) The child support agency of an Indian tribe or another country; and

(7) Those persons authorized by 45 C.F.R. 303.15 to use the FPLS in connection with parental kidnaping or child custody cases.

**AMENDATORY SECTION** (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

**WAC 388-14A-1050 The division of child support cooperates with tribes and other states and ((Indian tribes)) countries for support enforcement purposes.** The division of child support (DCS) cooperates with the IV-D agencies of tribes and other states ((and of Indian tribes)) and the central authorities of other countries, according to rules and policies set by the Secretary of the Department of Health and Human Services and/or the federal Office of Child Support Enforcement (OCSE). Areas of cooperation include:

(1) Establishing paternity;

(2) Locating a noncustodial parent (NCP) who resides in Washington;

(3) Enforcing the support obligation of an NCP who resides in Washington but whose support order was entered by an Indian tribe or another state or country; and

(4) Any other functions required under a Title IV-D plan.

**AMENDATORY SECTION** (Amending WSR 06-06-078, filed 2/28/06, effective 3/31/06)

**WAC 388-14A-1055 Can the division of child support collect support owed or assigned to another state, tribe or country?** (1) The division of child support (DCS) may, at the request of an Indian tribe or another state, collect child support which has been assigned to that tribe, state

under 42 U.S.C. 608 (a)(3)(A), or another country according to the laws of that country.

(2) DCS uses the remedies in chapters 26.23, 74.20 and 74.20A RCW to collect support on behalf of another state, tribe, country or IV-D agency.

**AMENDATORY SECTION** (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

**WAC 388-14A-2000 Who can receive child support enforcement services from the division of child support?**

(1) The division of child support (DCS) provides payment processing and records maintenance services (called "payment services only") to parties to a court order who are not receiving a public assistance grant when:

(a) A Washington superior court order, tribal court order, administrative order, or wage assignment order under chapter 26.18 RCW directs payments through DCS or through the Washington state support registry (WSSR);

(b) The custodial parent (CP) of a dependent child or a noncustodial parent (NCP) requests payment services only, provided that:

(i) An NCP's request for payment services only may not cause a reduction of service from the level of service provided under section (2) of this section; and

(ii) The support obligation is set by a Washington state superior court order, tribal court order, administrative order or wage assignment order, directing payment to DCS or to WSSR.

(2) DCS provides full support enforcement services under Title IV-D of the Social Security Act to custodial parents or noncustodial parents who are not receiving a public assistance grant when:

(a) The custodial parent or former physical custodian of a child requests support enforcement services;

(b) The noncustodial parent of a dependent child requests support enforcement services;

(c) An NCP submits a support order for inclusion in or a support payment to the WSSR, together with an application for support enforcement services;

(d) A public assistance recipient stops receiving a cash grant under the temporary assistance for needy families program;

(e) The department provides medicaid-only benefits to a CP on behalf of a dependent child, unless the recipient of the medicaid-only benefits declines support enforcement services not related to paternity establishment, medical support establishment or medical support enforcement; ~~((or))~~

(f) A man requests paternity establishment services alleging he is the father of a dependent child; or

(g) An Indian tribe or another state or country requests services in an intergovernmental case.

(3) DCS provides payment processing, records maintenance, paternity establishment, medical support establishment, and medical support enforcement services when a recipient of medicaid-only benefits declines support enforcement services in writing.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

**WAC 388-14A-2010 Can I apply for support enforcement services if I do not receive public assistance?**

(1) If you are not receiving public assistance, you can apply for support enforcement services. Your case is called a non-assistance case. A nonassistance case receives the same level of services as a case that was opened because of the payment of public assistance.

(2) Generally, the person applying for nonassistance support enforcement services is the custodial parent or former custodial parent of a child. However, the noncustodial parent may apply for services as well, as provided in WAC 388-14A-2000 (2)(b), (c) and (f).

(3) A person wishing to apply for nonassistance support enforcement services must submit a written application for support enforcement services except as provided in WAC 388-14A-2000 (2)(d); and

(a) Have or have had physical custody of the child for whom support is sought, or for whom a support debt has accrued, or be the person with whom the child resided the majority of the time for which support is sought; or

(b) Be the noncustodial parent.

(4) The applicant must:

(a) Give consent for the division of child support (DCS) to take an assignment of earnings from the noncustodial parent (NCP) if the parents are still married;

(b) Agree to send to DCS any support payments received directly from the NCP within eight days of receipt;

(c) Agree to direct a payor or forwarding agent to make payments to the Washington state support registry (WSSR);

(d) Agree not to hire an attorney or collection agency, or apply to any other state's IV-D agency to collect the same support obligation or support debt, without notifying DCS;

(e) Complete, sign, date and submit to DCS the application form and any other required documents;

(f) Supply copies of divorce and dissolution decrees, support orders and modification orders, and any related documents affecting a support obligation;

(g) Provide a statement of the amount of support debt owed by the NCP;

(h) Include or attach a list, by date, of the support payments received from the NCP during the time period for which the CP seeks support; and

(i) Pay any applicable fee imposed by state or federal law.

(5) If someone other than the CP has legal custody of the child under a court order, the CP must affirm that:

(a) The CP has not wrongfully deprived the legal custodian of custody; and

(b) The person with legal custody has not been excused from making support payments by a court or administrative tribunal.

(6) See WAC 388-14A-2015 regarding requests for intergovernmental child support services received from a foreign reciprocating country (FRC) or from a custodial parent who is a resident of an FRC.

(7) See WAC 388-14A-7660 regarding the assessment of costs in an intergovernmental case where the initiating jurisdiction is an FRC.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

**WAC 388-14A-2015 Does DCS accept an application from someone who is not a resident of Washington state?**

(1) If you are not a resident of the state of Washington but you are applying for services, you must swear or affirm that there is not an open IV-D case in another state.

(2) The division of child support (DCS) may decline the application for nonassistance support enforcement services if:

(a) DCS already has an open case for you which was opened at the request of another state; or

(b) Neither the custodial parent nor the noncustodial parent reside, work, or own any assets in the state of Washington.

(3) If you are a custodial parent residing in a foreign reciprocating country (FRC), either you or the child support agency of your country may request intergovernmental child support services from DCS. As provided under 42 USC 654 (32)(C):

(a) No formal application for services is required; and

(b) DCS does not assess costs against either the FRC or the custodial parent.

(4) See WAC 388-14A-7660 regarding costs assessed against the noncustodial parent in an intergovernmental case where the initiating jurisdiction is an FRC.

AMENDATORY SECTION (Amending WSR 06-03-120, filed 1/17/06, effective 2/17/06)

**WAC 388-14A-3350 Are there any limits on how much back support the division of child support can seek to establish?**

(1) When no public assistance is being paid to the custodial parent (CP) and the children, the division of child support (DCS) starts the claim for support as of the date:

(a) DCS receives the application for nonassistance services if the CP applies directly to DCS for services; or

(b) An Indian tribe or another state or ((~~Indian tribe~~) country received the application for nonassistance services or the actual date the ((~~other~~) tribe, state, or ((~~tribe~~) country requests that child support start, whichever is later, if the ((~~other state or Indian tribe~~) initiating jurisdiction requests DCS to establish a support order.

(2) When the children are receiving medicaid-only benefits, DCS starts the claim for support as of the date the medicaid benefits began. See WAC 388-14A-2005(4) to determine whether DCS seeks to establish medical support only for a particular case.

(3) This section does not limit in any way the right of the court to order payment for back support as provided in RCW 26.26.130 and 26.26.134 if the case requires paternity establishment.

(4) When an Indian tribe or another state or ((~~an Indian tribe~~) country is paying public assistance to the CP and children, DCS starts the claim for support as of the date specified by the ((~~other~~) tribe, state, or ((~~tribe~~) country.

(5) For the notice and finding of parental responsibility, WAC 388-14A-3120(9) limits the back support obligation.

(6) When the state of Washington is paying public assistance to the CP and/or the children, the following rules apply:

(a) For support obligations owed for months on or after September 1, 1979, DCS must exercise reasonable efforts to locate the noncustodial parent (NCP);

(b) DCS serves a notice and finding of financial or parental responsibility within sixty days of the date the state assumes responsibility for the support of a dependent child on whose behalf support is sought;

(c) If DCS does not serve the notice within sixty days, DCS loses the right to reimbursement of public assistance payments made after the sixtieth day and before the notice is served;

(d) DCS does not lose the right to reimbursement of public assistance payments for any period of time:

(i) During which DCS exercised reasonable efforts to locate the NCP; or

(ii) For sixty days after the date on which DCS received an acknowledgment of paternity for the child for whom the state has assumed responsibility, and paternity has not been established.

(7) The limitation in subsection (6) does not apply to:

(a) Cases in which the physical custodian is claiming good cause for not cooperating with the department; and

(b) Cases where parentage is an issue and:

(i) Has not been established by superior court order; or

(ii) Is not the subject of a presumption under RCW 26.26.320.

(8) DCS considers a prorated share of each monthly public assistance payment as paid on each day of the month.

**AMENDATORY SECTION** (Amending WSR 03-17-013, filed 8/12/03, effective 9/12/03)

**WAC 388-14A-3370 What legal defenses are available to a noncustodial parent when DCS seeks to enforce a support obligation?** (1) A noncustodial parent (NCP) who objects to a notice and finding of financial, parental, or medical responsibility has the burden of establishing defenses to liability. Defenses include, but are not limited to:

(a) Proof of payment;

(b) The existence of a superior court order, tribal court order, or administrative order that sets the NCP's support obligation or specifically relieves the NCP of a support obligation for the child(ren) named in the notice;

(c) The party is not a responsible parent as defined by RCW 74.20A.020(7);

(d) The amount requested in the notice is inconsistent with the Washington state child support schedule, chapter 26.19 RCW;

(e) Equitable estoppel, subject to WAC 388-14A-6500; or

(f) Any other matter constituting an avoidance or affirmative defense.

(2) A dependent child's or a custodial parent's ineligibility to receive public assistance is not a defense to the assessment of a support obligation.

(3) An NCP may be excused from providing support for a dependent child if the NCP is the legal custodian of the child and has been wrongfully deprived of physical custody

of the child. The NCP may be excused only for any period during which the NCP was wrongfully deprived of custody. The NCP must establish that:

(a) A court of competent jurisdiction of any state, tribe or country has entered an order giving legal and physical custody of the child to the NCP;

(b) The custody order has not been modified, superseded, or dismissed;

(c) The child was taken or enticed from the NCP's physical custody and the NCP has not subsequently assented to deprivation. Proof of enticement requires more than a showing that the child is allowed to live without certain restrictions the NCP would impose; and

(d) Within a reasonable time after deprivation, the NCP exerted and continues to exert reasonable efforts to regain physical custody of the child.

**AMENDATORY SECTION** (Amending WSR 03-20-072, filed 9/29/03, effective 10/30/03)

**WAC 388-14A-3800 Once a support order is entered, can it be changed?** (1) ~~((Only the court that entered the order can modify a support order entered by a superior court or tribal court))~~ A support order entered by a superior court may only be modified by a superior court or a court of comparable jurisdiction of an Indian tribe or another state or country. The uniform interstate family support act (UIFSA, adopted in Washington as chapter 26.21A RCW) determines which state, tribe or country may modify the order.

(2) If the order specifically states how the amount of support may be adjusted, the division of child support (DCS) may bring an administrative action under RCW 26.23.110 and WAC 388-14A-3310.

~~((2))~~ (3) As provided in WAC 388-14A-3900, DCS may review any support order to determine whether DCS should petition to modify the support provisions of the order.

~~((3))~~ (4) Either DCS, the CP or the NCP may petition to modify an administrative order under WAC 388-14A-3925. Acting as a responding jurisdiction, DCS may petition to modify an administrative order at the request of the initiating jurisdiction.

~~((4))~~ (5) Under appropriate circumstances, an administrative support order may be vacated. See WAC 388-14A-3700.

**AMENDATORY SECTION** (Amending WSR 05-14-101, filed 6/30/05, effective 7/31/05)

**WAC 388-14A-3810 Once an administrative child support order is entered, how long does the support obligation last?** (1) A noncustodial parent's obligation to pay support under an administrative order continues until:

(a) A superior or tribal court order supersedes the order, either as provided by RCW 74.20A.055(7) or by the uniform interstate family support act (UIFSA);

(b) The order is modified under WAC 388-14A-3925;

(c) The child reaches eighteen years of age;

(d) The child is emancipated;

(e) The child marries;

(f) The child becomes a member of the United States armed forces;

- (g) The child or the responsible parent die;
- (h) A responsible stepparent's marriage is dissolved;
- (i) The parties to the order marry or remarry, as provided in WAC 388-14A-3100(3); or
- (j) A superior court order terminates the responsible parent's liability as provided under RCW 26.16.205.

(2) As an exception to the above rule, a noncustodial parent's obligation to pay support under an administrative order continues for a dependent child over the age of eighteen if the child is under age nineteen, and participating full-time in a secondary school program or the same level of vocational or technical training, as defined in WAC 388-404-0005 (1)(b). However, if the child has already met the requirements to finish the educational program, the child is no longer considered to be dependent.

(3) A noncustodial parent's obligation to pay support under an administrative order may be temporarily suspended when the:

- (a) Noncustodial parent (NCP) resides with the child for whom support is sought for purposes other than visitation;
- (b) NCP reconciles with the child and the custodial parent; or
- (c) Child returns to the residence of the NCP from a foster care placement, for purposes other than visitation.

(4) When the NCP's obligation to pay current support on a case is suspended under subsection (3) of this section, the division of child support (DCS) informs the NCP that the obligation is suspended, in writing, sent by regular mail to the NCP's last known address.

(5) If circumstances causing an NCP's support obligation to be temporarily suspended change, the support obligation resumes. DCS sends the NCP a notice that the obligation to make current support payments has resumed.

**AMENDATORY SECTION** (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

**WAC 388-14A-3900 Does DCS review my support order to see if it should be modified?** (1) When the division of child support (DCS) is providing support enforcement services under Title IV-D of the Social Security Act, DCS must:

- (a) Review a superior court or administrative order for child support to determine whether DCS will petition to modify the child support provisions of the order; or
- (b) Evaluate an ~~((interstate))~~ intergovernmental case to determine whether to refer the case to an Indian tribe or another state or ((an Indian tribe)) country for review of the support order for modification.

(2) Recipients of payment services only under WAC 388-14A-2000(1) are not eligible for a review of their support order under this section until they have submitted an application for support enforcement services.

**AMENDATORY SECTION** (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

**WAC 388-14A-3901 Under what circumstances does DCS review a support order for modification?** (1) The division of child support (DCS) reviews ~~((orders for))~~ child support orders under WAC 388-14A-3900 when((:

~~((a)))~~ DCS has enough locate information to obtain personal service on both parties to the order; and;

~~((b)))~~ (a) The department is paying public assistance or has determined that the children are eligible for medical assistance, and thirty-five months have passed since:

- (i) DCS last reviewed the order under this section;
- (ii) The order was last modified; or
- (iii) The order was entered~~((:))~~; or

~~((c)))~~ (b) A party to the order, ~~((or another state's))~~ the IV-D agency of a tribe or another state, or the central authority of another country, submits a request for review to DCS and thirty-five months have passed since:

- (i) DCS or another ~~((state's))~~ state or tribe's IV-D agency last reviewed the order under this section;
- (ii) The order was last modified; or
- (iii) The order was entered.

(2) DCS may refer a request for review to another ~~((state's))~~ state or tribe's IV-D agency for action.

**AMENDATORY SECTION** (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

**WAC 388-14A-3925 Who can ask to modify an administrative support order?** (1) The division of child support (DCS), the custodial parent (CP) or the noncustodial parent (NCP) may file a petition and request a hearing to prospectively modify an administrative order for child support. The request must be in writing and must state:

- (a) Any circumstances that have changed;
- (b) Any relief requested; and
- (c) The proposed new support amount.

(2) The petitioning party must file the request for modification with DCS.

(3) Acting as a responding jurisdiction, DCS may file a petition to prospectively modify an administrative order for child support on behalf of an initiating jurisdiction in an inter-governmental case.

(4) DCS serves a copy of the request for modification and notice of hearing on all other parties by first class mail at their address last known to DCS.

~~((4)))~~ (5) DCS, the administrative law judge (ALJ), or the department review judge:

- (a) Prospectively modifies orders according to the terms of chapter 26.19 RCW and RCW 74.20A.059; and
- (b) May only modify an order issued by a tribunal in another state according to the terms of RCW 26.21A.550.

~~((5)))~~ (6) A request to add a requirement for the custodial parent (CP) to provide health insurance coverage, or to add a provision in the order to include the CP's share of medical expenses, is not by itself a sufficient basis for modification of the order.

~~((6)))~~ (7) If the nonpetitioning party fails to appear at the hearing, the ALJ issues a default order based on the Washington state child support schedule and the worksheets submitted by the parties, considering the terms set out in the request for modification.

~~((7)))~~ (8) If the petitioning party fails to appear at the hearing, the ALJ enters an order dismissing the petition for modification.

(8) If the petition for modification does not comply with the requirements of subsection (1)(a) and (b) of this section, the ALJ may:

(a) Dismiss the petition; or

(b) Continue the hearing to give the petitioning party time to amend according to WAC 388-14A-3275 or to complete the petition.

~~((9))~~ (10) The ALJ may set the effective date of modification as the date the order is issued, the date the request was made, or any time in between. If an effective date is not set in the order, the effective date is the date the modification order is entered.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

### **PART G - (~~INTERSTATE~~) INTERGOVERNMENTAL ISSUES**

AMENDATORY SECTION (Amending WSR 11-22-116, filed 11/2/11, effective 12/3/11)

**WAC 388-14A-7100 The division of child support may register an order from a tribe or another state or country for enforcement or modification.** (1) A ~~((support enforcement agency, or a party to a))~~ child support order or an income-withholding order for support issued by a tribunal of another state or jurisdiction~~((;))~~ may ~~((register the order))~~ be registered in this state for enforcement pursuant to chapter 26.21A RCW at the request of a party to the order or at the request of the support enforcement agency of an Indian tribe or of another state or country.

(a) At the option of the division of child support (DCS), the support order or income-withholding order may be registered with the superior court pursuant to RCW 26.21A.505 or it may be registered with the administrative tribunal according to subsection (2) of this section. Either method of registration is valid.

(b) A support order or income-withholding order issued in another state or jurisdiction is registered when the order is filed with the registering tribunal of this state.

(c) DCS may enforce a registered order issued in another state or jurisdiction in the same manner and subject to the same procedures as an order issued by a tribunal of this state.

(d) DCS may assess and collect interest on amounts owed under support orders entered or established in a jurisdiction other than the state of Washington as provided in WAC 388-14A-7110.

(e) DCS may notify the parties that it is enforcing a non-Washington support order using the notice of support debt and demand for payment under WAC 388-14A-3304 or using the notice of support debt and registration as provided in this section and in WAC 388-14A-7110. Either method of notice is valid.

(2) DCS must give notice to the nonregistering party when it administratively registers a support order or income-withholding order issued in another state or jurisdiction. DCS gives this notice with the Notice of Support Debt and Registration (NOSDR).

(a) The notice must inform the nonregistering party:

(i) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(ii) That if a party wants a hearing to contest the validity or enforcement of the registered order, the party must request a hearing within twenty days after service of the notice on the nonregistering party within Washington state. If the nonregistering party was served with the notice outside of Washington state, the party has sixty days after service of the notice to request a hearing to contest the validity or enforcement of the registered order;

(iii) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted;

(iv) Of the amount of any alleged arrearages, including interest, if interest is being assessed under WAC 388-14A-7110; and

(v) Whether DCS has made a determination of controlling order under chapter 26.21A RCW, as described in WAC 388-14A-7325.

(b) The notice must be:

(i) Served on the nonregistering party by certified or registered mail or by any means of personal service authorized by the laws of the state of Washington; and

(ii) Served on the registering party by first class mail at the last known address; and

(iii) Accompanied by a copy of the registered order and any documents and relevant information accompanying the order submitted by the registering party.

(c) The effective date of a request for hearing to contest the validity or enforcement of the registered order is the date DCS receives the request.

(3) A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state or jurisdiction may register the order in this state according to RCW 26.21A.540 through 26.21A.550.

(a) The order must be registered as provided in subsection (1)(a) if the order has not yet been registered.

(b) A petition for modification may be filed at the same time as a request for registration, or later. The petition must specify the grounds for modification.

(c) DCS may enforce a child support order of another state or jurisdiction registered for purposes of modification, as if a tribunal of this state had issued the order, but the registered order may be modified only if the requirements of RCW 26.21A.550 are met.

(4) Interpretation of the registered order is governed by RCW 26.21A.515.

AMENDATORY SECTION (Amending WSR 11-22-116, filed 11/2/11, effective 12/3/11)

**WAC 388-14A-7110 The division of child support may enforce interest on amounts owed under support orders entered or established in a jurisdiction other than Washington state.** (1) The division of child support (DCS)

may accept an (~~(interstate)~~) intergovernmental request to enforce interest when:

(a) The request is from:

(i) Another state's IV-D agency;

(ii) An Indian tribe;

(iii) A foreign country which has entered into a reciprocal agreement with the United States of America or with the state of Washington; or

(iv) A custodial parent (CP) or noncustodial parent (NCP) who resides outside of Washington state who has filed a petition under the Uniform Interstate Family Support Act (UIFSA), chapter 26.21A RCW.

(b) The party requesting that DCS enforce interest provides a calculation of the interest claimed which has been certified by a IV-D agency or a certified public accountant (CPA); and

(c) The support order was entered or established in a jurisdiction other than Washington state.

(2) When a foreign support order has been submitted for enforcement under UIFSA, DCS may, at its option, either:

(a) Use the notice of support debt and demand for payment to enforce interest on an out-of-state support order. See WAC 388-14A-3304 for the rules regarding the notice of support debt and demand for payment; or

(b) Use a notice of support debt and registration to enforce interest on the foreign order. See WAC 388-14A-7100 for the rules regarding registration of a foreign order.

(3) When an out of state order has been submitted for registration for enforcement and modification under UIFSA, DCS uses a notice of support debt and registration to enforce interest on the out of state order. See WAC 388-14A-7100 for the rules regarding registration of a foreign support order.

(4) Any hearing held on a notice of support debt and registration which includes a claim for interest is conducted in accordance with WAC 388-14A-7125 and 388-14A-7115.

(a) WAC 388-14A-7135 describes the procedures for confirmation of the registered order.

(b) WAC 388-14A-7135 describes the effect of confirmation of the registered order.

(5) At any time after the notice of support debt and registration becomes a final administrative order, DCS may update the amount of interest as provided in WAC 388-14A-7120.

AMENDATORY SECTION (Amending WSR 11-22-116, filed 11/2/11, effective 12/3/11)

**WAC 388-14A-7115 Are there special rules for a hearing on a notice seeking to enforce interest on a support order?** (1) When the division of child support serves a notice of support debt and demand for payment or a notice of support debt and registration under WAC 388-14A-7110(2) and the notice becomes the subject of a hearing, this section applies to a determination of interest.

(2) The calculation of the amount of interest which has been certified by a IV-D agency (~~(or)~~) a certified public accountant (CPA) or a foreign country's equivalent of a CPA must be accepted as evidence at a hearing on a notice of support debt and demand for payment or on a notice of support debt and registration.

(a) Such certified calculation is prima facie evidence of the amount of interest owed by the NCP.

(b) Any party challenging the certified calculation has the burden of proving that the amount of interest claimed is incorrect.

(3) A party challenging the certified calculation may challenge the calculation for one or more of the following reasons:

(a) The amount of principal is incorrect because credit was not given for payments made;

(b) The amount of principal is incorrect because credit was given for payments which were not actually made; or

(c) The interest calculation was not properly done according to the law of the state, tribe or country issuing the order.

(4) If the administrative law judge (ALJ) finds that the party challenging the interest calculation has shown that the amount of principal is incorrect, the ALJ:

(a) Enters an order stating the correct amount of principal;

(b) Orders the party which submitted the original interest calculation to:

(i) Recalculate or have recalculated the interest based on the new principal amount; and

(ii) Submit the new certified calculation to the ALJ within a reasonable amount of time; and

(c) After receiving the new certified calculation, enters an order determining the amount of debt, including interest, for the period claimed in the notice.

(5) If the ALJ orders a new certified calculation, DCS may enforce any amounts of principal the ALJ found to be due and owing under the support order while the administrative order under subsection (4)(c) of this section is pending.

(6) A claim that the interest calculation was not properly done must be supported by an interest calculation which is certified by a IV-D agency, a CPA or (~~a certified public accountant (CPA)~~) the foreign equivalent. The ALJ then determines which calculation is best supported by the evidence.

(7) The division of child support does not perform certified interest calculations for use in a hearing under this section.

AMENDATORY SECTION (Amending WSR 11-22-116, filed 11/2/11, effective 12/3/11)

**WAC 388-14A-7120 When does DCS update the interest on an intergovernmental case for enforcement?**

(1) When the division of child support (DCS) accepts an (~~(interstate)~~) intergovernmental case for enforcement of interest under WAC 388-14A-7110(1), DCS may, at any time after service of a notice of support debt and registration or a notice of support debt and demand for payment, update the amount of interest to be enforced on the case.

(2) To notify the parties to the order that DCS has updated the amount of interest, DCS uses a form called the interest enforcement letter.

(a) The interest enforcement letter is based upon the annual notification of accrued interest from the IV-D agency

or an updated interest calculation from a certified public accountant (CPA) or a foreign country's equivalent of a CPA.

(b) DCS sends the interest enforcement letter to the non-custodial parent (NCP), by first class mail to the NCP's last known address.

(3) The interest enforcement letter may advise the NCP of:

(a) The new, updated amount of interest owed for the arrears period; and

(b) The updated total amount of support owed, including interest.

(4) An NCP who objects to an interest enforcement letter must contact the IV-D agency or the CPA or equivalent who did the calculation to dispute the amount of interest claimed.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

**WAC 388-14A-7400 What can I do if I want to contest an ((interstate)) intergovernmental order to withhold income served on my employer?** (1) RCW 26.21A.425 provides that a noncustodial parent (NCP) may contest the validity or enforcement of an income-withholding order issued ((~~to~~)) by an Indian tribe or another state or country and received directly by an employer in this state.

(2) Acting as an administrative tribunal under chapter 26.21A RCW, the division of child support (DCS) does not have the authority to quash income-withholding orders.

(3) An NCP who seeks to contest an income-withholding order as described in subsection (1) must seek relief in the superior court under RCW 26.18.140.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

**WAC 388-14A-7500 What can I do if I am concerned about the release of my personal information in an ((interstate)) intergovernmental referral?** (1) When the division of child support (DCS) refers a case to an Indian tribe or another state or country, DCS must provide personal information regarding the parties to that other ((state)) jurisdiction. DCS notifies the party residing in Washington that we are preparing to refer your case and that we must release your personal information.

(2) If you believe that it would be dangerous for DCS to release your personal information to the ((other state)) responding jurisdiction (RJ), you may make a request for nondisclosure of your personal information under RCW 26.21A.255.

(3) The way DCS handles your request for nondisclosure depends on what version of the Uniform Interstate Family Support Act (UIFSA) has been adopted by the ((state)) RJ where DCS is referring your case.

(a) The ((state)) RJ may have enacted a version of UIFSA which is similar to the version enacted by the state of Washington as chapter 26.21A RCW (known as "UIFSA 2001"); ((~~or~~))

(b) The ((state)) RJ may have enacted a version of UIFSA which is similar to the version which was formerly enacted by the state of Washington as chapter 26.21 RCW (known as "UIFSA 1996"); or

(c) The RJ may not have enacted UIFSA or any similar law.

(4) If DCS is making an intergovernmental referral to ((another state)) an RJ which has enacted UIFSA 2001:

(a) DCS must disclose your personal information to the ((other state)) RJ.

(b) DCS sends to the ((other state)) RJ a declaration for nondisclosure of information which you have signed under penalty of perjury.

(c) The ((other state)) RJ must seal your personal information and may not disclose that information to the other party or to the public unless a tribunal orders disclosure of the information in the interest of justice, after a hearing in which the tribunal considers your (or your child's) health, safety and liberty.

(5) If DCS is making an intergovernmental referral to ((another state)) an RJ which has enacted UIFSA 1996:

(a) DCS holds a conference board under WAC 388-14A-6400.

(b) If the conference board finds that your (or your child's) health, safety or liberty would be unreasonably put at risk by the disclosure of the information, the conference board issues a nondisclosure finding.

(c) DCS does not disclose your personal information to the ((other state)) RJ, and instead provides the ((other state)) RJ with the nondisclosure finding.

(6) If DCS is making an intergovernmental referral to an RJ which has not adopted UIFSA or a similar law, DCS follows the procedure set out in subsection (5) of this section.

#### NEW SECTION

**WAC 388-14A-7600 Does DCS provide the same services in an intergovernmental case as it provides in a case where both parties reside in the state of Washington?** (1) When acting as the responding jurisdiction in an intergovernmental child support case, the division of child support (DCS) provides the full range of services available under our state plan pursuant to Title IV-D of the federal Social Security Act to:

(a) Another state;

(b) A Tribal IV-D program or child support agency; and

(c) A country as defined in 45 CFR 301.1.

(2) The DCS central registry provides the same services for all IV-D cases, including intergovernmental cases.

(3) See WAC 388-14A-1030 for a list of the services provided by DCS.

#### NEW SECTION

**WAC 388-14A-7610 The division of child support complies with federal requirements regarding intergovernmental cases.** As required under 45 CFR 303.7 (a)(3), the division of child support (DCS) ensures that its organizational structure and staff are adequate to provide for the administration or supervision of the functions specified in 45 CFR 303.20(c) for its intergovernmental IV-D caseload, including but not limited to:

(1) Intake;

(2) Establishment of paternity;

(3) Location of noncustodial parents;

- (4) Establishment of child support orders;
- (5) Collection and/or enforcement;
- (6) Monitoring; and
- (7) Review and adjustment of orders.

NEW SECTION

**WAC 388-14A-7620 How does DCS provide information to another jurisdiction in an intergovernmental case?** (1) The division of child support (DCS) uses federally-approved forms in intergovernmental IV-D cases, unless a country has provided alternative forms as part of its chapter in A Caseworker's Guide to Processing Cases with Foreign Reciprocating Countries.

(2) DCS uses electronic means to transmit these forms unless a paper version is required under the laws of Washington State or the other jurisdiction.

(3) For intergovernmental cases, DCS transmits requests for information and provides requested information electronically to the greatest extent possible.

(4) When using a paper version of a form, DCS provides one complete set of required documents unless the laws of the responding jurisdiction require multiple copies.

(5) When the child support agency of a tribe or another state or country requests any order or payment record information in order to perform a controlling order determination and reconciliation of arrearages, DCS provides that information within thirty working days of a request, or notifies the state IV-D agency when the information will be provided.

(6) DCS notifies the other agency within ten working days of receipt of new information on the case.

NEW SECTION

**WAC 388-14A-7630 What limited services does DCS provide?** (1) For intergovernmental cases, the division of child support (DCS) cooperates with requests for the following limited services:

- (a) Quick locate;
- (b) Service of process;
- (c) Assistance with discovery;
- (d) Assistance with genetic testing;
- (e) Teleconferenced hearings;
- (f) Administrative reviews;
- (g) High-volume automated administrative enforcement in interstate cases under section 466 (a)(14) of the Act; and
- (h) Copies of court orders and payment records.

(2) DCS may also honor requests for other limited services as appropriate.

NEW SECTION

**WAC 388-14A-7640 Payment and recovery of costs in intergovernmental IV-D cases.** (1) When acting as the responding agency in an intergovernmental IV-D case, the division of child support (DCS) pays the costs it incurs in processing the case, including the costs of genetic testing.

(2) See WAC 388-14A-8300 for the rules regarding payment of genetic testing costs in any IV-D case.

(3) DCS may recover its costs of providing services in intergovernmental nonassistance (both never-assistance and

former-assistance) cases as provided under 45 CFR 302.33(d), but when the initiating jurisdiction is a foreign reciprocating country (FRC):

(a) DCS may not assess costs against either the FRC or the custodial parent residing in an FRC; and

(b) DCS may assess costs against the noncustodial parent in such a case.

NEW SECTION

**WAC 388-14A-7650 What kind of federal audit requirements are there for intergovernmental cases?** (1) When the division of child support (DCS) is acting as either the initiating jurisdiction (IJ) or the responding jurisdiction (RJ) in an intergovernmental case, there are certain audit requirements which must be met in at least seventy-five percent of the cases reviewed.

(2) For all intergovernmental cases requiring services during the review period, DCS must determine the last required action on each case and determine whether the action was taken during the appropriate time frame.

(3) DCS must use the audit criteria set forth in 45 CFR 308.2(g) when reviewing intergovernmental cases.

NEW SECTION

**WAC 388-14A-7700 How does the division of child support (DCS) decide that a new case is an intergovernmental case?** When the division of child support (DCS) opens a new IV-D case, DCS must:

(1) Determine whether or not there is already an existing child support order or orders in effect in the case. DCS uses the state and federal case registries, state records, information provided by the recipient of services, and other relevant information;

(2) Determine which jurisdiction may make a determination of the controlling order and reconciliation of arrearages if there are multiple orders; and

(3) Determine whether the noncustodial parent (NCP) is in another jurisdiction and whether it is appropriate to use its one-state remedies to establish paternity and establish, modify, and enforce a support order, including medical support and income withholding.

NEW SECTION

**WAC 388-14A-7710 What does the division of child support (DCS) do when it decides that a case is an intergovernmental case?** Within twenty calendar days of completing the determinations required in WAC 388-14A-7700 and, if appropriate, receipt of any necessary information needed to process the case, the division of child support:

(1) Asks the appropriate intrastate tribunal, or refers the case to the appropriate responding state IV-D agency, for a determination of the controlling order and a reconciliation of arrearages if such a determination is necessary; and

(2) Refers any intergovernmental IV-D case to the appropriate state central registry, Tribal IV-D program, or central authority of a country for action, if one-state remedies are not appropriate.

NEW SECTION

**WAC 388-14A-7720 What is the division of child support (DCS) required to do when Washington is the initiating jurisdiction in an intergovernmental case?** When acting as the initiating jurisdiction in an intergovernmental case, the division of child support (DCS) must:

(1) Provide the responding jurisdiction (RJ) sufficient, accurate information to act on the case by submitting with each case any necessary documentation and intergovernmental forms required by the RJ;

(2) Provide the RJ with an updated intergovernmental form and any necessary additional documentation within thirty calendar days of receipt of the request for information, or notify the RJ when the information will be provided;

(3) Notify the RJ at least annually, and upon request in an individual case, of interest charges, if any, owed on overdue support under an initiating state order being enforced in the RJ;

(4) Submit all past-due support owed in IV-D cases that meet the certification requirements under §303.72 of this part for federal tax refund offset;

(5) Send a request for review of a child support order to another state within twenty calendar days of determining that a request for review of the order should be sent to the other state and of receipt of information from the requestor necessary to conduct the review in accordance with section 466 (a)(10) of the Act and §303.8 of this part;

(6) Distribute and disburse any support collections received in accordance with this section and §§302.32, 302.51, and 302.52 of this chapter, sections 454(5), 454B, 457, and 1912 of the Act, and instructions issued by the office;

(7) Notify the RJ within ten working days of case closure that DCS has closed its case, and the basis for case closure as provided in WAC 388-14A-2083;

(8) Instruct the RJ to close its intergovernmental case and to stop any withholding order or notice the RJ has sent to an employer before DCS transmits a withholding order or notice, with respect to the same case, to the same or another employer unless the two states reach an alternative agreement on how to proceed; and

(9) If DCS has closed its case pursuant to WAC 388-14A-2083 and has not notified the RJ to close its corresponding case, DCS must make a diligent effort to locate the obligee, including use of the federal parent locator service and the state parent locator service, and accept, distribute and disburse any payment received from the RJ.

NEW SECTION

**WAC 388-14A-7800 What is the division of child support (DCS) required to do when Washington receives a request for intergovernmental child support services?** When the division of child support (DCS) receives a request for intergovernmental child support enforcement services from an Indian tribe, another state or another country, DCS is known as the responding jurisdiction (RJ). As the RJ, DCS must:

(1) Accept and process an intergovernmental request for services, regardless of whether the initiating jurisdiction (IJ)

elects not to use remedies that may be available under the law of that jurisdiction;

(2) Within seventy-five calendar days of receipt of an intergovernmental form and documentation:

(a) Provide locate services under WAC 388-14A-1035, if the request is for locate services or if the form or documentation does not include adequate locate information on the noncustodial parent (NCP);

(b) If unable to proceed with the case because of inadequate documentation, notify the IJ of the necessary additions or corrections to the form or documentation; and

(c) If the documentation received with a case is incomplete and cannot be remedied without the assistance of the IJ, process the case to the extent possible pending necessary action by the IJ.

(3) If DCS locates the NCP in another state, DCS returns the intergovernmental referral to the IJ within ten days.

(a) DCS provides the NCP's locate information to the IJ.

(b) Upon request of the IJ, DCS may forward or transmit the intergovernmental referral to the central registry in the state where the NCP has been located.

NEW SECTION

**WAC 388-14A-7810 What is the division of child support (DCS) required to do when DCS receives a request for a determination of controlling order?** When the division of child support (DCS) receives an intergovernmental request for a determination of controlling order, DCS must:

(1) File the controlling order determination request with the appropriate tribunal in its state within thirty calendar days of receipt of the request or location of the noncustodial parent, whichever occurs later; and

(2) Notify the initiating state agency, the controlling order state and any state where a support order in the case was issued or registered, of the controlling order determination and any reconciled arrearages within thirty calendar days of receipt of the determination from the tribunal.

NEW SECTION

**WAC 388-14A-7820 What is the division of child support (DCS) required to do when DCS acts as the responding jurisdiction in an intergovernmental case?** (1) When the division of child support (DCS) opens a IV-D case upon receipt of a request for intergovernmental child support enforcement services from an Indian tribe, another state or another country and acts as the responding jurisdiction (RJ), DCS provides any necessary services as it would in any other IV-D case including:

(a) Establishing paternity and, if appropriate, attempting to obtain a judgment for costs of paternity establishment;

(b) Establishing a child support order;

(c) Reporting overdue support to consumer reporting agencies, in accordance with WAC 388-14A-2160;

(d) Processing and enforcing orders referred by the initiating jurisdiction (IJ), whether pursuant to the uniform interstate family support act (UIFSA) or other legal processes, using all appropriate remedies available;

(e) Submitting the case for such federal enforcement techniques as DCS determines to be appropriate;

(f) Collecting and monitoring any support payments from the noncustodial parent and forwarding payments to the location specified by the IJ. In doing so, DCS:

- (i) Includes sufficient information to identify the case;
- (ii) Indicates the date of collection as defined in WAC 388-14A-5001(3); and
- (iii) Includes the RJ's case identifier and locator code, in accordance with federal regulations.

(g) Reviewing and adjusting child support orders upon request, as provided in WAC 388-14A-3900 through 388-14A-3907.

(2) DCS provides timely notice to the IJ in advance of any hearing that may result in the establishment, modification or adjustment of an order.

(3) DCS identifies any fees or costs deducted from support payments when forwarding payments to the IJ in accordance with RCW 74.20.040 and WAC 388-14A-2200.

(4) DCS stops its income withholding order or notice and closes the intergovernmental IV-D case within ten working days of receipt of instructions for case closure from the IJ, unless DCS and the IJ reach an alternative agreement on how to proceed; and

(5) DCS notifies the IJ when a case is closed pursuant to WAC 388-14A-2083 and 388-14A-2090.

**AMENDATORY SECTION** (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

**WAC 388-14A-8300 Who pays for genetic testing when paternity is an issue?** (1) As provided in WAC 388-14A-3120(14), the noncustodial parent (NCP) and/or the mother of the child may request genetic testing, also called paternity tests, after the service of a notice and finding of parental responsibility.

(2) After receiving a request for paternity tests, the division of child support (DCS) must:

(a) Arrange and pay for the genetic testing, except as provided in subsection (6) of this section, with a laboratory under contract with the department; and

(b) Notify the NCP and the mother of the time and place to appear to give blood samples.

(3) After DCS receives the test results, DCS must:

~~(a))~~ ~~mail~~ a notice of the test results to the:

~~((i))~~ ~~(a)~~ NCP's last known address by certified mail, return receipt requested; and

~~((ii))~~ ~~(b)~~ Mother's and/or custodial parent's last known address by first class mail.

~~((b))~~ ~~Notify the NCP:~~

~~(i)~~ ~~Of the costs of the tests;~~

~~(ii)~~ ~~That an administrative order entered as a result of the notice and finding of parental responsibility will include the cost of the tests; and~~

~~(iii)~~ ~~That DCS may take collection action to collect the genetic testing costs twenty days after the date the NCP receives notice in Washington, or within the time specified in WAC 388-14A-7200, of the test results if the NCP fails to:~~

~~(A)~~ ~~Request either a hearing on the issue of reimbursement to DCS for genetic testing costs under WAC 388-14A-~~

~~3120 or the initiation of a parentage action in superior court; or~~

~~(B)~~ ~~Negotiate an agreed settlement.~~

~~(iv)~~ ~~If the notice was served in another state, DCS may take collection action according to WAC 388-14A-7200.)~~

(4) When the genetic tests do not exclude the NCP from being the father, DCS may require the NCP ~~((must))~~ to reimburse the department for the costs of the tests. If DCS seeks reimbursement from the NCP, DCS must notify the NCP:

(a) Of the costs of the tests;

(b) That an administrative order entered as a result of the notice and finding of parental responsibility will include the cost of the tests; and

(c) That DCS may take collection action to collect the genetic testing costs twenty days after the date the NCP receives notice in Washington, or within the time specified in WAC 388-14A-7200, of the test results if the NCP fails to:

(i) Request either a hearing on the issue of reimbursement to DCS for genetic testing costs under WAC 388-14A-3120 or the initiation of a parentage action in superior court; or

(ii) Negotiate an agreed settlement; and

(d) That if the notice and finding of parental responsibility was served in another state, DCS may take collection action according to WAC 388-14A-7200.

(5) When the paternity tests exclude the NCP from being the father, DCS must:

(a) File a copy of the results with the state center for health statistics;

(b) Withdraw the notice and finding of parental responsibility; and

(c) Request the dismissal of any pending action based on the notice and finding of parental responsibility.

(6) RCW 74.20A.056 does not require DCS to arrange or pay for genetic testing when:

(a) Such tests were previously conducted; or

(b) A court order establishing paternity has been entered.

(7) In an intergovernmental case where DCS is the responding jurisdiction, DCS pays the costs of genetic testing for the initiating jurisdiction and may seek reimbursement from the NCP as provided in this section.

## WSR 13-02-023

### PERMANENT RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed December 20, 2012, 3:21 p.m., effective January 20, 2013]

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

Purpose: The purpose of the new language in chapters 388-71 and 388-112 WAC is to implement and clarify the training requirements and the criminal history background check requirements as directed in chapter 74.39A RCW and to revise the implementation effective dates as directed by Initiative 1163 and subsequently ESHB 2314. Chapter 74.39A RCW requires training for long-term care workers which includes seventy-five hours of entry-level training and

also requires federal and state criminal history background checks for all long-term care workers. This law increases the basic training hour requirements for long-term care workers from thirty-two hours to seventy-five hours and increases their continuing education hour requirement from ten to twelve hours annually. ESHB 2314 also allows for certified home care aides to be delegated nursing tasks and this was also added to these WACs.

Initiative 1163, enacted by the people in November 2011, requires implementation of these rules effective beginning January 7, 2012 (unless otherwise specified). Emergency rules were filed to implement the effective dates as WSR 12-05-100 and an emergency rule extension was filed as WSR 12-21-068 on October 17, 2012. This CR-103P supersedes the CR-103Es filed to implement this rule amendment.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-71-05665, 388-71-05670, 388-71-05675, 388-71-05680, 388-71-05685, 388-71-05690, 388-71-05695, 388-71-05700, 388-71-05705, 388-71-05710, 388-71-05715, 388-71-05720, 388-71-05725, 388-71-05730, 388-71-05735, 388-71-05740, 388-71-05745, 388-71-05750, 388-71-05755, 388-71-05760, 388-71-05765, 388-71-05770, 388-71-05775, 388-71-05780, 388-71-05785, 388-71-05790, 388-71-05795, 388-71-05799, 388-71-05805, 388-71-05810, 388-71-05815, 388-71-05820, 388-71-05825, 388-71-05830, 388-71-05832, 388-71-05835, 388-71-05836, 388-71-05837, 388-71-05840, 388-71-05845, 388-71-05850, 388-71-05860, 388-71-05865, 388-71-05870, 388-71-05875, 388-71-05880, 388-71-05885, 388-71-05890, 388-71-05895, 388-71-05899, 388-71-05905, 388-71-05909, 388-71-0801, 388-71-0806, 388-71-0811, 388-71-0816, 388-71-0821, 388-71-0826, 388-71-0855, 388-112-0020, 388-112-0025, 388-112-0030, 388-112-0040, 388-112-0050, 388-112-0060, 388-112-0065, 388-112-0080, 388-112-0085, 388-112-0090, 388-112-0095,

388-112-0100, 388-112-0105, 388-112-01965, 388-112-0215, 388-112-0220, 388-112-0230, 388-112-0245, 388-112-02610, 388-112-02615, 388-112-02620, 388-112-02625, 388-112-02630, 388-112-0350 and 388-112-0375; and amending WAC 388-71-0500, 388-71-0505, 388-71-0510, 388-71-0513, 388-71-0515, 388-71-0520, 388-71-0540, 388-71-0546, 388-71-0551, 388-71-0560, 388-112-0001, 388-112-0005, 388-112-0010, 388-112-0015, 388-112-0035, 388-112-0040, 388-112-0045, 388-112-0055, 388-112-0070, 388-112-0075, 388-112-0110, 388-112-0115, 388-112-0120, 388-112-0125, 388-112-0130, 388-112-0135, 388-112-0140, 388-112-0145, 388-112-0150, 388-112-0155, 388-112-0160, 388-112-0165, 388-112-0170, 388-112-0195, 388-112-0196, 388-112-0200, 388-112-0205, 388-112-0210, 388-112-0220, 388-112-0225, 388-112-0235, 388-112-0240, 388-112-0255, 388-112-0260, 388-112-0270, 388-112-0280, 388-112-0295, 388-112-0300, 388-112-0315, 388-112-0320, 388-112-0325, 388-112-0330, 388-112-0335, 388-112-0340, 388-112-0345, 388-112-0350, 388-112-0355, 388-112-0360, 388-112-0365, 388-112-0370, 388-112-0380, 388-112-0385, 388-112-0390, 388-112-0395, 388-112-0405, and 388-112-0410.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 12-16-027 on July 25, 2012.

Changes Other than Editing from Proposed to Adopted Version: There were no major policy changes since the last filing.

Rules were amended to coordinate training to coincide with the department of health rules which will require workers to take recertification training by their birthdays instead of by calendar year. Other clarifications were made based on comments received.

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL COMMENTS SUBMITTED. THE ACTIONS TAKEN IN RESPONSE, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
<p>Proposed new <b>WAC 388-71-0543</b> and <b>388-71-0544</b> permit the department, AAA, or the department designee to deny payment to individual providers and home care agencies with LTC employees for a multitude of reasons that were not previously within the department's discretion.</p> <p>The proposed regulations fail to provide any opportunity for the disqualified LTC worker — whom the department declines to pay — to challenge the decision or to be heard by an impartial body.</p> <p>Examples of arbitrary and inappropriate employment disqualifications allowed by the proposed rules include the following: Proposed <b>WAC 388-71-0543</b> permits unreviewable department action denying payment to LTC workers even though more than three or five years have passed since the listed criminal conviction. Previously, the worker had an opportunity to establish, after the requisite time period, that they possessed the character, competence, and suitability to care for the vulnerable adult. Without basis in law, that opportunity is removed.</p>	<p>One of the purposes of chapter 388-71 WAC is to describe requirements that apply to individual providers (IPs) and home care agency employees in order for them to be qualified to have unsupervised access to vulnerable adults. The rules address training requirements and requirements related to the health, safety, and well-being of vulnerable adults who will be receiving services</p> <p>Changes were made to WAC 388-71-0540 and 388-71-0543 to clarify which actions <i>require</i> a denial of payment (WAC 388-71-0540) and which actions <i>may</i> result in a denial of payment (WAC 388-71-0543).</p> <p>WAC 388-71-0540 has been changed to more clearly state the disqualifying crimes that are in statute, including a few that have a disqualification period of three or five years from the date of conviction. For crimes with a disqualification period, character, competence, and suitability review will be conducted on a case-by-case basis after the disqualification period has passed.</p>

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL COMMENTS SUBMITTED. THE ACTIONS TAKEN IN RESPONSE, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
<p>Proposed <b>WAC 388-71-0543</b> permits unreviewable department action denying payment to LTC workers based on any conviction the department agent deems related to the person's competency to provide care to a client. The proposed rule does not address whether the conviction is recent or remote in time and does not identify which convictions are related to the worker's competency to provide care. As a result, a person convicted of driving with a suspended license, for example, could be denied payment if one department agent deemed that related to the worker's competency to provide care. <b>WAC 388-71-0543 (1)(a)-(b)</b> and <b>388-71-0544 (1)(a)-(b)</b> are also concerning. We'd like to know why the department feels these addition[al] categories of crimes should be considered disqualifying; what the magnitude of the effect of enacting these new exclusions will be on the current and future long-term care workforce, and what if any process there will be for transitioning any individuals currently in the long-term care workforce who were previously convicted of what will now be considered a disqualifying crime.</p>	<p>WAC 388-71-0543 includes those actions that may result in a denial of payment. A decision to deny payment under WAC 388-71-0543 is made on a case-by-case basis, through a character, competence, and suitability review.</p> <p>As required by chapter 74.39A RCW, the applicant/provider is given a right to appeal denial of payment actions related to training and certification requirements, and overpayments.</p> <p>The client is the employer of the IP. Therefore, the client is the individual who is given the right to appeal the department's decision not to pay for the provision of services by a specific IP. The client is afforded due process.</p> <p>As stated above, the rule related to crimes that are disqualifying for three or five years from the date of conviction were moved into WAC 388-71-0540, so that the reader will know that convictions for Theft 2 and Forgery are disqualifying for five years, and Theft 3, Prostitution, and Assault 4 are disqualifying for three years. A conviction for any of these five crimes beyond these periods of disqualification requires a character, competence, and suitability review on a case-by-case basis. The department provides training and consultation on character, competence, and suitability to department staff, AAAs, and home care agencies.</p> <p>There are no new crimes in rule. WAC 388-71-0540 clarifies actions that will result in denial of payment and WAC 388-71-0543 clarifies actions that may result in denial of payment.</p>
<p>Proposed <b>WAC 388-71-0543</b> permits unreviewable department action denying payment to an LTC worker if a department agent determines the worker "has engaged in the illegal use of drugs or excessive use of alcohol or drugs without evidence of rehabilitation. ..."</p> <p>The proposed rule does not address whether the alleged conduct is recent or remote in time and the term "excessive" is subjective. The proposed rule provides no guidance on assessing the reliability of the information the agent is using and no requirement that it bears on the worker's current ability to do the job. It is also unclear what would constitute sufficient evidence of rehabilitation. Finally, this section of the rule seems to violate the ADA's prohibition of discrimination against recovering alcoholics and drug addicts.</p> <p>Proposed <b>WAC 388-71-0543</b> permits unreviewable department action denying payment to an LTC worker if a department agent determines that the worker had a license to care for children or vulnerable adults denied, revoked, suspended,</p>	<p>WAC 388-71-0543(2) has been changed and clarifies that an IP may be denied payment if he or she <i>is</i> engaged in the misuse of alcohol, controlled substances, or legend drugs.</p> <p>Character, competence, and suitability reviews are client and IP-specific, and they may include the individual's age at the time of conviction(s), the number of years since the conviction(s), the nature of the conviction(s), and other objective information, in relation to the specific client and his or her assessed needs/tasks/service plan.</p> <p>The individual was provided an opportunity to appeal the licensing action, such as a revocation or suspension, at the time the action was taken. An individual who decides not to renew a license will not be denied payment, if the nonrenewal was initiated solely by the individual, as in the example given here. In contrast, an [a] decision by an agency to "not renew" the license is an action that will be considered and would fall under either WAC 388-71-0540 or 388-71-0543, depending upon the reasons for the nonrenewal.</p>

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL COMMENTS SUBMITTED. THE ACTIONS TAKEN IN RESPONSE, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
<p>terminated, or not renewed, without regard to the basis for the loss or denial of the license, or the passage of time since the license ended. For instance, a person who decided not to renew a license because the cost of a new plumbing system in her/his facility was too great, could be denied payment as a LTC worker with no opportunity for review.</p> <p>Proposed <b>WAC 388-71-0543</b> permits unreviewable department action denying payment to an LTC worker if a department agent determines that the worker voluntarily relinquished, or had any health care provider license, certification or contract denied, suspended, revoked, or terminated, even though the license was later reinstated after satisfactory completion of conditions or requirements. For instance, a young applicant for a registered nursing assistant license who was denied because s/he had not yet completed a prerequisite, but then completed the prerequisite and obtained the license, could be denied payment as a LTC worker with no opportunity for review.</p>	<p>For providers who have had a license or contract for the care of children or vulnerable adults denied, revoked, suspended or terminated for failure to comply with state and federal regulations WAC 388-71-0540 and 388-71-0543 describe when the department will deny payment or when the department may deny payment.</p> <p>In either of the scenarios presented, the applicants voluntarily left the workforce; their actions did not result from any type of agency decision or action, consequently they would not be denied payment if they are otherwise qualified. If, the fact that their license was suspended or not renewed happened to appear on their background check, the department would ascertain the reasons for the action during the character competency and suitability review.</p>
<p>Proposed <b>WAC 388-71-0543</b> permits unreviewable department action denying payment to an LTC worker if a department agent determines that the worker voluntarily relinquished or had a residential or health care facility license, certification or contract denied, revoked, suspended, terminated, or not renewed, without regard to the basis for the loss or denial of the license, or the passage of time since the license ended. For example, a person who left the work force for a few years to care for children or elderly parents and so relinquished his/her license, could be denied payment as a LTC worker with no opportunity for review.</p> <p>Proposed <b>WAC 388-71-0543</b> permits unreviewable department action denying payment to an LTC worker with a pending criminal charge for a disqualifying crime, without regard to the nature of the allegations. The enabling legislation provides that the department must perform criminal background checks and to submit to fingerprints "for the purpose of investigating conviction records through both the Washington state patrol and the federal bureau of investigation." Requiring reports of pending charges before conviction, and denying payment to LTC workers who have pending charges may result in denying pay to workers who are facing false allegations and would disproportionately harm people of color.</p>	<p>WAC 388-71-0540 was revised to more clearly describe when the department will deny payment, and WAC 388-71-0543 was revised to more clearly describe when the department may deny payment.</p> <p>In the example given, an applicant who relinquished a license to care for children because he or she left the work force to care for elderly parents would not be disqualified.</p> <p>An applicant would be disqualified if he or she relinquished a license for the care of children because he or she had neglected children under state and federal regulations, and the license was otherwise going to be revoked or terminated. Under these circumstances, the individual would have been provided the right to appeal the underlying licensing action. That is the type of licensing action that would fall under WAC 388-71-0540.</p> <p>This change was made in order to make the background check requirements for IPs consistent with the department's background check requirements for other administrations and divisions. This rule does not apply to arrests, only to pending charges for crimes that would be disqualifying, if convicted. This is consistent with current practice and policy. When the court makes its determination that the person was not guilty, the charge will not be considered, nor appear on a new background check. If the person is found to be guilty of a lesser, nondisqualifying crime, the department will conduct a character, competence, and suitability review.</p>

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL COMMENTS SUBMITTED. THE ACTIONS TAKEN IN RESPONSE, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
<p>RECOMMENDATION: Proposed <b>WAC 388-71-0543 and 388-71-0544</b> should be deleted. If any provisions remain, however, the LTC worker must be given notice and a right to appeal such determinations.</p> <p>RECOMMENDATION: Either the administrative hearing rights in proposed <b>WAC 388-71-0561 and 388-71-0562</b> should match the expansion of DSHS discretion to deny payment described in proposed <b>WAC 388-71-0543 and 388-71-0544</b>, or proposed <b>WAC 388-71-0543 and 388-71-0544</b> should be deleted as noted above.</p>	<p>The department cannot delete provider requirements for IPs (WAC 388-71-0543) and home care agency long-term care employees (WAC 388-71-0544). These rules implement rules implement[ing] new statutory requirements and clarify rules that are long standing.</p> <p>The department provides appeal rights for client/employers, as specified in RCW 74.39A.095.</p> <p>IPs have appeal rights, as specified in RCW 74.39A.056 and 43.20B.675.</p>
<p>The proposed amendment to <b>WAC 388-71-0515(1)</b> deletes the provision that the client's plan of care shall be translated or interpreted for the individual provider.</p> <p>COMMENT: Limited English proficient individual providers may have a solid command of conversational English, but unable to effectively read English.</p> <p>RECOMMENDATION: <b>WAC 388-71-0515(1)</b> should state "Understand the client's plan of care that is signed by the client or legal representative and which may be translated or interpreted, as necessary, for the client and the provider; ... ."</p> <p>Reports of large scale losses of home care workers followed the implementation of emergency rules WSR 12-05-100 and 12-13-090. The rules proposed in the latest WSR filing offer no changes.</p> <p>COMMENT: We received reports from regions throughout the state that home care recipients lost care providers in large numbers and shortages of available caregivers occurred because many workers could not obtain home care aide certification by the deadline. The reports included descriptions of workers who were not certified through no fault of their own, due to barriers in the application, training, testing, and evaluation process. For example, the home care application packet is twenty-three pages and offered in English only, even though many home care workers are limited English proficient. Some workers were unaware that after taking the training, the worker must fill out a second application to take the test. The effect on vulnerable adults in need of home care has been dramatic. A shortage of home care workers can cause vulnerable adults to stay at home without needed care for as long as they can to avoid institutionalization, risking falls and other injuries, malnourishment, medication mistakes, and ultimately, hospitalization. Individuals seeking to return home from nursing facilities and persons seeking to stay at home and out of care facilities are unable to do so without home care aides to help them. The individuals whom I-1163 is intended to benefit are harmed when qualified workers are not available.</p>	<p>Language is clarified. Translations requirements and requests apply to medicaid clients.</p>

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL COMMENTS SUBMITTED. THE ACTIONS TAKEN IN RESPONSE, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
<p>The effect on the state's budget is also a concern. When individuals remain in nursing facilities because there are not enough workers to provide less restrictive, less expensive options, the state's long-term care budget increases.</p> <p>We also understand that the AAAs are sharing their regional information with the department and that SEIU and the department are collaborating to address these problems.</p> <p>RECOMMENDATION: The implementation of I-1163 introduced a complex change to the long-term care system. We urge all entities involved to work promptly for solutions to reduce the barriers that potential home care workers face in getting the training and certification needed. In particular, we urge that language access accommodations be provided for limited English proficient workers throughout the entire training and certification process.</p>	
<p><b>WAC 388-71-0836</b> definition of "functionally disabled person" or "person who is functionally disabled" should be changed to "person who has a functional disability."</p> <p>Please consider involving clients who receive these services in the competency training process.</p>	<p>The term "functionally disabled" was removed from chapter 388-71 WAC.</p> <p>Client advocacy groups have been involved in the development of the competencies and learning objectives of the training.</p>
<p><b>WAC 388-112-0002</b> - Unclear as to why this section is necessary; would recommend eliminating the phrase "long-term care worker" from the first sentence since the training described in the WAC applies to all adult family home/assisted living workers, not just "long-term care workers."</p>	<p>WAC 388-112-0002 delineates who the chapter applies to. The term "long-term care worker" was removed from the first sentence.</p>
<p><b>WAC 388-112-0003:</b></p> <ul style="list-style-type: none"> <li>• Reorganize the table so that the credential is in a column to the left, with all required education/training provided across in a row. This decreases confusion while including "one stop shopping" for all requirements.</li> <li>• Ensure continuity in language regarding continuing education column: Include "12 hours" in each column in order to ensure consistency.</li> <li>• Include ALL training requirements covered in the chapter 388-112 WAC on the table.</li> </ul>	<p>Modifications were made to the table in an effort to simplify and clarify. However, major changes were not made due to formatting restrictions imposed by the office of the code reviser.</p> <p>The suggested change was made.</p> <p>In order to keep the table "simple" and because of restrictions noted above, other trainings (not all of which are required) were listed below the table with reference to appropriate WAC section.</p>
<p><b>WAC 388-112-0004:</b></p> <ul style="list-style-type: none"> <li>• There is no need to "call out" the department's abilities to take action against facilities in noncompliance; this is duplication since language already exists in chapters 18.20 and 70.128 RCW.</li> </ul>	<p>No change was made.</p>

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL COMMENTS SUBMITTED. THE ACTIONS TAKEN IN RESPONSE, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
<ul style="list-style-type: none"> <li>RCW 74.39A.086 is very specific regarding enforcement action related to those providers who <u>knowingly</u> employ a long-term care worker who is not a certified home care aid, and is directed to promulgate the rules to implement. These rules fail to address the "appropriate enforcement action."</li> </ul>	RCW 74.39A.086 refers specifically to employment of uncertified long-term care workers. The intention of WAC 388-112-0004 is to inform regarding actions possible for violations of other parts of this chapter.
<p><b>WAC 388-112-0005:</b></p> <ul style="list-style-type: none"> <li>Under the definition of "long-term care worker" there is a section that calls out "the following persons are not long-term care workers." Add contracted nurse/RN to this section, as they work, oftentimes, for their own company.</li> <li>Why is "care team" included in the definitions section? In adult family homes and assisted living facilities, residents do not direct the service plan - this appears to be relevant for the home care sector.</li> <li>The "direct supervision" definition is incomplete: RCW 18.20.270 [(1)](b) "direct supervision" means oversight by a person who has demonstrated competency in the core areas or has been fully exempted from the training requirements pursuant to this section, is on the premises, and is quickly and easily available to the caregiver.</li> <li>Why is the definition of "functionally disabled person" necessary in the WAC?</li> </ul>	<p>The definition of "long-term care worker" clearly states that "all persons providing paid, personal care services... in state-licensed facilities" are considered as long-term care workers.</p> <p>A change was made to allow resident to direct care "when able." The department does not wish to preclude the possibility of a resident to exercise their right to self-determine care.</p> <p>Changes were made to more clearly define "direct supervision."</p> <p>Term was removed from chapter 388-112 WAC.</p>
<p><b>WAC 388-112-0015, 388-112-0016, 388-112-0018, 388-112-0035:</b> To alleviate confusion, distinguish orientation training from the long-term care worker orientation and safety training.</p>	Changes were made to WAC 388-112-0015, 388-112-0016, 388-112-0018 and 388-112-0035 to more clearly define training requirements addressed in these sections.
<p><b>WAC 388-112-0040:</b> Eliminate this section as it needs to be separated out.</p>	WAC 388-112-0040 repealed.
<p><b>WAC 388-112-0045 What is basic training?</b></p> <ul style="list-style-type: none"> <li>Subsection (4) should read "A previously approved basic training curriculum may be used to teach core basic training but it must include enhancements which must be approved by the department." This fully incorporates an individual's ability to use not only RFOC but another qualifying curriculum as well.</li> <li>Examples of enhancements (and what are NOT considered enhancements) should be removed, as they limit the opportunity for creative application. Furthermore, the content of this section is outside the intent of the initiative.</li> </ul>	<p>Changes were made to allow more flexibility for creative application of requirements, and similarly for examples of enhancements.</p> <p>Initiative 1163 was a mandate to create a comprehensive training program for long-term care workers. Enhancing fundamentals of caregiving is in keeping with Initiative 1163. No changes were made in response to second bullet point comment.</p>

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL COMMENTS SUBMITTED. THE ACTIONS TAKEN IN RESPONSE, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
<p><b>WAC 388-112-0053 What topics must be taught in the core competencies of basic training for long-term care workers?</b></p> <ul style="list-style-type: none"> <li>• Many of the topics included in the core competencies are duplicative, as they are also found in the orientation and safety training. These include:                             <ul style="list-style-type: none"> <li><input type="checkbox"/> Communication skills</li> <li><input type="checkbox"/> Resident rights</li> <li><input type="checkbox"/> Abuse, abandonment, neglect, financial exploitation and mandatory reporting</li> <li><input type="checkbox"/> Body mechanics</li> <li><input type="checkbox"/> Fall prevention</li> <li><input type="checkbox"/> Infection control, blood-borne pathogens</li> </ul> </li> <li>• Add at the end of this section, "The core basic training learning outcomes and competencies may be obtained from the department."</li> </ul>	<p>No change was made. Although there is some repetition of content matter, orientation and safety is a five-hour training and, as such, would not allow the level of detail expected in the seventy basic training. These duplicative items are key skills that are part of the skills testing through the department of health (DOH).</p> <p>The department is required to approve topics and competencies and therefore they are outlined in WAC.</p>
<p><b>WAC 388-112-0055 What are the core competencies and learning objectives for long-term care worker basic training?</b></p> <ul style="list-style-type: none"> <li>• By including the learning outcomes and competencies in WAC, it forces DSHS to "open" WACs whenever they wish to update and/or make changes to these outcomes and competencies. In order to avoid this, we recommend eliminating this entire section and include the statement at the end of WAC 388-112-0053: "The core basic training learning outcomes and competencies may be obtained from the department." This supports other sections of the draft WAC, such as WAC 388-112-0125.</li> <li>• If this is not the chosen pathway, consider the following as alternatives:</li> <li>• Learning objectives must be measurable; the words "recognize" and "understand" are included in many sections and are not measurable; they should be replaced.</li> <li>• Subsection (1)(c) "Listen attentively and determine that the resident understands what has been communicated." This should be limited to "listen attentively" as one cannot always determine that a resident understands what has been communicated. Medical, cultural, and/or cognitive conditions may limit a resident's ability to fully understand and therefore this learning objective is unattainable.</li> </ul>	<p>No change was made. This section of the WAC relates directly to the skills portion of the training and testing and as such they are clearly stated.</p> <p>A student's ability to "recognize" and "understand" are determined in the testing process and are legitimate terms of learning. Testing is based on learning outcomes.</p> <p>The term "when able" was added to the sentence. This term allows for the possibility that barriers may exist that would not allow for a resident to fully understand what is being communicated, but encourages communication to the fullest extent.</p>

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL COMMENTS SUBMITTED. THE ACTIONS TAKEN IN RESPONSE, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
<ul style="list-style-type: none"> <li>• Subsection (4)(c) "Maintain a restraint-free environment, including physical, chemical, and environmental restraints .... This may not be possible, as there are rare occasions where a restraint is indeed the best option for the resident and must be implemented as part of his/her negotiated care. In this instance, workers should learn the legalities of restraint use and when they are indeed appropriate; monitoring for safety and proper implementation then becomes the key objective.</li> <li>• Subsection (5)(b) "Identify common symptoms of abuse, abandonment ...." Consider replacing the word "symptoms" with "indications" as the word "symptom" generally relates to a medical condition.</li> <li>• Subsection (6)(a), add, "Describe a worker's role <u>and limitations</u> in resident directed care ...."</li> <li>• Subsection (6)(b), correct to identify that resident directed care is unique to in-home care situations only. Consider, "Describe the importance, impact, <u>and limitations</u> of resident directed care ....</li> <li>• Subsection (12)(a), the list of skills demonstrations are limited in scope and do not prepare the worker to fully operate as a member of the care team; vital signs measurements are expected as part of the job and are not reflected or mentioned as learning objectives or demonstrated during skills practice. Neither is safe use of mechanical lifts.</li> <li>• All sections that are repetitive with the orientation and/or safety requirements should be eliminated.</li>   <li>• Subsection (16)(e) "Identify beneficial ways and resources to work through feelings of grief and loss" is a judgmental statement and should be amended; ways that are beneficial for grieving vary amongst workers and should not be held above other methods. Consider changing to, "Identify methods and resources to work through feelings of grief and loss."</li> </ul>	<p>Any use of restraints in a facility would be rare, and under very specific circumstances and unique to a particular resident and their plan of care. In these instances specific training would occur for the long-term care worker that would address this unique situation. The training for long-term care workers is geared to the normal rather than the exceptional circumstance.</p> <p>The suggested change was made.</p> <p>Residential care offers different challenges for self-directed care but does not limit it to only in-home care.</p> <p>Taking and recording vital signs is not a requirement for all long-term care workers. There are approved continuing education courses that include taking and recording of vital signs. Use of mechanical lifts are also part of approved CE courses. Many facilities do not have mechanical lifts and those that do use a variety of devices. LTC worker would need to learn use of specific equipment in the facility where they work.</p> <p>No change was made. The purposes of chapter 388-112 WAC are to <i>describe</i> training and certification requirements for long-term care workers and others in adult family homes and assisted living facilities. While some of the statements are duplicative of orientation and safety requirements, this particular section describes the core competencies for the <u>basic training</u> requirements. The duplicative items are key skills that are part of the skills testing through DOH.</p> <p>No change was made. The statement does not proscribe resources or methods for dealing with grief and loss.</p>

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL COMMENTS SUBMITTED. THE ACTIONS TAKEN IN RESPONSE, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
<p><b>WAC 388-112-0070 What documentation is required to show completion of basic training?</b></p> <ul style="list-style-type: none"> <li>Eliminate the last part of the section title, as it is redundant: "What documentation is required to show completion of basic training, <del>including core competencies and population-specific competencies?</del></li> <li>Subsections (1)(d) and (h) are duplicative (date(s) of training and completion date). Include just the completion date.</li> <li>Subsection (2) requires the provider and training entity to maintain a copy of the certificate. Once the worker becomes certified, the certificate is irrelevant and should not be maintained.</li> </ul>	<p>The suggested changes were made.</p>
<p><b>WAC 388-112-0075 Who is required to complete basic training, and when, unless exempt as described in WAC 388-112-0076?</b></p> <ul style="list-style-type: none"> <li>This section is a repeat of the table in WAC 388-112-0003 and therefore should be eliminated. If maintained as-is, please recognize that this entire section is confusing and refers the reader (in numerous places) to refer to different sections of the WAC.</li> <li>Additionally, the section unnecessarily references certification requirements in subsection (6); this section specifically relates to basic training. Recommend deleting subsection (6).</li> </ul>	<p>The table in WAC 388-112-0003 was devised to be a quick reference in response to stakeholder requests. It is not a replacement for this section of WAC.</p> <p>Certification requirements are an extension of the basic training. This [is] an appropriate reference point for stakeholders.</p>
<p><b>WAC 388-112-0076 Which long-term care workers are exempt from the basic training requirement?</b></p> <ul style="list-style-type: none"> <li>This section is too far back in the entire document and should be moved closer to the table near the beginning.</li> </ul>	<p>No change was made. The Administrative Procedures Act and code reviser's office do not allow for change at this point. Numbers would have to be repealed and recodified at a later date.</p>
<p><b>WAC 388-112-0078 What curriculum may be used in the population specific component of the basic training?</b></p> <ul style="list-style-type: none"> <li>RCW 74.39A.009(20) notes that "Population specific competencies" means <u>basic training</u> topics unique to the care needs of the population the long-term care worker is serving, <u>including but not limited</u> to, mental health, dementia, developmental disabilities, young adults with physical disabilities, and older adults.</li> </ul>	<p>Changes were made to broaden the scope of this section.</p>

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL COMMENTS SUBMITTED. THE ACTIONS TAKEN IN RESPONSE, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
<ul style="list-style-type: none"> <li>"Population specific" curricula is broad and may address much more than just the three specialties. Since most adult family home and assisted living employers would prefer long-term care workers take courses that are required (as opposed to optional) it seems clear that they would choose one, two, or all three of these specialty courses to fulfill the population specific component. By locking the WACs into these three options, however, limits the possibility of future specialties.</li> </ul>	
<p><b>WAC 388-112-0081, 388-112-0083, 388-112-0088, and 388-112-0091.</b></p> <ul style="list-style-type: none"> <li>Question regarding who came up with these topics and learning objectives/competencies. Who were the consumers questioned for their input into these items as addressed?</li> <li>AFH and ALF workers will most likely ALWAYS use the required population specific training courses (i.e. mental health, dementia, and/or developmental disabilities) in order to conserve funds while maximizing educational opportunities. The topics such as "young adults with physical disabilities" and "aging and older adults" are irrelevant for the purposes of the seventy-five hour training, then, and specific learning objectives and competencies should be removed from WAC.</li> <li>AFH/ALF facilities wishing to address these populations via training should be encouraged to do so through the continuing education venue, with the development of learning objectives and competencies left to the curriculum designer.</li> </ul>	<p>The topics, and learning objectives and competencies were developed over time by the department. Contributions were made by long term care facilities, consumer advocates, and other community stakeholders.</p> <p>While these topics may not be common for AFH/ALF, they are none-the-less relevant in some circumstances.</p> <p>The learning objectives and competencies are examples. This does not limit further development by curriculum designers.</p>
<p><b>WAC 388-112-0092 What learning objectives may be included in the curriculum for young adults with physical disabilities and/or for aging and older adults?</b></p> <p>This entire section is irrelevant; see above comments.</p>	<p>While these topics may not be common for AFH/ALF, they are none-the-less relevant in some circumstances.</p>
<p><b>WAC 388-112-0106 Who is required to obtain certification as a home care aide, and when?</b></p> <ul style="list-style-type: none"> <li>Add subsection (5) that reads: "nursing assistant certification may be achieved in lieu of home care aide certification."</li> </ul>	<p>This WAC is being written to implement Initiative 1163 which specifically details a certified home care aide. People exempt from the requirements can be found in WAC 388-112-0076.</p>
<p><b>WAC 388-112-0108 What documentation is required for a long-term care worker to apply for the home care aide certification or recertification?</b></p> <ul style="list-style-type: none"> <li>Subsection (3), eliminate the requirement for the "training entity" to verify that the certified home care aide has certificates or transcripts that add up to twelve hours of DSHS-approved continuing education. Rather, the certified home care aide shall verify twelve hours of CE.</li> </ul>	<p>The suggested changes were made.</p>

<p>SUMMARY OF COMMENTS RECEIVED</p>	<p>THE DEPARTMENT CONSIDERED ALL COMMENTS SUBMITTED. THE ACTIONS TAKEN IN RESPONSE, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.</p>
<ul style="list-style-type: none"> <li>Subsection (4), spell out who is a long-term care worker (RN, LPN, NAC, exempt long-term care worker) and certified home care aide.</li> <li>Subsection (4), there is no need to maintain the seventy-five hour certificate of completion once certification is achieved.</li> <li>You cannot require a long term care worker to maintain their CE certificates as long as they are employed and up to three years after termination of employment. This WAC is designed for PROVIDERS (AFH and ALF facilities), not the workers themselves.</li> </ul>	<p>The suggested change was made and WAC 388-112-0108(4) was deleted.</p> <p>In response to public comment this stipulation was developed to address concerns about LTC workers changing jobs and former employers not forwarding evidence of completed training. The purpose of chapter 388-112 WAC is to describe "Training and certification requirements" that apply to providers AND to describe the training requirements that apply to "Adult family home applicants, resident managers, entity representatives, long-term care workers and volunteers" also assisted living facility administrators and their designees (WAC 388-112-0002).</p>
<p><b>WAC 388-112-0120 What topics must developmental disabilities specialty training include?</b></p> <ul style="list-style-type: none"> <li>Add at the end "The developmental disabilities specialty training learning outcomes and competencies may be obtained from the department."</li> </ul>	<p>The department is required to approve topics and competencies and therefore feels that they should be outlined in WAC.</p>
<p><b>WAC 388-112-0122 What are the competencies and learning objectives for the long-term care worker developmental disability specialty training?</b></p> <ul style="list-style-type: none"> <li>Eliminate entire section; refer to comments in WAC 388-112-0120.</li> </ul>	<p>See comment above.</p>
<p><b>WAC 388-112-0130 What topics must long-term care worker dementia specialty training include?</b></p> <ul style="list-style-type: none"> <li>Add at the end "The long-term care worker dementia specialty training learning outcomes and competencies may be obtained from the department."</li> </ul>	<p>See comment above.</p>
<p><b>WAC 388-112-0132 What are the competencies and learning objectives for the long-term care worker dementia specialty training?</b></p> <ul style="list-style-type: none"> <li>Eliminate entire section; refer to comments in WAC 388-112-0130.</li> </ul>	<p>See comment above.</p>
<p><b>WAC 388-112-0140 What topics must the long-term care worker mental health specialty training include?</b></p> <ul style="list-style-type: none"> <li>Add at the end, "The long-term care worker mental health specialty training learning outcomes and competencies may be obtained from the department."</li> </ul>	<p>See comment above.</p>
<p><b>WAC 388-112-0142 What are the competencies and learning objectives for the long-term care worker mental health specialty training?</b></p> <ul style="list-style-type: none"> <li>Eliminate entire section; refer to comments in WAC 388-112-0140.</li> </ul>	<p>See comment above.</p>
<p><b>WAC 388-112-0145 Who is required to complete competency testing for specialty training?</b></p> <ul style="list-style-type: none"> <li>Eliminate the references to different WAC 388-112-0295, 388-112-0300, 388-112-0315; the remaining subsections spell out who must complete testing.</li> </ul>	<p>The suggested changes were made.</p>

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL COMMENTS SUBMITTED. THE ACTIONS TAKEN IN RESPONSE, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
<p><b>WAC 388-112-0155 What documentation is required for successful completion of specialty training?</b></p> <ul style="list-style-type: none"> <li>Change to read, "Specialty training must be documented by a DSHS-issued certificate of successful completion, issued by the instructor or training entity, that includes: (1) The name of the student, (2) the name of the specialty training, (3) the number of training hours, (4) the name and identification number of the home or training entity, (5) the instructor's name, (6) the date of completion."</li> <li>The last part of this section should be changed to read, "The employer must keep a copy of the certificate on file." Eliminate the remaining information that references other WAC sections, as this increases confusion.</li> </ul>	<p>The suggested changes were made.</p>
<p><b>WAC 388-112-0200 What is continuing education?</b></p> <p>Subsection (1), eliminate the term "caregiving-related" in the first sentence and replace with "relevant." Many long-term care workers take continuing education courses that are not related to caregiving; likewise assisted living administrators as well as adult family home providers may benefit from continuing education that has precious little to do with caregiving. Also, change the last two words in this section from "would be" to "is."</p>	<p>The term "caregiving related" was removed from this section.</p>
<p><b>WAC 388-112-0205 Who is required to complete continuing education training, and how many hours of continuing education are required each year?</b></p> <p>Subsection (1)(b), (c), change to read, "Effective July 1, 2012, all long-term care workers must complete 12 hours of continuing education each calendar year unless: (i) Basic training was taken, therefore allowing continuing education be delayed one calendar year, and (ii) specialty training was taken, therefore allowing continuing education be delayed two calendar years. Continuing education must include at least one-half hour per year on safe food handling in adult family homes.</p>	<p>The department linked continuing education (CE) time frame requirements to the recertification schedule developed by DOH so a long-term care worker or employer would have one time frame for renewal of certification and CE requirements, not two separate time frames.</p>

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL COMMENTS SUBMITTED. THE ACTIONS TAKEN IN RESPONSE, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
<p><i>Please see RCW 70.128.230(6) which describes continuing education requirements be completed via calendar year, not birthday to birthday. RCW 74.39A.341(1) also references continuing education requirements, simply stating the need for twelve hours <u>per year</u>, not specific to "calendar" or "birthday."</i></p> <p>Subsection (2)(b), (c), change to read, "Effective July 1, 2012, long-term care workers must complete 12 hours of continuing education each calendar year unless: (i) Basic training was taken, therefore allowing continuing education be delayed one calendar year, and (ii) specialty training was taken, therefore allowing continuing education be delayed two calendar years. An assisted living facility administrator with a current nursing home administrator license is exempt from this requirement.</p> <p><i>Please see RCW 18.20.270(6) which describes continuing education requirements be completed via calendar year, not birthday to birthday.</i></p> <p>Subsection (3) "A long-term care worker <del>or certified home care aide</del> who did not complete ... ." There is no reason to call out the certified home care aide, as this term "long-term care workers" credential encompasses the home care aide credential.</p> <p>Subsection (4), change to read, "One hour of completed classroom instruction of other form of training (such as video or online course) equals one hour of continuing education. <del>The training entity must establish a way for the long term care worker to ask the instructor questions."</del></p> <p><i>The eliminated section does not reference the specific title of this section and is best used elsewhere in the chapter.</i></p>	<p>We have noted this discrepancy with RCW 70.128.230 and 18.20.270 and will coordinate with residential care services (RCS) which licenses adult family homes and assisted living facilities. We will ask RCS to develop licensing rules that have consistent wording so the "per year" requirement is standard.</p>
<p><b>WAC 388-112-0207 When must a long-term care worker or certified home care aide complete continuing education?</b></p> <ul style="list-style-type: none"> <li>In the title, remove "certified home care aide." The term "long-term care worker" encompasses the home care aide credential.</li> <li>Subsection (1) requires CE be completed by the worker's birthday. This is not congruous with WAC 388-112-0205, nor with RCW 18.20.270(6), 70.128.0230(6), and 74.39A.341(1) which state calendar year and simply "year," respectively.</li> </ul>	<p>The suggested change was made.</p> <p>See response to comment under WAC 388-112-0205.</p>
<p><b>WAC 388-112-0220 May basic training be completed a second time and used to meet continuing education requirements?</b></p> <ul style="list-style-type: none"> <li>This is an exclusive call-out and should be eliminated entirely. For example, a repeated course of nurse delegation cannot be used to fulfill the continuing education requirements, nor can repeating a specialty course.</li> </ul>	<p>This section was repealed.</p>

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL COMMENTS SUBMITTED. THE ACTIONS TAKEN IN RESPONSE, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
<p><b>WAC 388-112-0225 May specialty training be used to meet continuing education requirements?</b></p> <p>The last two sentences do not match current statutes. "When a specific specialty training is completed as part of basic training the hours cannot be applied to continuing education. Different specialty training taken in subsequent years may be applied as continuing education hours." RCW 18.20.270(6) and 70.128.230(6) clearly state that the completion of a specialty training may fulfill two years' worth of continuing education.</p>	<p>RCW 74.39A.074 (1)(c) allows the training required in RCW 18.20.270(6) and 70.128.230(6), which is the specialty training, to apply towards the seventy-five hours of basic training as required by Initiative 1163. In addition, training above seventy-five hours is not required the first year of training. Since long-term care workers meet their specialty training requirements when they complete basic training, this cannot apply to CE the following year. Additional CE is required by statute.</p>
<p><b>WAC 388-112-0240 What are the documentation requirements for continuing education?</b></p> <p>This section must be amended to better match the significant changes to WAC 388-112-0205 as suggested.</p> <ul style="list-style-type: none"> <li>• Subsection (1)(b) eliminate "as approved by DSHS."</li> <li>• Subsection (f) eliminate "DSHS approved" in both locations within the subsection and "and signature" (because online or internet-based courses often lack instructor signature).</li> </ul>	<p>The suggested changes were made.</p>
<p><b>WAC 388-112-0255 What is first-aid training?</b></p> <ul style="list-style-type: none"> <li>• Eliminate subsections (1) - (4) that include all topics, since OSHA determines those and may change them in the future. Amend the last part of the first section to read "Training includes all course topics as identified in the OSHA first-aid training standards."</li> </ul>	<p>The suggested change was made.</p>
<p><b>WAC 388-112-0295 What components must competency testing include?</b></p> <ul style="list-style-type: none"> <li>• Subsection (1) states that all competency exams include a skills portion. This is not true; the forty-eight hour course for adult family homes does not include a skills portion, nor should it.</li> <li>• Determining in WAC that a competency test always includes both skills and written exams places DSHS in a predicament whereas creative changes cannot be made to better "test" a student's progress and knowledge (by way of a project, for example).</li> </ul>	<p>Changes were made to WAC 388-112-0295 by adding subsection (2), specific to adult family home residential care administrator training that does not include skills demonstration. The rule includes the following language "... knowledge should be measured by an assigned project ..."</p>
<p><b>WAC 388-112-0320 What trainings must be taught with a curriculum approved by DSHS?</b></p> <p>Eliminate the details in this entire section and replace it with "all required training courses must have approval from DSHS prior to use."</p>	<p>Changes were made to simplify this section but it was not eliminated.</p>

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL COMMENTS SUBMITTED. THE ACTIONS TAKEN IN RESPONSE, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
<p><b>WAC 388-112-0325 What must be submitted to DSHS for curriculum approval?</b></p> <ul style="list-style-type: none"> <li>Subsection (2) Continuing education. Mimic the spirit of continuing education WAC for nursing home administrators (WAC 246-843-130); it is simple and to-the-point while eliminating DSHS time and effort at reviewing and approving every individual training entity and allows for DSHS audit of courses offered/entities offering courses.</li> </ul> <p>Consider the following wording for this subsection (2):            "A course provided to satisfy the continuing education requirement for long-term care workers, assisted living facility administrators (or designees), adult family home providers, and entity representatives shall meet the following conditions before being approved by the department:</p> <p>(1) A request for approval shall be submitted on forms provided by the department at least one day prior to the start of the course;</p> <p>(2) Such a course of study shall consist of a minimum of one hour of organized instruction;</p> <p>(3) Such courses of study may include the following general subject areas or their equivalents, and shall be oriented to the worker and reasonably related to the worker's job duties or future job duties:</p> <ul style="list-style-type: none"> <li>a. Resident management;</li> <li>b. Personnel management;</li> <li>c. Financial management;</li> <li>d. Environmental factors affecting resident and staff well-being;</li> <li>e. Laws relating to Washington state long-term care;</li> <li>f. Common conditions affecting long-term care residents;</li> <li>g. Activities and social programs;</li> <li>h. Food and menu planning;</li> <li>i. Legal aspects of employment, care and service;</li> <li>j. Trends and new developments in long-term care;</li> <li>k. First aid, CPR, and/or food handling;</li> <li>l. Nursing and other adjunct services;</li> <li>m. Resident rights.</li> </ul> <p>Subsection (4) Such course(s) of study shall issue to the worker certificates of attendance or other evidence of satisfactory completion.":</p> <ul style="list-style-type: none"> <li>Eliminate the provision allowing self-study in this section.</li> <li>Refer to the "Request for Approval of Educational Offering" (DOH form 661-004 dated November 2010) for the nursing home administrator CE curriculum application document. Sponsors that are automatically approved should be included, and based upon past high-quality professional training coursework and include:</li> </ul>	<p>Long-term care worker training cannot be defined in the same way as nursing home requirements. Initiative 1163 promotes choice of trainers and training methods for LTC workers across the state in residential and community settings.</p> <p>The department is investigating a procedure whereby continuing education, approved by a national credentialing organization, would not have to be preapproved through DSHS. The criteria governing this circumstance would be posted on aging and disability services administration web site.</p>

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL COMMENTS SUBMITTED. THE ACTIONS TAKEN IN RESPONSE, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
<ul style="list-style-type: none"> <li>■ Washington Health Care Association</li> <li>■ Washington State Residential Care Council</li> <li>■ Leading Age of Washington</li> <li>■ American Health Care Association</li> <li>■ National Center for Assisted Living</li> <li>■ Department of Social and Health Services</li> <li>■ NAB National Continuing Education Review Services (NCERS)</li> <li>■ Assisted Living Federation of America</li> <li>■ Residents Council of Washington</li> <li>■ Oregon Healthcare Association</li> <li>■ Washington Long-Term Care Ombudsman</li> <li>■ Any state professional association affiliated with NAB NCERS registered or certified sponsors</li> <li>■ American College of Health Care Administrators</li> <li>■ Leading Age of America</li> </ul> <ul style="list-style-type: none"> <li>• Because the department may change its methods of curriculum approval in the future, consider changing all subsections (1) through (4) to "curriculum not developed by DSHS must be reviewed by DSHS prior to approval."</li> <li>• If these sections remain, subsection (3)(a) should read, "if the instructor or training entity wants to use a previously DSHS-approved basic training program with enhancements ... ."</li> </ul>	
<p><b>WAC 388-112-0330 What is the curriculum approval process for orientation, basic training (core and population specific training), and continuing education?</b></p> <ul style="list-style-type: none"> <li>• Why are WAC 388-112-0325 and 388-112-0330 separate? By simply stating that DSHS must approve curricula and those applications must be submitted on DSHS-developed application forms, this seems to fit all aspects of required processes. Eliminate this entire section.</li> </ul>	<p>Initiative 1163 requires the department to create an "approval system." It is appropriate to clearly delineate the system developed.</p>

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL COMMENTS SUBMITTED. THE ACTIONS TAKEN IN RESPONSE, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
<p><b>WAC 388-112-0335 What are the requirements for an assisted living facility or adult family home that wishes to conduct orientation, safety, basic, on-the-job training, continuing education, or long-term care worker specialty training?</b></p> <ul style="list-style-type: none"> <li>• Subsection (1)(c)(v) if the home cannot teach others that are outside of employment by the same owner/operator, then don't include that option on the application. Eliminate this section entirely. Both RCW 18.20.270 and 70.128.230 encourage homes to "pool resources" to coordinate educational offerings amongst and between facilities and that the department must support this. The elimination of this opportunity sets up a financial hardship for many long-term care communities, especially those in rural areas of Washington.</li> <li>• Subsection (1)(f) requires the home to keep the certificates on file for six years; certificates demonstrate successful completion of a course. Subsection (1)(g), then, which requires the home to maintain attendance and testing records, is irrelevant and should be eliminated.</li> </ul>	<p>An owner/operator is not prohibited from teaching nonemployees. Becoming a community instructor (CI) would allow the person to teach outside of their own facility. There is no cost associated with becoming a CI.</p> <p>Subsection (1)(g) was eliminated.</p>
<p><b>WAC 388-112-0340 Is department approval required to provide continuing education?</b></p> <ul style="list-style-type: none"> <li>• This section is redundant to WAC 388-112-0335 and should be eliminated.</li> </ul>	<p>Suggested change was made. WAC 388-112-0340 was repealed.</p>
<p><b>WAC 388-112-0345</b></p> <ul style="list-style-type: none"> <li>• Where is the department's statutory authority for suspending a training program? At what point can a training program be reinstated?</li> <li>• Population-specific training is a component of basic training, therefore should be eliminated in the first sentence.</li> <li>• Amend subsection (4) to read: The home's instructor(s) fail to meet the applicable trainer standards; eliminate the citations.</li> </ul>	<p>RCW 74.39A.074 (2), (4) states that only training curriculum approved by the department may be used to fulfill the training requirements and adopt rules to implement this section. The department's responsibility to approve training programs and instructors has been a long-standing authority.</p> <p>Suggested change was made.</p> <p>Suggested change was made.</p>
<p><b>WAC 388-112-0350 What trainings must be taught by an instructor who meets the applicable minimum qualifications under this chapter?</b></p> <ul style="list-style-type: none"> <li>• Referring the reader to multiple sections of the WAC is ineffective and difficult to follow. Eliminate the entire section and replace it with: "all required training courses must be taught by DSHS-approved instructors. CE and orientation/safety training must be taught by someone knowledgeable in the topics."</li> </ul>	<p>WAC 388-112-0350 was removed.</p>

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL COMMENTS SUBMITTED. THE ACTIONS TAKEN IN RESPONSE, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
<ul style="list-style-type: none"> <li>Alternately, eliminate this entire section and instead use WAC 388-112-0360 which states the same thing.</li> </ul>	
<p><b>WAC 388-112-0370 What is a guest speaker, and what are the minimum qualifications to be a guest speaker for basic training?</b></p> <ul style="list-style-type: none"> <li>Why limit this to just basic training (as the title suggests)? Consider eliminating the last three words of the title ("for basic training").</li> <li>Subsection (2)(a) change to "The approved instructor must select guest speakers based on their knowledge and experience in the specific topic." By requiring an approved instructor to choose a guest speaker that meets the training requirements places him/her in the predicament of checking references and/or reviewing resumes and background. This may eliminate some very powerful presentations simply due to guest speaker's limited or otherwise alternate education and experience that is not included in the DSHS approval criteria.</li> <li>Subsection (2)(b) eliminate the term "and qualifications."</li> </ul>	<p>The suggested changes were made.</p>
<p><b>WAC 388-112-0380 What are the minimum qualifications for an instructor for basic, population specific, on-the-job training, residential care administrator, and nurse delegation core and specialized diabetes training?</b></p> <ul style="list-style-type: none"> <li>Subsections (3)(a)(i), (ii) By requiring the trainer to have experience in a "community setting" eliminates those nurses or other professionals who currently may work in another care setting (such as a nursing home) and who may teach in a nursing assistant certification course or similar. Likewise, it eliminates community colleges or technical schools from teaching the basic training course, as many of their instructors are also nursing instructors and/or NAC instructors who do not necessarily work in the "community based care settings."</li> </ul>	<p>Subsection (3)(a)(i) states "... work experience within last five years with elderly or persons with disabilities requiring long-term care in a community setting." The department views experience with the specific population to be crucial. That experience may be gained in a variety of settings, including, but not limited to, clinics, hospitals, and nursing facilities.</p>
<p><b>WAC 388-112-0385 What are the minimum qualifications for instructors for manager and long-term care worker mental health specialty training?</b></p> <ul style="list-style-type: none"> <li>Subsection (2)(a) after "adult family home provider" add the term "or designee." This mimics the assisted living standards and allows the adult family home provider to promote a qualified resident manager or entity representative to teach the course, rather than limiting the training opportunities to just the provider.</li> </ul>	<p>The suggested change was made.</p>

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL COMMENTS SUBMITTED. THE ACTIONS TAKEN IN RESPONSE, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
<p><b>WAC 388-112-0390 What are the minimum qualifications for instructors for manager and long-term care worker dementia specialty?</b></p> <ul style="list-style-type: none"> <li>Subsection (2)(a) after "adult family home provider" add the term "or designee." This mimics the assisted living standards and allows the adult family home provider to promote a qualified resident manager or entity representative to teach the course, rather than limiting the training opportunities to just the provider.</li> </ul>	<p>The suggested change was made.</p>
<p><b>WAC 388-112-0395 What are the minimum qualifications for instructors for manager and long-term care worker developmental disabilities specialty?</b></p> <ul style="list-style-type: none"> <li>Subsection (2)(a) after "adult family home provider" add the term "or designee." This mimics the assisted living standards and allows the adult family home provider to promote a qualified resident manager or entity representative to teach the course, rather than limiting the training opportunities to just the provider.</li> </ul> <p>For ease of reference and reading, the sections on approval of instructors should be separated out between community-based instructors and facility-based instructors. Perhaps a table or grid that spells out the criteria for each would best depict the differences and "clean up" the oftentimes mixed topics that are included in the same sections.</p>	<p>The suggested change was made.</p> <p>A table delineating trainer qualifications was submitted for consideration of inclusion in chapter 388-112 WAC. While this table held merit it had not been proposed in previous filings and cannot be added now per code reviser restrictions. The department will consider for inclusion when chapter 388-112 WAC is next opened for review.</p>
<p><b>WAC 388-112-0405 What physical resources are required for classroom training and testing?</b></p> <ul style="list-style-type: none"> <li>This section belongs in an approval letter (for a facility-based trainer) or contract (for a community instructor) to ensure that the space is appropriate.</li> </ul>	<p>No change was made. The need has been identified to establish these guidelines prior to approval of training program.</p>

A final cost-benefit analysis is available by contacting Martin Yates, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2540, fax (360) 407-7582, e-mail martin.yates@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 86, Amended 63, Repealed 77.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 86, Amended 63, Repealed 7.

Date Adopted: December 13, 2012.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

**WAC 388-71-0500 What is the purpose of ((WAC 388-71-0500 through [388-71-05952] [388-71-05909])) this chapter?** ((A client/legal representative may choose an individual provider or a home care agency provider. The intent of WAC 388-71-0500 through [388-71-05952] [388-71-05909])) The purpose of this chapter is to describe the:

(1) Qualifications of an individual provider, as defined in WAC 388-106-0010;

(2) Qualifications of a long-term care worker employed by a home care agency ((provider)), as defined in WAC 388-106-0010 and chapter ((246-336)) 246-335 WAC;

(3) Conditions under which the department or the area agency on aging (AAA) will pay for the services of an indi-

vidual provider or a home care agency (~~(provider)~~) long-term care worker;

(4) Training requirements for an individual provider and home care agency (~~(provider)~~) long-term care worker;

(5) Client's options for obtaining a long-term care worker. A client, as described in WAC 388-71-0836, eligible to receive long-term care services, or his/her legal representative acting on the client's behalf, may choose to receive personal care services in the client's home from an individual provider or a long-term care worker from a home care agency. If the client chooses to receive services from a home care agency, the agency will assign a long-term care worker employed by the agency to provide services to the client. Individual providers and home care agency long-term care workers are "long-term care workers" as defined in RCW 74.39A.009 and are subject to background checks under RCW 74.39A.055 and 43.20.710; and

(6) Contracting requirements.

AMENDATORY SECTION (Amending WSR 01-11-019, filed 5/4/01, effective 6/4/01)

**WAC 388-71-0505 How does a client hire an individual provider?** The client(~~(s)~~) or legal representative:

(1) Has the primary responsibility for locating, screening, hiring, supervising, and terminating an individual provider;

(2) Establishes an employer/employee relationship with the individual provider; and

(3) May receive assistance from the social worker/case manager or other resources in this process.

AMENDATORY SECTION (Amending WSR 04-16-029, filed 7/26/04, effective 8/26/04)

**WAC 388-71-0510 How does a person become an individual provider?** In order to become an individual provider, a person must:

(1) Be eighteen years of age or older;

(2) Provide the social worker/case manager/designee with:

(a) A valid Washington state driver's license or other valid picture identification; and either

(b) A Social Security card; or

(c) Proof of authorization to work in the United States.

(3) ~~((Complete and submit to the social worker/case manager/designee the department's criminal conviction background inquiry application, unless the provider is also the parent of the adult DDD client and exempted, per chapter 74.15 RCW;~~

~~(a) Preliminary results may require a thumb print for identification purposes;~~

~~(b) An FBI fingerprint-based background check is required if the person has lived in the state of Washington less than three years.~~

~~(4)) Complete the required DSHS form authorizing a background check.~~

(4) Disclose any disqualifying criminal convictions and pending charges, and also disclose civil adjudication proceedings and negative actions as those terms are defined in WAC 388-71-0512;

(5) Effective January 8, 2012, be screened through Washington state's name and date of birth background check. Preliminary results may require a thumb print for identification purposes.

(6) Effective January 8, 2012, be screened through the Washington state and national fingerprint-based background check, as required by RCW 74.39A.056.

(7) Results of background checks are provided to the department and the employer or potential employer unless otherwise prohibited by law or regulation for the purpose of determining whether the person:

(a) Is disqualified based on a disqualifying criminal conviction, a pending charge for a disqualifying crime, civil adjudication proceeding, or negative action; or

(b) Should or should not be employed as an individual provider based on his or her character, competence, and/or suitability.

(8) Disqualifying crimes, civil adjudication proceedings, and negative actions are listed in WAC 388-71-0540 (4), (5) and (6).

(9) For those providers listed in RCW 43.43.837(1), a second Washington state and national fingerprint-based background check is required if they have lived out of the state of Washington since the first national fingerprint-based background check was completed.

(10) The department may require an individual provider to have a Washington state name and date of birth background check or a Washington state and national fingerprint-based background check, or both, at any time.

(11) Sign a home and community-based service provider contract/agreement to provide personal care services to a person under a medicaid state plan or federal waiver such as COPES(~~(, MNIW, or medicaid personal care client)) or other waiver programs.~~

#### NEW SECTION

**WAC 388-71-0512 What is included in Washington state's name and date of birth background check and the Washington state and national fingerprint-based background check?** (1) Washington state's name and date of birth background check includes a check of:

(a) Records contained in databases maintained by the Washington state patrol, including records of pending charges and criminal convictions.

(b) Records maintained by the Washington state department of corrections and the Washington state administrative office of the courts judicial information system.

(c) Records of negative actions, final findings, or civil adjudication proceedings of any agency or sub-agency.

(i) A "negative action" includes the denial, suspension, revocation, or termination of a license, certification, or contract for the care of children, as defined in RCW 26.44.020, or vulnerable adults, as defined in RCW 74.34.020, for non-compliance with any state or federal regulation.

(ii) A "civil adjudication proceeding" is a judicial or administrative adjudicative proceeding that results in a finding of, or upholds any agency finding of, domestic violence, abuse, sexual abuse, exploitation, financial exploitation, neglect, abandonment, violation of a child or vulnerable adult

under any provision of law, including but not limited to chapters 13.34, 26.44, or 74.34 RCW or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

(iii) Negative actions and civil adjudication proceedings include but are not limited to, findings made and actions taken by:

- (A) DSHS adult protective services;
- (B) DSHS residential care services;
- (C) DSHS children's protective services;
- (D) The Washington state department of health; and
- (E) The nursing assistant registry;

(iv) Any pending charge, criminal conviction, civil adjudication proceeding or negative action disclosed by the applicant.

(2) The Washington state and national fingerprint-based background check includes a check of:

- (a) Washington state records;
- (b) Federal Bureau of Investigation (FBI) records; and
- (c) The national sex offender registry.

(3) Except as prohibited by federal law, results are shared with the employer or prospective employer and with the department of health, as authorized.

AMENDATORY SECTION (Amending WSR 01-11-019, filed 5/4/01, effective 6/4/01)

**WAC 388-71-0513 Is a background check required of a long-term care worker employed by a home care agency (~~(provider)~~) licensed by the department of health?**

In order to be a long-term care worker employed by a home care agency (~~(provider)~~), a person must (~~(complete the department's criminal conviction background inquiry application, which is submitted by the agency to the department. This includes an FBI fingerprint based background check if the home care agency provider has lived in the state of Washington less than three years))~~;

(1) Complete the required DSHS form authorizing a background check.

(2) Disclose any disqualifying criminal convictions and pending charges, and also disclose civil adjudication proceedings and negative actions as those terms are defined in WAC 388-71-0512.

(3) Effective January 8, 2012, be screened through Washington state's name and date of birth background check. Preliminary results may require a thumb print for identification purposes.

(4) Effective January 8, 2012, be screened through the Washington state and national fingerprint-based background check, as required by RCW 74.39A.056.

(5) Results of background checks are provided to the department and the employer or potential employer for the purpose of determining whether the person:

(a) Is disqualified based on a disqualifying criminal conviction, a pending charge for a disqualifying crime, civil adjudication proceeding, or negative action; or

(b) Should or should not be employed based on his or her character, competence, and/or suitability.

(6) Disqualifying crimes, civil adjudication proceeding, and negative actions are listed in WAC 388-71-0540 (4), (5) and (6).

(7) For those providers listed in RCW 43.43.837(1), a second national fingerprint-based background check is required if they have lived out of the state of Washington since the first national fingerprint-based background check was completed.

(8) The department may require a long-term care worker to have a Washington state name and date of birth background check or a Washington state and national fingerprint-based background check, or both, at any time.

#### NEW SECTION

**WAC 388-71-0514 Can an individual provider or licensed home care agency long-term care worker work pending the outcome of the national fingerprint-based background check?** An individual provider or licensed home care agency long-term care worker may work up to one hundred twenty days pending the outcome of the Washington state and national fingerprint-based background check, provided that the person is not disqualified as a result of Washington state's name and date of birth background check or for character, competence, or suitability.

AMENDATORY SECTION (Amending WSR 10-06-112, filed 3/3/10, effective 4/3/10)

**WAC 388-71-0515 What are the responsibilities of an individual provider (~~(or home care agency provider)~~) when (~~(employed to provide care)~~) providing services to a client?** An individual provider (~~(or home care agency provider)~~) must:

(1) Take direction from the client, who is the IP's employer, or when appropriate, from the client's legal representative;

(2) Understand the client's plan of care that (~~(is)~~) has been signed by the client or legal representative (~~(and social worker/case manager and)~~), which may be translated or interpreted, as necessary, (~~(for)~~) and as requested by the client (~~(and the provider)~~);

(~~(2)~~) (3) Provide the services as outlined on the client's plan of care, as (~~(defined)~~) described in WAC 388-106-0010, according to the client's direction, supervision, and prioritization of tasks within the number of hours authorized;

(~~(3)~~) (4) Accommodate the client's individual preferences and (~~(differences)~~) unique needs in providing care;

(~~(4)~~) (5) Contact the (~~(client's)~~) client, client's representative and case manager when there are changes (~~(which)~~) that affect the personal care and other tasks listed on the plan of care;

(~~(5)~~) (6) Observe (~~(the client for)~~) and consult (~~(with)~~) the client or client's representative, regarding change(s) in health, take appropriate action, and respond to emergencies;

(~~(6)~~) (7) Notify the case manager immediately when the client enters a hospital, or moves to another setting;

(~~(7)~~) (8) Notify the case manager immediately (~~(if)~~) in the event of the (~~(client dies)~~) client's death;

~~((8))~~ (9) Notify the department or AAA immediately when unable to staff/serve the client; ~~((and))~~

~~((9))~~ (10) Notify the department/AAA when the individual provider ~~((or home care agency))~~ will no longer provide services. ~~((Notification to the client/legal guardian))~~  
The individual provider must:

(a) Give at least two weeks' notice, and

(b) ~~((Be))~~ Notify the client or the client's representative in writing; and

(c) Notify the client's case manager.

~~((10))~~ (11) Complete and keep accurate time sheets of authorized/paid hours that are accessible to the social worker/case manager; under WAC 388-106-0130, the department does not pay for shared benefit(s) or informal support provided to the client by anyone, including the IP; and

~~((11))~~ (12) Comply with all applicable laws ~~((and))~~, regulations, and the individual provider contract.

~~((12))~~ A home care agency must not bill the department for in-home medicaid-funded personal care or DDD respite services when the agency employee providing care is a family member of the client served, unless approved to do so through an exception to rule under WAC 388-440-0001. For purposes of this section, family member means related by blood, marriage, adoption, or registered domestic partnership.)

#### NEW SECTION

**WAC 388-71-0516 What are the responsibilities of home care agency when providing care to a client?** In providing care to a client, a home care agency must:

(1) Ensure that the assigned home care agency long-term care worker(s) understands the client's plan of care that is signed by the client or legal representative, and which may be translated or interpreted, as necessary for the client;

(2) Provide tasks from services outlined in a client's plan of care, as described in WAC 388-106-0010;

(3) Accommodate the client's individual preferences and unique needs in providing care;

(4) Contact the client, client's representative and case manager when there are changes observed by the assigned home care agency long-term care worker that affect the personal care and other tasks listed on the plan of care;

(5) Ensure that the assigned home care agency long-term care worker(s) observes the client for and consults with the client or representative, regarding change(s) in health, takes appropriate action, and responds to emergencies;

(6) Notify the case manager immediately when the client enters a hospital, or moves to another setting;

(7) Notify the case manager immediately in the event of the client's death;

(8) Notify the department or AAA immediately when unable to staff/serve the client;

(9) Notify the department or AAA when the home care agency will no longer provide services and the home care agency must:

(a) Give at least two weeks' notice; and

(b) Notify the client or the client's representative in writing; and

(c) Notify the case manager.

(10) Comply with time keeping requirements, and keep accurate time sheets of authorized/paid hours that are accessible to the appropriate department or designee staff; under WAC 388-106-0130, the department does not pay for shared benefit(s) or voluntary informal support that may be provided to the client by anyone, including providers; and

(11) Comply with all applicable laws and regulations.

#### NEW SECTION

**WAC 388-71-0517 What are the responsibilities of a home care agency when the home care agency long-term care worker is a family member of the client and the client is receiving in-home medicaid-funded personal care or DDD respite services?** A home care agency must not bill the department for in-home medicaid-funded personal care or DDD respite services when the agency employee providing care is a family member of the client served, unless approved to do so through an exception to rule under WAC 388-440-0001. For purposes of this section, family member means related by blood, marriage, adoption, or registered domestic partnership.

AMENDATORY SECTION (Amending WSR 09-03-066, filed 1/14/09, effective 2/14/09)

**WAC 388-71-0520 ~~((Are there))~~ What are the training requirements for an individual provider or a home care agency ~~((provider of an adult client))~~ long-term care worker?** An individual provider or a home care agency ~~((provider for an adult client))~~ long-term care worker, hired on or after January 7, 2012, must meet the training requirements ~~((in))~~ described in WAC ~~((388-71-05665))~~ 388-71-0836 through ~~((388-71-05865 and WAC 388-71-0801 through 388-71-0826))~~ 388-71-1006. These training requirements also apply to individual providers or home care agency long-term care workers who were hired before January 7, 2012, if they did not complete prior training requirements within one hundred twenty days of hire and they want to be reinstated to work as a long term care worker. These training requirements and certification if required must be met prior to reinstating these individual to work as a long term care worker.

NEW SECTION**WAC 388-71-0523 What are the training/certification requirements for individual providers and home care agency long-term care workers?**

Who	Status	Orientation Training	Safety Training	Basic Training	Continuing Education	Certification HCA-C
(1) An individual provider who is a licensed, certified health care professional	RN, LPN, CN-A, and allied health professionals listed in WAC 388-71-0839	Not required	Not required	Not required	Required. Ten hours through June 30, 2012 Twelve hours from July 1, 2012 forward per WAC 388-71-0990 and 388-71-0991	Not required
(2) An individual provider or home care agency long term care worker with specific employment history.	Employed as a long term care worker at some point between January 1, 2011 and January 6, 2012 and who completed the basic training requirements in effect on date of his or her hire. WAC 388-71-0840.	Not required	Not required	Not required	Required. Ten hours through June 30, 2012. Twelve hours from July 1, 2012 forward per WAC 388-71-0990 and 388-71-0991.	Not required
(3) Individual provider/home care agency long term care worker.	Contracted with the department OR hired by a licensed home care agency to provide personal care service as defined in WAC 388-71-0836 and is not exempt under subsection (1) or (2) of this table.	Required. Two hours per WAC 388-71-0860.	Required. Three hours per WAC 388-71-0860.	Required. Seventy hours per WAC 388-71-0870 and 388-71-0875.	Required. Twelve hours per WAC 388-71-0990 and 388-71-0991.	Required per WAC 388-71-0975.
(4) An individual provider with limited hours.	Contracted individual providing twenty hours or less of care for one person per calendar month and does not meet criteria in (1) or (2) of this table.	Required. Two hours per WAC 388-71-0860.	Required. Three hours per WAC 388-71-0860.	Required. Thirty hours per WAC 388-71-0880.	Not required prior to June 30, 2014.	Not required
(5) Parent, step-parent, or adoptive parent as individual provider.	Department paid individual providing care for his or her adult child <b>ONLY and receiving services through the division of developmental disabilities</b> and not exempt under (1) or (2) of this table.	Required. Two hours per WAC 388-71-0895.	Required. Three hours per WAC 388-71-0895.	Required. Seven hours per WAC 388-71-0890.	Not required	Not required

Who	Status	Orientation Training	Safety Training	Basic Training	Continuing Education	Certification HCA-C
(6) Biological, step, or adoptive parent/adult child as individual provider.	Who is a department paid individual providing care <b>ONLY</b> to his or her child or parent, and does not meet criteria in (5) and is not exempt under (1) or (2) of this table.	Required. Two hours per WAC 388-71-0860.	Required. Three hours per WAC 388-71-0860.	Required. Thirty hours per WAC 388-71-0880.	Required for adult child per WAC 388-71-0990 and 388-71-0991. Not required for parent provider per WAC 388-71-1001.	Not required.

AMENDATORY SECTION (Amending WSR 10-06-112, filed 3/3/10, effective 4/3/10)

**WAC 388-71-0540** **When will the department, AAA, or department designee deny payment for services of an individual provider or home care agency ((~~provider~~) long-term care worker?)** ~~((The department, AAA, or department designee will deny payment for the services of a home care agency provider if the services are provided by an employee of the home care agency who is related by blood, marriage, adoption, or registered domestic partnership to the client.))~~

The department, AAA, or department designee will deny payment for the services of an individual provider or home care agency provider (~~who~~):

(1) When the services are provided by an employee of the home care agency who is related by blood, marriage, adoption, or registered domestic partnership to the client;

(2) When he or she is the client's spouse, ((~~per 42 C.F.R. 441.360(g);~~) except in the case of an individual provider for a chore services client. Note: For chore spousal providers, the department pays a rate not to exceed the amount of a one-person standard for a continuing general assistance grant, per WAC ((388-478-0030)) 388-478-0020;

~~((2))~~ (3) When he or she is the natural/step/adoptive parent of a minor client aged seventeen or younger receiving services under medicaid personal care;

~~((3))~~ (4) When he or she is a foster parent providing personal care to a child residing in their licensed foster home;

~~((4))~~ Has been convicted of a disqualifying crime, under RCW 43.43.830 and 43.43.842 or of a crime relating to drugs as defined in RCW 43.43.830;))

(5) ~~((Has abused, neglected, abandoned, or exploited a minor or vulnerable adult, as defined in chapter 74.34 RCW;))~~ When he or she has had any of the following:

(a) A history of noncompliance with federal or state laws or regulations in the provision of care or services to children or vulnerable adults;

(b) A conviction or pending charge for a crime in federal court or in any other state, when the department determines that the crime is equivalent to a crime under subsections (c), (d), (e), (f), or (g) below;

(c) A conviction or pending charge for a "crime against children or other persons" as defined in RCW 43.43.830, unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years has passed since conviction;

(d) A conviction or pending charge for "crimes relating to financial exploitation" as defined in RCW 43.43.830, unless the crime is theft in third degree and more than three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years has passed since conviction;

(e) A conviction or pending charge for a "crime relating to drugs" which is the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance under one of the following:

(i) Violation of the imitation controlled substances act (VICSA);

(ii) Violation of the uniform controlled substances act (VUCSA);

(iii) Violation of the uniform legend drug act (VULDA);

or  
(iv) Violation of the uniform precursor drug act (VUPDA).

(f) A conviction or pending charge for sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;

(g) A conviction or pending charge for criminal mistreatment;

(h) Been found to have abused, neglected, financially exploited, or abandoned a minor or vulnerable adult by court of law or a disciplining authority, including the department of health. Examples of legal proceedings in which such findings could be made include juvenile court proceedings under chapter 13.34 RCW, domestic relations proceeding under title 26 RCW, and vulnerable adult protection proceedings under chapter 74.34 RCW;

(i) A finding of abuse or neglect of a child under RCW 24.44.020 and chapter 388-15 WAC that is:

(i) Listed on the department's background check central unit (BCCU) report; or

(ii) Disclosed by the individual, except for findings made before December, 1998. Findings made before December 1998 require a character, competence, and suitability determination.

(j) A finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult that is:

(i) Listed on any registry, including the department's registry;

(ii) Listed on the department's background check central unit (BCCU) report; or

(iii) Disclosed by the individual, except for adult protective services findings made before October 2003. Findings

made before October 2003 require a character, competence, and suitability determination.

(6) Who has had a license, certification, medicaid or medicare provider agreement, or a contract for the care of children or vulnerable adults denied, suspended, revoked, not renewed, or terminated, for noncompliance with state and/or federal regulations;

(7) ~~((Does not successfully complete the training requirements within the time limits required in WAC 388-71-05665 through 388-71-05865))~~ Who obtained or attempted to obtain a license, certification or contract by fraudulent means or misrepresentation;

(8) ~~((Is already meeting the client's needs on an informal basis, and the client's assessment or reassessment does not identify any unmet need; and/or))~~ Who knowingly, or with reason to know, made a false statement of material fact on his or her application for a license, certification, contract or any data attached to the application, or in any matter involving the department;

(9) Who willfully prevented or interfered with or failed to cooperate with any inspection, investigation, or monitoring visit made by the department, including refusal to permit authorized department representatives to interview clients or have access to their records;

(10) When the client's assessment or reassessment does not identify an unmet need;

(11) Who is terminated by the client (in the case of an individual provider) or by the home care agency (in the case of an agency provider);

(12) Who does not successfully complete applicable training requirements, within the timeframes described in WAC 388-71-0875, 388-71-0880, 388-71-0890 and 388-71-0991. If an individual provider or long-term care worker employed by a home care agency does not complete required training within the required timeframe, and:

(a) If the worker is not required to be a certified home care aide, then the long-term care worker may not provide care until the training is completed; or

(b) If the worker is required to be a certified home care aide, then the long-term care worker may not provide care until the certification has been granted.

(13) Who does not successfully complete the certification or recertification requirements as described under WAC 388-71-0975; or

(14) Who has had a home care aide certification denied, suspended, or revoked. If the individual is otherwise qualified, payment for services may resume when his or her certification has been reissued.

In addition, the department, AAA, or department designee may deny payment to or terminate the contract of an individual provider as provided under WAC 388-71-0543, 388-71-0546, and 388-71-0551(~~and 388-71-0556~~).

#### NEW SECTION

**WAC 388-71-0543 When may the department, AAA, or department designee deny payment for the services of an individual provider?** In addition to mandatory denials of payment under WAC 388-71-0540, the department, AAA, or

department designee may deny payment for the services of an individual provider who:

(1) Has been convicted of:

(a) Any crime that the department determines is reasonably related to the competency of the person to provide care to a client; or

(b) A crime involving a firearm used in commission of a felony or in any act of violence against a person.

(2) Is engaged in the misuse of alcohol, controlled substances, or legend drugs;

(3) Has committed an act of domestic violence toward a family or household member;

(4) Has been found in any final decision of a federal or state agency to have abandoned, neglected, abused or financially exploited a vulnerable adult, unless the department is required to deny payment under WAC 388-71-0540;

(5) Has had a license for the care of children or vulnerable adults denied, suspended, revoked, terminated, or not renewed unless the department is required to deny payment under WAC 388-71-0540;

(6) Has had any health care provider license, certification or contract denied, suspended, revoked, terminated, even though the license was later reinstated after satisfactory completion of conditions or other requirements. This provision also applies to a long-term care worker who voluntarily relinquished a license, certification or contract in lieu of revocation or termination;

(7) Has had any residential care facility or health care facility license, certification, contract denied, suspended, revoked, terminated, even though the license, certification or contract was later reinstated after satisfactory completion of conditions or other requirements. This provision also applies to a long-term care worker who voluntarily relinquished a license, certification or contract in lieu of revocation or termination;

(8) Has been enjoined from operating a facility for the care and services of children or adults; or

(9) Has been the subject of a sanction or corrective or remedial action taken by federal, state, county, or municipal officials or safety officials related to the care or treatment of children or vulnerable adults, unless the department is required to deny payment under WAC 388-71-0540.

#### NEW SECTION

**WAC 388-71-0544 When may the department, AAA, or department designee deny payment to a home care agency for the services of a long-term care worker that it employs?** In addition to mandatory denials of payment under WAC 388-71-0540, the department, AAA, or department designee may deny payment to a home care agency for services provided to a department client by a home care agency long-term care worker that it employs, who:

(1) Has been convicted of:

(a) Any crime that the department determines is reasonably related to the competency of the person to provide care to a client; or

(b) A crime involving a firearm used in commission of a felony or in any act of violence against a person.

(2) Is engaged in the misuse of alcohol, controlled substances, or legend drugs;

(3) Has committed an act of domestic violence toward a family or household member;

(4) Has been found in any final decision of a federal or state agency to have abandoned, neglected, abused or financially exploited a vulnerable adult, unless such decision requires a denial of payment under this chapter;

(5) Has had a license for the care of children or vulnerable adults denied, suspended, revoked, terminated, or not renewed, except as provided for under WAC 388-71-0540;

(6) Has had any health care provider license, certification or contract denied, suspended, revoked, terminated, even though the license was later reinstated after satisfactory completion of conditions or other requirements. This provision also applies to a long-term care worker who voluntarily relinquished a license, certification or contract in lieu of revocation or termination;

(7) Has had any residential care facility or health care facility license, certification, contract denied, suspended, revoked, terminated, even though the license, certification or contract was later reinstated after satisfactory completion of conditions or other requirements. This provision also applies to a long-term care worker who voluntarily relinquished a license, certification or contract in lieu of revocation or termination;

(8) Has been enjoined from operating a facility for the care and services of children or adults; or

(9) Has been the subject of a sanction or corrective or remedial action taken by federal, state, county, or municipal officials or safety officials related to the care or treatment of children or vulnerable adults.

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

**WAC 388-71-0546** When ~~((can))~~ may the department, AAA, or ~~((managed care entity))~~ department designee reject ((the client's)) your choice of an individual provider? The department, AAA, or ~~((managed care entity))~~ department designee may reject ~~((a client's))~~ your request to have a family member or other person serve as ~~((his or her))~~ your individual provider if the case manager has a reasonable, good faith belief that the person is, or will be, unable to appropriately meet ~~((the client's))~~ your needs. Examples of circumstances indicating an inability to meet ~~((the client's))~~ your needs ~~((could))~~ include, ~~((without limitation))~~ but are not limited to:

(1) Evidence of misuse of alcohol, controlled substances, or legend drugs ~~((abuse))~~;

(2) A reported history of domestic violence committed by the individual provider, no-contact orders entered against the individual provider, or criminal conduct committed by the individual provider (whether or not the conduct is disqualifying under ~~((RCW 43.43.830 and 43.43.842))~~ WAC 388-71-0540);

(3) A report from ~~((the client's health care provider or other))~~ any knowledgeable person that the ~~((requested))~~ individual provider lacks the ability or willingness to provide adequate care;

(4) The individual provider has other employment or responsibilities that prevent or interfere with the provision of required services; or

(5) Excessive commuting distance that would make it impractical for the individual provider to provide services as they are needed and outlined in ~~((the client's))~~ your service plan.

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

**WAC 388-71-0551** When ~~((can))~~ may the department, AAA, or ~~((managed care entity))~~ department designee terminate ((or summarily suspend)) an individual provider's contract? The department, AAA, or ~~((managed care entity))~~ department designee may ~~((take action to))~~ terminate an individual provider's contract to provide personal care services under this chapter or chapters 388-106 and 388-112 WAC if the provider's inadequate performance or inability to deliver quality care is jeopardizing the client's health, safety, or well-being. ~~((The department, AAA, or managed care entity may summarily suspend the contract pending a hearing based on a reasonable, good faith belief that the client's health, safety, or well-being is in imminent jeopardy. Examples of circumstances indicating jeopardy to the client could include, without limitation))~~ Examples include, but are not limited to:

(1) ~~((Domestic violence or abuse, neglect, abandonment, or exploitation of a minor or vulnerable adult))~~ The provider's home care aide certification has been revoked;

(2) ~~((Using or being under the influence of alcohol or illegal drugs during working hours))~~ The provider's inadequate performance or inability to deliver quality care is jeopardizing the client's health, safety, or well-being;

(3) ~~((Other behavior directed toward the client or other persons involved in the client's life that places the client at risk of harm))~~ The department has determined that the provider lacks the character, competence or suitability necessary to protect the client's health, safety or well-being; and

(4) ~~((A report from the client's health care provider that the client's health is negatively affected by inadequate care;~~

~~((5) A complaint from the client or client's representative that the client is not receiving adequate care;~~

~~((6) The absence of essential interventions identified in the service plan, such as medications or medical supplies; and/or~~

~~((7) Failure to respond appropriately to emergencies))~~ The department, AAA or department designee may also terminate the individual provider's contract in accordance with the terms of the contract.

#### NEW SECTION

**WAC 388-71-0553** When may the department summarily suspend an individual provider's contract? The department, AAA, or managed care entity may summarily suspend the contract pending a hearing based on a reasonable, good faith belief that the client's health, safety, or well-being is in imminent jeopardy. Examples of circumstances indicating jeopardy could include, but are not limited to:

(1) The individual provider has committed domestic violence or abuse, neglect, abandonment, or exploitation of a child, as defined in RCW 26.44.020, or a vulnerable adult, as defined in RCW 74.34.020;

(2) The individual provider is engaged in the misuse of alcohol, controlled substances, or legend drugs during working hours;

(3) The individual provider engages in other behavior directed toward the client or other persons involved in the client's life that places the client at risk of harm;

(4) A report from the client's health care provider that the client's health is negatively affected by inadequate care being provided by the individual provider;

(5) A complaint from the client or client's representative that the client is not receiving adequate care from the individual provider;

(6) The individual provider failed to engage in essential interventions identified in the service plan, such as medications or medical supplies;

(7) The individual provider failed to respond appropriately to emergencies; and/or

(8) The department, AAA or department designee may also summarily suspend the individual provider's contract in accordance with the terms of the contract.

**AMENDATORY SECTION** (Amending WSR 01-11-019, filed 5/4/01, effective 6/4/01)

**WAC 388-71-0560 What are the client's rights if the department denies, terminates, or summarily suspends an individual provider's contract?** (1) If the department denies, terminates, or summarily suspends the individual provider's contract, the client has the right to:

~~((1))~~ (a) An administrative hearing to appeal the decision, ~~((per))~~ as described in chapter 388-02 WAC and Title 182 WAC, and

~~((2))~~ (b) Receive services from another currently contracted qualified individual provider or home care agency ~~((provider))~~ long-term care worker, or ~~((other options))~~ to receive services through other programs the client is eligible for ~~((, if a contract is summarily suspended))~~.

~~((3))~~ (2) The hearing rights ~~((afforded))~~ provided under this section are ~~((these))~~ rights of the client ~~((, not))~~ and not the individual provider.

#### **NEW SECTION**

**WAC 388-71-0561 When does an individual provider have the right to an administrative hearing and how can a hearing be requested?** (1) An individual provider has the right to an administrative hearing when the department denies payment to the individual provider because:

(a) He or she has not been certified by the department of health as a home care aide within the required timeframe; or

(b) If exempted from certification, he or she has not completed required training within the required timeframe.

(2) An individual provider has the right to an administrative hearing when the department terminates the individual provider's contract, or takes other enforcement measures against the individual provider because:

(a) He or she has not completed required training within the required timeframe; or

(b) His or her certification as a home care aide has been revoked by the department of health.

(3) In an administrative hearing challenging an action under subsection (1) or (2) above, the individual provider may not challenge an action by the department of health that affects the individual provider's certification. Actions by the department of health must be challenged through an appeal to the department of health, as provided in department of health rules.

(4) To request an administrative hearing, an individual provider must send, deliver, or fax a written request to the office of administrative hearings (OAH). OAH must receive the written request within thirty calendar days of the date the department's notice letter is served upon the individual provider.

(5) The individual provider should keep a copy of the request.

(6) The appeal process will be governed by the Administrative Procedures Act (chapter 34.05 RCW), RCW 74.39A.-085, chapter 388-02 WAC, Title 182 WAC and this chapter. If there is a conflict between chapter 388-02 WAC, Title 182 WAC and this chapter, this chapter will govern.

**Reviser's note:** The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

#### **NEW SECTION**

**WAC 388-71-0562 When does a medicaid contracted home care agency have the right to an administrative hearing and how can a hearing be requested?** (1) A medicaid contracted home care agency has the right to an administrative hearing when the department or a department designee terminates its contract or takes other enforcement action related to its contract because the home care agency:

(a) Knowingly employs a long-term care worker who has not completed training within the required timeframe.

(b) Knowingly employs a long-term care worker who does not meet the certification or recertification requirements or whose certification has been revoked by the department of health.

(2) In an administrative hearing under subsection (1) or (2) above, the medicaid contracted home care agency may not challenge an action taken by the department of health that affects a long-term care worker's certification. Actions by the department of health must be challenged through an appeal to the department of health, as provided in department of health rules.

(3) To request an administrative hearing, a home care agency must send, deliver, or fax a written request to the office of administrative hearings (OAH). OAH must receive the written request within thirty calendar days of the date the department's notice letter is served upon the home care agency.

(4) The home care agency should keep a copy of the request.

(5) The appeal process will be governed by the Administrative Procedures Act (chapter 34.05 RCW), RCW 74.39A.-085, chapter 388-02 WAC, Title 182 WAC and this chapter. If there is a conflict between chapter 388-02 WAC, Title 182 WAC and this chapter, this chapter will govern.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

## NEW SECTION

**WAC 388-71-0836 What definitions apply to the long-term care worker training requirements? "Activities of daily living"**, in the context of this chapter, means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, and transfer. Instrumental activities of daily living may also be used to assess a person's functional abilities in the home and the community such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

**"Care team"** includes the client and everyone involved in his or her care. The care team can include family, friends, doctors, nurses, long-term care workers, social workers and case managers. The role of the care team is to support the well-being of the client, however, the client directs the care plan.

**"Certified home care aide"** means a long-term care worker who has obtained and maintains a home care aide certification through the department of health.

**"Challenge test"** means a challenge test taken for specialty training, without first taking the class for which the test is designed and can only be used when basic training is not required.

**"Client"** means an individual receiving in-home services.

**"Competency"** defines the integrated knowledge, skills, or behavior expected of a long-term care worker after completing training in a required topic area. Learning objectives are associated with each competency.

**"Competency testing"** is evaluating a student to determine if he or she can demonstrate the required level of skill, knowledge, and/or behavior with respect to the identified learning objectives of a particular course. The department only requires competency testing for nurse delegation core and specialized diabetes training and the specialty trainings. Training programs may integrate competency testing within their approved curricula.

**"DDD"** refers to the division of developmental disabilities.

**"Department"** or **"DSHS"** refers to the department of social and health services.

**"Enhancement"** is additional time provided for skills practice and additional training materials or classroom activities that help a worker to thoroughly learn the course content and skills. Enhancements can include new student materials, videos or DVDs, on-line materials, and/or additional student activities.

**"Guardian"** means an individual as defined in chapter 11.88 RCW.

**"Individual provider"** means a person who has contracted with the department to provide personal care or

respite care services to persons with functional disabilities under a medicaid state plan or federal waiver such as community options program entry system (COPES), or other waiver programs.

**"Learning objectives"** are measurable, written statements that clearly describe what a long-term care worker must minimally learn to meet each competency. Learning objectives are identified for each competency. Learning objectives provide consistent, common language and a framework for curriculum designers, the curriculum approval process, and testing. Curriculum developers have the flexibility to determine how learning objectives are met and may include additional content deemed necessary to best meet the competency in a particular setting.

**"Long-term care worker"** includes all persons providing paid, personal care services for the elderly or persons with disabilities, including individual providers of home care services, direct care employees of home care agencies, providers of home care services to persons with developmental disabilities under Title 71A RCW, all direct care workers in state-licensed boarding homes, adult family homes, respite care providers, community residential service providers, and any other direct care staff providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities, and supported living providers.

The following persons are not long-term care workers:

- (1) Persons who are:
  - (a) Providing personal care services to individuals who are not receiving state-funded services; and
  - (b) The person is not employed by an agency or facility that is licensed by the state.
- (2) Persons employed by:
  - (a) Nursing homes licensed under chapter 18.51 RCW;
  - (b) Facilities certified under 42 CFR Part 483;
  - (c) Residential habilitation centers under chapter 71A.20 RCW;
  - (d) Hospitals or other acute care settings;
  - (e) Hospice agencies licensed under chapter 70.127 RCW;
  - (f) Adult day care centers or adult day health centers.
- (3) Persons whose services are exclusively limited to assistance with "instrumental activities of daily living," as that term is defined in WAC 388-106-0010.

**"Personal care services"** means physical or verbal assistance with activities of daily living, or activities of daily living and instrumental activities of daily living which are provided to the client.

**"Training entity"** means an organization, including an independent contractor, who is providing or may provide training under this section using approved curriculum. Training entities may only deliver approved curriculum.

**"Training partnership"** means a joint partnership or trust that includes the office of the governor and the exclusive bargaining representative of individual providers under RCW 74.39A.270 with the capacity to provide training, peer mentoring, and workforce development, or other services to individual providers.

NEW SECTION

**WAC 388-71-0839 What long-term care workers are exempt from the seventy hour, thirty hour or twelve hour basic training requirement?** The following long term care workers are exempt from the basic training requirement:

(1) A person already employed as a long term care worker on January 6, 2012, who completed the basic training requirements in effect on the date of his or her hire;

(2) A person employed as a long term care worker on January 6, 2012, who completes within one hundred twenty days of hire the basic training requirements in effect on the date of his or her hire;

(3) A person previously employed as a long term care worker who completed the basic training requirements in effect on the date of his or her hire, and was employed as a long term care worker at some point between January 1, 2011 and January 6, 2012, this exemption will be verified at time of hire or service begin date;

(4) An individual provider who worked as a respite provider or who provided care to a minor between January 1, 2011 and January 6, 2012, and who completed the training requirements in effect on the date of his or her hire;

(5) Registered nurses, licensed practical nurses, nurse technicians, or advanced registered nurse practitioner under chapter 18.79 RCW;

(6) Nursing assistants certified under chapter 18.88A RCW;

(7) Certified counselors under chapter 18.19 RCW;

(8) Speech language pathologists or audiologists under chapter 18.35 RCW;

(9) Occupational therapists under chapter 18.59 RCW;

(10) Physical therapists under chapter 18.74 RCW;

(11) A home health aide who is employed by a medicare certified home health agency and has met the requirements of 42 CFR, Part 483.35;

(12) An individual with special education training and has an endorsement granted by the superintendent of public instruction as described in RCW 28A.300.010; and

(13) Individuals who are in a training program to become credentialed in a category listed from subsection (5) through (10) must complete this training program within one hundred twenty days of hire or service begin date to meet this exemption.

**ORIENTATION AND SAFETY TRAINING**NEW SECTION

**WAC 388-71-0841 What is orientation?** (1) Orientation is a training of two hours regarding the long-term care worker's role as long-term care workers and the applicable terms of employment.

(2) The department must approve orientation curricula and instructors.

(3) There is no challenge test for orientation.

NEW SECTION

**WAC 388-71-0846 What content must be included in orientation?** Orientation must include introductory information in the following areas:

(1) The care setting and the characteristics and special needs of the population served or to be served;

(2) Basic job responsibilities and performance expectations;

(3) The care plan, including what it is and how to use it;

(4) The care team;

(5) Process, policies, and procedures for observation, documentation and reporting;

(6) Client rights protected by law, including the right to confidentiality and the right to participate in care decisions or to refuse care and how the long-term care worker will protect and promote these rights;

(7) Mandatory reporter law and worker responsibilities; and

(8) Communication methods and techniques that can be used while working with a client or guardian, and other care team members.

One hour of completed classroom instruction or other form of training (such as video or on-line course) equals one hour of training. The training entity must establish a way for the long-term care worker to ask the instructor questions.

NEW SECTION

**WAC 388-71-0850 What is safety training?** (1) Safety training is a training of three hours that includes basic safety precautions, emergency procedures, and infection control. The training must be completed prior to providing care to the client.

(2) The department must approve safety training curricula and instructors.

(3) There is no challenge test for safety training.

NEW SECTION

**WAC 388-71-0855 What content must be included in safety training?** Safety training consists of introductory information in the following areas:

(1) Safety planning and accident prevention, including but not limited to:

(a) Proper body mechanics;

(b) Fall prevention;

(c) Fire safety;

(d) In-home hazards;

(e) Long-term care worker safety; and

(f) Emergency and disaster preparedness.

(2) Standard precautions and infection control, including but not limited to:

(a) Proper hand washing;

(b) When to wear gloves and how to correctly put them on and take them off;

(c) Basic methods to stop the spread of infection;

(d) Protection from exposure to blood and other body fluids;

(e) Appropriate disposal of contaminated/hazardous articles;

(f) Reporting exposure to contaminated articles; and  
 (g) What to do when sick or injured, including whom to report this to.

(3) Basic emergency procedures, including but not limited to:

- (a) Evacuation preparedness;
- (b) When and where to call for help in an emergency;
- (c) What to do when a client is falling or falls;
- (d) Location of any advanced directives and when they are given; and
- (e) Basic fire emergency procedures.

One hour of completed classroom instruction or other form of training (such as video or on-line course) equals one hour of training. The training entity must establish a way for the long-term care worker to ask the instructor questions.

#### NEW SECTION

**WAC 388-71-0860 Who must complete orientation and safety training and by when?** Unless exempted in WAC 388-71-0839 (1) through (12), all long-term care workers must complete orientation and safety training prior to providing care to a client.

#### BASIC TRAINING

#### NEW SECTION

**WAC 388-71-0870 What is the seventy hour basic training?** (1) Basic training of seventy hours is training that includes:

- (a) Core competencies; and
  - (b) Population specific competencies.
- (2) All seventy hour basic training curriculum must be approved by the department and provided by qualified instructors.

(3) The DSHS developed revised fundamentals of caregiving (RFOC) or another department approved training may be used to teach core basic training but it must include enhancements. Examples of enhancements are, but are not limited to:

- (a) Adding more time for workers to practice skills including:
  - (i) The mechanics of completing the skill correctly.
  - (ii) Client centered communication and problem solving associated with performing the skill.
  - (iii) The different levels of care required for each skill (independent, supervision, limited, extensive, total).
  - (iv) Working with assistive devices associated with a skill.
  - (v) Helpful tips or best practices in working through common client challenges associated with a skill.
  - (vi) Disease specific concerns or challenges associated with a skill.

In most of these examples, additional student materials would be required to ensure the skill enhancements are well planned and documented for students. Materials must be submitted for approval and approved per WAC 388-71-1026.

(b) Augmenting or adding additional materials, student activities, videos or guest speakers that:

(i) More deeply reinforce and fortify the learning outcomes required for basic training.

(ii) Ensure each student integrates and retains the knowledge and skills needed to provide quality basic personal care.

(iii) Prepares workers for the certification testing environment and process.

(c) Enhancements are NOT materials and/or activities that:

(i) Are out of the scope of practice for a LTC worker such as content clearly written for registered nurses.

(ii) Are identical to, or a direct replacement of, those already included in RFOC.

(iii) Do not reinforce Washington state laws associated with client rights and client directed care.

(iv) Long-term care workers are not paid to provide.

(v) Are written above a high school reading level.

(4) One hour of completed classroom instruction or other form of training (such as a video or on-line course) equals one hour of training.

(5) The training entity must establish a way for the long-term care worker to ask the instructor questions.

(6) There is no challenge test for basic training.

#### NEW SECTION

**WAC 388-71-0875 Who must complete the seventy hour basic training and by when?** Unless exempt from training in WAC 388-71-0839 (1) through (12), all long-term care workers must complete core and population specific competencies within one hundred twenty days of:

(1) The date of hire for home care agency long-term care workers; or

(2) From the begin date of the authorization to provide department-paid in-home services for a client for individual providers.

#### NEW SECTION

**WAC 388-71-0880 Who must take the thirty hour training instead of the seventy hour basic training and when must it be completed?** Unless exempt from the basic training requirements under WAC 388-71-0839 (1) through (12), the thirty hour basic training under WAC 388-71-0885, must be completed within one hundred twenty days from the begin date of the authorization for provision to provide department paid, in-home services by an individual provider, who is caring only for:

(1) His or her biological, step, or adoptive child or parent.

(2) An individual provider who:

(a) Provides care to only one person; and

(b) Provides no more than twenty hours of care in any calendar month.

#### NEW SECTION

**WAC 388-71-0885 What is the thirty hour training?** The thirty hour training is a subset of the seventy hour basic training that must include core and population specific basic training. Topics completed in the subset must be on topics

relevant to the care needs of the client(s). There is no challenge test for the thirty hour training.

#### NEW SECTION

**WAC 388-71-0888 What are the training and certification requirements for an individual provider who is initially hired to provide care for one person, if the authorized monthly hours fluctuate or individual provider begins working for more than one department client?** (1)

If an individual provider is initially hired to provide care for one client and the authorized hours are for more than twenty hours he or she will have to complete the seventy hours of basic training, become certified and complete continuing education even if the authorized monthly hours are later reduced to twenty hours or fewer.

(2) If the individual provider initially starts working for one client and the authorized monthly hours are twenty or fewer, he or she will have to complete the seventy hours of basic training, become certified, and complete continuing education whenever:

(a) The authorized hours increase to more than twenty hours; or

(b) He or she begins to work for a second department client.

(3) Under these circumstances from the point of this change, the individual provider will:

(a) Have an additional one hundred twenty days to complete the seventy hours of training and additional one hundred fifty days to become certified;

(b) Be required to complete continuing education under WAC 388-71-0990; and

(c) Be required to continue to comply with the higher level of training requirements, even if the monthly authorized hours are later reduced to twenty or fewer hours.

#### NEW SECTION

**WAC 388-71-0890 What are the training requirements for parent providers who are individual providers for their adult children through DDD?** Unless exempt from the basic training requirements as defined in WAC 388-71-0839 (1) through (12), a natural, step, or adoptive parent who is the individual provider for his or her adult child receiving services through the DSHS division of developmental disabilities must complete the twelve hour parent provider training, as described in WAC 388-71-0895, within one hundred twenty days from the begin date of the authorization to provide department paid, in-home services.

#### NEW SECTION

**WAC 388-71-0895 What is the twelve hour parent provider training?** (1) The twelve hour parent provider training must include five hours of orientation and safety training as described in WAC 388-71-0841 and 388-71-0850. The remaining seven hours will cover the following topics:

(a) Medicaid personal care;

(b) Assessments completed by the division of developmental disabilities;

(c) Community resources;

(d) State and federal benefits;

(f) Networking; and

(g) Client self-determination.

(2) There is no challenge test for this training.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

#### NEW SECTION

**WAC 388-71-0906 What topics must be taught in the core competencies of basic training?** Basic training must include all of the competencies under WAC 388-71-0911 for the following topics:

(1) Communication skills;

(2) Long-term care worker self-care;

(3) Problem solving;

(4) Client rights and maintaining dignity;

(5) Abuse, abandonment, neglect, financial exploitation and mandatory reporting;

(6) Client directed care;

(7) Cultural sensitivity;

(8) Body mechanics;

(9) Fall prevention;

(10) Skin and body care;

(11) Long-term care worker roles and boundaries;

(12) Supporting activities of daily living;

(13) Food preparation and handling;

(14) Medication assistance;

(15) Infection control, blood-borne pathogens, HIV/AIDS; and

(16) Grief and loss.

#### NEW SECTION

**WAC 388-71-0911 What are the competencies and learning objectives for the core competencies of basic training?** The core competencies describe the behavior and skills that a long-term care worker should exhibit when working with clients. Learning objectives are associated with each competency.

(1) Regarding communication, communicate effectively and in a respectful and appropriate manner with clients, family members, and care team members:

(a) Recognize how verbal and nonverbal cues impact communication with the client and care team;

(b) Engage and respect the client through verbal and nonverbal communication;

(c) Listen attentively and determine that the client, when able, understands what has been communicated;

(d) Recognize and acknowledge clients' communication including indicators of pain, confusion, or misunderstanding;

(e) Utilize communication strategies to deal with difficult situations; and

(f) Recognize common barriers to effective communication and identify how to eliminate them.

(2) Regarding long-term care worker self-care, take appropriate action to reduce stress and avoid burnout:

(a) Identify behaviors, practices and resources to reduce stress and avoid burnout;

(b) Recognize common barriers to self-care and ways to overcome them; and

(c) Recognize aspects of a long-term care worker's job that can lead to stress and burnout, common signs and symptoms of stress and burnout; and the importance of taking action to practice self-care to avoid burnout.

(3) Regarding the competency of effective problem solving, use effective problem solving skills:

(a) Explain why it is necessary to understand and utilize a problem solving method;

(b) Implement a problem solving process/method; and

(c) Identify obstacles to effective problem solving and ways to overcome them.

(4) Regarding the competency of client rights and dignity, take appropriate action to promote and protect a client's legal and human rights as protected by federal and Washington state laws including:

(a) Protect a client's confidentiality, including what is considered confidential information, to whom a long-term care worker is allowed or not allowed to give confidential information, and how to respond if a noncare team member asks for confidential information;

(b) Promote dignity, privacy, encourage, and support a client's maximum independence when providing care; and

(c) Maintain a restraint-free environment, including physical, chemical, and environmental restraints. Use common, safe alternatives to restraint use;

(d) Protect and promote the client's right to live free of abuse, neglect, abandonment, and financial exploitation.

(5) Regarding the competency of abuse and mandatory reporting, recognize the signs of abuse and report suspected abuse, abandonment, neglect, and financial exploitation:

(a) Describe long-term care workers' responsibilities as a mandatory reporter as defined in RCW 74.34.020 through 74.34.053; and

(b) Identify common indications of abuse, abandonment, neglect, and financial exploitation.

(6) Regarding the competency of client directed care, take appropriate action when following a client's direction regarding his or her care:

(a) Describe a worker's role in client directed care including determining, understanding, and supporting a client's choices;

(b) Describe the importance and impact of client directed care on a client's independence, self-determination, and quality of life;

(c) Identify effective problem solving strategies that help balance a client's choice with personal safety; and

(d) Report concerns when a client refuses care or makes choices that present a possible safety concern.

(7) Regarding the competency of cultural sensitivity, provide culturally appropriate care:

(a) Describe how cultural background, lifestyle practices, and traditions can impact care and use methods to determine and ensure that these are respected and considered when providing care.

(8) Regarding the competency of body mechanics, utilize current best practices and evidence-based methods of proper body mechanics while performing tasks as outlined in the care plan.

(9) Regarding the competency on fall prevention, prevent or reduce the risk of falls:

(a) Identify fall risk factors and take action to reduce fall risks for a client; and

(b) Take proper steps to assist when a client is falling or has fallen.

(10) Regarding the competency of skin and body care, use personal care practices that promote and maintain skin integrity:

(a) Explain the importance of observing a client's skin, when to observe it and what to look for including common signs and symptoms of skin breakdown;

(b) Identify risk factors of skin breakdown;

(c) Observe skin at pressure point locations and report any concerns;

(d) Describe what a pressure ulcer is, what it looks like, and what actions to take if a client develops a pressure ulcer;

(e) Describe current best practices that protect and maintain a client's skin integrity including position changes when sitting or lying for extended periods and proper positioning and transfer techniques;

(f) Implement current best practices that promote healthy skin including hygiene, nutrition, hydration, and mobility; and

(g) Identify when to report skin changes and to whom.

(11) Regarding the competency on long-term care worker roles and boundaries, adhere to basic job standards, expectations, and requirements and maintain professional boundaries:

(a) Identify when, how, and why to obtain information from appropriate sources about a client's condition or disease for which they are receiving services. Describe how to use this information to provide appropriate, individualized care;

(b) Describe a client's baseline based on information provided in the care plan and explain why it is important to know a client's baseline;

(c) Identify changes in a client's physical, mental, and emotional state;

(d) Report changes from baseline and/or concerns to the appropriate care team member(s);

(e) Identify basic job standards and requirements (e.g. coming to work on time) and describe how maintaining these standards are critical to a client's safety and well-being;

(f) Explain the purpose of a care plan and describe how it is created, used and modified;

(g) Use a client's care plan to direct a worker's job tasks and any client directed care tasks;

(h) Identify what is required of a long-term care worker, as described in WAC 388-71-0946, prior to performing a nurse-delegated task;

(i) Describe the role of a care team and a long-term care worker's role in it;

(j) Describe professional boundaries and the importance of maintaining them; and

(k) Identify signs of unhealthy professional boundaries, barriers to keeping clear professional boundaries, and ways to avoid or eliminate them.

(12) Regarding the competency on supporting activities of daily living, perform required personal care tasks to the

level of assistance needed and according to current best practices and evidence-based guidelines:

(a) Demonstrate, in the presence of a qualified instructor, all critical steps required for personal care tasks including but not limited to:

- (i) Helping an individual walk;
- (ii) Transferring an individual from bed to wheelchair;
- (iii) Turning and repositioning an individual in bed;
- (iv) Providing mouth care;
- (v) Cleaning and storing dentures;
- (vi) Shaving a face;
- (vii) Providing fingernail care;
- (viii) Providing foot care;
- (ix) Providing a bed bath;
- (x) Assisting an individual with a weak arm to dress;
- (xi) Putting knee-high elastic stockings on an individual;
- (xii) Providing passive range of motion for one shoulder;
- (xiii) Providing passive range of motion for one knee and ankle;

(xiv) Assisting an individual to eat;

(xv) Assisting with peri-care;

(xvi) Assisting with the use of a bedpan;

(xvii) Assisting with catheter care;

(xviii) Assisting with condom catheter care; and

(xix) Providing medication assistance.

(b) In the process of performing the personal care tasks, use proper body mechanics, listen attentively, speak clearly and respectfully while explaining what the long-term care worker is doing, incorporate client preferences, maintain privacy and dignity, support the client's level of ability, and assure their comfort and safety;

(c) Appropriately utilize assistive device(s) specified in the care plan;

(d) Describe any safety concerns related to each task and how to address the concerns;

(e) Demonstrate an understanding of bowel and bladder functioning, including factors that promote healthy bowel and bladder functioning, and the signs, symptoms, and common causes of abnormal bowel and bladder function; and

(f) Identify the importance of knowing a client's bowel and bladder functioning baseline and when to report changes.

(13) Regarding the competency on food preparation and handling, plan and prepare meals using a basic knowledge of nutrition and hydration, incorporating any diet restrictions or modifications, and prevent food borne illness by preparing and handling food in a safe manner:

(a) Describe how nutrition and hydration can impact a client's health;

(b) Plan, shop, and prepare meals for a client according to the guidelines of good nutrition and hydration, incorporating any dietary requirements and restrictions per the care plan and client preferences;

(c) Describe common signs of poor nutrition and hydration, and when to report concerns and to whom;

(d) Understand that diet modification is required for certain health conditions, including dysphagia, and describe how to identify diet modifications required for a client;

(e) Recognize when a client's food choices vary from specifications on the care plan, describe when and to whom to report concerns;

(f) Describe what causes food borne illness, the risks associated with food borne illness and examples of potentially hazardous foods;

(g) Describe appropriate food handling practices, including: avoiding cross contamination from one food to another, safe storage requirements for cooling of leftover foods, including depth, types of containers, and temperatures, the need to maintain food at proper temperatures to limit bacterial growth and what are the safe food storage and holding temperatures for both cold and hot foods, best practices for thawing and re-heating food, and using clean gloves (if possible), and clean utensils when preparing food;

(h) Describe the importance and correct procedure for cleaning and disinfecting food contact surfaces; and

(i) Describe why a long-term care worker with certain types of illnesses and/or symptoms must not prepare food.

Long-term care workers who complete DSHS approved basic training meet the training requirements for adult family homes in RCW 70.128.250.

(14) Regarding the competency of medication assistance, appropriately assist with medications:

(a) Identify what a long-term care worker is allowed and not allowed to do when assisting with medications as described in chapter 246-888 WAC;

(b) Define terms related to medication assistance including prescription drugs, over the counter medications, and as needed (PRN) medications, medication side effects, and drug interactions;

(c) Identify common symptoms of medication side effects and when and to whom to report concerns;

(d) Store medications according to safe practices and the label instructions;

(e) Describe, in the proper sequence, each of the five rights of medication assistance; and

(f) Identify what to do for medication-related concerns, including describing ways to work with a client who refuses to take medications, identifying when and to whom to report when a client refuses medication or there are other medication-related concerns, and identifying what is considered a medication error and when and to whom it must be reported.

(15) Regarding the competency of infection control and blood borne pathogens including HIV/AIDS, implement best practices to prevent and control the spread of infections:

(a) Identify commonly occurring infections, ways that infections are spread, and symptoms of infections;

(b) Describe the purpose, benefit and proper implementation of standard precautions in infection control;

(c) Implement current best practices for controlling the spread of infection, including the use of hand washing and gloves;

(d) Demonstrate proper hand washing and putting on and taking off gloves;

(e) Identify immunizations that are recommended for adults to reduce the spread of virus and bacteria;

(f) Describe laundry and housekeeping measures that help in controlling the spread of infection;

(g) Describe proper use of cleaning agents that destroy micro-organisms on surfaces;

(h) Describe what blood-borne (BB) pathogens are and how they are transmitted;

- (i) Identify the major BB pathogens, diseases, and high-risk behaviors for BB diseases;
- (j) Identify measures to take to prevent BB diseases;
- (k) Describe what to do if exposed to BB pathogens and how to report an exposure;
- (l) Describe how HIV works in the body;
- (m) Explain that testing and counseling for HIV/AIDS is available;
- (n) Describe the common symptoms of HIV/AIDS;
- (o) Explain the legal and ethical issues related to HIV including required reporting, confidentiality and nondiscrimination; and
- (p) Explain the importance of emotional issues and support for clients and long-term care workers.

Long-term care workers who complete DSHS-approved basic training meet the four hours of AIDS education as required by the department of health in WAC 246-980-040.

- (16) Regarding the competency on grief and loss, support yourself and the client in the grieving process:
  - (a) Define grief and loss;
  - (b) Describe common losses a client and long-term care worker may experience;
  - (c) Identify common symptoms associated with grief and loss;
  - (d) Describe why self-care is important during the grieving process; and
  - (e) Identify beneficial ways and resources to work through feelings of grief and loss.

#### NEW SECTION

**WAC 388-71-0916 What topics may be taught in the population specific competencies of basic training?** (1) Population specific training may include but is not limited to one or more of the following topics. Which topic(s) to include in population specific training is based on the needs of the population(s) served or to be served.

- (a) Dementia;
- (b) Mental health;
- (c) Developmental disabilities;
- (d) Young adults with physical disabilities; and
- (e) Aging and older adults.

(2) Specialty training per WAC 388-112-0110 may be used to meet the population specific component of basic training. The training program will provide a department issued specialty certificate in these instances.

#### NEW SECTION

**WAC 388-71-0921 What are the population specific competencies?** There are no DSHS mandatory competencies or learning objectives for population specific training. The training entity developing the training determines the competencies and learning objectives that best meet the care needs of the population(s) served.

Competencies and learning objectives described for developmental disability specialty training in WAC 388-112-0122, dementia specialty training in WAC 388-112-0132, mental health specialty training in WAC 388-112-0142, aging and older adults in WAC 388-112-0091 and young adults with physical disabilities in WAC 388-112-0083 may

be used to develop the population specific training in these topic areas. This is not a requirement.

Competencies and learning objectives used to develop the training must be submitted with the curricula when sent to DSHS for approval as described in WAC 388-71-1026.

#### NEW SECTION

**WAC 388-71-0931 What other methods of training may count towards the seventy hour basic training requirement?** On-the-job training, as defined in WAC 388-71-0932, provided after July 1, 2012 may count towards the seventy hour basic training requirement.

#### ON-THE-JOB TRAINING

#### NEW SECTION

**WAC 388-71-0932 What is on-the-job training?** (1) Effective July 1, 2012, on the job training is a method of training when the long-term care worker successfully demonstrates any or all of the personal care or infection control skills included in the core basic training while working with a client versus in a practice training setting.

(2) On-the-job training is provided by a qualified instructor as described in WAC 388-71-1055, who directly observes, coaches, and reinforces skills training for up to two long-term care workers at a time. The instructor providing the on-the-job training:

- (a) Does not have to be the instructor who has taught the core competency training;
- (b) Cannot be someone whose primary job duty is providing direct care to clients; or
- (c) Cannot be the immediate supervisor of the long-term care worker receiving the on-the-job training.

(3) The person overseeing on-the-job training must:

- (a) Submit DSHS required forms and become an approved instructor for the core competency of basic training; and
- (b) Verify on a DSHS approved skills checklist the long-term care worker's successful completion of the demonstrated skills.

(4) For the person receiving on-the-job training, the hours spent in on the job training may count for up to twelve hours toward the completion of basic training requirements.

(5) The training program shall offer department approved on-the-job training as part of the seventy hour training.

#### NURSE DELEGATION CORE AND SPECIALIZED DIABETES TRAINING

#### NEW SECTION

**WAC 388-71-0936 What is nurse delegation core training?** (1) Nurse delegation core training is the required course a nursing assistant, certified or registered, or certified home care aide must successfully complete before being delegated a nursing task.

(2) Only the curriculum developed by DSHS, "Nurse Delegation for Nursing Assistants" meets the training requirement for nurse delegation core training.

(3) DSHS must approve the instructors for nurse delegation core training prior to an instructor offering a course.

#### NEW SECTION

**WAC 388-71-0941 What is specialized diabetes nurse delegation training?** (1) Specialized diabetes nurse delegation training is the required course for nursing assistants, certified or registered, and certified home care aide who will be delegated the task of insulin injections.

(2) The specialized diabetes nurse delegation training consists of three modules which are diabetes, insulin, and injections.

(3) Only the curriculum developed by DSHS, "Nurse Delegation for Nursing Assistants: Special Focus on Diabetes" may be used for the specialized diabetes nurse delegation training.

(4) DSHS approves the instructors for the specialized diabetes nurse delegation training prior to an instructor offering a course.

#### NEW SECTION

**WAC 388-71-0946 Who is required to complete the nurse delegation core training, and when?** Before performing any delegated task, a long-term care worker must:

(1) Be a:

(a) Certified home care aide under chapter 18.88B RCW; or

(b) Nursing assistant certified under chapter 18.88A RCW; or

(c) If exempt from the home care aide certification, become a nursing assistant registered and complete the core competencies of basic training, unless the twenty-eight hours of revised fundamentals of care or a department approved alternative was already completed.

(d) If nurse delegation is needed to implement a care plan earlier than home care aide certification can be obtained, become a nursing assistant registered and complete core competencies of basic training.

(2) Successfully complete "Nurse Delegation for Nursing Assistants" training.

#### NEW SECTION

**WAC 388-71-0951 Who is required to complete the specialized diabetes nurse delegation training, and when?** Specialized diabetes nurse delegation training is required before a certified home care aide, or a certified or registered nursing assistant, who meets the qualifications under WAC 388-71-0946, may be delegated the task of insulin injections.

#### NEW SECTION

**WAC 388-71-0953 Can nurse delegation core and specialized diabetes training occur in the same year as basic training?** Nurse delegation core and specialized diabetes training can occur in the same year as basic training if

required to be able to perform delegated tasks. If this occurs, the maximum of twelve hours for this training can be applied towards the continuing education requirement for the following year. Nurse delegation core and specialized diabetes trainings do not apply towards basic training.

#### NEW SECTION

**WAC 388-71-0956 Is competency testing required for the nurse delegation core training and specialized diabetes training?** Passing the DSHS competency test is required for successful completion of nurse delegation core training and specialized diabetes training, as provided in WAC 388-71-1106 through 388-71-1130.

### DOCUMENTATION REQUIREMENTS

#### NEW SECTION

**WAC 388-71-0970 What documentation is required for completion of each training?** Orientation, safety, basic training, including core and population specific, the thirty hour training, the twelve hour parent provider training, on-the-job training, continuing education, and nurse delegation core and specialized diabetes training, must be documented by a certificate(s) or transcript or proof of completion of training issued by a qualified instructor or qualified training entity that includes:

(1) The name of the student;

(2) The title of the training as approved by the department;

(3) For continuing education the department assigned curriculum approval code;

(4) The number of hours of the training;

(5) The name and identification number of the training entity;

(6) The instructor's name. For basic core training, the instructor's name and identification number;

(7) The instructor's signature or an authorized signature from the training entity the qualified instructor is training on behalf of; and

(8) The completion date of the training.

The long-term care worker must retain the original certificate or transcript for proof of completion of the training. A home care agency must keep a copy of the certificate or transcript on file.

#### NEW SECTION

**WAC 388-71-0973 What documentation is required for a long-term care worker to apply for the home care aide certification or recertification?** (1) Successful completion of seventy-five hours of training must be documented on a DSHS seventy-five hour training certificate by an approved training entity that has provided or verified that a total of seventy-five hours of training has occurred.

(2) An approved training entity issuing and signing a DSHS seventy-five hour training certificate must verify that the long-term care worker has the certificates or transcript required documenting two hours of DSHS-approved orientation, three hours of DSHS-approved safety training, and sev-

enty hours of DSHS-approved basic training, as described in this chapter. Only a DSHS or training partnership seventy-five hour training certificate or transcript can be submitted by a long-term care worker applying to the department of health for a home care aide certification.

(3) For home care aide recertification, successful completion of twelve hours of DSHS-approved continuing education training must be documented on a certificate(s) or transcript(s) issued by a department-approved training entity.

(4) The long-term care worker, certified home care aide, and their employer must retain the original seventy-five hour training certificate or transcript and any twelve-hour continuing education training certificates as long as the worker is employed and up to three years after termination of employment. Training entities must keep a copy of these certificates on file for six years.

### **HOME CARE AIDE CERTIFICATION**

#### **NEW SECTION**

**WAC 388-71-0975 Who is required to obtain certification as a home care aide, and when?** All long-term care workers, who do not fall within the exemptions under the department of health WAC 246-980-070, must obtain certification within one hundred and fifty days of hire or begin date of the authorization to provide department paid in-home services effective January 7, 2012.

#### **NEW SECTION**

**WAC 388-71-0980 Can a home care agency or client employ a long-term care worker who has not completed the training and/or certification requirements?** A home care agency or client cannot employ an individual to work as a long-term care worker if the individual has previously worked as a long-term care worker and has not completed applicable training and/or certification requirements within the required timeframe. Such individual may be employed by a home care agency or client to work as a long-term care worker only after applicable training and/or certification requirements are met. The department is authorized by RCW 74.39A.086 to take enforcement action for noncompliance related to training and/or certification requirements.

### **CONTINUING EDUCATION**

#### **NEW SECTION**

**WAC 388-71-0985 What is continuing education?** Continuing education is additional relevant training designed to keep current a person's knowledge and skills. DSHS must approve continuing education curricula and instructors. The same continuing education course may not be repeated for credit unless it is a new or more advanced training on the same topic, or there is a demonstrated or documented need for retraining. Exceptions to this are first aid, CPR, and blood borne pathogens. Nurse delegation core and nurse delegation specialized diabetes training may be used to count towards continuing education.

#### **NEW SECTION**

**WAC 388-71-0990 How many hours of continuing education are required each year?** (1) From January 1, 2012 through June 30, 2012, individual providers and home care agency long-term care workers whose birth date occurs January 1 through June 30, and the required basic training was previously completed must complete ten hours of continuing education. If ten hours of continuing education were completed between January 1, 2012 through June 30, 2012 for an individual provider or home care agency long term care worker, regardless of their birth date, then the continuing education requirements have been met for 2012.

(2) Effective July 1, 2012, certified home care aides must complete twelve hours of continuing education each year after obtaining certification as described in department of health WAC 246-980-110 and 246-12-020(3).

(3) If exempt from certification as described in RCW 18.88B.041, all long-term care workers must complete twelve hours of continuing education each year unless exempt from continuing education as described in WAC 388-71-1001.

(4) A long-term care worker or certified home care aide who did not complete the continuing education requirements by the timeframe described in (1) above or in WAC 388-71-0991 cannot be paid to provide care after that date and cannot be reinstated as a long-term care worker until they complete the continuing education requirements.

(5) One hour of completed classroom instruction or other form of training (such as a video or on-line course) equals one hour of continuing education. The training entity must establish a way for the long-term care worker to ask the instructor questions.

#### **NEW SECTION**

**WAC 388-71-0991 When must a long-term care worker or certified home care aide complete continuing education?** (1) Effective July 1, 2012, all long-term care workers and certified home care aides must complete the continuing education requirements described in WAC 388-71-0990 by their birthday.

(2) For long-term care workers who are required to be certified, if the first renewal period is less than a full year from the date of certification, no continuing education will be due for the first renewal period.

(3) For long-term care workers who are biological, step, or adoptive adult child, continuing education is to be completed by their birthday in the year following completion of basic training.

#### **NEW SECTION**

**WAC 388-71-1001 What long-term care workers are exempt from the continuing education requirement?** Unless voluntarily certified as a home care aide, continuing education is not required for:

- (1) Individual providers caring only for his or her biological, step, or adoptive son or daughter; and
- (2) Before June 30, 2014, an individual provider who:
  - (a) Provides care to only one person; and

(b) Provides no more than twenty hours of care in any calendar month.

#### NEW SECTION

**WAC 388-71-1006 What kinds of training topics may be covered in continuing education?** Continuing education must be on a topic relevant to the care setting, care needs of clients, or long-term care worker career development. Topics may include but are not limited to:

- (1) Client rights;
- (2) Personal care services;
- (3) Mental illness;
- (4) Dementia;
- (5) Developmental disabilities;
- (6) Depression;
- (7) Medication assistance;
- (8) Communication skills;
- (9) Positive client behavior support;
- (10) Developing or improving client-centered activities;
- (11) Dealing with wandering;
- (12) Dealing with challenging client behaviors;
- (13) Medical conditions; and
- (14) Nurse delegation core and specialized diabetes.

#### CURRICULUM APPROVAL

#### NEW SECTION

**WAC 388-71-1021 What trainings must be taught with a curriculum approved by DSHS?** (1) Orientation, safety, on-the-job, basic training (core and population specific training), the thirty hour basic training, the twelve hour parent provider training, and continuing education must be taught with a curriculum approved by DSHS before use.

(2) The nurse delegation core and diabetes training must use only the DSHS curriculum.

(3) Continuing education curriculum delivery models will only include instructor led, on-line instructor led, or on-line self-paced learning with access to instructor.

#### NEW SECTION

**WAC 388-71-1026 What must be submitted to DSHS for curriculum approval?** DSHS developed curricula are not required to be submitted to the department for approval unless the curriculum is being modified in any manner by the training entity.

**(1) For orientation and/or safety training:**

(a) Effective January 7, 2012, submit an outline of what will be covered in each training offered (for example, a table of contents or a class syllabus) showing where the required introductory topics as listed in WAC 388-71-0846 for orientation and WAC 388-71-0855 for safety training are covered in the training. Department required orientation and safety training application forms must be submitted to the department at least forty-five days in advance of when the training is expected to be offered. Training cannot be offered before receiving department curriculum and instructor approval.

**(2) For continuing education:**

(a) Effective July 1, 2012, for instructor led and on line learning, submit a summary that includes the topic, a brief description of what it will cover, and a course outline. Also include the number of training hours. For on line training courses, submit a description of how the instructor or training entity will assess that the students have completed the materials and integrated the information being taught. Department required continuing education training application forms must be submitted at least forty-five days in advance of when the training is expected to be offered. The trainings cannot be offered before receiving department curriculum and instructor approval as well as the unique code assigned by the department for each curriculum.

**(3) For basic training, the thirty hour basic training, and the twelve hour parent provider training:**

(a) If the instructor or training entity wants to use the DSHS developed revised fundamentals of caregiving learner's guide with enhancements, submit the DSHS required form with all required information. Curricula must be submitted to DSHS for approval of one or both sections (core competencies and population specific competencies) of the seventy hours required for basic training, for the thirty hour basic training, and for the twelve hour parent provider training. When submitting one or both sections of the basic training curriculum for DSHS approval, it must at a minimum include:

(i) A completed DSHS curriculum checklist indicating where all of the competencies and learning objectives, described in this chapter, are located in the long-term care worker materials from the proposed curriculum for that course;

(ii) Any materials long-term care workers will receive, such as a textbook or long-term care worker manual, learning activities, audio-visual materials, handouts and books;

(iii) The table of contents or outline of the curriculum including the allotted time for each section;

(iv) Demonstration skills checklists for the personal care tasks described in WAC 388-71-0911 (12)(a) and (b), and infection control skills (hand washing and putting on and taking off gloves);

(v) The teacher's guide or manual that includes for each section of the curriculum:

(A) The goals and objectives;

(B) How that section will be taught including teaching methods and learning activities that incorporate adult learning principles;

(C) Methods instructors will use to determine whether each long-term care worker understands the material covered and can demonstrate all skills;

(D) A list of sources or references, that were used to develop the curriculum. If the primary source or reference is not a published citation, the instructor must provide detail on how the content was established as evidence based;

(E) Description of how the curriculum was designed to accommodate long-term care workers with limited English proficiency and/or learning disabilities; and

(F) Description and proof of how input was obtained from consumers and long-term care worker representatives in the development of the curriculum.

(vi) In addition, for curricula being submitted for the core competency section of the basic training as described in WAC 388-71-0911, the curriculum must include how much time long-term care workers will be given to practice skills and how instructors will evaluate and ensure each long-term care worker can proficiently complete each skill.

(vii) Entities submitting curriculum for population specific basic training must submit their own list of competencies and learning objectives used to develop the population specific basic training curriculum.

#### NEW SECTION

**WAC 388-71-1031 What is the curriculum approval process for orientation, safety, seventy hour basic training (core and population specific training), the thirty hour basic training, the twelve hour parent provider training, and continuing education?** (1) Submit the required training application forms and any other materials required for specific curricula to the department.

(2) After review of the curriculum, DSHS will send a written response to the submitter, indicating approval or disapproval of the curriculum(s).

(3) If curriculum(s) are not approved, the reason(s) for denial will be given and the submitter will be told what portion(s) of the training must be changed and resubmitted for review in order for the curriculum to be approved.

(4) The submitter can make the requested changes and resubmit the curriculum(s) for review.

(5) If after working with the department the reasons why the curriculum is not approved cannot be resolved, the submitter may seek review of the nonapproval decision from the assistant secretary of aging and disability services administration. The assistant secretary's review decision shall be the final decision of DSHS; no other administrative review is available to the submitter.

#### INSTRUCTOR QUALIFICATIONS, APPROVAL, AND RESPONSIBILITIES

#### NEW SECTION

**WAC 388-71-1045 What are a training entity's responsibilities?** The training entity is responsible for:

- (1) Coordinating and teaching classes;
- (2) Assuring that the curriculum used is DSHS-approved and taught as designed;
- (3) Selecting and monitoring qualified guest speakers, where applicable;
- (4) Administering or overseeing the administration of the DSHS competency tests for nurse delegation core, specialized diabetes trainings, dementia specialty, mental health specialty and DDD specialty training;
- (5) Maintaining training records including long-term care worker tests and attendance records for a minimum of six years;
- (6) Reporting training data to DSHS in DSHS-identified timeframes; and
- (7) Issuing or reissuing training certificates to long-term care workers.

#### NEW SECTION

**WAC 388-71-1050 Must training entities and their instructors be approved by DSHS?** All training entities and their instructor(s) for orientation, safety, and continuing education must meet the minimum qualifications under WAC 388-71-1060. All instructors for seventy hour basic training (core and population specific training), thirty hour training, twelve hour DDD parent provider training, on-the-job training, nurse delegation core training and nurse delegation specialized diabetes training must meet the minimum qualifications under WAC 388-71-1055.

(1) DSHS must approve and/or contract with a training entity and their instructor(s) to conduct orientation, safety, seventy hour basic training (core and population specific training), thirty hour training, twelve hour DDD parent provider training, nurse delegation core training and nurse delegation specialized diabetes training, on-the-job training, and continuing education. DSHS may contract with training entities and their instructor(s) using any applicable contracting procedures.

(2) The training partnership must ensure that its instructors meet the minimum qualifications under this chapter.

#### NEW SECTION

**WAC 388-71-1051 Can DSHS deny or terminate a contract with an instructor or training entity?** (1) DSHS may determine not to accept an offer by a person or organization seeking a contract with DSHS to conduct training programs. No administrative remedies are available to dispute DSHS' decision not to accept an offer, except as may be provided through the contracting process.

(2) DSHS may terminate an existing training contract in accordance with the terms of the contract. The contractor's administrative remedies shall be limited to those specified in the contract.

#### NEW SECTION

**WAC 388-71-1055 What are the minimum qualifications for an instructor of the seventy hour basic training (core and population specific training), thirty hour training, twelve hour DDD parent provider training, on-the-job training, nurse delegation core training, and nurse delegation specialized diabetes training?** An instructor for basic training (core and population specific training), on-the-job training, nurse delegation core training, and nurse delegation specialized diabetes training must meet the following minimum qualifications:

- (1) General qualifications:
  - (a) Twenty-one years of age; and
  - (b) Has not had a professional health care, adult family home, boarding home, or social services license or certification revoked in Washington state.
- (2) Education and work experience:
  - (a) Upon initial approval or hire, an instructor must:
    - (i) Be a registered nurse with work experience within the last five years with the elderly or persons with disabilities requiring long-term care in a community setting; or

(ii) Have an associate degree or higher degree in the field of health or human services and six months of professional or caregiving experience within the last five years in an adult family home, boarding home, supported living through DDD, or home care setting; or

(iii) Have a high school diploma, or equivalent, and one year of professional or caregiving experience within the last five years in an adult family home, boarding home, supported living through DDD, or home care setting.

(3) Teaching experience:

(a) Must have one hundred hours of teaching adults in an appropriate setting on topics directly related to the basic training; or

(b) Must have forty hours of teaching while being mentored by an instructor who meets these qualifications, and must attend a class on adult education that meets the requirements in WAC 388-71-1066.

(4) The instructor must be experienced in caregiving practices and capable of demonstrating competency with respect to teaching the course content or units being taught;

(5) Instructors who will administer tests must have experience or training in assessment and competency testing; and

(6) An instructor for nurse delegation core and specialized diabetes trainings must have a current Washington state RN license in good standing without practice restrictions.

#### NEW SECTION

**WAC 388-71-1060 What are the minimum qualifications for an instructor of orientation, safety, and continuing education?** An instructor of orientation, safety, and continuing education must be a registered nurse or other person with specific knowledge, training, and work experience in the provision of direct, personal care or other relevant services to the elderly or persons with disabilities requiring long-term care.

#### NEW SECTION

**WAC 388-71-1066 What must be included in a class on adult education?** A class on adult education must include content, student practice, and evaluation of student skills by the instructor in:

- (1) Adult education theory and practice principles;
- (2) Instructor facilitation techniques;
- (3) Facilitating learning activities for adults;
- (4) Administering competency testing; and
- (5) Working with adults with special training needs (for example, English as a second language or learning or literacy issues).

#### NEW SECTION

**WAC 388-71-1076 What is a guest speaker, and what are the minimum qualifications to be a guest speaker?** (1) A guest speaker is a person selected by an approved instructor to teach on a specific topic. A guest speaker:

(a) May only teach a specific subject in which he or she has expertise, background, and experience that establishes his or her expertise on that specific topic;

(b) May not teach the entire course;

(c) Must not supplant the primary teaching responsibilities of the instructor; and

(d) Must cover the DSHS competencies and learning objectives for the topic he or she is teaching.

(2) The approved instructor:

(a) Must ensure the guest speaker meets these minimum qualifications;

(b) Maintain documentation of the guest speaker's qualifications and background;

(c) Supervise and monitor the guest speaker's performance; and

(d) Is responsible for ensuring the required content is taught.

(3) DSHS does not approve guest speakers.

#### NEW SECTION

**WAC 388-71-1081 What are the requirements for the training partnership to conduct training?** (1) The training partnership must:

(a) Verify, document using the department's attestation process, keep on file, and make available to the department upon request, that all instructors meet the minimum instructor qualifications in WAC 388-71-1055 and 388-71-1060 for the course they plan to teach;

(b) Teach using a complete DSHS-developed or approved curriculum;

(c) When requested by DSHS, notify DSHS in writing of their intent to conduct training prior to providing training, when changing training plans, including:

(i) Name and schedule of training(s) the partnership will conduct;

(ii) Name of approved curriculum(s) the partnership will use; and

(iii) Name of the instructor(s) for only the core basic training.

(d) Ensure that DSHS competency tests are administered when conducting nurse delegation core or specialized diabetes training;

(e) Keep a copy of long-term care worker certificates on file for six years and give the original certificate to the student;

(f) Keep attendance records and testing records of long-term care workers trained and tested on file for six years; and

(g) Report training data to DSHS when requested by the department.

(2) The department may conduct a random audit at any time to review training and instructor qualifications.

#### NEW SECTION

**WAC 388-71-1083 Must the department verify that training entities and their community instructors meet the minimum instructor qualifications?** The department through its contracting process must verify that the community instructors meet the minimum qualifications as described in WACs 388-71-1055 and 388-71-1060. The department will conduct random audits of the training provided and of the instructor qualifications.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**PHYSICAL RESOURCES AND STANDARD PRACTICES FOR TRAINING**

**NEW SECTION**

**WAC 388-71-1091 What physical resources are required for classroom training and testing?** (1) Classroom facilities used for classroom training must be accessible to students and provide adequate space for learning activities, comfort, lighting, lack of disturbance, and tools for effective teaching and learning, such as white boards and flip charts. Appropriate supplies and equipment must be provided for teaching and practice of caregiving skills in the class being taught.

(2) Testing sites for nurse delegation core and specialized diabetes training must provide adequate space for testing, comfort, lighting, lack of disturbance appropriate for the written or skills test being conducted. Appropriate supplies and equipment necessary for the particular test must be provided.

**NEW SECTION**

**WAC 388-71-1096 What standard training practices must be maintained for classroom training and testing?** The following training standards must be maintained for classroom training and testing:

- (1) Training must not exceed eight hours within one day;
- (2) Training provided in short time segments must include an entire unit, skill, or concept;
- (3) Training must include regular breaks; and
- (4) Long-term care workers attending classroom training must not be expected to leave the class to attend job duties, except in an emergency.

**COMPETENCY TESTING FOR NURSE DELEGATION CORE AND SPECIALIZED DIABETES TRAINING**

**NEW SECTION**

**WAC 388-71-1106 What components must competency testing include?** Competency testing must include the following components:

- (1) Skills demonstration of ability to perform and/or implement specific caregiving approaches, and/or activities as appropriate to the training;
- (2) Written evaluation to show knowledge of the learning objectives included in the training; and
- (3) A scoring guide for the tester with clearly stated scoring criteria and minimum proficiency standards.

**NEW SECTION**

**WAC 388-71-1111 What experience or training must individuals have to be able to perform competency testing?** Individuals who perform competency testing must have

documented experience or training in assessing competencies.

**NEW SECTION**

**WAC 388-71-1120 How must competency test administration be standardized?** To standardize competency test administration, testing must include the following components:

- (1) An instructor for the course who meets all minimum qualifications for the course he or she teaches must oversee all testing; and
- (2) The tester must follow the DSHS guidelines for:
  - (a) The maximum length of time allowed for the testing;
  - (b) The amount and nature of instruction given long-term care workers before beginning a test;
  - (c) The amount of assistance to long-term care workers allowed during testing;
  - (d) The accommodation guidelines for long-term care workers with disabilities; and
  - (e) Accessibility guidelines for long-term care workers with limited English proficiency.

**NEW SECTION**

**WAC 388-71-1125 What form of identification must long-term care workers show before taking a competency test?** Long-term care workers must show photo identification before taking a competency test.

**NEW SECTION**

**WAC 388-71-1130 How many times may a competency test be taken?** For the trainings under WAC 388-71-0936 and 388-71-0941, competency testing may be taken twice. If the test is failed a second time, the person must retake the course before taking the test for that course again.

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

WAC 388-71-05665	What definitions apply to WAC 388-71-05670 through 388-71-05909?
WAC 388-71-05670	What is orientation?
WAC 388-71-05675	What content must be included in an orientation?
WAC 388-71-05680	Is competency testing required for orientation?
WAC 388-71-05685	Is there a challenge test for orientation?
WAC 388-71-05690	What documentation is required for orientation?
WAC 388-71-05695	Who is required to complete orientation, and when must it be completed?

WAC 388-71-05700	What is basic training?	WAC 388-71-05785	What kinds of training topics are required for continuing education?
WAC 388-71-05705	Is there an alternative to the basic training for some health care workers?	WAC 388-71-05790	Is competency testing required for continuing education?
WAC 388-71-05710	What core knowledge and skills must be taught in basic training?	WAC 388-71-05795	May basic or modified basic training be completed a second time and used to meet the continuing education requirement?
WAC 388-71-05715	Is competency testing required for basic training?	WAC 388-71-05799	What are the documentation requirements for continuing education?
WAC 388-71-05720	Is there a challenge test for basic training?	WAC 388-71-05805	What is nurse delegation core training?
WAC 388-71-05725	What documentation is required for successful completion of basic training?	WAC 388-71-05810	What knowledge and skills must nurse delegation core training include?
WAC 388-71-05730	Who is required to complete basic training, and when?	WAC 388-71-05815	Is competency testing required for nurse delegation core training?
WAC 388-71-05735	What is modified basic training?	WAC 388-71-05820	Is there a challenge test for nurse delegation core training?
WAC 388-71-05740	What knowledge and skills must be included in modified basic training?	WAC 388-71-05825	What documentation is required for successful completion of nurse delegation core training?
WAC 388-71-05745	Is competency testing required for modified basic training?	WAC 388-71-05830	Who is required to complete nurse delegation core training, and when?
WAC 388-71-05750	Is there a challenge test for modified basic training?	WAC 388-71-05832	What is safety training and is there a challenge test for safety training?
WAC 388-71-05755	What documentation is required for successful completion of modified basic training?	WAC 388-71-05835	Who is required to complete safety training, when, and how often must it be completed?
WAC 388-71-05760	Who may take modified basic training instead of the full basic training?	WAC 388-71-05836	Will DSHS deny payment of an individual provider who does not complete safety training?
WAC 388-71-05765	What are the training requirements and exemptions for parents who are individual providers for their adult children receiving services through DDD?	WAC 388-71-05837	What is competency testing?
WAC 388-71-05770	What are the training requirements and exemptions for parents who are individual providers for their adult children who do not receive services through DDD?	WAC 388-71-05840	What components must competency testing include?
WAC 388-71-05775	What is continuing education?	WAC 388-71-05845	What experience or training must individuals have to be able to perform competency testing?
WAC 388-71-05780	How many hours of continuing education are required each year?		

WAC 388-71-05850	What training must include the DSHS-developed competency test?	WAC 388-71-0811	Is competency testing required for the specialized diabetes nurse delegation training?
WAC 388-71-05855	How must competency test administration be standardized?	WAC 388-71-0816	Is there a challenge test for specialized diabetes nurse delegation training?
WAC 388-71-05860	What form of identification must providers show a tester before taking a competency or challenge test?	WAC 388-71-0821	What documentation is required for successful completion of specialized diabetes nurse delegation training?
WAC 388-71-05865	How many times may a competency test be taken?	WAC 388-71-0826	Who is required to complete the specialized diabetes nurse delegation training, and when?
WAC 388-71-05870	What are an instructor's or training entity's responsibilities?		
WAC 388-71-05875	Must instructors be approved by DSHS?		
WAC 388-71-05880	Can DSHS deny or terminate a contract with an instructor or training entity?		
WAC 388-71-05885	What is a guest speaker, and what are the minimum qualifications to be a guest speaker for basic training?		
WAC 388-71-05890	What are the minimum qualifications for an instructor for basic, modified basic or nurse delegation core and specialized diabetes training?		
WAC 388-71-05895	What additional qualifications are required for instructors of nurse delegation core training and specialized diabetes nurse delegation training?		
WAC 388-71-05899	What must be included in a class on adult education?		
WAC 388-71-05905	What physical resources are required for basic, modified basic, or nurse delegation core classroom training and testing?		
WAC 388-71-05909	What standard training practices must be maintained for basic, modified basic, or nurse delegation core classroom training and testing?		
WAC 388-71-0801	What is specialized diabetes nurse delegation training?		
WAC 388-71-0806	What knowledge and skills must specialized diabetes nurse delegation training include?		

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0001 What ~~(is)~~ are the purposes of this chapter?** The ~~((residential long-term care training requirements under this chapter apply to))~~ purposes of this chapter are to describe the following:

- (1) ~~((All adult family homes licensed under chapter 70.128 RCW))~~ Training and certification requirements that apply to adult family homes and assisted living facilities on or before January 6, 2012; and
- (2) ~~((All boarding homes licensed under chapter 18.20 RCW))~~ Training and certification requirements that apply to adult family homes and assisted living facilities on or after January 7, 2012.
- (3) Curriculums and instructor requirements.

NEW SECTION

**WAC 388-112-0002 To whom do the training requirements apply?** The training requirements under this chapter apply to:

- (1) Adult family home providers, applicants, resident managers, entity representatives, long-term care workers, and volunteers; and
- (2) Assisted living facility administrators, designees, long-term care workers, and volunteers.

NEW SECTION

**WAC 388-112-0003 What are the training and certification requirements for volunteers and long-term care workers in adult family homes and assisted living facilities, adult family home providers, assisted living facility administrators and adult family home applicants?** (1) The following charts provides a summary of the training and certification requirements. The remainder of the rules under this chapter contain a more detailed description of the requirements.

Who	Status	Facility Orientation	Safety / Orientation training	Basic / Population Specific training	Specialty training	Continuing education	Certification HCA-C
(1) Adult family home resident manager, or long-term care worker in adult family home / assisted living facility.	(a) An RN, LPN, NA-C or allied health care professionals listed in WAC 388-112-0076	Required per WAC 388-112-0015(1)	Not required	Not required	Required per WAC 388-112-0110	Required twelve hours per WAC 388-112-0205	Not required
	(b) A long term care worker who was employed on January 6, 2012 or was previously employed sometime between 1/1/2011 and 1/6/2012 and has completed the basic training requirements in effect on his or her hire date. WAC 388-112-0076	Required per WAC 388-112-0015(1)	Not required	Not required	Required per WAC 388-112-0110	Required twelve hours per WAC 388-112-0205	Not required
	(c) Employed in an adult family home or assisted living facility and does not meet criteria in (1) or (2) of this table. Meets definition of long term care worker in WAC 388-112-0005.	Not required	Required. Five hours per WAC 388-112-0015(2); and 388-112-0018	Required. Seventy hours per WAC 388-112-0045 and 388-112-0066	Required per WAC 388-112-0110	Required. Twelve hours per WAC 388-112-0205	Required per WAC 388-112-0106
(2) Adult family home provider	A person who has an adult family home license and does not meet criteria in (a), (b) or (c). This requirement applies to an entity representative of a licensed entity. WAC 388-76-1000.	Not required	Completed prior to licensing	Completed prior to licensing	Completed prior to licensing	Required. Twelve hours per WAC 388-112-0205	Completed prior to licensing
(3) Assisted living facility administrator	A qualified assisted living facility administrator or designee who does not meet criteria in (a), (b) or (c) of this table.	Not required	Required. Five hours per WAC 388-112-0015(2); and 388-112-0018	Required. Seventy hours per WAC 388-112-0045 and 388-112-0066	Required per WAC 388-112-0110	Required. Twelve hours per WAC 388-112-0205	Required per WAC 388-112-0106
(4) Volunteer staff in adult family home or assisted living facility	An unpaid person	Required per WAC 388-112-0015(1)	Not required	Not required	Not required	Not required	Not required

(2) Summary of the training and certification requirements for adult family home applicants prior to licensure, and resident managers prior to assuming the duties of the position.

Who	Status	Orientation and Safety training	Basic / Population Specific training	Specialty training	Continuing education	Certification HCA-C
(1) Adult family home applicant	(a) An RN, LPN, ARNP, NA-C, and other allied health professionals as listed in WAC 388-112-0076	Not required	Not required	Required per WAC 388-112-0110	Not required during application process	Not required
	(b) A long-term care worker employed on January 6, 2012 or was previously employed sometime between 1/1/2011 and 1/6/2012 and has completed the basic training requirements in effect on the date of his or her hire. WAC 388-112-0076	Not required	Not required	Required per WAC 388-112-0110	Not required during application process	Not required
	(c) Seeking a license to operate an adult family home and is not exempt under (a) or (b) of this table. WAC 388-112-0002	Required. Five hours per WAC 388-112-0018	Required. Seventy hours per WAC 388-112-0045 and 388-112-0066	Required per WAC 388-112-0110	Not required during application process	Required per WAC 388-112-0106
(2) Adult family home resident manager	Employed or designated by the provider to manage an adult family home and is not exempt under (a) or (b) of this table. WAC 388-112-0002.	Required. Five hours per WAC 388-112-0018	Required. Seventy hours per WAC 388-112-0066 and 388-112-0066	Required per WAC 388-112-0110	Required. Twelve hours per WAC 388-112-0205	Required per WAC 388-112-0106

Note: Other trainings that are required under this chapter are not listed in tables above. They are:

- First aid and CPR (WAC 388-112-0260)
- Nurse delegation (WAC 388-112-0170 and 388-112-0196);
- Adult family home administrator training (WAC 388-112-0270).

**NEW SECTION**

**WAC 388-112-0004 What action(s) may the department take for provider noncompliance with the requirements of this chapter?** (1) If a provider knowingly employs an individual who has not satisfied the training or certification requirements under this chapter, the department shall take one or more of the enforcement actions under:

- (a) RCW 18.20.190(2), for assisted living facility providers; or
- (b) RCW 70.128.160(2), for adult family home providers.

(2) Except as required under subsection (1), if a provider fails to comply with any requirements under this chapter, the department may take one or more of the enforcement actions under:

- (a) RCW 18.20.190(2), for assisted living facility providers; or
- (b) RCW 70.128.160(2), for adult family home providers.

**AMENDATORY SECTION** (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0005 What definitions apply to this chapter? "Activities of daily living", in the context of this chapter, means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, and transfer. Instrumental activities of daily living may also be used to assess a person's functional abilities in the home and the community such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.**

**"Applicant", for the purposes of this chapter, means:**  
 (1) An individual who is applying for an adult family home license; or

(2) An individual with an ownership interest in a partnership, corporation, or other entity that is applying for an adult family home license.

(("Caregiver" means anyone providing hands-on personal care to another person including but not limited to

euing, reminding, or supervision of residents, on behalf of an adult family home or boarding home, except volunteers who are directly supervised.)

**"Care team"** includes the resident and everyone involved in his or her care. The care team can include family, friends, doctors, nurses, long-term care workers, social workers and case managers. The role of the care team is to support the well-being of the resident, however, the resident directs the service plan when able.

**"Certified home care aide"** means a person who has obtained and maintains a home care aide certification through the department of health.

**"Challenge test"** means a competency test taken for specialty training without first taking the class for which the test is designed.

**"Competency"** ((means the minimum level of information and skill trainees are required to know and be able to demonstrate)) defines the integrated knowledge, skills, or behavior expected of a long-term care worker after completing the training in a required topic area. Learning objectives are associated with each competency.

**"Competency testing"** including challenge testing, is evaluating a student to determine if they can demonstrate the required level of skill, knowledge, and/or behavior with respect to the identified learning objectives of a particular course.

**"DDD"** refers to the division of developmental disabilities.

**"Designee"** means a person in ((a boarding home)) assisted living facility who supervises ((caregivers)) long-term care workers and who is designated by ((a boarding home)) assisted living facility administrator to take the trainings in this chapter required of the ((boarding home)) assisted living facility administrator. A ((boarding home)) assisted living facility administrator may have more than one designee.

**"Direct care worker"** means a paid individual who provides direct, personal care services to persons with disabilities or the elderly requiring long-term care.

**"Direct supervision"** means oversight by a person who has demonstrated competency in the basic training (and specialty training if required), or ((who)) has been exempted from the basic training requirements, is on the premises, and is quickly ((and easily)) available to the caregiver.

**"DSHS" or "department"** refers to the department of social and health services.

**"Enhancement"** means additional time provided for skills practice and additional training materials or classroom activities that help a worker to thoroughly learn the course content and skills. Enhancements can include new student materials, videos or DVDs, on-line materials, and/or additional student activities.

**"Entity representative"** means the individual designated by an adult family home provider who is or will be responsible for the daily operations of an adult family home.

**"Guardian"** means an individual as defined in chapter 11.88 RCW.

**"Home"** refers to adult family homes and ((boarding homes)) assisted living facilities.

**"Indirect supervision"** means oversight by a person who has demonstrated competency in the basic training ((and specialty training if required)), or who has been exempted from the basic training requirements, and who is quickly and easily available to the ((caregiver)) long-term care worker, but not necessarily on-site.

**"Learning ((outcomes)) objectives"** ((means the specific information, skills and behaviors desired of the learner as a result of a specific unit of instruction, such as what they would learn by the end of a single class or an entire course. Learning outcomes are generally identified with a specific lesson plan or curriculum)) are measurable, written statements that clearly describe what a long-term care worker must minimally learn to meet each competency. Learning objectives are identified for each competency. Learning objectives provide consistent, common language and a framework for curriculum designers, the curriculum approval process, and testing.

**"Long-term care worker"** includes all persons providing paid, personal care services for the elderly or persons with disabilities, including individual providers of home care services, direct care employees of home care agencies, providers of home care services to persons with developmental disabilities under title 71A RCW, all direct care workers in state-licensed assisted living facilities, adult family homes, respite care providers, community residential service providers, and any other direct care staff providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

The following persons are not long-term care workers:

(1) Persons who are:

(a) Providing personal care services to individuals who are not receiving state-funded services; and

(b) The person is not employed by an agency or facility that is licensed by the state.

(2) Persons employed by:

(a) Nursing homes licensed under chapter 18.51 RCW;

(b) Facilities certified under 42 CFR Part 483;

(c) Residential habilitation centers under chapter 71A.20 RCW;

(d) Hospitals or other acute care settings;

(e) Hospice agencies licensed under chapter 70.127 RCW;

(f) Adult day care centers or adult day health centers.

(3) Persons whose services are exclusively limited to assistance with "instrumental activities of daily living," as that term is defined in WAC 388-106-0010.

**"Personal care services"** means physical or verbal assistance with activities of daily living, or activities of daily living and instrumental activities of daily living which is provided to meet resident's care needs.

**"Provider"** means any person or entity who is licensed by the department to operate an adult family home or assisted living facility, or certified by the department to provide instruction and support services to meet the needs of persons receiving services under title 71A RCW.

**"Resident"** means a person residing and receiving long-term care services at ((a boarding home)) an assisted living facility or adult family home. As applicable, the term resident

also means the resident's legal guardian or other surrogate decision maker.

**"Resident manager"** means a person employed or designated by the provider to manage the adult family home who meets the requirements in WAC 388-76-10000 and this chapter.

**"Routine interaction"** means contact with residents that happens regularly.

**"Training entity"** means an organization, including an independent contractor, who is providing or may provide training under this section using approved curriculum. Training entities may only deliver approved curriculum.

**AMENDATORY SECTION** (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0010 When do the training requirements go into effect?** (1) The long-term care worker training requirements described in this chapter went into effect January 7, 2012.

(2) The long-term care worker training requirements ((of this chapter begin September 1, 2002, or one hundred twenty days from the date of employment, whichever is later, and apply to:

(1) Adult family home providers, resident managers, and caregivers, and boarding home administrators, designees, and caregivers, who are hired or begin to provide hands-on personal care to residents subsequent to September 1, 2002; and

(2) Existing adult family home providers, resident managers, and caregivers, and boarding home administrators, designees, and caregivers, who on September 1, 2002, have not successfully completed the training requirements under RCW 74.39A.010, 74.39A.020, 70.128.120, or 70.128.130 and this chapter. Existing adult family home providers, resident managers, and caregivers, and boarding home administrators, designees, and caregivers, who have not successfully completed the training requirements under RCW 74.39A.010, 74.39A.020, 70.128.120, or 70.128.130 are subject to all applicable requirements of this chapter. However, until September 1, 2002, nothing in this chapter affects the current training requirements under RCW 74.39A.010, 74.39A.020, 70.128.120, or 70.128.130)) that were in effect on or before January 6, 2012 apply to those individuals who:

(a) Were hired on or before January 6, 2012; and

(b) Completed basic training within the required timeframes.

**AMENDATORY SECTION** (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0015 ((What is orientation)) What is orientation training, who should complete it, and when should it be completed?** There are two types of orientation training - facility orientation training and long-term care worker orientation training.

(1) Facility orientation. Individuals who are exempt from certification described in RCW 18.88B.041 and volunteers are required to complete facility orientation training before having routine interaction with residents. This training provides basic introductory information appropriate to the residential care setting and population served. The department

does not approve this specific orientation program, materials, or trainers. No test is required for this orientation.

(2) Long-term care worker orientation. Individuals required to complete long-term care worker training must complete long-term care worker orientation ((provides basic introductory information appropriate to the residential care setting and population served)) which is two hours of training regarding the long-term care worker's role and the applicable terms of employment as described in WAC 388-112-0016. The following individuals must complete long-term care worker orientation training.

(a) All long-term care workers who are not exempt from certification described in RCW 18.88.041 hired on or after January 7, 2012, must complete two hours of orientation before providing care to residents. This orientation training must be provided by qualified instructors described in WAC 388-112-0383.

(3) The department ((does not)) must approve ((specific)) this long-term care worker orientation ((programs, materials, or trainers for homes)) curriculums and instructors.

(4) There is no test ((is required)) for this orientation.

**Reviser's note:** The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

#### NEW SECTION

**WAC 388-112-0016 What content must be included in long-term care worker orientation?** (1) For those individuals identified in WAC 388-112-0015(1) who must complete long-term care worker orientation training:

(a) Long-term care worker orientation may include the use of videotapes, audiotapes, and other media if the person overseeing the orientation is available to answer questions or concerns for the person(s) receiving the orientation. Orientation must include introductory information in the following areas:

(i) The care setting;

(ii) The characteristics and special needs of the population served;

(iii) Fire and life safety, including:

(A) Emergency communication (including phone system if one exists);

(B) Evacuation planning (including fire alarms and fire extinguishers where they exist);

(C) Ways to handle resident injuries and falls or other accidents;

(D) Potential risks to residents or staff (for instance, aggressive resident behaviors and how to handle them); and

(E) The location of home policies and procedures.

(iv) Communication skills and information, including:

(A) Methods for supporting effective communication among the resident/guardian, staff, and family members;

(B) Use of verbal and nonverbal communication;

(C) Review of written communications and/or documentation required for the job, including the resident's service plan;

(D) Expectations about communication with other home staff; and

(E) Whom to contact about problems and concerns.

(v) Universal precautions and infection control, including:

- (A) Proper hand washing techniques;
- (B) Protection from exposure to blood and other body fluids;
- (C) Appropriate disposal of contaminated/hazardous articles;
- (D) Reporting exposure to contaminated articles, blood, or other body fluids; and
- (E) What staff should do if they are ill.

(vi) Resident rights, including:

- (A) The resident's right to confidentiality of information about the resident;
- (B) The resident's right to participate in making decisions about the resident's care, and to refuse care;
- (C) Staff's duty to protect and promote the rights of each resident, and assist the resident to exercise his or her rights;
- (D) How and to whom staff should report any concerns they may have about a resident's decision concerning the resident's care;
- (E) Staff's duty to report any suspected abuse, abandonment, neglect, or exploitation of a resident;

(F) Advocates that are available to help residents (LTC ombudsmen, organizations); and

(G) Complaint lines, hot lines, and resident grievance procedures.

(vii) In adult family homes, safe food handling information must be provided to all staff, prior to handling food for residents.

(2) For long-term care worker orientation required of those individuals identified in WAC 388-112-0015(2):

(a) Long-term care worker orientation is a two hour training that must include introductory information in the following areas:

- (i) The care setting and the characteristics and special needs of the population served;
- (ii) Basic job responsibilities and performance expectations;
- (iii) The care plan, including what it is and how to use it;
- (iv) The care team;
- (v) Process, policies, and procedures for observation, documentation and reporting;

(vi) Resident rights protected by law, including the right to confidentiality and the right to participate in care decisions or to refuse care and how the long-term care worker will protect and promote these rights;

(vii) Mandatory reporter law and worker responsibilities; and

(viii) Communication methods and techniques that can be used while working with a resident or guardian and other care team members.

One hour of completed classroom instruction or other form of training (such as a video or on line course) equals one hour of training. The training entity must establish a way for the long-term care worker to ask the instructor questions.

#### NEW SECTION

**WAC 388-112-0018 What is safety training, who must complete it and when should it be completed?** (1)

Safety training is part of the long-term care worker requirements. It is a three hour training that meets the requirements of WAC 388-112-0019 and includes basic safety precautions, emergency procedures, and infection control.

(2) The following individuals must complete safety training:

(a) All long-term care workers who are not exempt from certification described in RCW 18.88.041, hired after January 7, 2012, must complete three hours of safety training. This safety training must be provided by qualified instructors described in WAC 388-112-0383.

(3) The department must approve safety training curriculums and instructors.

(4) There is no test for safety training.

#### NEW SECTION

**WAC 388-112-0019 What content must be included in safety training?** Safety training consists of introductory information in the following areas:

(1) Safety planning and accident prevention, including but not limited to:

- (a) Proper body mechanics;
- (b) Fall prevention;
- (c) Fire safety;
- (d) In home hazards;
- (e) Long-term care worker safety; and
- (f) Emergency and disaster preparedness.

(2) Standard precautions and infection control, including but not limited to:

- (a) Proper hand washing;
- (b) When to wear gloves and how to correctly put them on and take them off;
- (c) Basic methods to stop the spread of infection;
- (d) Protection from exposure to blood and other body fluids;
- (e) Appropriate disposal of contaminated/hazardous articles;
- (f) Reporting exposure to contaminated articles; and
- (g) What to do when the worker or the resident is sick or injured, including whom to report this to.

(3) Basic emergency procedures, including but not limited to:

- (a) Evacuation preparedness;
- (b) When and where to call for help in an emergency;
- (c) What to do when a resident is falling or falls;
- (d) Location of any advance directives if available; and
- (e) Basic fire emergency procedures.

One hour of completed classroom instruction or other form of training (such as video or on line course) equals one hour of training. The training entity must establish a way for the long-term care worker to ask the instructor questions. In adult family homes, safe food handling information must be provided to all staff, prior to handling food for residents.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0035 What documentation is required for facility orientation training?** The adult family home or assisted living facility must maintain documentation ((of

~~completion of)) that facility orientation((-) training has been completed as required by this chapter. The training and documentation must be issued by ((the home)) the home or service provider familiar with the facility, ((that includes)) and must include:~~

- ~~(1) The ((trainee's)) name of the student;~~
- ~~(2) ((A list of the specific information taught)) The title of the training;~~
- ~~(3) The number of hours of the training;~~
- ~~(4) The signature of the ((person overseeing)) instructor providing facility orientation((-, indicating completion of the required information)) training;~~
- ~~((4)) (5) The ((trainee's)) student's date of ((employ- ment)) hire;~~
- ~~((5)) (6) ((The name of the home giving the orientation; and (6)) The date(s) of facility orientation;~~
- ~~(7) The documentation required under this section must be kept in a manner consistent with WAC 388-76-10198 (for adult family homes) and WAC 388-78A-2450 (for assisted living facilities).~~

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0045 What is basic training?** (1) Basic training is in addition to orientation and safety training and is a training of seventy hours which includes ((the));

(a) The core ((knowledge)) competencies and skills that ((caregivers)) long-term care workers need in order to provide personal care services effectively and safely;

(b) Practice and demonstration of skills;

(c) Population specific competencies.

(2) DSHS must approve basic training ((curricula)) cur- riculums.

(3) Effective July 1, 2012, no more than twelve of the seventy hours may be applied for on-the-job training;

(4) The DSHS developed revised fundamentals of care- giving (RFOC) or another department approved training may be used to teach basic training but it must include enhance- ments. Examples of enhancements include, but are not lim- ited to:

(a) More time for workers to practice skills including:

(i) The mechanics of completing the skill correctly.

(ii) Resident centered communication and problem solv- ing associated with performing the skill.

(iii) The different levels of care required for each skill (independent, supervision, limited, extensive, total).

(iv) Working with assistive devices associated with a skill.

(v) Helpful tips or best practices in working through common resident challenges associated with a skill.

(vi) Disease specific concerns or challenges associated with a skill. In most of these examples, additional student materials would be required to ensure the skill enhancements are well planned and documented for students. Materials must be submitted for approval and approved per WAC 388- 112-0325.

(b) Augmenting or adding additional materials, student activities, videos or guest speakers that:

(i) More deeply reinforce and fortify the learning out- comes required for basic training.

(ii) Ensure each student integrates and retains the knowl- edge and skills needed to provide quality basic personal care.

(iii) Prepares workers for the certification testing envi- ronment and process.

(c) Enhancements are NOT materials and/or activities that:

(i) Are out of the scope of practice for a long-term care worker such as content clearly written for registered nurses.

(ii) Are identical to, or a direct replacement of, those already included in RFOC.

(iii) Fail to reinforce Washington state laws associated with resident rights and resident directed care.

(iv) Long-term care workers are not paid to provide.

(v) Are written above a high school reading level.

(5) One hour of completed classroom instruction or other form of training (such as a video or on-line course) equals one hour of training.

(6) The long-term care worker must be able to ask the instructor questions during the training.

(7) There is no challenge test for basic training.

#### NEW SECTION

**WAC 388-112-0053 What topics must be taught in the core competencies of basic training for long-term care workers?** Basic training for long-term care workers must include all of the competencies described in WAC 388-112- 0055 and must cover the following topics:

(1) Communication skills;

(2) Long-term care worker self-care;

(3) Problem solving;

(4) Resident rights and maintaining dignity;

(5) Abuse, abandonment, neglect, financial exploitation and mandatory reporting;

(6) Resident directed care;

(7) Cultural sensitivity;

(8) Body mechanics;

(9) Fall prevention;

(10) Skin and body care;

(11) Long-term care worker roles and boundaries;

(12) Supporting activities of daily living;

(13) Food preparation and handling;

(14) Medication assistance;

(15) Infection control, blood-borne pathogens, HIV/ AIDS; and

(16) Grief and loss.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0055 What ((knowledge and skills must be taught in)) are the core competencies and learn- ing objectives for long-term care worker basic training?**

~~((4)) The ((basic training knowledge and skills must include all of the learning outcomes and competencies published by the department for the following core knowledge and skills:~~

~~(a) Understanding and using effective interpersonal and problem solving skills with the resident, family members, and other care team members;~~

(b) Taking appropriate action to promote and protect resident rights, dignity, and independence;

(c) Taking appropriate action to promote and protect the health and safety of the resident and the caregiver;

(d) Correctly performing required personal care tasks while incorporating resident preferences, maintaining the resident's privacy and dignity, and creating opportunities that encourage resident independence;

(e) Adhering to basic job standards and expectations.

(2) The basic training learning outcomes and competencies may be obtained from the DSHS aging and adult services administration)) core competencies describe the behavior and skills that a long-term care worker must exhibit when working with residents. Learning objectives are associated with each competency.

(1) Regarding communication, communicate effectively and in a respectful and appropriate manner with residents, family members, and care team members:

(a) Recognize how verbal and non-verbal cues impact communication with the resident and care team;

(b) Engage and respect the resident through verbal and non-verbal communication;

(c) Listen attentively and determine that the resident, when able, understands what has been communicated;

(d) Recognize and acknowledge residents' communication including indicators of pain, confusion, or misunderstanding;

(e) Utilize communication strategies to deal with difficult situations; and

(f) Recognize common barriers to effective communication and identify how to eliminate them.

(2) Regarding long-term care worker self-care:

(a) Identify behaviors, practices and resources to reduce stress and avoid burnout;

(b) Recognize common barriers to self-care and ways to overcome them; and

(c) Recognize aspects of a long-term care worker's job that can lead to stress and burnout, common signs and symptoms of stress and burnout; and the importance of taking action to practice self-care to avoid burnout.

(3) Regarding the competency of effective problem solving, use effective problem solving skills:

(a) Explain why it is necessary to understand and utilize a problem solving method;

(b) Implement a problem solving process/method; and

(c) Identify obstacles to effective problem solving and ways to overcome them.

(4) Regarding the competency of resident rights and dignity, take appropriate action to promote and protect a resident's legal and human rights as protected by federal and Washington state laws, including:

(a) Protect a resident's confidentiality including what is considered confidential information, to whom a long-term care worker is allowed or not allowed to give confidential information, and how to respond if a noncare team member asks for confidential information;

(b) Promote dignity, privacy, encourage and support a resident's maximum independence when providing care;

(c) Maintain a restraint-free environment, including physical, chemical, and environmental restraints. Use common, safe alternatives to restraint use;

(d) Protect and promote the resident's right to live free of abuse, neglect, abandonment, and financial exploitation.

(5) Regarding the competency of abuse and mandatory reporting, recognize the signs of abuse and report suspected abuse, abandonment, neglect, and financial exploitation:

(a) Describe long-term care workers' responsibilities as a mandatory reporter as described in RCW 74.34.020 through 74.34.053; and

(b) Identify common indications of abuse, abandonment, neglect, and financial exploitation.

(6) Regarding the competency of resident directed care, take appropriate action when following a resident's direction regarding his or her care:

(a) Describe a worker's role in resident directed care including determining, understanding, and supporting a resident's choices;

(b) Describe the importance and impact of resident directed care on a resident's independence, self-determination, and quality of life;

(c) Identify effective problem solving strategies that help balance a resident's choice with personal safety; and

(d) Report concerns when a resident refuses care or makes choices that present a possible safety concern.

(7) Regarding the competency of cultural sensitivity, provide culturally appropriate care:

(a) Describe how cultural background, lifestyle practices, and traditions can impact care and use methods to determine and ensure that these are respected and considered when providing care.

(8) Regarding the competency of body mechanics, utilize current best practices and evidence-based methods of proper body mechanics while performing tasks as outlined in the service plan.

(9) Regarding the competency on fall prevention:

(a) Identify fall risk factors and take action to reduce fall risks for a resident; and

(b) Take proper steps to assist a resident who is falling or has fallen.

(10) Regarding the competency of skin and body care, use of personal care practices that promote and maintain skin integrity:

(a) Explain the importance of observing a resident's skin, when to observe it and what to look for including common signs and symptoms of skin breakdown;

(b) Identify risk factors of skin breakdown;

(c) Observe skin at pressure point locations and report any concerns;

(d) Describe what a pressure ulcer is, what it looks like, and what action to take if a resident appears to be developing or develops a pressure ulcer;

(e) Describe current best practices that protect and maintain a resident's skin integrity including position changes when sitting or lying for extended periods, and proper positioning and transfer techniques;

(f) Implement current best practices that promote healthy skin including hygiene, nutrition, hydration, and mobility; and

(g) Identify when to report skin changes and to whom.

(11) Regarding the competency on long-term care worker roles and boundaries, adhere to basic job standards, expectations, and requirements and maintain professional boundaries:

(a) Identify when, how, and why to obtain information from appropriate sources about a resident's condition or disease for which they are receiving services. Describe how to use this information to provide appropriate, individualized care;

(b) Describe a resident's baseline functioning level using information provided in the service plan and explain why it is important to know a resident's baseline;

(c) Identify changes in a resident's physical, mental, and emotional state through observation;

(d) Report changes from baseline and/or concerns to the appropriate care team member(s);

(e) Identify basic job standards and requirements (e.g. coming to work on time) and describe how maintaining these standards are critical to a resident's safety and well-being;

(f) Explain the purpose of a service plan and describe how it is created, used, and modified;

(g) Use a resident's service plan to direct a worker's job tasks and any resident directed care tasks;

(h) Identify what is required of a long-term care worker, as described in WAC 388-112-0195, prior to performing a nurse-delegated task;

(i) Describe the role of a care team and a long-term care worker's role in it;

(j) Describe professional boundaries and the importance of maintaining them; and

(k) Identify signs of unhealthy professional boundaries, barriers to keeping clear professional boundaries, and ways to avoid or eliminate them.

(12) Regarding the competency on supporting activities of daily living, perform required personal care tasks to the level of assistance needed and according to current best practices and evidence-based guidelines:

(a) Demonstrate, in the presence of a qualified instructor, all critical steps required for personal care tasks including but not limited to:

(i) Helping a resident walk;

(ii) Transferring a resident from a bed to a wheelchair;

(iii) Turning and repositioning a resident in bed;

(iv) Providing oral care;

(v) Cleaning and storing dentures;

(vi) Shaving a face;

(vii) Providing fingernail care;

(viii) Providing foot care;

(ix) Providing a bed bath;

(x) Assisting a resident with a weak arm to dress;

(xi) Putting knee-high elastic stockings on a resident;

(xii) Providing passive range of motion for one shoulder;

(xiii) Providing passive range of motion for one knee and ankle;

(xiv) Assisting a resident to eat;

(xv) Assisting with peri-care;

(xvi) Assisting with the use of a bedpan;

(xvii) Assisting with catheter care;

(xviii) Assisting with condom catheter care; and

(xix) Providing medication assistance.

(b) In the process of performing the personal care tasks, use proper body mechanics, listen attentively, speak clearly and respectfully while explaining what the long-term care worker is doing, incorporate resident preferences, maintain privacy and dignity, support the resident's level of ability, and assure their comfort and safety;

(c) Appropriately utilize assistive device(s) specified on the service plan;

(d) Describe any safety concerns related to each task and how to address the concerns;

(e) Demonstrate an understanding of bowel and bladder functioning, including factors that promote healthy bowel and bladder functioning, and the signs, symptoms, and common causes of abnormal bowel and bladder function; and

(f) Identify the importance of knowing a resident's bowel and bladder functioning baseline and when to report changes.

(13) Regarding the competency on food preparation and handling, plan and prepare meals using a basic knowledge of nutrition and hydration, incorporating any diet restrictions or modifications, and prevent food borne illness by preparing and handling food in a safe manner:

(a) Describe how nutrition and hydration can impact a resident's health;

(b) Plan, shop, and prepare meals for a resident according to the guidelines of good nutrition and hydration, incorporating any dietary requirements and restrictions per the service plan and resident preferences;

(c) Describe common signs of poor nutrition and hydration, and when to report concerns and to whom;

(d) Understand that diet modification is required for certain health conditions, including dysphagia, and describe how to identify diet modifications required for a resident;

(e) Recognize when a resident's food choices vary from specifications on the care plan, describe when and to whom to report concerns;

(f) Describe what causes food borne illness, the risks associated with food borne illness and examples of potentially hazardous foods;

(g) Describe appropriate food handling practices, including: avoiding cross contamination from one food to another, safe storage requirements for cooling of leftover foods, including depth, types of containers, and temperatures, the need to maintain food at proper temperatures to limit bacterial growth and what are the safe food storage and holding temperatures for both cold and hot foods, best practices for thawing and re-heating food, and using clean gloves (if possible) and clean utensils when preparing food;

(h) Describe the importance and correct procedure for cleaning and disinfecting food contact surfaces; and

(i) Describe why a long-term care worker with certain types of illnesses and/or symptoms must not prepare food.

Long-term care workers who complete a DSHS-approved basic training meet the training requirements for adult family homes in RCW 70.128.250.

(14) Regarding the competency of medication assistance, appropriately assist with medications:

(a) Identify what a long-term care worker is allowed and not allowed to do when assisting with medications as described in chapter 246-888 WAC;

(b) Define terms related to medication assistance including prescription drugs, over the counter medications, and as needed (PRN) medications, medication side effects, and drug interactions;

(c) Identify common symptoms of medication side effects and when and to whom to report concerns;

(d) Store medications according to safe practices and the label instructions;

(e) Describe, in the proper sequence, each of the five rights of medication assistance; and

(f) Identify what to do for medication-related concerns, including describing ways to work with a resident who refuses to take medications, identifying when and to whom to report when a resident refuses medication or there are other medication-related concerns, and identifying what is considered a medication error and when and to whom it must be reported.

(15) Regarding the competency of infection control and blood borne pathogens including HIV/AIDS, implement best practices to prevent and control the spread of infections:

(a) Identify commonly occurring infections, ways that infections are spread, and symptoms of infections;

(b) Describe the purpose, benefit and proper implementation of standard precautions in infection control;

(c) Implement current best practices for controlling the spread of infection, including the use of hand washing and gloves;

(d) Demonstrate proper hand washing and putting on and taking off gloves;

(e) Identify immunizations that are recommended for adults to reduce the spread of virus and bacteria;

(f) Describe laundry and housekeeping measures that help in controlling the spread of infection;

(g) Describe proper use of cleaning agents that destroy micro-organisms on surfaces;

(h) Describe what BB pathogens are and how they are transmitted;

(i) Identify the major BB pathogens, diseases, and high-risk behaviors for BB diseases;

(j) Identify measures to take to prevent BB diseases;

(k) Describe what to do if exposed to BB pathogens and how to report an exposure;

(l) Describe how HIV works in the body;

(m) Explain that testing and counseling for HIV/AIDS is available;

(n) Describe the common symptoms of HIV/AIDS;

(o) Explain the legal and ethical issues related to HIV including required reporting, confidentiality and nondiscrimination; and

(p) Explain the importance of emotional issues and support for residents and long-term care workers.

Long-term care workers who complete a DSHS-approved basic training meet the four hours of AIDS education as required by the department of health in WAC 246-980-040.

(16) Regarding the competency on grief and loss, support yourself and the resident in the grieving process:

(a) Define grief and loss;

(b) Describe common losses a resident and long-term care worker may experience;

(c) Identify common symptoms associated with grief and loss;

(d) Describe why self-care is important during the grieving process; and

(e) Identify beneficial ways and resources to work through feelings of grief and loss.

#### NEW SECTION

##### **WAC 388-112-0062 What is on-the-job training?** (1)

Effective July 1, 2012, on-the-job training is a method of training when the long-term care worker successfully demonstrates any or all of the personal care or infection control skills included in the core basic training while working with a resident versus in a practice training setting.

(2) On-the-job training is provided by a qualified instructor as defined in WAC 388-112-0380 who directly observes, coaches, and reinforces skills training for up to two long-term care workers at a time. The instructor providing the on-the-job training:

(a) Does not have to be the instructor who has taught the core competency training;

(b) Cannot be someone whose primary job duty is providing direct care to residents; or

(c) Cannot be the immediate supervisor of the long-term care worker receiving the on-the-job training.

(3) The person overseeing on-the-job training must:

(a) Submit DSHS required forms and become an approved instructor for the core competency of basic training; and

(b) Verify on a DSHS approved skills checklist the long-term care worker's successful completion of the demonstrated skills.

(4) For the person receiving on-the-job training, the hours spent in on-the-job training may count for up to twelve hours toward the completion of basic training requirements.

(5) The training program shall offer department approved on-the-job training as part of the seventy hour training.

#### NEW SECTION

##### **WAC 388-112-0066 What is the population specific component of basic training?** (1)

Population specific basic training is training on topics that are unique to the care needs of the population that the home or provider is serving. Topics can include but are not limited to:

(a) Dementia;

(b) Mental health;

(c) Developmental disabilities;

(d) Young adults with physical disabilities; and

(e) Aging and older adults.

(2) Specialty training per WAC 388-112-0110 may be used to meet the population specific component of basic training if completed within one hundred and twenty days of date of hire.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0070 What documentation is required ~~((for successful))~~ to show completion of the seventy hour basic, and five hour orientation and safety training?** (1) Long-term care worker basic training must be documented by a certificate of successful completion of seventy five hours of training, issued by the instructor or training entity, that includes:

- (a) The name of the ~~((trainee))~~ student;
  - (b) The name of the training;
  - (c) The number of hours of the training;
  - (d) The name of the home or training entity giving the training;
  - ~~((e))~~ (e) The instructor's name and signature; and
  - ~~((f))~~ (f) The name and the identification number of the instructor for core competencies, and the home or training entity giving the training; and
  - (g) The ~~((date(s)))~~ completion date of training.
- (2) The ~~((trainee))~~ student must be given an original certificate(s) for proof of completion of the training and retain for their records, ((A home)) The provider, and if applicable, the training entity must keep a copy of the certificate ((on file)) as described in WAC 388-76-10198 (for adult family homes) and as described in WAC 388-78A-2450 (for assisted living facilities).

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0075 Who is required to complete basic training, and when, unless exempt as described in WAC 388-112-0076?** The following individuals must complete basic training requirements:

**Adult family homes**

- (1) Adult family home ~~((providers (including entity representatives as defined under chapter 388-76 WAC)))~~ applicants must complete basic training ((and demonstrate competency)) and become certified before ((operating an)) the adult family home is licensed.
- (2) Adult family home entity representatives and resident managers ((must complete basic training and demonstrate competency)) before ((providing services in an)) assuming the duties of the position in the adult family home.
- (3) ~~((Caregivers))~~ Long-term care workers in adult family homes ((must complete basic training)) within one hundred twenty days of ((when they begin providing hands on personal care or within one hundred twenty days of September 1, 2002, whichever is later)) date of hire. Until ((competency in the)) basic training has been ((demonstrated, caregivers)) completed, long-term care workers may not provide ((hands on)) personal care without ((indirect)) direct supervision.

**~~((Boarding homes))~~ Assisted living facilities**

- (4) ~~((Boarding home))~~ Assisted living facility administrators (or their designees), except administrators with a current nursing home administrator license, ((must complete basic training and demonstrate competency)) within one hundred twenty days of ((employment or within one hundred

twenty days of September 1, 2002, whichever is later)) date of hire.

(5) ~~((Caregivers must complete basic training))~~ Long-term care workers within one hundred twenty days of ((when they begin providing hands on personal care or within one hundred twenty days of September 1, 2002, whichever is later)) their date of hire. Until ((competency in)) completion of the basic training ((has been demonstrated, caregivers)), long-term care workers may not provide ((hands on)) personal care without direct supervision.

(6) For certification requirements for individuals in subsections (2) through (5) refer to WAC 388-112-0106.

NEW SECTION

**WAC 388-112-0076 Which long-term care workers are exempt from the basic training requirement?** The following long-term care workers are exempt from the basic training requirement:

- (1) An applicant for an adult family home license on or before January 6, 2012 who met the basic training requirements in effect at the time of application.
- (2) A person already employed as a long-term care worker on January 6, 2012, who completed the basic training requirements in effect on the date of his or her hire;
- ~~((2))~~ (3) A person employed as a long-term care worker on January 6, 2012, who completes within one hundred twenty days of hire, the basic training requirements in effect on the date of his or her hire;
- ~~((3))~~ (4) A person previously employed as a long-term care worker who completed the basic training requirements in effect on the date of his or her hire, and was employed as a long-term care worker at some point between January 1, 2011 and January 6, 2012;
- ~~((4))~~ (5) Registered nurses, licensed practical nurses, nurse technicians, or advanced registered nurse practitioner under chapter 18.79 RCW;
- ~~((5))~~ (6) Nursing assistants-certified under chapter 18.88A RCW;
- ~~((6))~~ (7) Certified counselors under chapter 18.19 RCW;
- ~~((7))~~ (8) Speech language pathologists or audiologists under chapter 18.35 RCW;
- ~~((8))~~ (9) Occupational therapists under chapter 18.59 RCW;
- ~~((9))~~ (10) Physical therapists under chapter 18.74 RCW;
- ~~((10))~~ (11) A home health aide who is employed by a medicare-certified home health agency and has met the requirements of 42 CFR, Part 483.35; and
- ~~((11))~~ (12) An individual with special education training and an endorsement granted by the superintendent of public instruction as described in RCW 28A.300.010.

**Reviser's note:** The unnecessary underscoring and strike through in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

**WAC 388-112-0078 What other required training may be used to satisfy the population specific component**

**of the basic training?** Homes or providers may use the following DSHS-developed or approved curriculum to meet all or some of the population specific component of basic training depending on the needs of the population served:

- (1) Dementia specialty training;
- (2) Mental health specialty training;
- (3) Developmental disabilities specialty training;
- (4) Young adults with physical disabilities; and
- (5) Aging and older adults.

#### NEW SECTION

**WAC 388-112-0079 What are the requirements for using basic training to meet the specialty training requirements?** When basic training is used to meet the specialty training requirements:

(1) It must include the department developed competencies and learning objectives as described in WAC 388-112-0122, 388-112-0132, or 388-112-0142. Homes or providers may enhance the specialty training component by adding additional competencies, learning objectives, content, or activities. If the department approves the enhancements and an increased number of training hours, the worker's training hours will apply to the seventy hour training requirement.

(2) Long-term care workers must pass a department competency test described in WAC 388-112-0295 to meet the applicable licensing requirements for adult family homes and assisted living facilities for all specialty training.

#### NEW SECTION

**WAC 388-112-0081 What topics may the training on young adults with physical disabilities include?** The training on young adults with physical disabilities may include, but are not limited to, all of the competencies and learning objectives described in WAC 388-112-0083 for the following topics:

- (1) Introduction to physical disabilities;
- (2) Common physical disabilities and ability limitations;
- (3) Supporting residents living with chronic conditions;
- (4) Independent living and resident-directed care; and
- (5) Social connections and sexual needs of adults living with disabilities.

#### NEW SECTION

**WAC 388-112-0083 What are some examples of the competencies and learning objectives for the training on young adults with physical disabilities?** The competencies define the integrated knowledge, skills, or behavior expected of a long-term care worker after completing the training on young adults with physical disabilities. Learning objectives are associated with each competency.

(1) Regarding the competency on young adults with physical disabilities, working effectively with young adults with physical disabilities based upon a basic understanding of disability:

(a) Identify basic information regarding physical disabilities, injuries, and illnesses that are more common in young adults;

(b) Describe the impact of changing and fluctuating abilities;

(c) Identify stereotypes, biases, and misconceptions regarding the perception of young adults with physical disabilities;

(d) Describe how biases, stereotypes, and misconceptions can influence care to young adults with physical disabilities;

(e) Identify and explain the Americans with Disabilities Act and rights for adults with physical disabilities; and

(f) Describe the value of personalizing care and support to the specific resident with a disability.

(2) Regarding the competency on common physical disabilities and ability limitations, providing individualized care based upon a basic understanding of common physical disabilities and their impact on functioning:

(a) Describe common physical disabilities, including paraplegia and quadriplegia, diabetes, multiple sclerosis, and pulmonary disease.

(b) Describe the characteristics and functional limitations of residents with these specific disabilities.

(3) Regarding the competency on supporting residents living with chronic conditions, providing appropriate care by recognizing chronic secondary conditions that impact functioning:

(a) Identify how common chronic medical conditions affect physical disability;

(b) Describe how chronic medical conditions influence and impact care for a young resident with a physical disability;

(c) Describe how to support a resident with a physical disability and multiple chronic conditions; and

(d) Describe how to support the resident's dignity while providing personal care.

(4) Regarding the competency on independent living and resident-directed care, supporting independent living and self-determination for the resident living with a disability:

(a) Define the independent living philosophy and describe what it might look like;

(b) Describe barriers to independent living, including accessibility and attitudes;

(c) Describe ways to support independent living and self-determination with the resident living with a disability;

(d) Describe resident-directed support;

(e) Identify ways to promote resident-directed support; and

(f) Identify resources that promote independence and self-determination for a resident living with a disability.

(5) Regarding the competency of social connections and sexual needs of young adults living with a physical disability, providing optimum support to a resident living with a disability in his or her expression of social and sexual needs:

(a) Describe and explain the importance of full, appropriate, and equal participation of resident's living with a physical disability;

(b) Identify ways to support social connections and activities;

(c) Describe and explain the importance of honoring the resident as a sexual being with diverse sexual needs, desires, and orientation; and

(d) Identify ways to support expression of sexual needs in a respectful, professional, and confidential manner.

#### NEW SECTION

**WAC 388-112-0088 What topics may the training on aging and older adults include?** Training on aging and older adults may include, but are not limited to, all of the competencies and learning objectives described in WAC 388-112-0091 for the following core knowledge and skills:

- (1) Introduction to aging;
- (2) Age-associated physical changes;
- (3) Cultural impacts on aging;
- (4) Ageism and supporting resident dignity;
- (5) Supporting residents living with a chronic condition;
- (6) Dealing with death, grief, and loss; and
- (7) Supporting health and wellness.

#### NEW SECTION

**WAC 388-112-0091 What are some examples of competencies and learning objectives for training on aging and older adults?** The competencies define the integrated knowledge, skills, or behavior expected of a long-term care worker after completing the training on aging and older adults. Learning objectives are associated with each competency.

(1) Regarding the competency on an introduction to aging, draw upon a basic understanding of the aging process and demonstrate awareness of the unique needs of older adults:

- (a) Describe basic information on the aging process, including the difference between age-related changes and a disease process;
- (b) List typical changes that occur with aging;
- (c) Identify common stereotypes, biases, myths, and misconceptions regarding aging, ageism, and older adults;
- (d) Describe how ageism, biases, myths, and misconceptions can influence care to older residents;
- (e) Describe how aging affects the resident's needs and behaviors; and
- (f) Describe the value of adapting caregiving to the age-related concerns of the resident.

(2) Regarding the competency on age-associated physical changes, provide individualized care by understanding physical changes that are experienced in aging:

- (a) Identify common physical changes experienced in the aging process;
- (b) Describe common sensory changes that occur in aging and their impact on an older adult's activities;
- (c) Describe the difference between age-associated physical changes versus a disease process; and
- (d) Describe how age-related physical changes can impact functioning and the ability to perform personal care.

(3) Regarding the competency on cultural impacts of aging, provide culturally compassionate care by utilizing a basic understanding of issues related to culture and aging:

- (a) Describe how race/ethnicity, poverty, and class influence the aging process;
- (b) Describe how race/ethnicity, poverty, and class influence an older adult's help-seeking behavior; and

(c) Describe a culturally sensitive approach to working with older adults that demonstrates shared decision-making and mutual respect.

(4) Regarding the competency on ageism and supporting resident dignity, overcome ageism and support resident dignity by understanding stereotypes and myths regarding aging:

- (a) Describe the concept of "ageism" and its possible impact on working with older adults;
- (b) Identify his or her perceptions about aging and how these perceptions may contribute to "ageism";
- (c) Describe how "ageism" can influence resident dignity; and
- (d) Describe strategies for overcoming "ageism" and supporting resident dignity.

(5) Regarding the competency on supporting residents living with chronic medical conditions, provide appropriate care by recognizing how chronic conditions impact functioning:

- (a) Describe how chronic medical conditions can influence and impact care for older adults;
  - (b) Describe strategies for working with an older adult with multiple chronic medical conditions;
  - (c) Describe proactive ways to support an older adult living with chronic medical conditions; and
  - (d) Describe how to help support the older adult's dignity while providing care.
- (6) Regarding the competency on dealing with death, grief and loss, respond appropriately to a resident experiencing loss:

- (a) Describe common examples of losses encountered in the aging process;
- (b) Describe common reactions to loss of significant roles;
- (c) Describe strategies for dealing with loss;
- (d) Describe the value of promoting social engagement for the older adult;
- (e) Identify strategies and opportunities for promoting social engagement; and
- (f) Identify actions and resources that can be used to help an older adult work through feelings of grief and loss.

(7) Regarding the competency on supporting optimum health and wellness, support the optimum health and wellness of older adults:

- (a) Identify key factors that support resident health and wellness;
- (b) Identify strategies for promoting resident optimum health while aging;
- (c) Identify strategies and opportunities to support an older adult to engage in healthy life style choices; and
- (d) Describe his or her role in promoting optimum health and wellness for older residents.

#### NEW SECTION

**WAC 388-112-0092 What learning objectives may be included in the curriculum for young adults with physical disabilities and/or for aging and older adults?** Homes or providers may develop a curriculum for young adults with physical disabilities and/or for aging and older adults using the learning objectives in WACs 388-112-0083 and WAC

388-112-0091 or any other relevant learning objectives for these populations and submit it for approval by the department.

#### NEW SECTION

**WAC 388-112-0106 Who is required to obtain certification as a home care aide, and when?** Unless exempt under WAC 246-980-070, the following individuals must be certified by the department of health as a home care aide within the required timeframes:

- (1) All long-term care workers, within one hundred and fifty days of hire;
- (2) Adult family home applicants, before licensure;
- (3) Adult family home entity representatives and resident managers, before assuming the duties of the position; and
- (4) Assisted living facility administrators or their designees within one hundred and fifty days of hire.

#### NEW SECTION

**WAC 388-112-0108 What documentation is required for a long-term care worker to apply for the home care aide certification or recertification?** (1) Successful completion of seventy-five hours of training must be documented on a DSHS seventy five hour training certificate by an approved training entity verifying that a total of seventy-five hours of approved training have occurred.

(2) An approved training entity issuing and signing a DSHS seventy five hour training certificate must verify that the long-term care worker has the certificates required documenting two hours of DSHS-approved orientation, three hours of DSHS-approved safety training, and seventy hours of DSHS-approved basic training, as described in this chapter. When applying to the department of health for home care aide certification, the long-term care worker may only submit a seventy-five hour training certificate that has been issued by the department or the training partnership.

(3) For home care aide recertification, successful completion of twelve hours of DSHS-approved continuing education training must be documented on a certificate(s) or transcript(s) issued by a department approved training entity.

(4) The long-term care worker and certified home care aide must retain any twelve hour training certificates or transcripts for as long as they are employed.

**AMENDATORY SECTION** (Amending WSR 06-16-072, filed 7/28/06, effective 8/28/06)

**WAC 388-112-0110 What is specialty training and who is required to take specialty training?** (1) Specialty or "special needs" training (~~(including caregiver specialty training)~~) provides instruction in caregiving skills that meet the special needs of people living with mental illness, dementia, or developmental disabilities. Specialty trainings are different for each population served and are not interchangeable. Specialty training may be integrated with basic training if the complete content of each training is included. DSHS must approve specialty training (~~(curricula)~~) curriculums for man-

agers and (~~(caregivers, except for adult family home caregiver specialty training)~~) long-term care workers.

(2) Manager specialty training is required for (~~(boarding home)~~) assisted living facility administrators (or designees), adult family home applicants or providers (~~(and)~~), resident managers, and entity representatives who are affiliated with homes that serve residents who have one or more of the following special needs: developmental disabilities, dementia, or mental health. The managers described in this section must take one or more of the following specialty trainings:

(a) Developmental disabilities specialty training, (~~(under)~~) described in WAC 388-112-0120 (~~(is the required training on that specialty for adult family home providers and resident managers, and for boarding home administrators (or designees))~~);

(b) Manager dementia specialty training, (~~(under)~~) described in WAC 388-112-0125 (~~(is the required training on that specialty for adult family home providers and resident managers, and for boarding home administrators (or designees))~~);

(c) Manager mental health specialty training, (~~(under)~~) described in WAC 388-112-0135 (~~(are the required trainings on those specialties for adult family home providers and resident managers, and for boarding home administrators (or designees))~~).

(3) (~~(Caregiver specialty training for boarding homes)~~) All long-term care workers including those who are exempt from basic training and who work in an assisted living facility or adult family home, serving residents with the special needs described in subsection (2) of this section, must take long-term care worker specialty training. The long-term care worker specialty training applies to the type of residents served by the home as follows:

(a) Developmental disabilities specialty training, (~~(under)~~) described in WAC 388-112-0120 (~~(is the required training on that specialty for boarding home caregivers)~~).

(b) (~~(Caregiver)~~) Long-term care worker dementia specialty training, (~~(under)~~) described in WAC 388-112-0130 (~~(is the required training on that specialty for adult family home providers and resident managers, and for boarding home administrators (or designees))~~); and (~~(caregiver)~~)

(c) Long-term care worker mental health specialty training, (~~(under)~~) described in WAC 388-112-0140 (~~(are the required trainings on those specialties for boarding home caregivers)~~).

(4) (~~(Caregiver specialty training for adult family homes:~~) The provider or resident manager who has successfully completed the manager specialty training, or a person knowledgeable about the specialty area, trains adult family home caregivers in the specialty needs of the individual residents in the adult family home, and there is no required curriculum) Specialty training may be used to meet the requirements for the basic training population specific component if completed within one hundred and twenty days of date of hire.

(5) For long-term care workers who have completed the seventy-five hour training and do not have a specialty training certificate which indicates completion and competency testing, the long-term care worker must complete specialty training when employed by the adult family home or assisted living facility that serves residents with special needs.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0115 What specialty training(~~including caregiver specialty training~~) is required if a resident has more than one special need?** If ~~((an individual))~~ a resident has needs in more than one of the special needs areas, the adult family home or assisted living facility must determine which of the specialty trainings will most appropriately address the overall needs of the ~~((person))~~ resident and ensure that the appropriate specialty training ~~((that addresses the overall needs))~~ is completed as required. If additional training beyond the specialty training is needed to meet all of the resident's needs, the adult family home or assisted living facility must ensure that additional training is completed.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0120 What ~~((knowledge and skills))~~ topics must ~~((manager and caregiver))~~ developmental disabilities specialty trainings include? (1) ~~((Manager and caregiver developmental disabilities specialty trainings))~~ Developmental disabilities specialty training must include all of the ~~((learning outcomes and competencies published by DSHS))~~ competencies and learning objectives described in WAC 388-112-0122 for the following ~~((core knowledge and skills))~~ topics:**

(a) Overview of developmental disabilities;  
 (b) Values of service delivery;  
 (c) Effective communication;  
 (d) Introduction to interactive planning;  
 (e) Understanding behavior;  
 (f) Crisis prevention and intervention; and  
 (g) Overview of legal issues and ~~((individual))~~ resident rights.

(2) For adult family homes, the division of developmental disabilities (DDD) will provide in-home technical assistance to the adult family home upon admission of the first resident eligible for services from DDD and, thereafter, as determined necessary by DSHS.

~~((3) The manager and caregiver developmental disabilities specialty training learning outcomes and competencies may be obtained from the DSHS division of developmental disabilities:))~~

NEW SECTION

**WAC 388-112-0122 What are the competencies and learning objectives for the long-term care worker developmental disability specialty training?** The developmental disabilities specialty competencies describe the behavior and skills a long-term care worker should exhibit when working with residents. Learning objectives are associated with each competency.

(1) Regarding the competency on an overview of developmental disabilities, drawing upon a basic understanding of developmental disabilities and demonstrate awareness of the unique needs of residents with developmental disabilities:

(a) Define developmental disability and describe intellectual disability, cerebral palsy, epilepsy, and autism;

(b) Identify common myths and misconceptions about developmental disabilities;

(c) Describe the negative effects of using labels such as "retarded" or "handicapped" to represent people and positive alternatives; and

(d) Differentiate between developmental disabilities and mental illness.

(2) Regarding the competency on values of service delivery, promote and support a resident's self-determination:

(a) Identify the principle of normalization and its significance to the work of long-term care workers;

(b) Explain how understanding each resident's needs leads to better services and supports, which lead to better outcomes for the resident;

(c) Describe each of the residential services guidelines and identify how the values represented in the guidelines are important in the lives of people with developmental disabilities;

(d) Describe the principle of self-determination; and

(e) Identify positive outcomes for residents with developmental disabilities when they are connected to the community they live in.

(3) Regarding the competency on communication, provide culturally compassionate and individualized care by utilizing a basic understanding of a resident or resident's history, experience, and cultural beliefs:

(a) List the key elements of effective communication;

(b) Describe the impact communication has on the lives of residents with developmental disabilities;

(c) Explain the impact a long-term care worker's behavior can have on eliciting communication;

(d) Explain the impact of a resident's physical environment on their ability to communicate;

(e) Describe methods of communication, other than verbal, that long-term care workers might use when supporting residents with developmental disabilities; and

(f) List tips for communication with residents with developmental disabilities.

(4) Regarding the competency on interactive planning, using person-centered and interactive planning when working with residents with developmental disabilities:

(a) Identify the benefits of using a person-centered planning process rather than the traditional planning methods used to develop supports for people with developmental disabilities;

(b) Identify key elements involved in interactive planning;

(c) Identify ways to include people with developmental disabilities and their families in the planning process; and

(d) Identify the required planning document for the setting and list ways to have a positive impact on the plan.

(5) Regarding the competency on challenging behaviors, use a problem solving approach and positive support principles when dealing with challenging behaviors:

(a) Identify the essential components of the concept of positive behavioral supports;

(b) Define the "ABCs" and describe how to use that process to discover the function of behavior;

(c) Explain why it is critical to understand the function of behavior before developing a support plan;

(d) Define reinforcement and identify ways to utilize it as a tool to increase a resident's ability to be successful;

(e) Identify the problems with using punishment to manage behavior;

(f) Identify behavior management techniques that are not allowed under DSHS policies and applicable laws;

(g) Identify factors that can positively and negatively influence the behavior of residents with developmental disabilities; and

(h) List steps to be taken when crisis or danger to people is immediate.

(6) Regarding the competency on crisis prevention, support a resident experiencing a crisis and get assistance when needed:

(a) Identify behaviors in people with developmental disabilities that might constitute "normal stress";

(b) Define "crisis";

(c) Differentiate the behaviors a resident who is in crisis exhibits from mental illness;

(d) Identify the principles of crisis prevention and intervention;

(e) Identify what types of situations require outside assistance and at what point it becomes necessary; and

(f) Name several ways to provide support to a resident experiencing a crisis.

(7) Regarding the competency on legal rights, promote and protect the legal and resident rights of residents with developmental disabilities:

(a) Explain how the rights of residents with disabilities compare to those of the general population;

(b) List the rights of residents living in adult family homes and assisted living facilities and the laws that support those rights;

(c) Describe how long-term care workers can help residents to exercise their rights;

(d) List ways a caregiver or long-term care worker must safeguard each resident's confidentiality;

(e) Describe the three types of guardianship a resident with developmental disabilities might be subject to and why;

(f) List less restrictive alternatives to guardianship;

(g) Describe the responsibilities, powers, and limitations of a guardian; and

(h) Describe the relationship between long-term care workers and guardians/families.

**AMENDATORY SECTION** (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0125 What knowledge and skills must manager dementia specialty training include?** ((+)) Manager dementia specialty training must include all of the competencies and learning ((outcomes and)) objectives described in WAC 388-112-0132 plus the following competencies ((published by DSHS for the following core knowledge and skills)):

(1) Medications and dementia:

(a) ~~((Introduction to the dementias))~~ Common medications for general health problems;

~~(b) ((Differentiating dementia, depression, and delirium))~~ Medication side effects;

~~(c) ((Caregiving goals, values, attitudes and behaviors))~~ Reporting side effects;

~~(d) ((Caregiving principles and dementia problem solving))~~ Drugs used with people who have dementia;

~~(e) ((Effects of cognitive losses on communication))~~ Extrapyramidal side effects;

~~(f) ((Communicating with people who have dementia))~~ Medications to treat dementia and their side effects; and

~~(g) ((Sexuality and dementia;~~

~~(h) Rethinking "problem" behaviors;~~

~~(i) Hallucinations and delusions;~~

~~(j) Helping with activities of daily living (ADLs);~~

~~(k) Drugs and dementia;~~

~~(l) Working with families;~~

~~(m) Getting help from others; and~~

~~(n) Self-care for caregivers))~~ Treating dementia with antipsychotic drugs.

~~(2) ((The manager dementia specialty training learning outcomes and competencies may be obtained from the DSHS aging and adult services administration))~~ Setting the tone:

~~(a) Working with families and friends;~~

~~(b) Considerations for dealing with family members and friends; and~~

~~(c) Encouraging self-care for the caregiver.~~

**AMENDATORY SECTION** (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0130 What ~~((knowledge and skills))~~ topics must ((caregiver)) long-term care worker dementia specialty training include? ((+)) ~~((Caregiver))~~ Long-term care worker dementia specialty training must include all the ((learning outcomes and competencies published by DSHS)) competencies and learning objectives described in WAC 388-112-0132 for the following ((core knowledge and skills)) topics:**

~~((a))~~ (1) Introduction to the dementias;

~~((b))~~ (2) Dementia, depression, and delirium;

~~((c) Resident-based caregiving;~~

~~((d))~~ (3) Dementia caregiving principles;

~~((e))~~ (4) Communicating with people who have dementia;

~~((f))~~ (5) Sexuality and dementia;

~~((g))~~ (6) Rethinking "problem" behaviors;

~~((h))~~ (7) Hallucinations and delusions;

~~((i))~~ (8) Helping with activities of daily living (ADLs);

and

~~((j))~~ (9) Working with family and friends.

~~((2) The learning outcomes and competencies for caregiver dementia training may be obtained from the DSHS aging and adult services administration.)~~

**NEW SECTION**

**WAC 388-112-0132 What are the competencies and learning objectives for the long-term care worker dementia specialty training?** The dementia specialty competencies describe the behavior and skills a long-term care worker

should exhibit when working with residents. Learning objectives are associated with each competency.

(1) Regarding the competency on an introduction to dementia, draw upon a basic understanding of dementia and demonstrate awareness of the unique needs of residents with dementia:

(a) Identify basic information on dementia, including causes and treatments;

(b) Describe how dementia affects resident needs and behaviors;

(c) List typical behaviors and symptoms a resident with dementia would most likely experience;

(d) Describe the differences that might be seen based on the type of dementia a resident has.

(2) Regarding the competency on dementia, depression, and delirium, respond appropriately to residents who have dementia, delirium, and/or depression:

(a) Identify and differentiate between dementia, depression, and delirium;

(b) Describe common symptoms of dementia, depression, and delirium and list possible causes;

(c) Compare and contrast among common symptoms of dementia, depression, and delirium; and

(d) Identify what symptom changes require immediate professional attention and how to access professional help.

(3) Regarding the competency on dementia caregiving principles, incorporate current best practices when providing dementia care:

(a) Identify current best practices in dementia caregiving;

(b) Describe current best practices in caregiving;

(c) Demonstrate the ability to support the resident's strengths using caregiving techniques to support those strengths; and

(d) Describe how to use cultural and life information to develop and enhance care provided to residents with dementia.

(4) Regarding the competency on communicating with people who have dementia, communicate in a respectful and appropriate manner with residents with dementia:

(a) Describe common dementia-caused cognitive losses and how those losses can affect communication;

(b) Identify appropriate and inappropriate nonverbal communication skills and discuss how each impacts a resident's behavior;

(c) Describe how to effectively initiate and conduct a conversation with a resident who has dementia; and

(d) Identify communication strategies to work with residents who have dementia.

(5) Regarding the competency on sexuality and dementia, protect a resident or resident's rights when dealing with issues of sexuality and appropriately manage unwanted or inappropriate sexual behavior:

(a) Identify ways in which dementia affects sexuality and sexual behaviors;

(b) Identify a resident's rights as they relate to sexuality and sexual behavior and discuss ways to support these rights; and

(c) Describe how to respond using nonjudgmental caregiving skills to residents' appropriate and inappropriate sexual behaviors.

(6) Regarding the competency on dealing with challenging behaviors, use a problem-solving approach when dealing with challenging behaviors:

(a) Describe how to use a problem-solving method to intervene in challenging behaviors or situations;

(b) Describe some possible common causes of challenging behaviors, including aggression, catastrophic reactions, wandering, and inappropriate sexual behavior and explore their causes;

(c) Describe how to implement a problem-solving process when working with a resident who has dementia; and

(d) Describe how to respond appropriately to a resident who is expressing a challenging behavior.

(7) Regarding the competency on hallucinations and delusions, respond appropriately when a resident is experiencing hallucinations or delusions:

(a) Define and differentiate between hallucinations and delusions;

(b) List different types of dementia-related hallucinations; and

(c) Describe how to appropriately and safely respond to a resident with dementia who is experiencing hallucinations and delusions.

(8) Regarding the competency on activities of daily living, make activities of daily living pleasant and meaningful:

(a) Identify and describe ways in which to support making activities of daily living pleasant for residents with dementia; and

(b) Describe strategies that support meaning and utilize an individualized approach when assisting a resident with dementia with activities of daily living.

(9) Regarding the competency on working with family and friends, respond respectfully, appropriately, and with compassion when interacting with families and friends of residents with dementia:

(a) Identify common concerns friends and family have when a loved one has dementia;

(b) Describe ways to be supportive and compassionate in interactions with family and friends of the resident with dementia;

(c) Identify how to find local resources for family support needs; and

(d) Describe a method to gather cultural and life history information from a resident and/or representative(s).

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0135 What knowledge and skills must manager mental health specialty training include? ((+))** Manager mental health specialty training must include all of the competencies and learning ((outcomes and)) objectives described in WAC 388-112-0142 plus the following competencies ((published by DSHS for the following core knowledge and skills)):

(1) Medications and mental health:

~~(a) ((Introduction to mental illness)) Medications used with mental disorders;~~

~~(b) ((Culturally compassionate care)) Antipsychotic medications;~~

~~(c) ((Respectful communications)) Anti-mania medications/anticonvulsants;~~

~~(d) ((Understanding mental illness – major mental disorders)) Anti-anxiety medications;~~

~~(e) ((Understanding mental illness – baseline, decompensation, and relapse planning; responses to hallucinations and delusions)) Side effects;~~

~~(f) ((Understanding and interventions for behaviors perceived as problems)) Reporting side effects;~~

~~(g) ((Aggression)) Extrapyramidal side effects;~~

~~(h) ((Suicide;~~

~~(i) Medications;~~

~~(j) Getting help from others; and~~

~~(k) Self-care for caregivers)) Medications to treat mental disorders and their side effects.~~

~~(2) ((The manager mental health specialty training learning outcomes and competencies may be obtained from the DSHS aging and adult services administration)) Getting help and self-care:~~

~~(a) Dealing with mental health issues;~~

~~(b) Dealing with crisis;~~

~~(c) Dealing with the risk of violence;~~

~~(d) Crisis resources;~~

~~(e) Crisis resources (activity);~~

~~(f) Your mental wellness;~~

~~(g) Strategies to cope;~~

~~(h) Who to get help from and what they do.~~

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0140 What ~~((knowledge and skills)) topics must ~~((caregiver)) the long-term care worker mental health specialty training include?~~ (1) ~~((Caregiver)) The long-term care worker mental health specialty training must include all of the ~~((learning outcomes and competencies published by DSHS)) competencies described in WAC 388-112-0142 for the following ~~((core knowledge and skills)) topics:~~~~~~~~**

~~(a) Understanding major mental ~~((disorders)) illnesses;~~~~

~~(b) ~~((Individual)) Resident background, experiences and beliefs;~~~~

~~(c) ~~((Responding to)) Respectful communication;~~~~

~~(d) Creative approaches to challenging behaviors;~~

~~(e) Decompensation~~((;))~~ and relapse~~((;))~~ planning;~~

~~(f) Responding to hallucinations and delusions;~~

~~~~((d)) Interventions for behaviors perceived as problems;~~~~

~~(e)) (g) Crisis intervention and dealing with aggression;~~

and

~~~~((f)) (h) Suicide prevention.~~~~

~~((2) The learning outcomes and competencies for caregiver mental health training may be obtained from the DSHS aging and adult services administration.)~~

#### NEW SECTION

**WAC 388-112-0142 What are the competencies and learning objectives for the long-term care worker mental**

**health specialty training?** The mental health specialty competencies describe the behavior and skills a caregiver or long-term care worker should exhibit when working with residents. Learning objectives are associated with each competency.

(1) Regarding the competency on understanding major mental illnesses, draw upon a basic understanding of mental illness and demonstrate awareness of the unique needs of residents with mental illness:

(a) Define and describe main symptoms of depression, bipolar schizophrenia, and anxiety disorder, and list treatment options for each;

(b) Describe causes of mental illness;

(c) Describe the progression of mental illness;

(d) Identify common myths and misinformation about mental illness; and

(e) Define stigma and identify how stigma can impact caregiving.

(2) Regarding the competency on resident background, experiences and beliefs, provide culturally compassionate and individualized care by utilizing a basic understanding of the resident's history, experience, and cultural beliefs:

(a) Demonstrate a method for gathering cultural, lifestyle, and personal value information from a resident;

(b) Identify why obtaining cultural information from a resident is important;

(c) Describe the importance of being sensitive to cultural differences when providing care;

(d) Differentiate how cultural beliefs and symptoms may be misinterpreted as mental illness; and

(e) Identify how the long-term care worker's culture might affect caregiving.

(3) Regarding the competency on communication and mental illness, communicate respectfully and appropriately with residents with a mental illness:

(a) Identify what is considered respectful and disrespectful communication when interacting with a resident with a mental illness;

(b) Identify what is judgmental communication toward a resident with a mental illness and ways to ensure communication is nonjudgmental;

(c) Identify examples of verbal and nonverbal communication and describe how each impacts communication; and

(d) Describe how to effectively initiate and conduct a respectful conversation with a resident who has a mental illness.

(4) Regarding the competency on creative approaches to challenging behaviors, use a problem-solving approach when dealing with challenging behaviors:

(a) Define and differentiate between inappropriate learned behaviors and symptoms of a mental illness;

(b) Identify possible common causes of challenging behaviors in a resident with a mental illness;

(c) Differentiate how challenging behaviors may be misinterpreted as mental illness; and

(d) Describe intervention strategies that can be used to reduce or prevent challenging behaviors.

(5) Regarding the competency on responding to decompensation and relapse, respond appropriately when a resident is decompensating to help prevent a relapse:

(a) Define the terms baseline, de-compensation, and relapse;

(b) Identify common causes and symptoms of de-compensation and relapse;

(c) Describe the term "relapse plan" and review an example of a relapse plan; and

(d) Identify how a long-term care worker can support and use the relapse plan.

(6) Regarding the competency on responding to hallucinations and delusions, respond appropriately to a resident experiencing hallucinations or delusions:

(a) Define the terms hallucination and delusion;

(b) Identify common triggers (including stress) of delusions and hallucinations;

(c) Identify and describe appropriate intervention strategies for a resident experiencing a hallucination or delusion; and

(d) Describe how to accurately document a resident's behavioral symptoms, interventions, and outcomes.

(7) Regarding the competency on crisis intervention and dealing with aggression, intervene early when dealing with aggressive behavior to increase emotional stability and ensure safety:

(a) Define the term aggression;

(b) Identify the difference between aggressive behaviors and aggressive feelings;

(c) List de-escalation "do's" and "don'ts" as they relate to working with a resident expressing aggressive behavior;

(d) Describe appropriate de-escalation techniques when working with a resident expressing aggressive behavior; and

(e) Differentiate between nonimmediate and immediate danger and at what point additional assistance may be needed.

(8) Regarding the competency on suicide prevention, respond appropriately to a resident at risk of suicide:

(a) Identify and list signs a resident is possibly suicidal;

(b) Describe how to respond appropriately to a resident experiencing suicidal thoughts, including:

(i) How, where, and when to refer a resident who is experiencing suicidal thoughts and/ or planning; and

(ii) Methods to keep a suicidal resident safe and ensure the safety for others.

(c) Describe strategies to help cope with a resident's suicide.

**AMENDATORY SECTION** (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0145 ((Is)) Who is required to complete competency testing ((required)) for specialty training((, including caregiver specialty training))?** Passing the DSHS competency test, as provided under this chapter is required for successful completion of specialty training for:

(1) All adult family home applicants or providers ((and), resident managers (or designees), ((and for)) entity representatives, and long-term care workers; and

(2) All ((boarding home)) assisted living facility administrators (or designees) ((and caregivers, as provided under WAC 388-112-0290 through 388-112-0315. Competency

testing is not required for adult family home caregivers)), and long-term care workers.

**AMENDATORY SECTION** (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0150 Is there a challenge test for specialty training((s)) (including ((caregiver)) the manager and long-term care worker specialty trainings)?** There is a challenge test for ((aH)) each of the specialty trainings((, including caregiver specialty trainings, except the adult family home caregiver training)) except where noted in subsection (2) below.

(1) Individuals may take the DSHS challenge test instead of required specialty training. A person who does not pass a challenge test on the first attempt must attend the class.

(2) A challenge test is not permitted when specialty training is taken to meet the population specifics of basic training per WAC 388-112-0066.

**NEW SECTION**

**WAC 388-112-0152 Is competency testing required for population specific trainings on young adults with physical disabilities, or aging and older adults?** No, there is no competency testing required for the population specific trainings on young adults with physical disabilities, or aging and older adults.

**AMENDATORY SECTION** (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0155 What documentation is required for successful completion of specialty training((, including caregiver specialty training))?** Specialty training((, including caregiver specialty training, as applicable;)) must be documented by a DSHS-issued certificate of successful completion ((of training)), ((issued)) awarded by the instructor or training entity((;)) that includes:

(1) The ((trainee's)) name of the student;

(2) The name of the specialty training;

(3) The number of training hours;

(4) The name and identification number of the home or training entity ((giving the training));

((4)) (5) The instructor's name ((and signature)); and

((5)) (6) The ((date(s) of training)) date of completion.

((6)) (7) The ((trainee)) student must be given an original certificate. The ((home)) employer must keep a copy of the certificate on file.

**AMENDATORY SECTION** (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0160 Who is required to complete manager specialty training, or eighteen hour developmental disability caregiver training, and when? Adult family homes**

(1) Adult family home applicants, providers ((including)), entity representatives ((as defined under chapter 388-76 WAC)) and resident managers must complete manager specialty training or developmental disability caregiver train-

ing, and demonstrate competency before ((admitting and serving residents)) the home is licensed or before a new entity representative or resident manager assumes the duties of the position in order to admit or serve residents who have special needs related to mental illness, dementia, or a developmental disability.

(2) If a resident develops special needs while living in a home without a specialty designation, the provider, entity representative, and resident manager have one hundred twenty days to complete manager specialty training or developmental disability caregiver training, and demonstrate competency.

**((Boarding homes)) Assisted living facilities**

(3) If ~~((a boarding home))~~ an assisted living facility serves one or more residents with special needs, the ~~((boarding home))~~ assisted living facility administrator (or designee) must complete manager specialty training or developmental disability caregiver training, and demonstrate competency within one hundred twenty days of ~~((employment or within one hundred twenty days of September 1, 2002, whichever is later))~~ date of hire. ~~((A boarding home))~~ An assisted living facility administrator with a current nursing home administrator license is exempt from this requirement, unless the administrator will train ((their facility caregivers)) the facility's long-term care workers in a ((caregiver)) specialty.

(4) If a resident develops special needs while living in ~~((a boarding home))~~ an assisted living facility, the ~~((boarding home))~~ assisted living facility administrator (or designee) has one hundred twenty days to complete manager specialty training and demonstrate competency. ~~((A boarding home))~~ An assisted living facility administrator with a current nursing home administrator license is exempt from this requirement, unless the administrator will train ((their facility caregivers)) the facility's long-term care workers in a ((caregiver)) specialty.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0165 Who is required to complete ((caregiver)) specialty training, and when? ((Adult family homes))**

~~((If an adult family home serves one or more residents with special needs, all caregivers must receive training regarding the specialty needs of individual residents in the home. The provider or resident manager knowledgeable about the specialty area may provide this training.))~~

**((Boarding homes))**

If ~~((a boarding home))~~ an assisted living facility or adult family home serves one or more residents with special needs, ~~((caregivers))~~ long-term care workers in those settings must complete ~~((caregiver))~~ specialty training and demonstrate competency.

(1) If the ~~((caregiver))~~ specialty training is integrated with basic training, ~~((caregivers))~~ long-term care workers must complete the ~~((caregiver))~~ specialty training within one hundred twenty days of ((when they begin providing hands-on personal care to a resident having special needs or within one hundred twenty days of September 1, 2002, whichever is later)) hire.

~~((2))~~ ~~((If the caregiver specialty training is not integrated with basic training, caregivers))~~ Long-term care workers who are exempt from basic training must complete the relevant ((caregiver)) specialty training within ninety days of ((completing basic training)) hire.

(3) Until competency in the ~~((caregiver))~~ specialty training has been demonstrated, ~~((caregivers))~~ long-term care workers may not provide ~~((hands-on))~~ personal care to a resident with special needs without direct supervision in an assisted living facility or in an adult family home.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0170 What is nurse delegation core training?** Nurse delegation core training is required before a nursing assistant certified or registered or certified home care aide may be delegated a nursing task. DSHS approves instructors for nurse delegation core training.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0195 Who is required to complete nurse delegation core training and nurse delegation specialized diabetes training, and when? ((Adult family homes))**

(1) Before performing any delegated nursing task, long-term care workers in adult family ((home staff)) homes and assisted living facilities must:

(a) Successfully complete DSHS-designated nurse delegation core training, "Nurse Delegation for Nursing Assistants";

(b) Be a:

(i) Certified home care aide under chapter 18.88B RCW ((nursing assistant registered)); or

(ii) Nursing assistant certified under chapter 18.88A RCW; ((and)) or

(iii) If exempt from the home care aide certification under WAC 246-980-070, become a nursing assistant registered and complete the core competencies of basic training, unless the twenty eight hours of revised fundamentals of care or a department approved alternative was already completed.

(iv) If nurse delegation is needed to implement a care plan earlier than home care aide certification can be obtained, become a nursing assistant registered and complete core competencies of basic training.

~~((c))~~ ~~((If a nursing assistant registered, successfully complete basic training.~~

**Boarding homes))**

(2) Before performing ~~((any delegated nursing task, boarding home staff))~~ the task of insulin injections, long-term care workers in adult family homes and assisted living facilities must:

(a) ~~((Successfully complete DSHS-designated nurse delegation core training))~~ Meet the requirements in subsections (1)(a) and (b) of this section; and

(b) ~~((Be a nursing assistant registered or certified under chapter 18.88A RCW; and~~

~~(e) If a nursing assistant registered, successfully complete basic training)) Successfully complete DSHS-designated specialized diabetes nurse delegation training.~~

AMENDATORY SECTION (Amending WSR 09-03-066, filed 1/14/09, effective 2/14/09)

**WAC 388-112-0196 What is specialized diabetes nurse delegation training?** Specialized diabetes nurse delegation training is the required training for nursing assistants, certified or registered or certified home care aides, who will be delegated the task of insulin injections. DSHS approves the instructors for specialized diabetes nurse delegation training.

NEW SECTION

**WAC 388-112-0197 Can nurse delegation core and specialized diabetes training occur in the same year as basic training?** Nurse delegation core and specialized diabetes training can occur in the same year as basic training if required to be able to perform delegated tasks. If this occurs, the maximum of twelve hours for this training can be applied towards the continuing education requirement for the following year. Nurse delegation core and specialized diabetes trainings do not apply towards the basic training.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0200 What is continuing education?** (1) Continuing education is ((additional caregiving-related)) annual training designed to increase ((and keep current)) a ((person's)) caregiver's knowledge and skills. DSHS ((does not preapprove)) must approve continuing education ((programs or instructors)) curriculums and instructors. The same continuing education course may not be repeated for credit unless it is a new or more advanced training on the same topic. The exceptions to this are:

- (a) Blood borne pathogens.
- (b) CPR training.
- (c) First aid training.
- (d) Food handling training.
- (e) When the assisted living facility or adult family home can demonstrate a need for retraining.

(2) Nurse delegation core and nurse delegation specialized diabetes training may be used to count towards continuing education.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0205 Who is required to complete continuing education training, and how many hours of continuing education are required each year? (1) Adult family homes**

~~((1) Individuals subject to a continuing education requirement)) (a) From January 1, 2012 through June 30, 2012, adult family home providers, entity representatives, resident managers, and long-term care workers whose birth date is within these dates and the required basic training was~~

~~previously completed must complete ((at least)) ten hours of continuing education ((each calendar year (January 1 through December 31) after the year in which they successfully complete basic or modified basic training)). If ten hours of continuing education were completed between January 1, 2012 through June 30, 2012 for any one listed above, regardless of birth date, then the continuing education requirements have been met for 2012.~~

~~((2)) (b) Effective July 1, 2012, certified home care aides must complete twelve hours of continuing education each year after obtaining certification as described in RCW 74.39A.341.~~

~~(c) If exempt from certification as described in RCW 18.88B.041, all long-term care workers must complete twelve hours of continuing education per year.~~

~~(d) Continuing education must include one-half hour per year on safe food handling in adult family homes described in RCW 70.128.250.~~

(2) Assisted living facilities

(a) From January 1, 2012 through June 30, 2012, assisted living facility administrators (or their designees) and long-term care workers whose birthdate is within these dates and the required basic training was previously completed must complete ten hours of continuing education. If ten hours of continuing education were completed between January 1, 2012 through June 30, 2012, for any one listed above, regardless of birthdate then the continuing education requirements have been met for 2012.

(b) Effective July 1, 2012, certified home care aides must complete twelve hours of continuing education each year after obtaining certification as described in RCW 74.39A.341.

(c) Long-term care workers exempt from certification under RCW 18.88.041, must complete twelve hours of continuing education per year. An assisted living facility administrator with a current nursing home administrator license is exempt from this requirement.

(3) A long-term care worker who does not complete continuing education as required in subsections (1)(a) and (b) and (2)(a) and (b) of this section or in RCW 74.39A.341 cannot be paid to provide care until the required continuing education is completed.

(4) One hour of completed classroom instruction or other form of training (such as ((a video or)) an on-line course) equals one hour of continuing education. For on-line courses, the training entity must establish a way for the long-term care worker to ask the instructor questions.

NEW SECTION

**WAC 388-112-0207 When must a long-term care worker complete continuing education?** (1) Effective July 1, 2012, all long-term care workers must complete the continuing education requirements described in WAC 388-112-0205 by their birthday.

(2) For long-term care workers who are required to be certified, if the first renewal period is less than a full year from the date of certification, no continuing education will be due for the first renewal period.

AMENDATORY SECTION (Amending WSR 06-01-046, filed 12/15/05, effective 1/15/06)

**WAC 388-112-0210** ~~What ((kinds of training)) topics ((are required for)) may be covered in continuing education?~~ Continuing education must be on a topic relevant to the care setting ~~((and)), care needs of residents, ((including)) or long-term care worker career development.~~ Topics or courses may include but are not limited to:

- (1) Resident rights, such as freedom from abuse, neglect, abandonment and financial exploitation;
- (2) Personal care ~~((such as transfers or skin care))~~ services;
- (3) Mental illness;
- (4) Dementia;
- (5) Developmental disabilities;
- (6) Depression;
- (7) Medication assistance;
- (8) Communication skills;
- (9) Positive resident behavior support;
- (10) Developing or improving resident centered activities;
- (11) Dealing with wandering or aggressive resident behaviors;
- (12) Medical conditions; ~~((and))~~
- (13) ~~((In adult family homes,))~~ Safe food handling, CPR and First aid described in WAC 388-112-0255 and 388-112-0260; and
- (14) Nurse delegation core and specialized diabetes.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0225** May specialty training be used to meet continuing education requirements? Manager specialty training and ~~((caregiver))~~ long-term care worker specialty training, except ((any specialty training)) if completed through a challenge test, may be used to meet continuing education requirements.

~~((1))~~ If one or more specialty trainings are completed in the same year as basic or modified basic training, the specialty training hours may be applied toward the continuing education requirement for up to two calendar years following the year of completion of the basic and specialty trainings.

~~(2)~~ If one or more specialty trainings are completed in a different year than the year when basic or modified basic training was taken, the specialty training hours may be applied toward the continuing education requirement for the calendar year in which the specialty training is taken and the following calendar year)) When hours from a specialty training are counted toward basic training requirements, the hours may not be counted toward continuing education. Additional hours not used to meet the basic training requirement may be applied toward the continuing education requirement.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0235** May residential care administrator training be used to meet continuing education requirements? Residential care administrator training under

WAC ~~((388-112-0275))~~ 388-112-0270 may be used to meet ~~((ten hours of))~~ the continuing education requirements described in WAC 388-112-0205 during the year it was completed.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0240** What are the documentation requirements for continuing education? (1) The adult family home or ~~((boarding home))~~ assisted living facility must maintain ((documentation of continuing education including)) written documentation of department approved continuing education in the form of a certificate or transcript:

- (a) The ~~((trainee's))~~ name of the student;
- (b) The title ~~((or content))~~ of the training;
- (c) The number of hours of the training;
- (d) The assigned curriculum approval code;
- (e) The instructor's name((:)) and signature;
- (f) The name of the home or training entity giving the training((, or the name of the video, on-line class, professional journal, or equivalent instruction materials completed)); and
- ~~((d))~~ The number of hours of training; and))
- ~~((e))~~ (g) The date(s) of training.

(2) The ~~((trainee))~~ student must be given an original certificate or other documentation of continuing education. The adult family home or assisted living facility must keep a copy of the certificate or transcript on file as described in WAC 388-76-10198 (for adult family homes) and as described in WAC 388-78A-2450 (for assisted living facilities).

AMENDATORY SECTION (Amending WSR 06-01-046, filed 12/15/05, effective 1/15/06)

**WAC 388-112-0255** What is CPR/first-aid training? CPR/first-aid training is training that meets the guidelines established by the Occupational Safety and Health Administration (OSHA) ((and listed at www.osha.gov)). Under OSHA guidelines, training must include hands-on skills development through the use of mannequins or trainee partners. ((Topics include:

- (1) General program elements, including:
  - (a) Responding to a health emergency;
  - (b) Surveying the scene;
  - (c) Basic cardiopulmonary resuscitation (CPR);
  - (d) Basic first aid intervention;
  - (e) Standard precautions;
  - (f) First aid supplies; and
  - (g) Trainee assessments.
- (2) Type of injury training, including:
  - (a) Shock;
  - (b) Bleeding;
  - (c) Poisoning;
  - (d) Burns;
  - (e) Temperature extremes;
  - (f) Musculoskeletal injuries;
  - (g) Bites and stings;
  - (h) Confined spaces; and
  - (i) Medical emergencies; including heart attack, stroke, asthma attack, diabetes, seizures, and pregnancy.

(3) Site of injury training, including:

- (a) Head and neck;
- (b) Eye;
- (c) Nose;
- (d) Mouth and teeth;
- (e) Chest;
- (f) Abdomen; and
- (g) Hand, finger and foot.

(4) Successful completion of first-aid training, following the OSHA guidelines, also serves as proof of the CPR training.)

AMENDATORY SECTION (Amending WSR 06-01-046, filed 12/15/05, effective 1/15/06)

**WAC 388-112-0260 What are the CPR and first-aid training requirements? (1) Adult family homes**

((+)) (a) Adult family home applicants, providers, entity representatives, and resident managers must possess a valid CPR and first-aid card or certificate prior to (~~providing care for residents~~) obtaining a license, and must maintain a valid (~~cards~~) card or (~~certificates~~) certificate.

((2)) (b) Licensed nurses working in adult family homes must possess a valid CPR card or certificate within thirty days of (~~employment~~) date of hire and must maintain a valid card or certificate. If the licensed nurse is an adult family home provider or resident manager, the valid CPR card or certificate must be obtained prior to providing care for residents.

((3)) (c) Adult family home (~~caregivers~~) long-term care workers must obtain and maintain a valid CPR and first-aid card or certificate:

((a)) (i) Within thirty days of beginning to provide care for residents, if the provision of care for residents is directly supervised by a fully qualified (~~caregiver~~) long-term care worker who has a valid first-aid and CPR card or certificate; or

((b)) (ii) Before providing care for residents, if the provision of care for residents is not directly supervised by a fully qualified (~~caregiver~~) long-term care worker who has a valid first-aid and CPR card or certificate.

~~(Boarding homes)~~ (2) **Assisted living facilities**

((4) ~~Boarding home~~) (a) Assisted living facility administrators who provide direct care, and (~~caregivers~~) long-term care workers must possess a valid CPR and first-aid card or certificate within thirty days of (~~employment~~) date of hire, and must maintain valid cards or certificates. Licensed nurses working in (~~boarding homes~~) assisted living facility must possess a valid CPR card or certificate within thirty days of (~~employment~~) date of hire, and must maintain a valid card or certificate.

AMENDATORY SECTION (Amending WSR 07-01-045, filed 12/14/06, effective 1/14/07)

**WAC 388-112-0270 Who must take the (~~forty-eight hour~~) adult family home residential care administrator training and when?** (~~Providers licensed prior to December 31, 2006. Before operating more than one adult family home, the provider (including an entity representative as defined under chapter 388-76 WAC) must successfully complete the~~

~~department approved forty-eight hour residential care administrator training.~~

Prospective providers applying for a license after January 1, 2007: Before a license for an adult family home is granted, the prospective provider)) All applicants for an adult family home license must successfully complete the department approved (~~forty-eight hour~~) residential care administrator training for adult family homes.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0280 Is competency testing required for adult family home residential care administrator training?** Competency testing is (~~not~~) required for adult family home residential care administrator training.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0295 What components must competency testing include?** Competency testing must include the following components:

(1) Skills demonstration (see subsection 2 of this section) of ability to perform and/or implement specific caregiving approaches, and/or activities as appropriate for the training;

(2) Adult family home residential care administrator training does not contain a skills demonstration. Student's progress and knowledge will be measured by assigned projects and other means of measuring competency.

(3) Written evaluation to show level of comprehension and knowledge of the learning (~~outcomes~~) objectives for the training; and

((3)) (4) A scoring guide for the tester with clearly stated criteria and minimum proficiency standards.

(5) Instructors who conduct competency testing must have experience or training in assessing competencies.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0300 What training must include the DSHS-developed competency test?** (~~Basic, modified basic, manager specialty, caregiver specialty, and nurse delegation core training must include the DSHS-developed competency test~~) The following trainings must include the DSHS-developed competency test:

(1) Manager dementia specialty training;

(2) Manager mental health specialty training;

(3) Long-term care worker dementia specialty training;

(4) Long-term care worker mental health specialty training;

(5) Developmental disabilities specialty training;

(6) Adult family home residential care administrator training;

(7) Nurse delegation core training; and

(8) Nurse delegation specialized diabetes training.

AMENDATORY SECTION (Amending WSR 06-01-046, filed 12/15/05, effective 1/15/06)

**WAC 388-112-0315 How many times may a competency test be taken?** (1) A competency test that is part of a course may be taken twice. If the test is failed a second time, the person must retake the course before any additional tests are administered. ~~((Licensed adult family providers and employees who fail the food handling section of the basic training competency test a second time, must obtain a valid food worker permit.))~~

(2) If a challenge test is available for a course, it may be taken only once. If the test is failed, the person must take the classroom course.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0320 ~~((What))~~ Which trainings ~~((must be taught with a))~~ require department approval of the curriculum ~~((approved by DSHS))~~ and instructor?** (1) Except for facility orientation training under WAC 388-112-0015(1) the ~~((following trainings must be taught using the DSHS curriculum or other curriculum approved by DSHS:~~

- ~~(a) Basic;~~
- ~~(b) Modified basic;~~
- ~~(c) Manager mental health, dementia, and developmental disabilities specialty training;~~
- ~~(d) Caregiver specialty training in boarding homes; and~~
- ~~(e) Any training that integrates basic training with a manager or caregiver specialty training.~~

~~(2) The residential care administrator training must use a curriculum approved by DSHS.~~

~~(3))~~ department must preapprove the curriculum and instructors for all training required under this chapter.

(2) The nurse delegation core and diabetes training must use only the DSHS curriculum.

~~((4))~~ (3) ((A curriculum other than the DSHS curriculum must be approved before it is used. An attestation that the curriculum meets all requirements under this chapter will be sufficient for initial approval. Final)) Approval will be based on curriculum review, as described ~~((under))~~ in WAC 388-112-0330.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0325 What ~~((are the minimum components that an alternative curriculum must include in order to be approved))~~ must be submitted to DSHS for curriculum approval?** ~~((In order to be approved, an alternative curriculum must at a minimum include:~~

~~(1) All the DSHS published learning outcomes and competencies for the course;~~

~~(2) Printed student materials that support the curriculum, a teacher's guide or manual, and learning resource materials such as learning activities, audio-visual materials, handouts, and books;~~

~~(3) The recommended sequence and delivery of the material;~~

~~(4) The teaching methods or approaches that will be used for different sections of the course, including for each lesson:~~

~~(a) The expected learning outcomes;~~

~~(b) Learning activities that incorporate adult learning principles and address the learning readiness of the student population;~~

~~(c) Practice of skills to increase competency;~~

~~(d) Feedback to the student on knowledge and skills;~~

~~(e) An emphasis on facilitation by the teacher; and~~

~~(f) An integration of knowledge and skills from previous lessons to build skills.~~

~~(5) A list of the sources or references, if any, used to develop the curriculum;~~

~~(6) Methods of teaching and student evaluation for students with limited English proficiency and/or learning disabilities; and~~

~~(7) A plan for updating material. Substantial changes to a previously approved curriculum must be approved before they are used))~~ A department developed curriculum does not require submission to the department for approval unless the curriculum is being modified in any manner by the training entity.

**(1) For orientation and/or safety training:**

Effective January 7, 2012, submit an outline of what will be covered in each training offered (for example, a table of contents or a class syllabus) showing where the required introductory topics as listed in WAC 388-112-0016 for orientation and WAC 388-112-0019 for safety training are covered in the training. Department required orientation and safety training application forms must be submitted to the department at least forty-five days in advance of when the training is expected to be offered. Training cannot be offered before receiving department curriculum and instructor approval.

**(2) For continuing education:**

(a) Continuing education curriculum delivery models will only include instructor led, on-line instructor led, or on-line self-paced learning with access to an instructor;

(b) Effective July 1, 2012, for instructor led and on-line learning, submit a summary that includes the topic, a brief description of what it will cover, a course outline, the number of training hours, and a description of how the training is relevant to the care setting, care needs of residents, or long-term care worker career development.

(c) For on line training courses, the information requested in (2)(a) and a description of how the instructor or training will assess that the students have integrated the information being taught must be submitted.

(d) Department required continuing education training application forms must be submitted at least forty five days in advance of when the training is expected to be offered. The trainings cannot be offered before receiving department curriculum and instructor approval.

**(3) For basic training:**

(a) If the instructor or training entity will use the DSHS developed revised fundamentals of caregiving learner's guide with enhancements, submit the DSHS form with all required information.

(b) If a DSHS developed revised fundamentals of caregiving learner's guide with enhancements, is not used to teach

seventy hours required for basic training, the following must be submitted to DSHS for approval:

(i) A completed DSHS curriculum checklist indicating where all of the competencies and learning objectives, described in this chapter, are located in the long-term care worker materials from the proposed curriculum for that course;

(ii) Any materials long-term care workers will receive, such as a textbook or long-term care worker manual, learning activities, audio-visual materials, handouts, and books;

(iii) The table of contents or outline of the curriculum, including the allotted time for each section;

(iv) Demonstration skills checklists for the personal care tasks described in WAC 388-112-0055 (12)(a) and (b), and infection control skills (hand washing and putting on and taking off gloves);

(v) The teacher's guide or manual that includes for each section of the curriculum:

(A) The goals and objectives;

(B) Method of teaching, including learning activities that incorporate adult learning principles;

(C) Methods used to determine whether each long-term care worker understands the materials covered and can demonstrate all skills;

(D) A list of the sources or references that were used to develop the curriculum. If the primary source or reference is not a published citation, the instructor must provide detail on how the content was established as evidence based;

(E) Description of how the curriculum was designed to accommodate long-term care workers with limited English proficiency and/or learning disabilities; and

(F) Description and proof of how input was obtained from consumer and long-term care worker representatives in the development of the curriculum.

(c) In addition, for curriculum being submitted for the core competency section of basic training as described in WAC 388-112-0055, the curriculum must include how much time students will be given to practice skills and how instructors will evaluate and ensure each long-term care worker can proficiently complete each skill.

(d) Entities submitting curriculum for population specific basic training must submit their own list of competencies and learning objectives used to develop the population specific basic training curriculum.

**(4) For specialty training:**

For specialty training that is not the DSHS developed curriculum or other department approved curriculum, submit the required specialty training application form and any additional learning objectives added to the competency and learning objectives checklist, the enhancements that have been added, and additional student materials or handouts. To be approved, an alternative curriculum must at a minimum include:

(a) All the DSHS-published learning outcomes and competencies for the course;

(b) Printed student materials that support the curriculum, a teacher's guide or manual, and learning resource materials such as learning activities, audio-visual materials, handouts, and books;

(c) The recommended sequence and delivery of the material;

(d) The teaching methods or approaches that will be used for different sections of the course, including for each lesson:

(i) Learning activities that incorporate adult learning principles and address the learning readiness of the student population;

(ii) Practice of skills to increase competency;

(iii) Feedback to the student on knowledge and skills;

(iv) An emphasis on facilitation by the teacher; and

(v) An integration of knowledge and skills from previous lessons to build skills.

(e) A list of the sources or references, if any, used to develop the curriculum;

(f) Methods of teaching and student evaluation for students with limited English proficiency and/or learning disabilities;

(g) A plan for updating material;

(h) Substantial changes to a previous approved curriculum must be approved before they are used.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0330 What is the curriculum approval process for orientation, safety, basic training (core and population specific training), and continuing education?** ~~((1))~~ An alternative curriculum must be submitted to DSHS for approval with:

~~(a) Identification of where each DSHS-published required learning outcome and competency is located in the alternate curriculum;~~

~~(b) All materials identified in WAC 388-112-0325; and~~

~~(c) A letter from the boarding home administrator or adult family home provider attesting that the training curriculum addresses all of the training competencies identified by DSHS;~~

~~(2) DSHS may approve a curriculum based upon the attestation in (1)(c) above, until it has been reviewed by DSHS;~~

~~(3) If, upon review by DSHS, the curriculum is not approved, the alternative curriculum may not be used until all required revisions have been submitted and approved by DSHS.~~

~~(4))~~ In order to obtain the department's approval of the curriculum for orientation, safety, basic training (core and population specific training), and continuing education:

(1) Submit the required training application forms and any other materials required for specific curriculums to the department.

(2) After review of the ~~((alternative))~~ curriculum, DSHS will send a written response to the submitter, indicating approval or disapproval of the curriculum ~~((and if disapproved, the reasons for denial;))~~.

~~((5))~~ (3) If curriculum are not approved, the reason(s) for denial will be given and the submitter will be told what portion(s) of the training must be changed and resubmitted for review in order for the curriculum to be approved.

(4) The submitter can make the requested changes and resubmit the curriculum for review.

(5) If after working with the department the ~~((alternative curriculum is not approved, a revised curriculum may be resubmitted to DSHS for another review))~~ reasons why the curriculum is not approved cannot be resolved, the submitter may seek a review of the nonapproval decision from the assistant secretary of aging and disability services administration (ADSA). The assistant secretary's review decision shall be the final decision of DSHS. No other administrative review is available to the submitter.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0335** What are the requirements for ~~((a boarding home))~~ an assisted living facility or adult family home ~~((that wishes))~~ to conduct orientation, safety, basic, ~~((modified basic, manager specialty, or caregiver))~~ on-the-job training, continuing education, or long-term care worker specialty training? (1) ~~((A boarding home))~~ An assisted living facility provider or adult family home provider ~~((wishing to))~~ may conduct orientation, safety, basic, ~~((modified basic, manager specialty))~~ on-the-job training, continuing education, or ~~((caregiver))~~ long-term care worker specialty training ~~((for boarding home caregivers may do so))~~ if the ~~((home))~~ provider:

(a) Verifies ~~((and))~~, documents using the department's attestation process, keeps on file, and makes available to the department upon request that all instructors meet ~~((each of))~~ the minimum instructor qualifications in WAC 388-112-0370 through 388-112-0395 for the course they plan to teach;

(b) Teaches using a complete DSHS-developed or approved ~~((alternative))~~ curriculum.

(c) Notifies DSHS in writing of the ~~((home's))~~ provider's intent to conduct staff training prior to providing the ~~((home's))~~ provider's first training, and when changing training plans, including:

(i) ~~((Home))~~ The provider's name;

(ii) Name of training(s) the ~~((home))~~ provider will conduct;

(iii) Name of approved ~~((curriculum(s)))~~ curriculum the ~~((home))~~ provider will use;

(iv) Name of lead instructor and instructor's past employment in ~~((boarding homes and))~~ assisted living facility or adult family homes; and

(v) Whether the ~~((home))~~ provider will train only the ~~((home's))~~ provider's staff, or will also train staff from other ~~((homes))~~ providers. If training staff outside the home or corporation, the instructor must become a DSHS-contracted community instructor;

(d) Ensures that DSHS competency tests are administered as required under this chapter;

(e) Provides a certificate or transcript of completion of training to all staff that successfully complete the entire course~~(, including:~~

(i) The trainee's name;

(ii) The name of the training;

(iii) The name of the home giving the training;

(iv) The instructor's name and signature; and

(v) The date(s) of training);

(f) Keeps a copy of ~~((student))~~ long-term care worker certificates on file for six years, and gives the original certificate to the ~~((trainee))~~ student; and

(g) ~~((Keeps attendance records and testing records of students trained and tested on file for six years; and~~

~~((h)))~~ Reports training data to DSHS ~~((in DSHS-identified time frames))~~ when requested by the department.

(2) ~~((An adult family home wishing to conduct caregiver specialty training that is taught by the provider, resident manager, or person knowledgeable about the specialty area, as required under WAC 388-112-0110 subsection (3), must document the specialty training as provided under WAC 388-112-0155))~~ The department may conduct a random audit at any time to review training and instructor qualifications.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0345** When can DSHS prohibit a home from conducting its own training? DSHS may prohibit a home from providing its own basic, ~~((modified basic,))~~ specialty, ~~((or caregiver specialty))~~ and continuing education training when:

(1) DSHS determines that the training fails to meet the standards under this chapter;

(2) The home fails to notify DSHS of changes in the curriculum prior to teaching the curriculum;

(3) The home provides false or misleading information to long-term care workers or the public concerning the courses offered or conducted;

(4) The home's ~~((instructor does not))~~ instructor(s) fail to meet the applicable qualifications described under ~~((WAC 388-112-0375 through 388-112-0395))~~ this chapter; or

~~((5))~~ (5) The home's instructor has been a licensee, ~~((boarding home))~~ assisted living facility administrator, or adult family home resident manager, ~~((as applicable,))~~ of any home subject to temporary management or subject to a revocation or summary suspension of the home's license, a stop placement of admissions order, a condition on the license related to resident care, or a civil fine of five thousand dollars or more, while the instructor was the licensee, administrator, or resident manager; or

~~((6))~~ (6) The home has been operated under temporary management or has been subject to a revocation or suspension of the home license, a stop placement of admissions order, a condition on the license related to resident care, or a civil fine of five thousand dollars or more, within the previous ~~((twelve))~~ eighteen months.

~~((7))~~ (7) Nothing in this section shall be construed to limit ~~((DSHS' authority))~~ the authority of DSHS under ~~((chapters 388-76 or 388-78A WAC))~~ this chapter to require the immediate enforcement, pending any appeal, of a condition on the home license prohibiting the home from conducting its own training programs.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0355** What are ~~((an instructor's or))~~ the training entity's responsibilities? The ~~((instructor or))~~ training entity is responsible for:

- (1) Coordinating and teaching classes~~(s)~~;
- (2) Assuring that the curriculum used is taught as designed~~(s)~~;
- (3) Selecting qualified guest speakers where applicable~~(s)~~;
- (4) Establishing a method whereby the long-term care worker can ask the instructor questions;
- (5) Administering or overseeing the administration of DSHS competency and challenge tests~~(s)~~;
- ~~((5))~~ (6) Maintaining training records including ((student)) long-term care worker tests, certificates and attendance records for a minimum of six years~~(s)~~;
- ~~((6))~~ (7) Reporting training data to DSHS ((in DSHS-identified time frames,)) when requested by the department; and
- ~~((7))~~ (8) Issuing or reissuing training certificates to ((students)) long-term care workers.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0360 Must training entities and their instructors be approved by DSHS?** (1) DSHS-contracted ~~((instructors))~~ training entities:

(a) DSHS must approve ~~((any))~~ and/or contract with a training entity and their instructor(s) ((under contract with DSHS)) to conduct orientation, safety, basic, ((modified basic,)) population specific, residential care administrator, manager and long-term care worker specialty, ((or)) nurse delegation core and specialized diabetes training ((classes using the training curricula developed by DSHS)), on-the-job training, and continuing education.

(b) DSHS may select~~((contracted instructors through a purchased services contract procurement pursuant to chapter 236-48 WAC or through other))~~ training entities using any applicable contracting procedures. Contractors must meet the minimum qualifications for instructors under this chapter and any additional qualifications established through ((a request for qualifications and quotations (RFQQ) or other applicable)) the contracting procedure.

(2) Homes conducting their own training  
~~((Homes conducting their own training))~~ programs using the training ~~((curricula))~~ curriculums developed by DSHS or ~~((alternative curricula))~~ another curriculum approved by DSHS must ensure, through an attestation process, that their instructors meet the minimum qualifications for instructors under this chapter.

(3) ~~((Other instructors))~~  
DSHS must approve all other training entities and their instructor(s) not described in subsection (1) and (2) of this section.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0365 Can DSHS deny or terminate a contract ~~((with))~~ or rescind approval of an instructor or training entity?** (1) DSHS may ~~((determine not to accept a bid or other offer by))~~ deny a person or organization seeking a contract with or approval by DSHS to conduct orientation, safety, basic, ((modified basic,)) population specific, residen-

tial care administrator, specialty, continuing education, or nurse delegation core or specialized diabetes training ((classes using the training curricula developed by DSHS. The protest procedures under chapter 236-48 WAC, as applicable, are a bidder's exclusive administrative remedy)). No administrative remedies are available to dispute ~~((DSHS'))~~ the decision not to ((accept an offer that is not governed by chapter 236-48 WAC)) contract with or approve of a person or organization, except as may be provided through the contracting process.

(2) DSHS may terminate ~~((any))~~ an existing training contract in accordance with the terms of the contract. The contractor's administrative remedies shall be limited to those specified in the contract.

(3) DSHS may terminate an existing training approval of a person or entity to conduct orientation, safety, basic, modified basic, population specific, residential care administrator, specialty, continuing education, or nurse delegation core or diabetes training.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0370 What is a guest speaker, and what are the minimum qualifications to be a guest speaker ~~((for basic and developmental disabilities specialty training))~~?** (1) A guest speaker ((s for basic and developmental disabilities specialty training)) is a person selected by an approved instructor to teach a specific topic. A guest speaker:

(a) May only teach a specific subject in which they have expertise, ((under the supervision of the instructor. A guest speaker must have as minimum qualifications, an appropriate)) and the background and experience ((that)) demonstrates ((that)) the guest speaker has expertise on the topic he or she will teach.

(b) May not teach the entire course;

(c) Must not supplant the primary teaching responsibilities of the primary instructor; and

(d) Must cover the DSHS competencies and learning objectives for the topic he or she is teaching.

(2) The approved instructor:

(a) Must select guest speakers ((that meet the minimum qualifications, and)) based on the guest speaker's knowledge and experience in the specific topic;

(b) Maintain documentation of ((this background)) the guest speaker's qualifications and/or experience;

(c) Supervise and monitor the guest speaker's performance; and

(d) Is responsible for insuring the required content is taught.

(3) DSHS does not approve guest speakers.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0380 What are the minimum qualifications for ~~((an instructor for basic or modified basic))~~ an instructor for basic, population specific, on-the-job training, residential care administrator, and nurse delegation core and specialized diabetes training? An instructor for**

basic ~~((or modified basic))~~, population specific, on-the-job training, residential care administrator, nurse delegation core and nurse delegation specialized diabetes training must meet the following minimum qualifications ~~((in addition to the general instructor qualifications in WAC 388-112-0375))~~:

- (1) Twenty-one years of age;
- (2) Has not had a professional health care, adult family home, assisted living facility, or social services license or certification revoked in Washington state; and
- (3) Has education and work experience~~((=))~~.
  - (a) Upon initial approval or hire, an instructor must ~~((have))~~:
    - (i) Be a registered nurse with work experience within the last five years with the elderly or persons with disabilities requiring long-term care in a community setting; or
    - (ii) Have an associate degree or higher degree in the field of health or human services and six months professional or caregiving experience within the last five years in a community based setting or an adult family home, assisted living facility, supported living through DDD, or home care setting; or
    - (iii) Have a high school diploma, or equivalent, and one year of professional or caregiving experience within the last five years in an adult family home, ~~((boarding home))~~ assisted living, supported living through DDD ~~((per chapter 388-820 WAC)), or home care setting~~~~((= or~~
      - (ii) An associate degree in a health field and six months professional or caregiving experience within the last five years in an adult family home, boarding home, supported living through DDD per chapter 388-820 WAC, or home care setting~~((=))~~.
  - (~~((2))~~) (4) Teaching experience:
    - (a) Must have one hundred hours of experience teaching adults in an appropriate setting on topics directly related to the basic training; or
    - (b) Must have forty hours of teaching while being mentored by an instructor who meets these qualifications, and must attend a class ~~((in))~~ on adult education that meets the requirements of WAC 388-112-0400.
  - (~~((3))~~) (5) The instructor must be experienced in caregiving practices and capable of demonstrating competency with respect to teaching the course content or units being taught;
  - (~~((4))~~) (6) Instructors who will administer tests must have experience or training in assessment and competency testing; and
    - (~~((5))~~) ~~If required under WAC 388-112-0075 or 388-112-0105, instructors must successfully complete basic or modified basic training prior to beginning to train others.~~
  - (7) In addition, an instructor for nurse delegation core and diabetes training must have a current Washington state RN license in good standing without practice restrictions.

#### NEW SECTION

**WAC 388-112-0383 What are the minimum qualifications for an instructor for orientation, safety, and continuing education?** An instructor for orientation, safety, and continuing education must be a registered nurse or other person with specific knowledge, training, and work experience in the provision of direct, ~~((hands-on))~~ personal care or other

relevant services to the elderly or persons with disabilities requiring long-term care.

**Reviser's note:** The unnecessary strike through in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**AMENDATORY SECTION** (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0385 What are the minimum qualifications for instructors for manager and ~~((caregiver)) long-term care worker mental health specialty training?~~**

(1) ~~((Instructors for manager mental health specialty training;))~~ The minimum qualifications for instructors for **manager mental health specialty**, in addition to the general qualifications in WAC ~~((388-112-0375))~~ 388-112-0380 (1) and (2) include:

(a) The instructor must be experienced in mental health caregiving practices and capable of demonstrating competency in the entire course content;

(b) Education:

(i) Bachelor's degree, registered nurse, or mental health specialist, with at least one year of education in seminars, conferences, continuing education, or in college classes, in subjects directly related to mental health, such as, but not limited to, psychology. (One year of education equals twenty-four semester hours, thirty-six quarter hours, or at least one hundred ninety-two hours of seminars, conferences, and continuing education.)

(ii) If required ~~((under))~~ by WAC 388-112-0160, successful completion of the mental health specialty training, prior to beginning to train others.

(c) Work experience - Two years full-time equivalent direct work experience with people who have a mental illness; and

(d) Teaching experience:

(i) Two hundred hours experience teaching mental health or closely related subjects; and

(ii) Successful completion of an adult education class ~~((or train the trainer as follows))~~:

(A) For instructors teaching alternate ~~((curricula))~~ curricula, a class in adult education that meets the requirements of WAC 388-112-0400 ~~((= or a train the trainer class for the curriculum they are teaching;))~~.

(~~((B))~~) (iii) For instructors teaching ~~((DSHS-developed))~~ mental health specialty training, successful completion of the DSHS ~~((-developed train the trainer))~~ instructor qualification/demonstration process:

(iv) And has been approved and contracted by the department as a community instructor.

(e) Instructors who will administer tests must have experience or training in assessment and competency testing.

(2) Instructors for ~~((caregiver))~~ long-term care worker mental health specialty training:

(a) ~~((Caregiver))~~ Long-term care worker mental health specialty may be taught by ~~((a boarding home))~~ an assisted living facility administrator (or designee), adult family home provider (or designee), or corporate trainer, who has successfully completed the manager mental health specialty training. A qualified instructor under this subsection may teach ~~((care-~~

giver)) specialty to ((caregivers)) long-term care workers employed at other home(s) licensed by the same licensee.

~~((b) Caregiver))~~ (3) Long-term care worker mental health specialty taught by a person who does not meet the requirements in subsection (2)(a) must meet the same requirements as the instructors for manager mental health specialty in subsection (1).

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0390 What are the minimum qualifications for instructors for manager and ~~((caregiver))~~ long-term care worker dementia specialty?** (1) The minimum qualifications for instructors for manager dementia specialty, in addition to the general qualifications ~~((under))~~ defined in WAC ((388-112-0375,)) 388-112-0380 (1) and (2) include:

(a) The instructor must be experienced in dementia caregiving practices and capable of demonstrating competency in the entire course content;

(b) Education;

(i) Bachelor's degree, registered nurse, or mental health specialist, with at least one year of education in seminars, conferences, continuing education or college classes, in dementia or subjects directly related to dementia, such as, but not limited to, psychology. (One year of education equals twenty-four semester hours, thirty-six quarter hours, or at least one hundred ninety-two hours of seminars, conferences, or continuing education.)

(ii) If required ~~((under))~~ in WAC 388-112-0160, successful completion of the dementia specialty training, prior to beginning to train others.

(c) Work experience - Two years full-time equivalent direct work experience with people who have dementia; and

(d) Teaching experience;

(i) Two hundred hours experience teaching dementia or closely related subjects; and

(ii) Successful completion of an adult education class ~~((or train the trainer as follows:))~~.

(A) For instructors teaching alternate ~~((curricula))~~ curriculums, a class in adult education that meets the requirements of WAC 388-112-0400 ~~((or a train the trainer class for the curriculum they are teaching:))~~.

~~((B))~~ (iii) For instructors teaching DSHS-developed dementia specialty training, successful completion of the DSHS ~~((developed train the trainer))~~ instructor qualification/demonstration process;

(iv) And has been approved and contracted by the department as a community instructor.

~~((E))~~ (e) Instructors who will administer tests must have experience or training in assessment and competency testing.

(2) Instructors for ~~((caregiver))~~ long-term care worker dementia specialty training:

(a) ~~((Caregiver))~~ Long-term care worker dementia specialty may be taught by ~~((a boarding home))~~ an assisted living facility administrator (or designee), adult family home provider ~~((or designee))~~, or corporate trainer, who has successfully completed the manager dementia specialty training. A quali-

fied instructor under this subsection may teach ~~((caregiver))~~ specialty to ~~((caregivers))~~ long-term care workers employed at other home(s) licensed by the same licensee.

(b) ~~((Caregiver))~~ Long-term care worker dementia specialty taught by a person who does not meet the requirements in subsection (2)(a) must meet the same requirements as the instructors for manager dementia specialty in subsection (1).

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0395 What are the minimum qualifications for instructors for ~~((manager and caregiver))~~ manager and long-term care worker developmental disabilities specialty?** (1) The minimum qualifications for instructors for ~~((manager))~~ developmental disabilities specialty, in addition to the general qualifications ~~((under))~~ defined in WAC ((388-112-0375)) 388-112-0380 (1) and (2), include:

(a) The instructor must be experienced in developmental disabilities caregiving practices and capable of demonstrating competency in the entire course content, including the administration of competency testing;

~~((b))~~ (b) Education and work experience:

(i) Bachelor's degree with at least two years of full-time work experience in the field of disabilities; or

(ii) High school diploma or equivalent, with four years full time work experience in the field of developmental disabilities, including two years full time direct work experience with people who have a developmental disability~~((:))~~; and

~~((B))~~ (iii) Successful completion of the eighteen hour developmental disabilities specialty training under WAC 388-112-0120~~((; and))~~.

(c) Teaching experience:

(i) Two hundred hours of teaching experience; and

(ii) Successful completion of an adult education ~~((or train the trainer))~~ class as follows:

(A) For instructors teaching alternative ~~((curricula))~~ curriculums, a class in adult education that meets the requirements of WAC 388-112-0400 ~~((or a train the trainer class for the curriculum they are teaching:))~~;

(B) For instructors teaching ~~((DSHS-developed))~~ developmental disabilities specialty training, successful completion of the ~~((DSHS-developed train the trainer))~~ DSHS instructor qualification/demonstration process.

(e) Has been approved and contracted by the department as a community instructor.

~~((E))~~ (f) Instructors who will administer tests must have experience in assessment and competency testing.

(2) Instructors for ~~((caregiver))~~ developmental disabilities specialty training:

(a) ~~((Caregiver))~~ Developmental disabilities specialty may be taught by ~~((a boarding home))~~ an assisted living facility administrator (or designee), adult family home provider ~~((or designee))~~, or corporate trainer, who has successfully completed the ~~((manager developmental disabilities specialty training))~~ mental health or manager dementia specialty course, the eighteen hour developmental disabilities specialty training, and has successfully completed the instructor qualification/demonstration process. A qualified instructor under

this subsection may teach (~~(caregiver)~~) developmental disabilities specialty to (~~(caregivers)~~) long-term care workers employed at other home(s) licensed by the same licensee.

(b) (~~(Caregiver)~~) Developmental disabilities specialty taught by a person who does not meet the requirements in subsection (2)(a) must meet the same requirements as the instructors for (~~(manager)~~) developmental disabilities specialty in subsection (1).

**Reviser's note:** The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0405 What physical resources are required for (~~(basic, modified basic, specialty, or nurse delegation core)~~) classroom training and testing?** (1) Classroom (~~(space used for basic, modified basic, specialty, or nurse delegation core classroom training)~~) facilities must be accessible to (~~(trainees)~~) students and provide adequate space for learning activities, comfort, lighting, lack of disturbance, and tools for effective teaching and learning such as white boards and flip charts. Appropriate supplies and equipment must be provided for teaching and practice of caregiving skills in the class being taught.

(2) Testing sites must provide adequate space for testing, comfort, lighting, and lack of disturbance appropriate for the written or skills test being conducted. Appropriate supplies and equipment necessary for the particular test must be provided.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

**WAC 388-112-0410 What standard training practices must be maintained for (~~(basic, modified basic, specialty, or nurse delegation core)~~) classroom training and testing?** The following training standards must be maintained for (~~(basic, modified basic, specialty or nurse delegation core)~~) classroom training and testing:

- (1) Training(~~(, including all breaks,)~~) must not exceed eight hours within one day;
- (2) Training provided in short time segments must include an entire unit, skill or concept;
- (3) Training must include regular breaks; and
- (4) (~~(Students)~~) Long-term care workers attending a classroom training must not be expected to leave the class to attend to job duties, except in an emergency.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-112-0020 What content must be included in an orientation?
- WAC 388-112-0025 Is competency testing required for orientation?

- WAC 388-112-0030 Is there a challenge test for orientation?
- WAC 388-112-0040 Who must complete orientation and safety training, and by when?
- WAC 388-112-0050 Is there an alternative to the basic training for some health care workers?
- WAC 388-112-0060 Is competency testing required for basic training?
- WAC 388-112-0065 Is there a challenge test for basic training?
- WAC 388-112-0080 What is modified basic training?
- WAC 388-112-0085 What knowledge and skills must be included in modified basic training?
- WAC 388-112-0090 Is competency testing required for modified basic training?
- WAC 388-112-0095 Is there a challenge test for modified basic training?
- WAC 388-112-0100 What documentation is required for successful completion of modified basic training?
- WAC 388-112-0105 Who may take modified basic training instead of the full basic training?
- WAC 388-112-01965 Who is required to complete the specialized diabetes nurse delegation training, and when?
- WAC 388-112-0215 Is competency testing required for continuing education?
- WAC 388-112-0220 May basic or modified basic training be completed a second time and used to meet the continuing education requirement?
- WAC 388-112-0230 May nurse delegation core training or nurse delegation specialized diabetes training be used to meet continuing education requirements?
- WAC 388-112-0245 Who is required to complete continuing education training, and when?
- WAC 388-112-02610 What is HIV/AIDS training?

|                   |  |
|-------------------|--|
| WAC 388-112-02615 | Is competency testing required for HIV/AIDS training?  |
| WAC 388-112-02620 | Is there a challenge test for HIV/AIDS training?   |
| WAC 388-112-02625 | What documentation is required for completion of HIV/AIDS training?  |
| WAC 388-112-02630 | Who is required to complete HIV/AIDS training, and when?   |
| WAC 388-112-0340  | Do homes need department approval to provide continuing education for their staff?   |
| WAC 388-112-0350  | What trainings must be taught by an instructor who meets the applicable minimum qualifications under this chapter?   |
| WAC 388-112-0375  | What are the minimum general qualifications for an instructor teaching a DSHS curriculum or DSHS-approved alternate curriculum as defined under chapter 388-112 WAC? |

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

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

Date Adopted: January 3, 2013.

Dan Newhouse  
Director

AMENDATORY SECTION (Amending WSR 09-17-099, filed 8/18/09, effective 9/18/09)

**WAC 16-470-305 Onion white rot disease—Definitions.** The following definitions apply to WAC 16-470-300 through 16-470-340:

(1) "Onion" means any plant of the *Allium* genus, including, but not limited to onion, garlic, leek, chive and shallots.

(2) "Pest-free area" means Adams, Benton, Franklin (~~and~~), Grant, and Klickitat counties.

AMENDATORY SECTION (Amending WSR 09-17-099, filed 8/18/09, effective 9/18/09)

**WAC 16-470-330 Onion white rot disease—Enforcement.** (1) The department may inspect any onion plant, plant part, or plantings within the pest-free area to determine whether *Sclerotium cepivorum* is present. If *Sclerotium cepivorum* is detected at any stage of production or transportation or in soil, the department may impound any infested onions or other articles and by written order direct the control and eradication of an infestation.

(2) Movement of infested onions or other articles within the pest-free area or removal of infested onions or other articles from the pest-free area is prohibited, except when the infested onions or other articles are accompanied by a written permit issued by the department. Requests for permits must be addressed to: Plant Services Program Manager, Plant Protection Division, Washington State Department of Agriculture, 1111 Washington St. S.E., P.O. Box 42560, Olympia, WA ((~~98540-2560~~) 98504-2560; fax ((~~360-902-2092~~) 360-902-2094; e-mail: [nursery@agr.wa.gov](mailto:nursery@agr.wa.gov)).

(3) Control and eradication methods that may be used are limited to those approved by the department. They may include:

(a) Destroying onions from an infested lot, bin, or location, and other infested articles;

(b) Prohibiting the production of onions in part or all of any infested area;

(c) Preventing off-flow of irrigation or rainwater from any infested area;

(d) Prohibiting the pasturing of animals on any infested area;

(e) Requiring equipment, tools and machinery used on an infested area be cleaned and sanitized as described in WAC 16-470-320 prior to removal from the area.

### WSR 13-03-009

#### PERMANENT RULES

#### DEPARTMENT OF AGRICULTURE

[Filed January 3, 2013, 8:55 a.m., effective February 3, 2013]

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

Purpose: This rule-making order amends WAC 16-470-305 and 16-470-330 (Quarantine—Onion white rot disease) by modifying the existing designated pest-free area for onion white rot disease by adding Klickitat County to the pest-free area and correcting agency contact information.

Citation of Existing Rules Affected by this Order: Amending WAC 16-470-305 and 16-470-330.

Statutory Authority for Adoption: RCW 17.24.041.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 12-23-093 on November 21, 2012.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 2, Repealed 0.

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

**WSR 13-03-018**  
**PERMANENT RULES**  
**DEPARTMENT OF LICENSING**

[Filed January 7, 2013, 9:40 a.m., effective February 7, 2013]

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

Purpose: Delete redundant and outdated reference to the fee for a commercial driver's license (WAC 308-100-050) and update references to the motorcycle endorsement (WAC 308-104-016) to reflect recent legislative changes (ESSB 6150).

Citation of Existing Rules Affected by this Order: Amending WAC 308-100-050 and 308-104-016.

Statutory Authority for Adoption: RCW 46.01.110, 46.20.049, and 46.20.505.

Adopted under notice filed as WSR 12-23-061 on November 19, 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

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

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

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

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

Date Adopted: January 7, 2013.

Damon Monroe  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-24-025, filed 11/28/07)

**WAC 308-100-050 Examination fees.** (1) ~~((The basic fee for obtaining or renewing any class of commercial driver's license shall be thirty dollars.~~

~~((2)))~~ The examination fee for each commercial driver's license knowledge examination, commercial driver's license endorsement knowledge examination, or any combination of commercial driver's license and endorsement knowledge examinations, shall be ten dollars.

~~((3)))~~ (2)(a) Except as provided in subsection ~~((3)))~~ (2)(b) of this section, the examination fee for each commercial driver's license skill examination conducted by the department shall be one hundred dollars.

(b) If the applicant's primary use of a commercial driver's license is for any of the following, then the examination fee for each commercial driver's license skill examination conducted by the department shall be seventy-five dollars:

(i) Public benefit not-for-profit corporations that are federally supported head start programs; or

(ii) Public benefit not-for-profit corporations that support early childhood education and assistance programs as described in RCW 43.215.405~~((4)))~~.

~~((4)))~~ (3) An applicant who has failed the skill examination must re-test and pay the full fee required under subsection ~~((3)))~~ (2) of this section.

~~((5)))~~ (4) Drivers selected for reexamination by the department may be subject to costs associated with the testing.

~~((6)))~~ (5) The fees in this section are in addition to the regular drivers' licensing fees.

AMENDATORY SECTION (Amending WSR 00-02-017, filed 12/27/99)

**WAC 308-104-016 Motorcycle endorsement fees.** The endorsement fee for the initial motorcycle endorsement shall be ~~((ten))~~ twelve dollars, unless the initial endorsement is issued for a period other than six years, in which case the initial endorsement fee shall be two dollars for each year or partial year that the endorsement is issued, and the subsequent renewal endorsement fee shall be ~~((twenty-five))~~ thirty dollars, unless the endorsement is renewed or extended for a period other than ~~((five))~~ six years, in which case the subsequent renewal endorsement fee shall be five dollars for each year that the endorsement is renewed or extended.

**WSR 13-03-020**  
**PERMANENT RULES**  
**EASTERN WASHINGTON**  
**STATE HISTORICAL SOCIETY**

[Filed January 7, 2013, 11:07 a.m., effective February 7, 2013]

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

Purpose: Repealing bylaws from 1968 that are out of date.

Citation of Existing Rules Affected by this Order: Repealing chapter 256-01 WAC.

Statutory Authority for Adoption: Chapter 27.34 RCW.

Adopted under notice filed as WSR 12-21-031 on October 9, 2012.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 11.

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

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

Date Adopted: January 2, 2013.

Forrest B. Rodgers  
Executive Director

REPEALER

The following sections of the Washington Administrative Code are repealed:

|                |  |
|----------------|--|
| WAC 256-01-001 | Office.                                |
| WAC 256-01-010 | Members.                               |
| WAC 256-01-020 | Meeting of members.                    |
| WAC 256-01-030 | Fees and dues.                         |
| WAC 256-01-040 | Board of trustees.                     |
| WAC 256-01-050 | Officers.                              |
| WAC 256-01-060 | Committees.                            |
| WAC 256-01-070 | Contracts, checks, deposits and funds. |
| WAC 256-01-080 | Order of business.                     |
| WAC 256-01-090 | Fiscal year.                           |
| WAC 256-01-100 | Amendment of bylaws.                   |

**WSR 13-03-037**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FINANCIAL INSTITUTIONS**

[Filed January 8, 2013, 5:36 a.m., effective February 8, 2013]

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

Purpose: (1) Repeal of WAC 208-512-210 through 208-512-300, inclusive (hereinafter, "existing rule"), related to limits on loans and extensions of credit by Washington state-chartered commercial banks, generally authorized by RCW 30.04.111; and (2) adoption of a comprehensive rule by way of chapter 208-512A WAC entitled "limits on loans and extensions of credit." This rule making primarily restates and clarifies the provisions of the existing rule without changing their effect. However, it also adds new provisions that are: (a) Specifically and explicitly permitted by RCW 30.04.111, 30.04.215(3), 30.08.140(16), and 32.08.157, including exceptions to the general lending limit rule related to nonconforming loans, circumstances involving a general decline in capital markets, and extraordinary emergencies (as authorized by the director upon application); and/or (b) mandated by Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013, related to Washington state-chartered commercial banks (Title 30 RCW) and savings banks (Title 32 RCW) treating "derivatives transactions" as "extensions of credit" and accounting for their credit exposure in relation to their concentration of "derivatives" investment according to standards generally consistent (with exceptions) to the newly adopted "lending limits" standards for "derivatives transactions" adopted by the Office of the Comptroller of the Currency (by way of 12 C.F.R. Part 32) in relation to national banks and federal savings associations. In this latter case, on account of RCW 32.08.157, savings banks

under Title 32 RCW will be permitted, on or after January 21, 2013, to continue to engage in "derivatives transactions" (if at all), provided they are subject to the provisions of RCW 30.04.111 and this rule making (chapter 208-512A WAC).

Citation of Existing Rules Affected by this Order: Repealing WAC 208-512-210 through 208-512-300, inclusive.

Statutory Authority for Adoption: RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050.

Other Authority: Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013.

Adopted under notice filed as WSR 12-22-066 on November 6, 2012.

Changes Other than Editing from Proposed to Adopted Version: Pursuant to the Washington Administrative Procedure Act, at RCW 34.05.325 (6)(a)(ii), the department is required to describe the differences between the text of the proposed rule, as published in the Washington State Register (WSR 12-22-066) and the text of the rule as adopted (other than nonmaterial editing changes), stating the reasons for the differences.

Below are the *material* changes from the proposed rule text to the adopted rule text. There are essentially three changes corresponding to three issues that were identified by written comments. This does not include editorial changes and correction of typographical errors.

**Issue No. 1: What Ought to Be an "Effective Margining Arrangement?"**

As of the public hearing on December 11, 2012, no one had commented on the definition of "effective margining arrangement" in proposed WAC 208-512A-007(13). Nonetheless, a discussion during the oral testimony of Rita Dillon at the public hearing (while it was satisfied with reference to the existing exception to the general lending limit for loans and extensions of credit secured by "readily marketable collateral") prompted the department's division of banks to take a second look at its definition of "effective margining arrangement," which was first proposed as identical to that of the OCC in its similar rules for federally chartered banks to conform to Section 610 of the Dodd-Frank Act. In revisiting this definition, the department found occasion to look at the written comment regarding this OCC definition made by the American Bankers Association, which took the position that the \$1 million daily balance threshold for using an internal model method (contained within the OCC definition), was arbitrary and unrealistic. The division of banks concurs and believes that to be "effective," for purposes of proposed WAC 208-512A-300(8) (the only time outside the definition the term is used), no arbitrary threshold should be used. Rather, a margining arrangement's efficacy ought to be based upon its terms as between the department's stakeholder and its counterparty, subject to general principles of safety and soundness (legal, market and operational risk) as to the margining arrangement as generally monitored by the director of banks through periodic examination of the stakeholder. Otherwise, one might be setting an arbitrary standard precluding the use of an internal model method. Accordingly, the

department has made the following change to WAC 208-512A-007(13) in its proposed final rule:

**WAC 208-512A-007 Other general chapter definitions.** As used in this chapter and to the extent used in RCW 30.04.111, the following additional terms, unless otherwise indicated, mean:

...

(13) **"Effective margining arrangement"** means a master legal agreement governing derivative transactions between a bank and a counterparty that requires the counterparty to post, on a daily basis, variation margin to fully collateralize that amount of the bank's net credit exposure to the counterparty (~~(that exceeds one million United States dollars)~~) created by the derivative transactions covered by the agreement, **subject to any monetary threshold requirements as prudently determined by the bank and its counterparty as contained in the master legal agreement.**

...

**Issue No. 2: Nonconforming "Derivative Transaction."**

For several years, the department's division of banks has been generally granting "nonconforming" status (rather than treatment as a "violation" of the lending limit) to loans by state-chartered commercial banks that were in conformity with the general lending limit under RCW 30.04.111 when made but, due to declining capital or decline in value of collateral, suddenly exceeded the bank's general lending limit. The division of banks did not do this by reason of a specific statutory provision in RCW 30.04.111 or any existing rule in chapter 208-512 WAC. Rather, it has been invoking "federal parity" for the benefit of state-chartered commercial banks pursuant to its authority under RCW 30.04.111(5) and 30.04.215(3). The "nonconforming" exception never applied anyway, as a matter of "lending limits," to a "derivative transaction" until Sections 610 and 611 of the Dodd-Frank Act sought to compel the OCC and state bank regulators to consider the *credit exposure* to "derivative transactions" for national banks and state banks, respectively, thereby compelling the OCC and state banking regulators to change their definition of "loans and extensions of credit" to include a "derivative transaction." However, in its rule making to comply with Section 610 of the Dodd-Frank Act, the OCC appears to have added a category of "nonconforming" exception (a nonconforming "derivative transaction") at 12 C.F.R. 32.6 (a)(3) without making reference to it in any other portion of 12 C.F.R. 32.6. So, in generally adopting the federal language of 12 C.F.R. § 32.6 so as to finally codify the "nonconforming rule," rather than continuing to rely upon "federal parity" under RCW 30.04.111(5) and 30.04.215(3), the division of banks did not, prior to its first comment letter from HomeStreet Bank, examine whether, in the best interest of stakeholders, any other subsection of proposed WAC 208-512A-012 ought to be amended. Having considered one of the comments of HomeStreet Bank in its first comment letter, the division of banks determined that an addition be made to subsection (2) of proposed WAC 208-512A-012, as follows:

**WAC 208-512A-012 Exception to general limitation—Nonconforming loans.** (1) A loan or extension of

credit that was within the limit on loans and extensions of credit when made, will not be deemed a violation of the legal lending limit and will be treated as "nonconforming" if the loan or extension of credit is no longer in conformity with the bank's limit on loans and extensions of credit because:

(a) The bank's capital has declined, borrowers have subsequently merged or formed a common enterprise, lenders have merged, or the limit on loans and extensions of credit or capital rules have changed; or

(b) Collateral securing the loan or extension of credit, in order to satisfy the requirements of an exception to the limit, has declined in value; or

(c) In the case of an extension of credit arising from a derivative transaction (or, if required by the FDIC or Federal Reserve Board, a securities financing transaction), and measured by the internal model method described in WAC 208-512A-300, the extension of credit subject to the lending limit increases after execution of the transaction.

(2) A bank must use reasonable efforts to bring a loan or extension of credit that is nonconforming as a result of subsection (1)(a) **or (c)** of this section into conformity with the bank's limit on loans and extensions of credit unless to do so would be inconsistent with safe and sound banking practices.

(3) A bank must bring a loan or extension of credit that is nonconforming as a result of circumstances described in subsection (1)(b) of this section into conformity with the bank's limit on loans and extensions of credit within thirty calendar days, except when judicial proceedings, regulatory actions, or other extraordinary circumstances beyond the bank's control prevent the bank from taking action.

(4) Notwithstanding any provision of this section, the director of banks may by interpretation and policy statement prescribe standards for treatment of nonconforming extensions of credit that are derivative transactions, repurchase agreements, reverse repurchase agreements, securities lending transactions, or securities borrowing transactions, and may, if required for state insured banks or state member banks, rely upon rules or interpretations of the FDIC or the Federal Reserve Board, as applicable.

The change made above will permit a bank, then, to avail itself of "reasonable efforts" to bring a "nonconforming" derivative transaction into compliance, thereby creating more assurance that a bank, in such a situation, will not be treated in violation of the law.

**Issue No. 3: Making Assurances that Transitional Rules Are Applicable to Savings Banks.**

At the beginning of this rule-making process, the department's division of banks determined that one or more of its savings banks under Title 32 RCW, especially HomeStreet Bank, was engaged in derivative transactions. The department also determined that in order for such Title 32 savings banks to continue to do derivative transactions on or after January 21, 2013, in conformity with Section 611 of the Dodd-Frank Act, they would have to be subject to all "lending limits" laws applicable to commercial banks under Title 30 RCW - not just the new "derivatives rule" occasioned by Section 611 of the Dodd-Frank Act. The division of banks began noticing [notifying] its stakeholders of the inevitability of this interpretation of federal law in 2011, many months before it began the rule-making process. This was to prepare

savings banks under Title 32 RCW (which have no "lending limits" statute as commercial banks do under RCW 30.04.-111) of the inevitability of being subject to "lending limits" in general. In giving such notice to savings bank stakeholders from 2011 onwards, the division of banks informed them of a two-step process: (1) 2012 rule making to address the immediate need for compliance as to the "derivatives rule"; and (2) 2013 legislation which would fix in statute a requirement that Title 32 RCW savings banks conform to lending limits under RCW 30.04.111 the same as state-chartered commercial banks. As part of this two-prong compliance strategy, the savings banks stakeholders were informed that 2012 rule making would have "subjunctive" provisions for them - i.e., any savings bank seeking to engage in derivatives transaction on or after January 21, 2013, would be subject to the entire "lending limits" rule as articulated in the new chapter 208-512A WAC.

In its first comment letter, HomeStreet Bank expressed the concern that it did not want to be out of compliance with "lending limits" on its existing loan portfolio because it was, in effect, like all other savings banks, for the first time going to be subject to lending limits as a matter of law, effective January 21, 2013. The division of banks proposed WAC 208-512A-600 with the prospect that it would act as fair "transitional rules" to protect all "banks" as defined under the proposed rule making, including savings banks under Title 32 RCW to which the rule has been made applicable. The division of banks did so with its definition of "bank" under proposed WAC 208-512A-007, which declares:

(2) "**Bank**" includes a commercial bank chartered and regulated under Title 30 RCW and, *to the extent applicable to this chapter pursuant to WAC 208-512A-009, a mutual or stock savings bank chartered and regulated under Title 32 RCW.*

[Emphasis added.]

It also created protective language in the proposed WAC 208-512A-009, as follows:

**WAC 208-512A-009 Applicability of chapter.** This chapter is applicable, notwithstanding any other provision thereof, only to:

- (1) A commercial bank under Title 30 RCW;
- (2) *A mutual or stock savings bank under Title 32 RCW, which, on January 21, 2013, or thereafter, invests in derivative transactions;*
- (3) A mutual or stock savings bank under Title 32 RCW, which, on January 21, 2013, or thereafter, invests in securities financing transactions, if:
  - (a) The mutual or stock savings bank is a state member bank and the Federal Reserve Board has determined that loans and extensions of credit apply to securities financing transactions; or
  - (b) The FDIC has determined that loans and extensions of credit apply to securities financing transactions in relation to state-chartered banks and savings banks; and
- (4) *A mutual or stock savings bank under Title 32 RCW that has notified the division, as of January 21, 2013, or thereafter, that it has elected to be regulated by and comply with this chapter, even if it does not invest in derivative transactions or securities financing transactions.*

[Emphasis added.]

The purpose of subsections (2) and (4) of proposed WAC 208-512A-009 is to not require that any savings bank under Title 32 RCW be subject to the 2012 rule making (*prior to* later enactment of the proposed 2013 legislation, which is intended to be effective June 1, 2013) unless, as of January 21, 2013, it is engaged in derivatives transactions *or* it has voluntarily elected to be subject to proposed chapter 208-512A WAC. Therefore, it was the opinion of the division of banks, up until its receipt of the first comment letter from HomeStreet Bank, that the definition of "bank" under proposed WAC 208-512A-007(2), as modified by proposed WAC 208-512A-009 (2) and (4), meant that the contextual use of the term "bank" in the "transitional rules" in proposed WAC 208-512A-600 would reasonably and fully protect HomeStreet Bank and other Title 32 savings banks, similarly situated. The division of banks is still of this opinion. However, in the interest of providing assurances to Title 32 savings who either (1) must be compliant with these new rules on or prior to January 21, 2013, or (2) seek to bring their entire credit operation into compliance with these rules prior to June 1, 2013, the division of banks has made the amendments to proposed WAC 208-512A-600, as follows:

**WAC 208-512A-600 Transitional rules.** (1)

Loans or extensions of credit that were in violation of RCW 30.04.111 and the former lending limits rules, prior to ~~((the relevant effective date of this chapter))~~ to January 21, 2013, will be considered to remain in violation of law until they are paid in full, regardless of whether the loans or extensions of credit conform to the rules established in this chapter. Renewals or extensions of such loans or extensions of credit will also be considered violations of law.

(2) A bank that has outstanding loans or extensions of credit to a person in violation of RCW 30.04.111 and the former lending limits rules as of ~~((the effective date of this chapter))~~ January 21, 2013, may make additional advances to such person after those dates if the additional advances are permitted under this chapter. The additional advances, however, may not be used directly or indirectly to repay any outstanding illegal loans or extensions of credit.

(3) Loans or extensions of credit which were in conformance with RCW 30.04.111 and the former lending limits rules prior to ~~((the relevant effective date of this chapter))~~ January 21, 2013, but are not in conformance with ~~((the rules established in))~~ this chapter, will not be considered to be violations of law during the existing contract terms of such loans or extensions of credit. Renewals or extensions of such loans or extensions of credit which are not in conformance with this chapter may be made on or after January 21, 2013, if the non-conformity is caused by WAC 208-512A-005 (1)(b) and WAC 208-512A-300; however, all loans or extensions of credit made under such renewals or extensions must conform with this chapter no later than June 1, 2013. Loans or extensions of credit which are not in conformance with this chapter for any other reason (i.e., a reduction in the bank's capital) must conform to this section upon renewal or extension.

(4) If a bank, prior to ~~((the effective date of this chapter))~~ **January 21, 2013**, entered into a legally binding commitment to advance funds on or after such date, and such commitment was in conformance with RCW 30.04.111 and ~~((this chapter))~~ **the former lending limits rules**, advances under such commitment may be made notwithstanding the fact that such advances are not in conformance with this chapter. The bank must, however, demonstrate that the commitment represents a legal obligation to fund, either by a written agreement or through file documentation.

**(5) As used in this section, "former lending limits rules" means WAC 208-512-210 through WAC 208-512-300, inclusive.**

**(6) Notwithstanding any other provision of this chapter, a savings bank under Title 32 RCW will not be considered to be in violation of law during the existing contract terms of any loan or extension of credit, which:**

**(a) In the case of a savings bank under WAC 208-512A-009 (2) or (3), was made and funded prior to June 1, 2013; or**

**(b) In the case of a savings bank under WAC 208-512A-009(4) but not subject to WAC 208-512A-009 (2) or (3), was made and funded prior to a date, earlier than June 1, 2013, upon which the savings bank gave notice to the division of its election to conform to the provisions of this chapter pursuant to WAC 208-512A-009(4).**

**(7) Notwithstanding any other provision of this chapter, a renewal or extension of such a loan or extension of credit by a savings bank under subsection 6 (a) and (b) of this section, which is not in conformance with this chapter, may be made if the nonconformity is caused by WAC 208-512A-005 (1)(b) and WAC 208-512A-300; however, any loan or extension of credit made under such renewals or extensions must conform with this chapter no later than December 31, 2013. However, a loan or extension of credit by such a savings bank which is not in conformance with this chapter for any other reason (i.e., a reduction in the bank's capital) must conform to this section upon renewal or extension.**

**(8) A bank will not be deemed to be in violation of law, including this chapter, if:**

**(a) It is engaged in derivative transactions prior to January 21, 2013;**

**(b) Uses an internal model method in connection with any part of its derivative transaction program;**

**(c) It is later determined by the division that the bank's specific internal model method is unsafe and unsound or that the bank's management is not competent to administer its derivative transaction program using such specific internal model method; and**

**(d) The director of banks does not find that the bank has shown a lack of good faith in its use of a specific internal model method.**

**(9) In the event of a determination pursuant to subsection (8) of this section, the division will treat the bank's derivative transactions program as "nonconforming" rather than a violation of law. In that event, the director of banks may issue a directive to the bank to exercise reasonable efforts to either bring its derivative transactions program into compliance or, if the director of banks so**

**finds in exceptional cases, unwind its derivative transactions program.**

Number of Sections Adopted in Order to Comply with Federal Statute: New 7, Amended 1, Repealed 0; Federal Rules or Standards: New 8, Amended 6, Repealed 0; or Recently Enacted State Statutes: New 5, Amended 7, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 13, Amended 2, Repealed 0.

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

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

Date Adopted: January 8, 2013.

Richard M. Riccobono  
Director of Banks

## Chapter 208-512A WAC

### LIMITS ON LOANS AND EXTENSIONS OF CREDIT

#### NEW SECTION

**WAC 208-512A-001 Promulgation of rules.** The division of banks of the department of financial institutions (hereinafter, the "division"), after due and proper notice, and pursuant to the provisions of RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050, hereby adopts and promulgates this chapter, effective January 21, 2013.

#### NEW SECTION

**WAC 208-512A-003 Findings and purpose.** (1) The director of the division (hereinafter, the "director of banks"), by and through the director of bank's delegated authority from the director of the department of financial institutions under RCW 43.320.040 and 43.320.050, finds and determines, that pursuant to RCW 30.04.030, the division has the broad administrative authority to adopt and promulgate rules and regulations that establish and maintain appropriate standards of safety and soundness with respect to the loans and extensions of credit made by Washington state-chartered banks under Titles 30 and 32 RCW including, without limitation, nonloan investments in derivative and similar transactions.

(2) As of January 21, 2013, the effective date of section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (hereinafter, "Dodd-Frank Act"), codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1828(y), a state insured bank may engage in a derivative transaction, as defined in section 5200 (b)(3) of the Revised Statutes of the United States (12 U.S.C. Sec. 84 (b)(3)), only if the law with respect to lending limits of the state in which the state-insured bank is chartered takes into consideration

credit exposure to derivative transactions. In addition to making loans, Washington state-chartered banks under Titles 30 and 32 RCW invest in derivative transactions as a regular and often-essential component of their overall investment strategy, including, without limitation, as a tool to manage their liquidity. It is necessary that Washington state law (including statute or regulation, or interpretation of the same by the division), be in compliance with the afore-stated federal statute and preserve the authority of banks under Titles 30 and 32 RCW to continue to engage in derivative transactions on or after January 21, 2013. Therefore, it is prudent and expeditious for the division to assert the full measure of its statutory authority to adopt this chapter so as to clearly set forth the manner in which a bank under Title 30 or 32 RCW may, in addition to its investment in other types of loans and extensions of credit, safely and soundly engage in derivative transactions.

(3) Section 610(a) of the Dodd-Frank Act, amending the National Bank Act, at 12 U.S.C. Sec. 84(b), revises the definition of "loans and extensions of credit" to include credit exposure of a national bank arising from its investment in a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction. The aforementioned section 611 of the Dodd-Frank Act redefines "loans and extensions of credit" to include derivative transactions by, in effect, making derivative transactions applicable to state "lending limits" laws. Section 611 of the Dodd-Frank Act does not specifically address repurchase agreements, reverse repurchase agreements, securities lending transactions, or securities borrowing transactions. However, the director of banks finds and determines that it serves the convenience and advantage of depositors, borrowers, and the general public that Washington state-chartered banks and savings banks be able to continue to prudently invest in repurchase agreements, reverse repurchase agreements, securities lending transactions, and securities borrowing transactions despite any future contingency that may be made applicable to them by federal banking regulations. Therefore, director of banks further finds and determines that the division may, in its safety and soundness standards for state member banks and state insured banks, respectively, apply the same definition of "loans and extensions of credit" as applicable to national banks under section 610 of the Dodd-Frank Act (12 U.S.C. Sec. 84(b)), but only to the extent required by the board of governors of the Federal Reserve System (hereinafter, the "Federal Reserve Board") or the Federal Deposit Insurance Corporation (hereinafter, the "FDIC").

(4) The director of banks finds and determines that, pursuant to RCW 30.04.111(5) and 30.04.215 (3) and (5), it serves the convenience and advantage of depositors, borrowers, and the general public, and further maintains the fairness of competition between state-chartered banks and national banks, that, on or after January 21, 2013, banks under Title 30 RCW be permitted to continue to invest in derivative transactions, repurchase agreements, reverse repurchase agreements, securities lending transactions, and securities borrowing transactions as national banks are generally permitted to under the National Bank Act (12 U.S.C. Sec. 84(b)) and applicable rules of the Office of the Comptroller of the Cur-

rency (hereinafter, "OCC"), subject to (a) the restrictions, limitations, and requirements applicable to such powers and authorities of national banks, and (b) the authority of the division to adopt and promulgate rules for banks, which, consistent with Title 30 RCW, vary from the precise powers and authorities of national banks.

(5) The director of banks finds and determines that, pursuant to RCW 32.08.157, a mutual or stock savings bank under Title 32 RCW may be permitted to engage in derivative transactions on or after January 21, 2013, the same as for a bank under Title 30 RCW, provided it subjects itself to all of the restrictions, limitations, and requirements for exercise of any powers and authorities under RCW 30.04.111 as set forth in this chapter respecting loans and extensions of credit applicable to banks under Title 30 RCW.

(6) There are certain standards of safety and soundness embodied in definitions of terms and other provisions used in RCW 30.04.111, including, without limitation, the term "capital and surplus," which have heretofore been inconsistent with the standards for computation of lending limits for national banks under the National Bank Act and the OCC rules. Pursuant to RCW 30.04.215 (3) and (5), the director of banks finds and determines that it both serves the convenience and advantage of depositors, borrowers, and the general public, and further maintains the fairness of competition and parity between Washington state-chartered banks and national banks, if the division adopts, for purposes of RCW 30.04.111, the same definition of "capital and surplus" as permitted for national banks, while maintaining the higher general lending limit of twenty percent of "capital and surplus" for banks under Title 30 RCW than exists for national banks under the OCC rules. In addition, the director of banks finds and determines that changes in other definitions of terms and technical provisions, as set forth in this chapter, serve the convenience and advantage of depositors, borrowers, and the general public, and further maintain the fairness of competition and parity between Washington state-chartered banks and national banks.

(7) Since RCW 30.04.111 does not define "loans and extensions of credit" and the words "extensions of credit" are not specified, the director of banks herein exercises the director of bank's broad administrative authority under RCW 30.04.030 and looks to applicable federal banking law and regulation for clarification of the term "extensions of credit," in keeping with well-settled principles of statutory construction. Accordingly, in promulgating and adopting the definition of "loans and extensions of credit" set forth in this chapter, the director of banks is herein guided by the restrictions on insider lending set forth in Federal Reserve Board Regulation O, at 12 C.F.R. Sec. 215.3, to the extent that (a) "extension of credit" has been therein broadly defined by the Federal Reserve Board to include "an extension of credit in any manner whatsoever" and (b) on account of Regulation O having been adopted by the Federal Reserve Board based on comparable principles of safety and soundness in regard to banks.

(8) The director of banks finds and determines that certain powers and authorities of an out-of-state state-chartered bank with a branch or branches in Washington state, which affect the operations of banking and delivery of financial ser-

vices in Washington state, and which provide certain exceptions to the general lending limit in emergency circumstances, ought to and will be deemed to be exceptions to the general lending limit under RCW 30.04.111, subject to the conditions set forth in this chapter.

(9) These rules and regulations are intended to:

(a) Prevent one person, or a relatively small group of persons who directly benefit from each other or who are engaged in a common enterprise, from borrowing or otherwise obtaining an unduly large amount of a bank's funds or other extension of credit;

(b) Safeguard a bank's depositors by establishing and maintaining standards that promote spreading of a bank's loans and extensions of credit among a relatively large number of persons engaged in different lines of business; and

(c) Prescribe standards of safety and soundness with respect to the credit exposure of a bank to its investment in derivative transactions, and to the extent required by the board of governors of the Federal Reserve System and the Federal Deposit Insurance Corporation for state member banks and state insured banks, respectively, to the credit exposure of a bank to its investment in repurchase agreements, reverse repurchase agreements, securities lending transactions, or securities borrowing transactions.

(10) These rules include, without limitation, provisions for:

(a) Defining or further defining or clarifying terms used in RCW 30.04.111;

(b) Establishing limits or requirements other than those specified in RCW 30.04.111 for particular classes or categories of loans and extensions of credit;

(c) Determining when a loan or extension of credit putatively made to a person shall, for purposes of this section, be attributed to another person;

(d) Setting standards for computation of time in relation to determining limits on loans and extensions of credit; and

(e) Implementing and incorporating other changes in limits on loans and extensions of credit necessary to conform to federal statute and rule required or otherwise authorized by RCW 30.04.111.

#### NEW SECTION

**WAC 208-512A-005 "Loans and extensions of credit" and "contractual commitment to advance funds"—Defined.** (1) "Loan or extension of credit" generally includes:

(a) Any direct or indirect advance of funds to a person made on a basis of any obligation of that person to repay the funds, or repayable from specific property pledged by or on behalf of a person;

(b) Any credit exposure of a bank arising from a derivative transaction or a securities financing transaction, but only to the extent that a securities financing transaction is required, by the Federal Reserve Board or the FDIC, with respect to state member banks and state insured banks, respectively, to be treated as a loan or extension of credit for purposes of RCW 30.04.111 and this chapter; and

(c) Any contractual commitment to advance funds, and includes a renewal, modification, or extension of the maturity date of a loan or extension of credit.

(2) Notwithstanding any other provision of this section, a "loan or extension of credit" excludes the following:

(a) Special exceptions, conditions and limitations to the general lending limit to the extent set forth in WAC 208-512A-020 through 208-512A-090, inclusive;

(b) A renewal, extension or restructuring of an existing loan, with interest paid current and no further advance of funds, by a bank under the direction and control of a conservator appointed by the director;

(c) A renewal or restructuring of a loan as a new loan or extension of credit, following the exercise by a bank of reasonable efforts, consistent with safe and sound banking practices, to bring the loan into conformance with the lending limit, unless new funds are advanced by the bank to the borrower (except as permitted by WAC 208-512A-015), or a new borrower replaces the original borrower, or unless the division determines that a renewal or restructuring was undertaken as a means to evade the bank's lending limit;

(d) Additional funds advanced for the benefit of a borrower by a bank for payment of taxes, insurance, utilities, security, and maintenance and operating expenses necessary to preserve the value of real property securing the loan, consistent with safe and sound banking practices, but only if the advance is for the protection of the bank's interest in the collateral, and provided that such amounts must be treated as an extension of credit if a new loan or extension of credit is made to the borrower;

(e) Accrued and discounted interest on an existing loan or extension of credit, including interest that has been capitalized from prior notes and interest that has been advanced under terms and conditions of a loan agreement;

(f) Financed sales of a bank's own assets, including other real estate owned, if the financing does not put the bank in a worse position than when the bank held title to the assets;

(g) Amounts paid against uncollected funds in the normal process of collection;

(h) Credit exposures arising from securities financing transactions in which the securities financed are Type I securities, or securities listed in section 5 (c)(1)(C), (D), (E), and (F) of the Home Owners Loan Act and general obligations of a state or subdivision as listed in section 5 (c)(1)(H) of the Home Owners Loan Act, at 12 U.S.C. Sec. 1464 (c)(1)(C), (D), (E), (F), and (H);

(i) Intraday credit exposures arising from a derivative transaction or securities financing transaction; and

(j) That portion of a loan or extension of credit sold as a participation by a bank on a nonrecourse basis, provided that the participation results in a pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders. Where a participation agreement provides that repayment must be applied first to the portions sold, a pro rata sharing will be deemed to exist only if the agreement also provides that, in the event of a default or comparable event defined in the agreement, participants must share in all subsequent repayments and collections in proportion to their percentage participation at the time of the occurrence of the event. When an originating bank funds the entire

loan, it must receive funding from the participants before the close of business of its next business day. If the participating portions are not received within that period, then the portions funded will be treated as a loan by the originating bank to the borrower. If the portions so attributed to the borrower exceed the originating bank's lending limit, the loan may be treated as nonconforming subject to WAC 208-512A-012, rather than a violation, if:

(i) The originating bank had a valid and unconditional participation agreement with a participant or participants that was sufficient to reduce the loan to within the originating bank's lending limit;

(ii) The participant reconfirmed its participation and the originating bank had no knowledge of any information that would permit the participant to withhold its participation; and

(iii) The participation was to be funded by close of business of the originating bank's next business day.

As used in this chapter and to the extent used in RCW 30.04.111, the term "loans and extensions of credit," unless otherwise indicated, shall have the meaning set forth in this section. As used in RCW 30.04.111 and this chapter, the terms "loan," "loans," "extension of credit," "extensions of credit," and "loan or extension of credit" refer, as applicable, to the singular or plural of "loans and extensions of credit."

(3) "**Contractual commitment to advance funds**" generally means a bank's obligation to advance funds under a legally binding contractual commitment to make a loan or extension of credit.

(a) For purposes of this chapter and calculation of the general lending limit, "contractual commitment to advance funds" includes:

(i) A bank's obligation to make payment (directly or indirectly) to a third person contingent upon default by a customer of the bank in performing an obligation and to make such payment in keeping with the agreed upon terms of the customer's contract with the third person, or to make payments upon some other stated condition;

(ii) A bank's obligation to guarantee or act as surety for the benefit of a person; and

(iii) A bank's obligation to advance funds under a standby letter of credit, a put, or other similar arrangement.

(b) For purposes of this chapter and calculation of the general lending limit, "contractual commitment to advance funds" does not include:

(i) The undisbursed portion of any loan or extension of credit;

(ii) The entire amount of any such commitment that has not yet been drawn upon; and

(iii) Letters of credit and similar instrument:

(A) Which do not guarantee payment;

(B) Which do not provide for payment in the event of a default of a third party; and

(C) In which the issuing bank expects the beneficiary to draw on the issuer.

#### NEW SECTION

**WAC 208-512A-007 Other general chapter definitions.** As used in this chapter and to the extent used in RCW

30.04.111, the following additional terms, unless otherwise indicated, mean:

(1) "**ALLL**" means a bank's allowance for loan and lease losses.

(2) "**Bank**" includes a commercial bank chartered and regulated under Title 30 RCW and, to the extent applicable to this chapter pursuant to WAC 208-512A-009, a mutual or stock savings bank chartered and regulated under Title 32 RCW.

(3) "**Borrower**" means:

(a) A person who is named as a borrower or debtor in a loan or extension of credit;

(b) A person to whom a bank has credit exposure arising from a derivative transaction or a securities financing transaction, entered by the bank; or

(c) Any other person, including a drawer, endorser, or guarantor, who is deemed to be a borrower under the "direct benefit" or the "common enterprise" tests set forth in WAC 208-512A-100.

(4) "**Call report**" means a bank's Consolidated Report of Condition and Income.

(5) "**Capital and surplus**" means:

(a) A bank's Tier 1 and Tier 2 capital as reported in a bank's call report; plus

(b) The balance of a bank's ALLL not included in the bank's Tier 2 capital as reported in the bank's call report.

(6) "**Close of business**" means the time at which a bank closes its accounting records for the business day.

(7) "**Control**" is presumed to exist when a person directly or indirectly, or acting through or together with one or more persons:

(a) Owns, controls, or has the power to vote twenty-five percent or more of any class of voting securities of another person;

(b) Controls, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of another person; or

(c) Has the power to exercise a controlling influence over the management or policies of another person.

(8) "**Credit derivative**" has the same meaning as this term has in 12 C.F.R. Part 3, Appendix C, section 2.

(9) "**Current market value**" means the bid or closing price listed for an item in a regularly published listing or an electronic reporting service.

(10) "**Derivative transaction**" includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.

(11) "**Director of banks**" means the director of the division of banks of the department of financial institutions.

(12) "**Division**" means the division of banks of the department of financial institutions.

(13) "**Effective margining arrangement**" means a master legal agreement governing derivative transactions between a bank and a counterparty that requires the counterparty to post, on a daily basis, variation margin to fully collateralize that amount of the bank's net credit exposure to the counterparty created by the derivative transactions covered

by the agreement, subject to any monetary threshold requirements as prudently determined by the bank and its counterparty as contained in the master legal agreement.

(14) **"Eligible credit derivative"** means a single-name credit derivative or a standard, nontranching index credit derivative provided that:

(a) The derivative contract meets the requirements of an eligible guarantee, as defined in 12 C.F.R. Part 3, Appendix C, and has been confirmed by the protection purchaser and the protection provider;

(b) Any assignment of the derivative contract has been confirmed by all relevant parties;

(c) If the credit derivative is a credit default swap, the derivative contract includes the following credit events:

(i) Failure to pay any amount due under the terms of the reference exposure, subject to any applicable minimal payment threshold that is consistent with standard market practice and with a grace period that is closely in line with the grace period of the reference exposure; and

(ii) Bankruptcy, insolvency, or inability of the obligor on the reference exposure to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as they become due and similar events;

(d) The terms and conditions dictating the manner in which the derivative contract is to be settled are incorporated into the contract;

(e) If the derivative contract allows for cash settlement, the contract incorporates a robust valuation process to estimate loss with respect to the derivative reliably and specifies a reasonable period for obtaining post-credit event valuations of the reference exposure;

(f) If the derivative contract requires the protection purchaser to transfer an exposure to the protection provider at settlement, the terms of at least one of the exposures that is permitted to be transferred under the contract provides that any required consent to transfer may not be unreasonably withheld; and

(g) If the credit derivative is a credit default swap, the derivative contract clearly identifies the parties responsible for determining whether a credit event has occurred, specifies that this determination is not the sole responsibility of the protection provider, and gives the protection purchaser the right to notify the protection provider of the occurrence of a credit event.

(15) **"Eligible guarantee"** means a guarantee that:

(a) Is written and unconditional;

(b) Covers all or a pro rata portion of all contractual payments of the obligor on the reference exposure;

(c) Gives the beneficiary a direct claim against the protection provider;

(d) Is not unilaterally cancelable by the protection provider for reasons other than the breach of the contract by the beneficiary;

(e) Is legally enforceable against the protection provider in a jurisdiction where the protection provider has sufficient assets against which a judgment may be attached and enforced;

(f) Requires the protection provider to make payment to the beneficiary on the occurrence of a default (as defined in the guarantee) of the obligor on the reference exposure in a

timely manner without the beneficiary first having to take legal actions to pursue the obligor for payment;

(g) Does not increase the beneficiary's cost of credit protection on the guarantee in response to deterioration in the credit quality of the reference exposure; and

(h) Is not provided by an affiliate of the bank, unless the affiliate is an insured depository institution, bank, securities broker or dealer, or insurance company that:

(i) Does not control the bank; and

(ii) Is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies (as the case may be).

(16) **"Eligible protection provider"** means:

(a) A sovereign entity (a central government, including the U.S. government, an agency, department, ministry, or central bank);

(b) The Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, or a multilateral development bank;

(c) A federal home loan bank;

(d) The Federal Agricultural Mortgage Corporation;

(e) A depository institution, as defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c);

(f) A bank holding company, as defined in section 2 of the Bank Holding Company Act, as amended, 12 U.S.C. 1841;

(g) A savings and loan holding company, as defined in section 10 of the Home Owners' Loan Act, at 12 U.S.C. 1467a;

(h) A securities broker or dealer registered with the U.S. Securities and Exchange Commission under the Securities Exchange Act of 1934, 15 U.S.C. 78o et seq.;

(i) An insurance company that is subject to the supervision of the Washington state office of insurance commissioner;

(j) A foreign banking organization;

(k) A non-U.S.-based securities firm or a non-U.S.-based insurance company that is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies; and

(l) A qualifying central counterparty.

(17) **"FDIC"** means the Federal Deposit Insurance Corporation.

(18) **"Federal Reserve Board"** means the board of governors of the Federal Reserve System.

(19) **"Financial instrument"** means stocks, notes, bonds, and debentures traded on a national securities exchange, over-the-counter (OTC) margin stocks as defined in Regulation U, 12 C.F.R. Part 221, commercial paper, negotiable certificates of deposit, bankers' acceptances, and shares in money market and mutual funds of the type that issue shares in which banks may perfect a security interest. Financial instruments may be denominated in foreign currencies that are freely convertible to U.S. dollars. The term "financial instrument" does not include mortgages.

(20) **"OCC"** means the Office of the Comptroller of the Currency.

(21) **"Person"** means: An individual; sole proprietorship; partnership; joint venture; association; trust; estate; business trust; corporation; limited liability company; limited liability partnership; not-for-profit corporation; sovereign government or agency, instrumentality, or political subdivision thereof; or any similar entity or organization.

(22) **"Qualifying central counterparty"** has the same meaning as this term has in 12 C.F.R. Part 3, Appendix C, section 2.

(23) **"Qualifying master netting agreement"** has the same meaning as this term has in 12 C.F.R. Part 3, Appendix C, section 2.

(24) **"Readily marketable collateral"** means financial instruments and bullion which are saleable under ordinary circumstances with reasonable promptness at a fair market value determined by daily quotations based on actual transactions on an auction or a similarly available daily bid and ask price market.

(25) **"Readily marketable staple"** means an article of commerce, agriculture, or industry, such as wheat and other grains, cotton, wool, and basic metals such as tin, copper and lead, in the form of standardized interchangeable units, that is easy to sell in a market with sufficiently frequent price quotations. An article comes within this definition if the exact price is easy to determine and the staple itself is easy to sell at any time at a price that would not be considerably less than the amount at which it is valued as collateral. Whether an article qualifies as a readily marketable staple is determined on the basis of the conditions existing at the time the loan or extension of credit that is secured by the staples is made.

(26) **"Securities financing transaction"** means a repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction.

(27) **"State insured bank"** denotes a bank, as defined in this chapter, which is an "insured depository institution" as defined in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(c)).

(28) **"State member bank"** denotes a bank, as defined in this chapter, which is a member of a federal reserve bank as authorized under section 9 of the Federal Reserve Act (12 U.S.C. Sec. 321) and, for purposes of this chapter, has the same meaning as that term is defined in section 3(d) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(d)).

(29) **"Subsidiary"** means:

(a) Any company twenty-five percent or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is directly or indirectly owned or controlled by such person, or is held by it with power to vote;

(b) Any company the election of a majority of whose directors is controlled in any manner by such person; or

(c) Any company with respect to the management or policies of which such person has power, directly or indirectly, to exercise a controlling influence, as determined by the division, after notice and opportunity for hearing.

(30) **"Type I securities"** has the same meaning as set forth in 12 C.F.R. Sec. 1.2(j) and includes:

(a) Obligations of the United States;

(b) Obligations issued, insured, or guaranteed by a department or an agency of the United States government, if

the obligation, insurance, or guarantee commits the full faith and credit of the United States for the repayment of the obligation;

(c) Obligations issued by a department or agency of the United States, or an agency or political subdivision of a state of the United States, that represent an interest in a loan or a pool of loans made to third parties, if the full faith and credit of the United States has been validly pledged for the full and timely payment of interest on, and principal of, the loans in the event of nonpayment by the third-party obligor(s);

(d) General obligations of a state of the United States or any political subdivision thereof; and

(e) Municipal bonds if the bank is well capitalized as defined as that term is used in the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1831o (b)(1).

#### NEW SECTION

**WAC 208-512A-009 Applicability of chapter.** This chapter is applicable, notwithstanding any other provision thereof, only to:

(1) A commercial bank under Title 30 RCW;

(2) A mutual or stock savings bank under Title 32 RCW, which, on January 21, 2013, or thereafter, invests in derivative transactions;

(3) A mutual or stock savings bank under Title 32 RCW, which, on January 21, 2013, or thereafter, invests in securities financing transactions, if:

(a) The mutual or stock savings bank is a state member bank and the Federal Reserve Board has determined that loans and extensions of credit apply to securities financing transactions; or

(b) The FDIC has determined that loans and extensions of credit apply to securities financing transactions in relation to state-chartered banks and savings banks; and

(4) A mutual or stock savings bank under Title 32 RCW that has notified the division, as of January 21, 2013, or thereafter, that it has elected to be regulated by and comply with this chapter, even if it does not invest in derivative transactions or securities financing transactions.

#### NEW SECTION

**WAC 208-512A-010 General limitation on loans and extensions of credit.** The total amount of loans and extensions of credit by a bank to a person outstanding at one time and not fully secured by collateral in a manner set forth in WAC 208-512A-011, shall not exceed twenty percent of the capital and surplus of such bank; provided, that a bank shall not be deemed to have violated this section on account of any loan or extension of credit, if such loan or extension of credit would be classified as an exception to the lending limit for national banks or federal savings associations under applicable federal banking laws and rules that existed as of July 28, 1985, or as of any subsequent date not later than July 27, 2003.

#### NEW SECTION

**WAC 208-512A-011 Exception to general limitation—Loans and extensions of credit fully secured by**

**readily marketable collateral.** (1) A loan or extension of credit by a bank to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, shall not be subject to any limitations based on capital and surplus.

(2) Notwithstanding subsection (1) of this section, if the total of such loans and extensions of credit, together with loans made under general limitations pursuant to WAC 208-512A-010 exceed forty-five percent of capital and surplus, the division will review the credits as a possible concentration, with regard to both risk diversification within the bank's asset structure and diversification or other risk in the marketable collateral securing the loan. This limitation shall be separate and in addition to the general twenty percent limitation set forth in WAC 208-512A-010.

(3) Each loan or extension of credit based on the foregoing limitation shall be secured by readily marketable collateral having a current market value of at least one hundred fifteen percent of the amount of the loan or extension of credit at all times.

(4) Financial instruments may be denominated in foreign currencies which are freely convertible to United States dollars. If collateral is denominated and payable in a currency other than that of the loan or extension of credit which it secures, the bank's procedures must require that the collateral be revalued at least monthly, using appropriate foreign exchange rates, in addition to being repriced at current market value.

(5) Each bank must institute adequate procedures to ensure that the collateral value fully secures the outstanding loan at all times. If collateral values fall below one hundred fifteen percent of the outstanding loan, to the extent that the loan is no longer in conformance with this section and exceeds the general twenty percent limitation, the loan must be brought into conformance within five business days, except where judicial proceedings, regulatory actions, or other extraordinary occurrences prevent the bank from taking action.

#### NEW SECTION

**WAC 208-512A-012 Exception to general limitation—Nonconforming loans.** (1) A loan or extension of credit that was within the limit on loans and extensions of credit when made, will not be deemed a violation of the legal lending limit and will be treated as "nonconforming" if the loan or extension of credit is no longer in conformity with the bank's limit on loans and extensions of credit because:

(a) The bank's capital has declined, borrowers have subsequently merged or formed a common enterprise, lenders have merged, or the limit on loans and extensions of credit or capital rules have changed; or

(b) Collateral securing the loan or extension of credit, in order to satisfy the requirements of an exception to the limit, has declined in value; or

(c) In the case of an extension of credit arising from a derivative transaction (or, if required by the FDIC or Federal Reserve Board, a securities financing transaction), and measured by the internal model method described in WAC 208-

512A-300, the extension of credit subject to the lending limit increases after execution of the transaction.

(2) A bank must use reasonable efforts to bring a loan or extension of credit that is nonconforming as a result of subsection (1)(a) or (c) of this section into conformity with the bank's limit on loans and extensions of credit unless to do so would be inconsistent with safe and sound banking practices.

(3) A bank must bring a loan or extension of credit that is nonconforming as a result of circumstances described in subsection (1)(b) of this section into conformity with the bank's limit on loans and extensions of credit within thirty calendar days, except when judicial proceedings, regulatory actions, or other extraordinary circumstances beyond the bank's control prevent the bank from taking action.

(4) Notwithstanding any provision of this section, the director of banks may by interpretation and policy statement prescribe standards for treatment of nonconforming extensions of credit that are derivative transactions, repurchase agreements, reverse repurchase agreements, securities lending transactions, or securities borrowing transactions, and may, if required for state insured banks or state member banks, rely upon rules or interpretations of the FDIC or the Federal Reserve Board, as applicable.

#### NEW SECTION

**WAC 208-512A-013 Exception to general limitation—Declining capital—Inability to otherwise effectively operate in marketplace—Director discretion.** Notwithstanding any provision of this chapter to the contrary, in the event that a bank's capital declines sufficiently to seriously impair the bank's ability to effectively operate in its marketplace or serve the needs of its customers or the community in which it is located, the director of banks may, upon written application and in the exercise of his or her discretion, grant a bank temporary permission to fund loans and extensions of credit in excess of such bank's limit on loans and extensions of credit. In the exercise of discretion, the director of banks may further specify conditions for granting such emergency exception and may limit emergency lending authority to particular types or classes of loans and extensions of credit.

#### NEW SECTION

**WAC 208-512A-014 Exception to general limitation—Extenuating facts and circumstances—Standards for division determination—Director of banks' discretion.** (1) Notwithstanding any provision of this chapter to the contrary, the director of banks, in his or her discretion, may grant an exception to the limit on loans and extensions of credit based on extenuating facts and circumstances.

(2) In deciding whether to grant an exception under this section, the director of banks shall consider:

(a) The proposed transaction for which the exception is sought;

(b) How the requested exception would affect the capital adequacy and safety and soundness of the requesting bank if the exception is not granted or, if the exception is granted, if the proposed borrower should ultimately default;

(c) How the requested exception would affect the loan portfolio diversification of the requesting bank;

(d) The competency of the bank's management to handle the proposed transaction and any resulting safety and soundness issues;

(e) The marketability and value of the proposed collateral (if any); and

(f) The extenuating facts and circumstances that warrant an exception in light of the purpose of the limit on loans and extensions of credit set forth in RCW 30.04.111 and this chapter.

#### NEW SECTION

**WAC 208-512A-015 Renewals and additional advances under a contractual commitment to advance funds—Project funding.** (1) A bank may renew a contractual commitment to advance funds and complete funding under that commitment if all of the following criteria are met:

(a) The completion of funding is consistent with safe and sound banking practices and is made to protect the position of the bank;

(b) The completion of funding will enable the borrower to complete a project for which the contractual commitment to advance funds was made;

(c) The amount of the additional funding does not exceed the unfunded portion of the bank's contractual commitment to advance funds; and

(d) Such contractual commitment to advance funds, when combined with all other outstanding loans and contractual commitments to advance funds to a borrower, was within the bank's lending limit when entered into, calculated pursuant to WAC 208-512A-200.

(2) In determining whether a contractual commitment to advance funds is within the bank's lending limit when made, the bank may deduct from the amount of the commitment the amount of any legally binding loan participation commitments that are issued concurrent with the bank's commitment and that would be excluded from the definition of loan or extension of credit.

#### NEW SECTION

**WAC 208-512A-020 Special rule—Discount of commercial or business paper.** A loan or extension of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse is excluded from the calculation of the general lending limit, subject to the following terms and conditions:

(1) This exclusion applies to negotiable paper given in payment of the purchase price of commodities in domestic or export transactions purchased for resale or to be used in the fabrication of a product, or to be used for any other business purposes which may reasonably be expected to provide funds for payment of the paper; and

(2) Loans or extensions of credit arising from the discount of paper must bear the full recourse endorsement of the owner; provided, however, that:

(a) Loans or extensions of credit arising from the discount of such paper in export transactions may be endorsed by such owner without recourse or with limited recourse, or

may be accompanied by a separate agreement for limited recourse; and

(b) If transferred without full recourse, the paper must be supported by an assignment of appropriate insurance covering the political, credit, and transfer risks applicable to the paper.

#### NEW SECTION

**WAC 208-512A-030 Special rule—Purchase of bankers' acceptances.** The purchase of bankers' acceptances of the kind described in section 13 of the Federal Reserve Act and which are issued by other depository institutions, is excluded from the calculation of the general lending limit, subject to the following terms and conditions:

(1) Acceptances by a bank of time drafts which do not meet the requirements for discount with a Federal Reserve Bank, are subject to the general twenty percent limitation of WAC 208-512A-010; and

(2) During any period within which a bank holds its own acceptances, eligible or ineligible, having given value therefor, the amount given is considered to be a loan or extension of credit to the customer for whom the acceptance was made and is subject to the lending limits. To the extent that a loan or extension of credit created by discounting the acceptance is covered by a bona fide participation agreement, the discounting bank need only consider that portion of the discounted acceptance which it retains as being subject to appropriate limitations.

#### NEW SECTION

**WAC 208-512A-040 Special rule—Readily marketable staples.** (1) Loans and extensions of credit secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples shall be subject to a limitation of thirty-five percent of capital and surplus, in addition to the general limit set forth in WAC 208-512A-010, if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds one hundred fifteen percent of the outstanding amount of such loan or extension of credit.

(2) The following additional terms and conditions shall apply to a loan or extension of credit secured by staples:

(a) The staples shall be fully covered by insurance whenever it is customary to insure such staples.

(b) For purposes of such a transaction, "capital and surplus" shall be calculated at thirty-five percent in addition to the general twenty percent limitation.

(c) A "readily marketable staple" means an article of commerce, agriculture, or industry of such uses as to make it the subject of dealings in a ready market with sufficiently frequent price quotations as to make (i) the price easily and definitely ascertainable, and (ii) the staple itself easy to realize upon sale at any time at a price which would not involve any considerable sacrifice from the amount at which it is valued as collateral.

(d) Staples eligible for this exception must be nonperishable, may be refrigerated or frozen.

(e) This exception is intended to apply primarily to basic commodities, such as wheat and other grains, cotton, wool,

and basic metals such as tin, copper, lead, and the like. Whether a commodity is readily marketable depends upon existing conditions and it is possible that a commodity that qualifies at one time may cease to qualify at a later date.

(f) Fabricated commodities which do not constitute standardized interchangeable units and do not possess uniformly broad marketability do not qualify as readily marketable staples.

(g) Since commodities sometimes fail to qualify as non-perishable because of the manner in which they are handled or stored during the life of the loan or extension of credit, the question as to whether a staple is nonperishable must be determined on a case-by-case basis.

(h) This exception is applicable to a loan or extension of credit arising from a single transaction or secured by the same staples for (i) not more than ten months if secured by nonperishable staples, and (ii) not more than six months if secured by refrigerated or frozen staples.

(i) The important characteristic of warehouse receipts, order bills of lading, or other similar documents is that the holder of such documents has control of the commodity and can obtain immediate possession. (However, the existence of brief notice periods, or similar procedural requirements under state law, for the disposal of the collateral will not affect the eligibility of the instruments for this exception.) Only documents with these characteristics are eligible security for loans under this exception. In the event of default on a loan secured by one of these documents, the bank must be in a position to sell the underlying commodity and promptly transfer title and possession to the purchaser, thus being able to protect itself without extended litigation. Generally, documents qualifying as "documents of title" under the Uniform Commercial Code are "similar documents" qualifying for this exception.

(j) Field warehouse receipts are an acceptable form of collateral when they are issued by a duly bonded and licensed grain elevator or warehouse having exclusive possession and control of the commodities even though the grain elevator or warehouse is maintained on the commodity owner's premises.

(k) Warehouse receipts issued by the borrower-owner which is a grain elevator or warehouse company, duly bonded and licensed and regularly inspected by state or federal authorities, may be considered eligible collateral under this exception only when the receipts are registered with a registrar whose consent is required before the commodities can be withdrawn from the warehouse.

#### NEW SECTION

**WAC 208-512A-050 Special rule—U.S. bonds, notes, certificates of indebtedness, or treasury bills, etc.** Loans or extensions of credit secured by bonds, notes, certificates of indebtedness, or treasury bills of the United States or by other such obligations wholly guaranteed as to principal and interest by the United States are excluded from the calculation of the general lending limit in WAC 208-512A-010, subject to the following terms and conditions:

(1) This exception applies only to loans or extensions of credit which are fully secured by the current market value of

obligations of the United States or guaranteed by the United States.

(2) If the market value of the collateral declines so that the loan is no longer in conformance with this exception and exceeds the general lending limit set forth in WAC 208-512A-010, the loan must be brought into conformance within five business days.

(3) Securities issued by any department, agency, bureau, board, commission or establishment of the United States, or any corporation wholly owned, directly or indirectly, shall not be considered eligible collateral for purposes of this subsection (3), unless such securities shall be direct obligation of or fully guaranteed as to principal and interest by the United States.

#### NEW SECTION

**WAC 208-512A-060 Special rule—Unconditional takeout commitments or guarantees of federal government.** Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States shall be excluded from the calculation of the general lending limit set forth in WAC 208-512A-010, subject to the following terms and conditions:

(1) This exclusion will apply to only that portion of a loan or extension of credit that is covered by a federal guarantee or commitment.

(2) For purposes of this exclusion, the commitment or guarantee must be payable in cash or its equivalent within sixty days after demand for payment is made.

(3) A guarantee or commitment is unconditional if the protection afforded the bank is not substantially diminished or impaired in the case of loss resulting from factors beyond the bank's control. Protection against loss is not materially diminished or impaired by procedural requirements, including default over a specific period of time, a requirement that notification of default be given within a specific period after its occurrence, or a requirement of good faith on the part of the bank.

#### NEW SECTION

**WAC 208-512A-070 Special rule—Segregated deposit account in lender bank.** Loans or extensions of credit secured by a segregated deposit account in the lending bank are excluded from the calculation of the general lending limit set forth in WAC 208-512A-010, subject to the following terms and conditions:

(1) Deposit accounts which may qualify for this exception include deposits in any form generally recognized as deposits. In the case of the secured loan, the bank must establish internal procedures which will prevent the release of the security.

(2) The bank must ensure that a security interest has been perfected in the deposit, including the assignment of a specifically identified deposit and any other actions required by state law.

(3) A deposit which is denominated and payable in a currency other than that of the loan or extension of credit which it secures may be eligible for this exception if it is freely convertible to United States dollars. The deposit must be revalued at least monthly, using appropriate foreign exchange rates, to ensure that the loan or extension of credit remains fully secured. This exception applies to only that portion of the loan or extension of credit that is covered by the United States dollar value of the deposit. If the United States dollar value of the deposit falls to the extent that the loan is in non-conformance with this exception and exceeds the general twenty percent limitation, the loan must be brought into conformance within five business days, except where judicial proceedings, regulatory actions, or other extraordinary occurrences prevent the bank from taking such action. This exception is not authority for a bank to take deposits denominated in foreign currencies.

#### NEW SECTION

**WAC 208-512A-080 Special rule—Sale of bank's assets—Unpaid portion of purchase price.** The unpaid portion of the purchase price of a sale of a bank's asset or assets, if secured by such asset or assets, shall be excluded from the calculation of the general lending limit set forth in WAC 208-512A-010, subject to the following terms and conditions:

(1) Any sale of a bank's asset or assets, resulting in an unpaid purchase price exceeding the bank's lending limit must be approved in advance of the sale by the board of directors, including the terms of payment of such unpaid purchase price, and if the purchase is by a director, officer or employee of the bank, shall conform to RCW 30.12.050 and the Federal Reserve Board's Regulation O, at 12 C.F.R. Sec. 215.3.

(2) The bank must ensure that a security interest has been perfected in the collateral, including execution and recording or filing of documents and any other action required by state law.

#### NEW SECTION

**WAC 208-512A-090 Special rule—Discount of negotiable or nonnegotiable installment consumer paper.** (1) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditional guarantee by the person transferring the paper shall be subject to a maximum limitation equal to twenty per centum of capital and surplus.

(2) If a bank's files or the knowledge of its officers of the financial condition of each maker of such consumer paper is reasonably adequate, and an officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of such loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the transferor, the limitations of this section as to the loans or extensions of credit of each such maker shall be the sole applicable loan limitations.

(3) This exception allows a bank to discount negotiable or nonnegotiable installment consumer paper of one person in an amount equal to twenty per centum of its capital and

surplus if the paper carries a full recourse endorsement or unconditional guarantee by the seller transferring such paper. The unconditional guarantee may be in the form of a repurchase agreement or a separate guarantee agreement. A condition reasonably within the power of the bank to perform, such as the repossession of collateral, will not be considered to make conditional an otherwise unconditional agreement.

(4) For purposes of this section:

(a) "Consumer" means the user of any products, commodities, goods, or services, whether leased or purchased, and does not include any person who purchases products or commodities for the purpose of resale or for fabrication into goods for sale; and

(b) "Consumer paper" includes paper relating to automobiles, mobile homes, residences, office equipment, household items, tuition fees, insurance premium fees, and similar consumer items. Also included is paper covering the lease (where the bank is not the owner or lessor) or purchase of equipment for use in manufacturing, farming, construction, or excavation.

(5) Under certain circumstances, installment consumer paper which otherwise meets the requirements of this exception will be considered a loan or extension of credit to the maker of the paper rather than the seller of the paper. Specifically, where (i) through the bank's files it has been determined that the financial condition of each maker is reasonably adequate to repay the loan or extension of credit, and (ii) an officer designated by the bank's chairman or chief executive officer pursuant to authorization by the board of directors certifies in writing that the bank is relying primarily upon the maker to repay the loan or extension of credit, the loan or extension of credit is subject only to the lending limits of the maker of the paper. Where paper is purchased in substantial quantities, the records, evaluation, and certification may be in such form as is appropriate for the class and quantity of paper involved.

(6) If a loan under this subsection is in default and the dealer or seller of the loan has contractually committed to repurchase the paper, then the loan will be aggregated with the dealer or seller's other outstanding debt for lending limit purposes and will be subject to the twenty per centum limitation.

(7) If loan payments are received and/or controlled by the dealer or seller of the paper and remitted to the bank, then those loans will be aggregated with the dealer or seller's other outstanding debt for lending limit purposes and will be subject to the twenty per centum limitation.

#### NEW SECTION

**WAC 208-512A-100 Combining loans and extensions of credit made to separate persons—Generally.** (1) Loans or extensions of credit to one person will be attributed to another person or persons when:

(a) The proceeds of the loans or extensions of credit are intended for or are used for the direct benefit of the other person or persons; or

(b) A "common enterprise" exists between the persons.

(2) The proceeds of a loan or extension of credit to a borrower will be deemed to be used for the "direct benefit" of

another person and will be attributed to the other person when the proceeds, or assets purchased with the proceeds, are transferred to another person, other than in a bona fide arm's length transaction, where the proceeds are used to acquire property, goods, or services.

(3) Determination of whether a "common enterprise" exists depends upon a realistic evaluation of the facts and circumstances of the applicable transactions. A "common enterprise" exists when:

(a) The expected source of repayment for each of the multiple loans or extensions of credit is the same for each person; or

(b) Separate persons borrow from a bank for the purpose of acquiring a business enterprise of which those persons will own or control more than fifty percent of the voting securities; or

(c) The loans or extensions of credit are made to persons who are related by common control and (i) are engaged in interdependent business or (ii) there is substantial financial interdependence among them; or

(d) The division determines, based upon a reasonable evaluation of the facts and circumstances of particular transactions, that a common enterprise exists.

(4) "Substantial financial interdependence" occurs when fifty percent or more of one person's gross receipts or gross expenditures (on an annual basis) are derived from transactions with one or more persons related through common control (gross receipts and expenditures include gross revenues/expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments).

(5) Throughout this section, the term "control" is presumed to exist when one or more persons acting in concert, directly or indirectly:

(a) Own, control, or have power to vote twenty-five percent or more of any class of voting securities of another person;

(b) Exercise a controlling influence over the management or policies of another person; or

(c) Control in any manner the election of a majority of the directors, trustees or other persons exercising similar functions of another person. "Common control" includes control of one person by another person.

#### NEW SECTION

**WAC 208-512A-110 Loans to partnerships, joint ventures, and associations.** (1) Loans or extensions of credit to a partnership, joint venture, or association shall, for purposes of this chapter, be considered loans or extensions of credit to each member of such partnership, joint venture, or association.

(2) Loans or extensions of credit to members of a partnership, joint venture, or association shall be considered loans or extensions of credit to the partnership, joint venture, or association if one or more of the tests set forth in WAC 208-512A-100 is satisfied with respect to one or more of the members. However, loans to members of a partnership, joint venture, or association will not be attributed to other members of the partnership, joint venture, or association unless one or more of the tests set forth in WAC 208-512A-100 is

satisfied with respect to such other members. The tests set forth in WAC 208-512A-100 shall be deemed satisfied when loans or extensions of credit are made to members of a partnership, joint venture, or association for the purpose of purchasing an interest in such partnership, joint venture, or association.

(3) The rule set forth in subsection (1) of this section is not applicable to limited partners in limited partnerships or to members of joint ventures if such partners or members, by the terms of the partnership or membership agreement, are not to be held liable for the debts or actions of the partnership, joint venture, or association. However, the rules set forth in WAC 208-512A-100 are applicable to such partners or members.

#### NEW SECTION

**WAC 208-512A-120 Loans to limited liability companies.** Loans or extensions of credit to a limited liability company shall, for purposes of this chapter, be considered loans or extensions of credit to a corporation, and shall not be subject to the provisions of WAC 208-512A-110.

#### NEW SECTION

**WAC 208-512A-130 Loans to subsidiaries and corporate groups.** (1) Loans or extensions of credit to a person and its subsidiaries or to subsidiaries of one person will not be combined where the person and its subsidiaries are not engaged in a "common enterprise" as defined in WAC 208-512A-100(2).

(2) If members of a corporate group (a person and all its subsidiaries) are either:

(a) "Substantially financially interdependent," as defined in WAC 208-512A-100(3); or

(b) Engaged in "common enterprise," as defined in WAC 208-512A-100(2), then the total amount of loans or extensions of credit to these persons must be attributed to each of the other persons in the corporate group.

Conversely, if members of a corporate group are neither substantially financially interdependent nor engaged in "common enterprise," then the loans to different members are separately subject to a twenty percent limitation. In no event may the total amount of loans or extensions of credit by a state bank to a corporate group exceed fifty percent of the bank's capital and surplus.

(3) For purposes of this section, a corporation or a limited liability company is a subsidiary of a person if the person owns or beneficially owns, directly or indirectly, more than fifty percent of the voting securities or voting interests of the corporation or limited liability company.

#### NEW SECTION

**WAC 208-512A-200 Computation of time—Calculation date of lending limits.** (1) For purposes of determining compliance with RCW 30.04.111 and this chapter, a bank shall determine its lending limit as of the most recent of the following dates:

(a) The last day of the preceding calendar quarter; or

(b) The date on which there is a change in the bank's capital category for purposes of the Federal Deposit Insurance Act, at 12 U.S.C. 1831o (b)(1).

(2) A bank's lending limit calculated in accordance with subsection (1)(a) of this section will be effective as of the earlier of the following dates:

(a) The date on which the bank's call report is submitted; or

(b) The date on which the bank's call report is required to be submitted.

(3) A bank's lending limit calculated in accordance with subsection (1)(b) of this section will be effective on the date that the limit is to be calculated.

(4) If the division determines for safety and soundness reasons that a bank should calculate its lending limit more frequently than required by subsection (1) of this section, the division may provide written notice to the bank directing it to calculate its lending limit at a more frequent interval, and the bank shall thereafter calculate its lending limit at that interval until further notice.

**NEW SECTION**

**WAC 208-512A-300 Credit exposure arising from derivative transactions.** (1) This section sets forth the rules for calculating the credit exposure arising from a derivative transaction entered into by a bank for purposes of determining the bank's lending limit pursuant to RCW 30.04.111 and this chapter.

(2) Subject to the direction of the division, a bank shall calculate the credit exposure to a counterparty arising from a derivative transaction by means of:

- (a) The internal model method;
- (b) The conversion factor matrix method; or
- (c) The remaining maturity method.

(3) Except as otherwise required by the division, a bank shall use the same method for calculating counterparty credit exposure arising from all of its derivative transactions.

(4) The division may require a bank to use the internal model method, the conversion factor matrix method, or the remaining maturity method to calculate the credit exposure of derivative transactions if it finds that such method is necessary to promote the safety and soundness of the bank.

(5) The requirements for using the internal model method are as follows:

(a) The credit exposure of a derivative transaction under the internal model method shall equal the sum of the current credit exposure of the derivative transaction and the potential future credit exposure of the derivative transaction.

(b) A bank shall determine its current credit exposure by the mark-to-market value of the derivative contract. If the mark-to-market value is positive, then the current credit exposure equals that mark-to-market value. If the mark-to-market value is zero or negative, then the current credit exposure is zero.

(c) A bank may not use the internal model method in its calculation of potential credit exposure to a derivative transaction unless the bank obtains prior approval of the division or unless it is already using the internal model method, as of January 21, 2013, and the division thereafter determines that

the bank's internal model method is safe and sound and that bank's management is competent to administer its derivative investment program using such internal model method.

(d) A bank that calculates its credit exposure by using the internal model method may net credit exposures of derivative transactions arising under the same qualifying master netting agreement.

(6) The credit exposure arising from a derivative transaction under the conversion factor matrix method shall equal and remain fixed at the potential future credit exposure of the derivative transaction as determined at the execution of the transaction by reference to Table 1 below.

Table 1 - Conversion Factor Matrix for Calculating Potential Future Credit Exposure<sup>1</sup>

| Original Maturity <sup>2</sup> | Interest Rate | Foreign Exchange Rate and Gold | Equity | Other <sup>3</sup> (includes commodities and precious metals except gold) |
|--------------------------------|---------------|--------------------------------|--------|---|
| 1 year or less                 | 0.015         | 0.015                          | 0.20   | 0.06  |
| Over 1 to 3 years              | 0.030         | 0.030                          | 0.20   | 0.18  |
| Over 3 to 5 years              | 0.060         | 0.060                          | 0.20   | 0.30  |
| Over 5 to 10 years             | 0.120         | 0.120                          | 0.20   | 0.60  |
| Over ten years                 | 0.300         | 0.300                          | 0.20   | 1.00  |

<sup>1</sup> For an OTC derivative contract with multiple exchanges of principal, the conversion factor is multiplied by the number of remaining payments in the derivative contract.

<sup>2</sup> For an OTC derivative contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the market value of the contract is zero, the remaining maturity equals the time until the next reset date. For an interest rate derivative contract with a remaining maturity of greater than one year that meets these criteria, the minimum conversion factor is 0.005.

<sup>3</sup> Transactions not explicitly covered by any other column in Table 1 are to be treated as "Other."

(7) The credit exposure arising from a derivative transaction under the remaining maturity method shall equal the greater of zero or the sum of the current mark-to-market value of the derivative transaction added to the product of the notional amount of the transaction, the remaining maturity in years of the transaction, and a fixed multiplicative factor determined by reference to Table 2 below.

Table 2 - Remaining Maturity Factor for Calculating Credit Exposure

|                       | Interest Rate | Foreign Exchange Rate and Gold | Equity | Other <sup>1</sup> (includes commodities and precious metals except gold) |
|-----------------------|---------------|--------------------------------|--------|---|
| Multiplicative Factor | 1.5%          | 1.5%                           | 6%     | 6%  |

<sup>1</sup> Transactions not explicitly covered by any other column in Table 2 are to be treated as "Other."

(8) Notwithstanding any other provision of this section, a bank that uses the conversion factor matrix method or remaining maturity method, or that uses the internal model method without entering an effective margining arrangement, shall calculate the counterparty credit exposure arising from credit derivatives entered by the bank by adding the net notional value of all protection purchased from the counterparty on each reference entity.

(9) A bank shall calculate the credit exposure to a reference entity arising from credit derivatives entered by the bank by adding the notional value of all protection sold on the reference entity. However, the bank may reduce its exposure to a reference entity by the amount of any eligible credit derivative purchased on that reference entity from an eligible protection provider.

#### NEW SECTION

**WAC 208-512A-310 Securities financing transactions.** (1) Only to the extent required by the FDIC, a bank that is a state insured bank shall comply with all rules governing limits on extensions of credit related to a state insured bank's credit exposure to securities financing transactions.

(2) Only to the extent required by the Federal Reserve Board, a bank that is a state member bank shall comply with all rules governing limits on extensions of credit related to a state member bank's credit exposure to securities financing transactions.

#### NEW SECTION

**WAC 208-512A-320 Policies and procedures related to derivative transactions, etc.** To fulfill the requirements of section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1828(y), and the requirements (if any) of the FDIC and the Federal Reserve Board in relation to securities financing transactions by state insured banks and state member banks, respectively, the division may publish and implement policies and procedures, consistent with RCW 30.04.111 and this chapter, related to examination for and supervision and enforcement of WAC 208-512A-300 and 208-512A-310.

#### NEW SECTION

**WAC 208-512A-400 Effect of OCC rules, interpretations and opinions as guidance.** Where RCW 30.04.111 and this chapter do not specifically address certain transactions involving loans and extensions of credit, the division may, as necessary, in its interpretations and supervision and enforcement of banks, be guided by applicable rules, interpretations, and opinions of the Office of the Comptroller of the Currency in the interest of a bank's safety and soundness, but only to the extent that such rules, interpretations, and opinions are compatible with the provisions of RCW 30.04.111 and this chapter.

#### NEW SECTION

**WAC 208-512A-500 Loans and extensions of credit to insiders and their immediate family.** No provision of Titles 30 and 32 RCW, chapter 208-512 WAC, or this chapter, shall limit the duty of a bank or a bank's affiliate, independent of any requirements of this chapter, to also comply with the provisions of Federal Reserve Board Regulation O, 12 C.F.R. Part 215, which relates to loans and extensions of credit to insiders of a bank or bank affiliate and their immediate family.

#### NEW SECTION

**WAC 208-512A-600 Transitional rules.** (1) Loans or extensions of credit that were in violation of RCW 30.04.111 and the former lending limits rules prior to January 21, 2013, will be considered to remain in violation of law until they are paid in full, regardless of whether the loans or extensions of credit conform to the rules established in this chapter. Renewals or extensions of such loans or extensions of credit will also be considered violations of law.

(2) A bank that has outstanding loans or extensions of credit to a person in violation of RCW 30.04.111 and the former lending limits rules as of January 21, 2013, may make additional advances to such person after those dates if the additional advances are permitted under this chapter. The additional advances, however, may not be used directly or indirectly to repay any outstanding illegal loans or extensions of credit.

(3) Loans or extensions of credit which were in conformance with RCW 30.04.111 and the former lending limits rules prior to January 21, 2013, but are not in conformance with this chapter will not be considered to be violations of law during the existing contract terms of such loans or extensions of credit. Renewals or extensions of such loans or extensions of credit which are not in conformance with this chapter may be made on or after January 21, 2013, if the non-conformity is caused by WAC 208-512A-005 (1)(b) and 208-512A-300; however, all loans or extensions of credit made under such renewals or extensions must conform with this chapter no later than June 1, 2013. Loans or extensions of credit which are not in conformance with this chapter for any other reason (i.e., a reduction in the bank's capital) must conform to this section upon renewal or extension.

(4) If a bank, prior to January 21, 2013, entered into a legally binding commitment to advance funds on or after such date, and such commitment was in conformance with RCW 30.04.111 and the former lending limits rules, advances under such commitment may be made notwithstanding the fact that such advances are not in conformance with this chapter. The bank must, however, demonstrate that the commitment represents a legal obligation to fund, either by a written agreement or through file documentation.

(5) As used in this section, "former lending limits rules" means WAC 208-512-210 through 208-512-300, inclusive.

(6) Notwithstanding any other provision of this chapter, a savings bank under Title 32 RCW will not be considered to be in violation of law during the existing contract terms of any loan or extension of credit, which:

(a) In the case of a savings bank under WAC 208-512A-009 (2) or (3), was made and funded prior to June 1, 2013; or

(b) In the case of a savings bank under WAC 208-512A-009(4) but not subject to WAC 208-512A-009 (2) or (3), was made and funded prior to a date, earlier than June 1, 2013, upon which the savings bank gave notice to the division of its election to conform to the provisions of this chapter pursuant to WAC 208-512A-009(4).

(7) Notwithstanding any other provision of this chapter, a renewal or extension of such a loan or extension of credit by a savings bank under subsection (6)(a) and (b) of this section, which is not in conformance with this chapter, may be made if the nonconformity is caused by WAC 208-512A-005 (1)(b) and 208-512A-300; however, any loan or extension of credit made under such renewals or extensions must conform with this chapter no later than December 31, 2013. However, a loan or extension of credit by such a savings bank which is not in conformance with this chapter for any other reason (i.e., a reduction in the bank's capital) must conform to this section upon renewal or extension.

(8) A bank will not be deemed to be in violation of law, including this chapter, if:

(a) It is engaged in derivative transactions prior to January 21, 2013;

(b) Uses an internal model method in connection with any part of its derivative transaction program;

(c) It is later determined by the division that the bank's specific internal model method is unsafe and unsound or that the bank's management is not competent to administer its derivative transaction program using such specific internal model method; and

(d) The director of banks does not find that the bank has shown a lack of good faith in its use of a specific internal model method.

(9) In the event of a determination pursuant to subsection (8) of this section, the division will treat the bank's derivative transactions program as "nonconforming" rather than a violation of law. In that event, the director of banks may issue a directive to the bank to exercise reasonable efforts to either bring its derivative transactions program into compliance or, if the director of banks so finds in exceptional cases, unwind its derivative transactions program.

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

|                 |  |
|-----------------|--|
| WAC 208-512-210 | Promulgation.  |
| WAC 208-512-220 | Purpose.   |
| WAC 208-512-230 | Definitions.   |
| WAC 208-512-240 | General limitations.   |
| WAC 208-512-250 | General limitation—Loans fully secured by readily marketable collateral. |
| WAC 208-512-260 | Combining loans to separate borrowers.                                   |

|                 |  |
|-----------------|--|
| WAC 208-512-270 | Loans to corporations.                                   |
| WAC 208-512-280 | Loans to partnerships, joint ventures, and associations. |
| WAC 208-512-290 | Exceptions to the lending limits.                        |
| WAC 208-512-300 | Transitional rules.                                      |

**WSR 13-03-038  
PERMANENT RULES  
OFFICE OF  
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2012-25—Filed January 9, 2013, 8:31 a.m., effective February 9, 2013]

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

Purpose: This new rule makes a correction to WAC 284-43-850.

Citation of Existing Rules Affected by this Order: Amending WAC 284-43-850.

Statutory Authority for Adoption: RCW 48.02.060.

Adopted under notice filed as WSR 12-21-126 on October 24, 2012.

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

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

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

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

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

Date Adopted: January 9, 2013.

Mike Kreidler  
Insurance Commissioner

**AMENDATORY SECTION** (Amending Matter No. R 2012-03, filed 10/8/12, effective 11/8/12)

**WAC 284-43-850 Clinical trials.** A carrier must not restrict coverage of routine patient costs for enrollees who participate in a clinical trial. "Routine costs" means items and services delivered to the enrollee that are consistent with and typically covered by the plan or coverage for an enrollee who is not enrolled in a clinical trial. A carrier may continue to apply its limitations and requirements related to use of network services.

(1) A carrier may require enrollees to meet the eligibility requirements of the clinical trial according to the trial protocol. While not required to impose such a condition, a carrier may refuse coverage under this section if the enrollee does

not provide medical and scientific information establishing that the individual's participation in such trial would be appropriate based on the individual meeting the eligibility requirements for the clinical trial, unless the enrollee is referred to the clinical trial by a health care provider participating in the carrier's network.

(2) This includes the cost of prescription medication used for the direct clinical management of the enrollee, unless the trial is for the investigation of the prescription medication or the medication is typically provided by the research sponsors free of charge for any enrollee in the trial.

(3) The requirement does not apply to:

(a) A service that is clearly inconsistent with widely accepted and established standards of care for a particular diagnosis;

(b) For items and services provided solely to satisfy data collection and analysis needs;

(c) Items and services that are not used in the direct clinical management of the enrollee; or

(d) The investigational item, device, or service itself.

(4) Clinical trial means a phase I, phase II, phase III, or phase IV clinical trial that is conducted in relation to the prevention, detection, or treatment of cancer or other life-threatening disease or condition, funded or approved by:

(a) One of the National Institutes of Health (NIH);

(b) An NIH cooperative group or center which is a formal network of facilities that collaborate on research projects and have an established NIH-approved peer review program operating within the group including, but not limited to, the NCI Clinical Cooperative Group and the NCI Community Clinical Oncology Program;

(c) The federal Departments of Veterans Affairs or Defense;

(d) An institutional review board of an institution in this state that has a multiple project assurance contract approval by the Office of Protection for the Research Risks of the NIH; ~~(and)~~ or

(e) A qualified research entity that meets the criteria for NIH Center Support Grant eligibility.

"Life threatening condition" means any disease or condition from which the likelihood of death is probable unless the course of the disease or condition is interrupted.

**WSR 13-03-043**  
**PERMANENT RULES**  
**OFFICE OF THE**  
**STATE TREASURER**

[Filed January 9, 2013, 12:27 p.m., effective February 9, 2013]

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

Purpose: This chapter is being repealed and replaced with chapter 210-10 WAC, Operation of the local government investment pool, in order to amend the WAC provisions that were contained in chapter 210-01 WAC without altering or losing the legislative history associated with them as a result of the comprehensive changes and reorganization of the rules.

To amend and update existing WACs (by repealing chapter 210-01 WAC, and replacing with chapter 210-10 WAC, to: (1) Introduce the concept and use of a prospectus; (2) introduce the ability of the state treasurer to offer different subpools with different investment strategies; (3) modernize and update the provisions of the WACs to account for legislative changes; and (4) provide for more clarity and more precision with respect to the terminology used in the WACs.

Citation of Existing Rules Affected by this Order: Repealing chapter 210-01 WAC.

Statutory Authority for Adoption: RCW 43.250.060.

Adopted under notice filed as WSR 12-23-086 on November 20, 2012.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 14, Amended 0, Repealed 13.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 14, Amended 0, Repealed 13.

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

Date Adopted: January 9, 2013.

Douglas D. Extine  
Deputy State Treasurer

**Chapter 210-10 WAC**

**LOCAL GOVERNMENT INVESTMENT POOL**

NEW SECTION

**WAC 210-10-010 Definitions.** Unless the context requires otherwise:

"Extended asset fund" means a subpool whose investments generally have a longer maturity than the money market fund and may be more restricted in the number of contributions and withdrawals than the money market fund.

"Financial institution" means a public depository as defined in RCW 39.58.010.

"Financial officer" means the same as that term is defined in RCW 43.250.020.

"Funds" means the same as that term is defined in RCW 43.250.020.

"Government finance official" means the same as that term is defined in RCW 43.250.020.

"Local government investment pool" or "pool" means the aggregate of all funds from pool participants that are placed in the custody of the state treasurer for investment and reinvestment.

"Money market fund" means a subpool whose investments are primarily money market instruments.

"Net asset value" with respect to the assets of a subpool shall mean the value of the assets of that subpool reduced by its accrued liability.

"Pool participant" means any eligible governmental entity as that term is defined in RCW 43.250.020 that is invested in a subpool.

"Prospectus" means a written offer of an investment in the pool or in any subpool designated as a prospectus by the state treasurer.

"Subpool" means a subcomponent of the pool as may be established and designated by the state treasurer from time to time. Each subpool shall have its own name, assets, and liabilities as designated by the state treasurer. The state treasurer may designate separate investment policies, restrictions, objectives, and strategies for each subpool.

"Value" with respect to an asset shall mean (a) with respect to securities for which market quotations are readily available, the market value of such securities, and (b) with respect to other securities or assets, fair value as determined by the state treasurer. In determining fair value, the state treasurer may appoint and rely upon a pricing service. With respect to the money market fund, "value" shall mean the amortized cost of the money market fund's assets unless the state treasurer determines otherwise.

#### NEW SECTION

**WAC 210-10-020 Requirements for participation in the pool.** (1) Before participating in the pool, all pool participants shall file with the state treasurer, any documentation required by the state treasurer. Such documentation shall, at a minimum, provide the following information:

- (a) Name and address of the pool participant;
- (b) A statement that the pool participant agrees to contribute or withdraw funds in the local government investment pool in accordance with the provisions of the Washington Administrative Code and the prospectus for the purpose of investment as stated therein; and
- (c) The names and titles of the officials authorized to order the contribution or withdrawal of funds in the local government investment pool.

(2) It shall be the responsibility of pool participants to properly execute and file any required documentation with the state treasurer. The state treasurer shall not allow participation in the local government investment pool unless such documentation has been filed with the state treasurer.

#### NEW SECTION

**WAC 210-10-030 State treasurer's liability.** The state treasurer shall not be liable for:

- (1) Any loss, including loss of capital, resulting from investments in the pool and/or any subpool, as applicable, except as provided for in RCW 43.250.040;
- (2) Any damages resulting from misfeasance, malfeasance, nonfeasance, or defalcation on the part of a government finance official, financial officer, or pool participant;
- (3) Any loss, including loss of capital, that results from a pool participant's failure to comply with the provisions of the Washington Administrative Code or the prospectus; or

- (4) Any loss, including loss of capital, resulting from a pool participant seeking, and being granted, a withdrawal due to necessity, from the extended asset fund.

#### NEW SECTION

**WAC 210-10-040 Transaction limitation.** The state treasurer reserves the right at its sole discretion to set a minimum and/or maximum transaction amount from any subpool and to limit the number of transactions, whether contribution, withdrawal, or transfer, permitted in a day or other given period of time, or whether to pay withdrawal proceeds in kind or in cash. The state treasurer may establish thresholds and defer withdrawals in excess of those thresholds and pay them out on a deferred or delayed basis from any subpool. In addition, the state treasurer reserves the right at its sole discretion to reject any proposed contribution order, and in particular to reject any proposed contribution made by a pool participant engaged in behavior deemed by the state treasurer to be abusive.

#### NEW SECTION

**WAC 210-10-050 Contribution procedures.** (1) Contribution procedures for the money market fund:

All contributions will be effected by electronic funds transfer to an account in the money market fund designated by the state treasurer. It is the responsibility of each pool participant to pay any bank charges associated with such electronic transfers to the state treasurer. Failure to wire funds by a pool participant after notification to the state treasurer of an intended transfer will result in penalties. Penalties for failure to timely wire funds will be assessed to the account of the pool participant responsible.

Contribution requests received in good order will receive the net asset value per unit of the money market fund next determined after the order is accepted by the state treasurer.

(2) Contribution procedures for the extended asset fund:

Direct investments into the extended asset fund are not permitted. Contributions to the extended asset fund may only be effected by means of a contribution from the money market fund. Contributions will take place monthly, on the 10th calendar day of the month (or on the next business day, if the 10th does not fall on a business day).

Pool participants must notify the state treasurer of any contribution on the business day prior to a permitted contribution date no later than the time on that day specified in the prospectus. The state treasurer may allow contributions with less than the required notice in its sole discretion.

Contributions to the extended asset fund will be effected by way of a corresponding withdrawal from the pool participant's specified money market fund account. On the contribution date, shares will be sold from the specified money market fund account at the net asset value determined as of the order acceptance date. Shares of the extended asset fund will be purchased using the extended asset fund's net asset value determined as of the order acceptance date.

NEW SECTION

**WAC 210-10-060 Contribution limits and earnings credit.** (1) Contribution limits and earnings credit for the money market fund:

To ensure same day credit, a pool participant must inform the state treasurer of any contribution over one million dollars no later than 9 a.m. on the same day the contribution is made. Contributions for one million dollars or less can be requested at any time prior to 10 a.m. on the day of contribution.

For all other contributions over one million dollars that are requested prior to 10 a.m., a pool participant may receive same day credit at the sole discretion of the state treasurer. Contributions that receive same day credit will count, for earning rate purposes, as of the day in which the contribution was made. Contributions for which no notice is received prior to 10 a.m. will be credited as of the following business day.

(2) Earnings credit:

Income earnings credit on funds contributed to a subpool will be credited to each subpool in the timing and manner described in the prospectus.

NEW SECTION

**WAC 210-10-070 Withdrawal procedures.** (1) Withdrawal procedures for the money market fund:

Each pool participant shall file with the state treasurer a letter designating the financial institution at which funds withdrawn from the money market fund shall be deposited. This letter shall contain the name of the financial institution, the location of the financial institution, the account name, and the account number to which funds will be deposited. This letter shall be signed by local officials authorized to receive and disburse funds, as described in WAC 210-10-020. Disbursements from the subpool will be effected by electronic funds transfer. Failure by the state treasurer to wire funds to a pool participant after proper notification to the state treasurer to disburse funds to a pool participant may result in a bank overdraft in the pool participant's bank account. The state treasurer will reimburse a pool participant for such bank overdraft penalties charged to the pool participant's bank account.

In order to withdraw funds from the money market fund, a pool participant must notify the state treasurer of any withdrawal over one million dollars no later than 9 a.m. on the same day the withdrawal is made. Withdrawals for one million dollars or less can be requested at any time prior to 10 a.m. on the day of withdrawal.

For all other withdrawals from the money market fund over one million dollars that are requested prior to 10 a.m., a pool participant may receive such withdrawal on the same day it is requested at the sole discretion of the state treasurer.

Withdrawal requests with respect to the money market fund received in good order will receive the net asset value per unit of the money market fund next determined after the order is accepted by the state treasurer.

(2) Withdrawal procedures for the extended asset fund.

Withdrawal orders will be accepted on a quarterly basis and must be received two business days prior to the intended

withdrawal date. Withdrawals will occur on the 10th calendar day of the months so designated in the prospectus. If the 10th is not a business day, the withdrawal will occur on the following business day. Other withdrawals may be permitted due to necessity, if the governing body of a pool participant sets forth, by resolution or other appropriate official action, that a withdrawal is necessary to meet the cash flow needs of the pool participant.

Withdrawals from the extended asset fund will be effected by way of a corresponding contribution into the pool participant's specified money market fund account. On the withdrawal date, shares will be sold from the specified extended asset fund account at the net asset value determined as of the next business day after the order acceptance date. Shares of the money market fund will be purchased using the money market fund's net asset value determined as of the next business day after the order acceptance date.

Pool participants must notify the state treasurer of any withdrawal two business days prior to a permitted withdrawal date no later than the time on that day specified in the prospectus. The state treasurer may allow withdrawals with less than the required notice in its sole discretion.

NEW SECTION

**WAC 210-10-080 Transfer procedures.** A pool participant may transfer funds from one money market fund account to another. To ensure same day credit, a pool participant must inform the state treasurer of any transfer no later than 10 a.m. on the same day the transfer is made.

NEW SECTION

**WAC 210-10-090 Reporting requirements.** The state treasurer will provide to each pool participant a monthly statement showing that pool participant's beginning balance, contributions, withdrawals, transfers, administrative charges, earnings rate, earnings, and ending balance in each subpool for the preceding calendar month.

NEW SECTION

**WAC 210-10-100 Administrative deductions.** As authorized in RCW 43.250.060, the state treasurer will require reimbursement for the administration and recovery of costs associated with the operation of the pool. Each pool participant will reimburse the state treasurer based upon each pool participant's share of the total pool assets in the timing and manner described in the prospectus.

NEW SECTION

**WAC 210-10-110 Portfolio management.** The state treasurer shall manage the funds invested in each subpool in such a manner as to effectively maximize the yield to the subpool. The state treasurer shall have the sole responsibility in setting the investment strategy for each subpool.

NEW SECTION

**WAC 210-10-120 The prospectus.** The state treasurer may specify by means of a prospectus, or supplement thereto, such terms and conditions not otherwise set forth in the administrative code applicable to the management and operation of the pool and/or any subpool, including investment policies, restrictions, objectives not inconsistent with WAC 210-10-110, contributions, the crediting of income, gain or loss, the allocation of liabilities among subpools, and withdrawals and contributions among subpools, as the state treasurer may deem appropriate, from time to time. Material changes to a prospectus may be made by the state treasurer by means of a supplement or restated prospectus, effective as of the date sent to pool participants or as of the later date stated therein.

NEW SECTION

**WAC 210-10-130 Liquidation and termination.** The state treasurer may liquidate and terminate any subpool in its sole discretion. Upon declaring a liquidation, the state treasurer shall make arrangements for the disposition of the affected subpool's assets and either the payment of all liabilities or the establishment of adequate reserves for the discharge of the subpool's liabilities, if any. Pool participants will receive their pro rata share of the subpool's assets net of such liabilities or reserves. Notwithstanding the foregoing, the state treasurer may hold back up to ten percent of the value of the liquidating subpool until all liabilities are discharged. Residual amounts, if any, will be distributed to pool participants on a pro rata basis. Pool participants will not earn income on any amounts held back.

NEW SECTION

**WAC 210-10-140 Restriction on withdrawals.** The state treasurer may take any measure and impose any restriction on withdrawals from any subpool or any category of pool participant, including, but not limited to, prorating over time any withdrawal order and/or satisfying any withdrawal order by offering pool participants withdrawals in-kind, as described in the prospectus.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 210-01-010 Promulgation.
- WAC 210-01-020 Definitions.
- WAC 210-01-030 Local government ordinance or resolution.
- WAC 210-01-040 Proper adoption and filing of local government ordinance or resolution.
- WAC 210-01-050 State treasurer's liability.
- WAC 210-01-060 Deposit and withdrawal of funds.

- WAC 210-01-070 Transaction limitation.
- WAC 210-01-080 Deposit procedures.
- WAC 210-01-090 Withdrawal procedures.
- WAC 210-01-100 Interest earnings credit.
- WAC 210-01-110 Reporting requirements.
- WAC 210-01-120 Administrative deductions.
- WAC 210-01-130 Portfolio management.

**WSR 13-03-046**

**PERMANENT RULES**

**DEPARTMENT OF AGRICULTURE**

[Filed January 10, 2013, 8:12 a.m., effective February 10, 2013]

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

Purpose: This rule-making order amends chapter 16-101 WAC by adopting the 2011 version of the pasteurized milk ordinance and revision of the somatic cell count in milk.

Citation of Existing Rules Affected by this Order: Amending WAC 16-101-701, 16-101-716, 16-101-721, 16-101-726, and 16-101-731.

Statutory Authority for Adoption: RCW 15.36.021.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 12-23-050 on November 16, 2012.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 5, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, Repealed 0.

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

Date Adopted: January 10, 2013.

Dan Newhouse  
Director

AMENDATORY SECTION (Amending WSR 08-24-073, filed 12/1/08, effective 1/1/09)

**WAC 16-101-701 Standards for the production of milk and milk products.** (1) With the exception of the portions identified in subsection (2) of this section, the department adopts the Grade "A" Pasteurized Milk Ordinance, ((2007)) 2011 Revision, United States Public Health Service/Food and Drug Administration, as additional Washington state standards for the production of milk and milk prod-

ucts including Grade A condensed and dry milk products and condensed and dry whey products under chapter 15.36 RCW.

(2) The department does not adopt the following portions of the Grade "A" Pasteurized Milk Ordinance, ((2007)) 2011 Revision:

(a) Grade "A" Pasteurized Milk Ordinance - ((2007)) 2011 Revision.

| PMO Page No.          | Excepted Portion  |
|-----------------------|---|
| Pages ((11-12)) 12-13 | <ul style="list-style-type: none"> <li>Section 3, Permits, paragraph 4, which begins with "The regulatory agency shall suspend..."</li> <li>Section 3, Permits, paragraph 5, which begins with "Upon notification..."</li> </ul>  |
| Page 24               | <ul style="list-style-type: none"> <li><u>Section 6. The Examination of Milk and Milk Products, paragraph 5, which begins with "Whenever two (2) of the last four (4) consecutive..."</u></li> </ul>  |
| Page ((28)) 29        | <p>Section of Table 1 entitled "GRADE "A" RAW MILK AND MILK PRODUCTS FOR PASTEURIZATION, ULTRA-PASTEURIZATION OR ASEP-TIC PROCESSING"</p> <ul style="list-style-type: none"> <li>"Temperature: Cooled to 10°C (50°F) or less within four (4) hours or less of the commencement of the first milking and to 7°C (45°F) or less within two hours after the completion of milking. Provided that the blend temperature after the first milking and subsequent milkings does not exceed 10°C (50°F)."<br/>Note: Milk sample submitted for testing cooled and maintained at 0°C (32°F) to 4.4°C (40°F), but &lt;7.0°C (45°F) and less than three (3) hours after collection has not increased in temperature;</li> <li>Under Bacterial Limits, only the sentence..."Individual producer milk not to exceed 100,000 per mL prior to commingling with other producer milk."</li> </ul> |

(b) Standards for Grade "A" Raw Milk for Pasteurization, Ultra-pasteurization or Aseptic Processing.

| PMO Page No.       | Excepted Portion   |
|--------------------|--|
| Page ((51)) (52)   | Item 18r. "Raw Milk Cooling" paragraph 1, which begins with "Raw milk for pasteurization shall be cooled..." |
| Page((s 51-52)) 53 | Ir. "Administrative Procedures", paragraph 1 only  |

(c) Standards for Grade "A" Pasteurized, Ultra-pasteurized and Aseptically Processed Milk and Milk Products.

| PMO Page No.     | Excepted Portion  |
|------------------|---|
| Page 111         | Item 18p. "Bottling, Packaging and Container Filling", under Public Health Reason, first sentence only which begins with "Manual bottling, packaging, and container filling..." |
| Page 111         | Item 18p. "Administrative Procedures", item number 2 only.  |
| Page 113         | Item 19p. "Capping, container closure and sealing and Dry Milk Product Storage", Administrative Procedures, item number 1 only.   |
| Page ((125)) 126 | Sections 15 (Enforcement), 16 (Penalty), and 17 (Repeal and Date of Effect)   |

(d) Appendix E: Examples of 3-out-of-5 Compliance Enforcement Procedures.

| PMO Page No.              | Excepted Portion  |
|---------------------------|-------------------|
| Pages ((198-199)) 202-203 | All of Appendix E |

(3) The department does adopt the following somatic cell count standards to be: Individual producer bovine cow milk not to exceed 400,000 per mL; and goat, sheep, and all other species milk not to exceed 1,000,000 per mL.

AMENDATORY SECTION (Amending WSR 08-24-073, filed 12/1/08, effective 1/1/09)

**WAC 16-101-716 Procedures for certification of interstate milk shippers.** The department adopts the Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments ((2007)) 2011 Revision as Washington state procedures for the certification of interstate milk shippers.

AMENDATORY SECTION (Amending WSR 08-24-073, filed 12/1/08, effective 1/1/09)

**WAC 16-101-721 Methods for making sanitation ratings of milk shippers.** The department adopts the Methods of Making Sanitation Ratings of Milk Shippers ((2007)) 2011 Revision, United States Health and Human Services Public Health Service/Food and Drug Administration as Washington state methods for ratings of interstate milk shippers.

AMENDATORY SECTION (Amending WSR 08-24-073, filed 12/1/08, effective 1/1/09)

**WAC 16-101-726 Standard for the accrediting of milk laboratories.** The department adopts the Evaluation of Milk Laboratories ((2005)) 2011 Revision United States Health and Human Services Public Health Service/Food and

Drug Administration as the Washington state standard for accrediting milk laboratories and certified industry supervisors who request certification and approval for uniform collection and testing required for compliance with the Grade "A" Pasteurized Milk Ordinance.

AMENDATORY SECTION (Amending WSR 08-24-073, filed 12/1/08, effective 1/1/09)

**WAC 16-101-731 Availability of the publications adopted by the department in this chapter.** (1) The Grade "A" Pasteurized Milk Ordinance, ((2007)) 2011 Revision, United States Public Health Service/Food and Drug Administration, ((can be purchased from the Superintendent of Documents, U.S. Printing Office, Washington, D.C.

(2) ~~The following publications can be obtained by writing the Center for Food Safety and Applied Nutrition, Director, Office of Constituent Operations, Industry Activities Staff, HFS-S65-200 "C" Street, S.W., Washington, D.C. 20204:~~

•) ~~the Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, ((2007)) 2011 Revision((-~~

•) ~~the Methods of Making Sanitation Ratings of Milk Shippers, ((2007)) 2011 Revision, United States Department of Health and Human Services Public Health Services/Food and Drug Administration((-~~

•) ~~and the Evaluation of Milk Laboratories, ((2005)) 2011 Revision, United States Department of Health and Human Services Public Health Service/Food and Drug Administration can be obtained at: <http://www.fda.gov/Food/FoodSafety/Product-SpecificInformation/Milk-Safety/NationalConferenceonInterstateMilkShipmentsNCIMSMModelDocuments/default.htm>.~~

(2) For information regarding the contents and application of these publications, contact the Food Safety and Consumer Services Division at the Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560 or [FSCS@agr.wa.gov](mailto:FSCS@agr.wa.gov).

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

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

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

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

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

Date Adopted: January 11, 2013.

Dan Newhouse  
Director

REPEALER

The following chapter of the Washington Administrative Code is repealed:

|                |   |
|----------------|---|
| WAC 16-657-001 | Retail sales of motor fuels and home heating products.                          |
| WAC 16-657-010 | Compliance schedule for retail motor fuel and home heating products dispensers. |
| WAC 16-657-025 | Posting of motor fuel prices—Cash and credit sales.                             |
| WAC 16-657-030 | Interim retail sales of home heating products.                                  |
| WAC 16-657-040 | Posting of alcohol blend gasolines.   |

**WSR 13-03-053**

**PERMANENT RULES**

**DEPARTMENT OF AGRICULTURE**

[Filed January 11, 2013, 9:53 a.m., effective February 11, 2013]

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

Purpose: This rule-making order repeals chapter 16-657 WAC, Retail pricing of motor and heating fuel, relevant sections are being moved to chapter 16-662 WAC, Weights and measures—National handbooks in a concurrent rule-making process.

Citation of Existing Rules Affected by this Order: Repealing WAC 16-657-001, 16-657-010, 16-657-025, 16-657-030, and 16-657-040.

Statutory Authority for Adoption: RCW 19.94.190.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 12-24-080 on December 5, 2012.

**WSR 13-03-054**

**PERMANENT RULES**

**DEPARTMENT OF AGRICULTURE**

[Filed January 11, 2013, 10:00 a.m., effective February 11, 2013]

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

Purpose: This rule-making order amends chapter 16-662 WAC, Weights and measures—National handbooks, by:

(1) Amending the existing rule to adopt, in whole or in part, the 2013 edition of NIST Handbook 44 (Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices) as required by RCW 19.94.195; NIST Handbook 130 (Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality); and NIST Handbook 133 (Checking the Net Contents of Packaged Goods);

(2) Adopting the most recent version of NIST Handbook 105-1 through 8, which incorporates specifications and tolerances for metrology calibration;

(3) Moving some of the existing requirements from chapter 16-657 WAC into chapter 16-662 WAC. Other provisions of chapter 16-657 WAC are being repealed in a concurrent rule-making action; and

(4) Adopting modifications to the existing text to increase rule clarity and readability, and to conform to current industry and regulatory standards.

Citation of Existing Rules Affected by this Order: Amending WAC 16-662-100, 16-662-105, 16-662-110, and 16-662-115.

Statutory Authority for Adoption: RCW 19.94.190, 19.112.020, and 19.112.140.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 12-24-081 on December 5, 2012.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 4, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 4, Repealed 0.

Date Adopted: January 11, 2013.

Dan Newhouse  
Director

**Chapter 16-662 WAC**

**WEIGHTS AND MEASURES—NATIONAL HANDBOOKS AND RETAIL SALE OF MOTOR FUEL**

AMENDATORY SECTION (Amending WSR 12-02-021, filed 12/28/11, effective 1/28/12)

**WAC 16-662-100 Purpose.** (1) This chapter establishes requirements for the state of Washington that are reasonably consistent with the uniform rules adopted by the National Conference on Weights and Measures and ~~((that are in effect in other states))~~ published by the National Institute of Standards and Technology (NIST). This chapter also establishes requirements for the retail sale and advertising of motor fuel.

(2) This chapter applies specifically to the:

(a) Uniform specifications, tolerances and other technical requirements for weighing and measuring devices addressed in ~~((the National Institute of Standards and Technology (NIST)))~~ NIST Handbook 44;

(b) Uniform procedures for checking the net contents of packaged goods addressed in NIST Handbook 133;

(c) Uniform packaging and labeling regulation addressed in NIST Handbook 130;

(d) Uniform regulation for the method of sale of commodities addressed in NIST Handbook 130;

(e) Uniform examination procedure for price verification addressed in NIST Handbook 130; ~~((and))~~

(f) Engine fuels, petroleum products, and automotive lubricants regulation addressed in NIST Handbook 130;

(g) Specifications and tolerances for reference standards and field standard weights and measures addressed in the NIST Handbook 105 series; and

(h) Requirements for the retail sale and advertising of motor fuel.

(3)(a) NIST Handbook 44, NIST Handbook 130 ~~((and)), NIST Handbook 133, and NIST Handbooks 105 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 ~~((The))~~ and are ~~((also))~~ available on the National Institute of Standards and Technology web site at <http://www.nist.gov/pml/wmd/pubs/handbooks.cfm>.~~

(b) For information regarding the contents and application of these publications, contact the weights and measures program at the Washington State Department of Agriculture, P.O. Box 42560, Olympia, Washington 98504-2560, telephone number 360-902-1857, or e-mail [wts&measures@agr.wa.gov](mailto:wts&measures@agr.wa.gov).

AMENDATORY SECTION (Amending WSR 12-08-041, filed 3/30/12, effective 4/30/12)

**WAC 16-662-105 Standards adopted by the Washington state department of agriculture (WSDA).** Except as otherwise modified in this chapter, the WSDA adopts the following national standards:

| National standard for:  | Contained in the:  |
|---|--|
| (1) The specifications, tolerances, and other technical requirements for the design, manufacture, installation, performance test, and use of weighing and measuring equipment                 | <del>((2011))</del> <u>2013</u> Edition of <i>NIST Handbook 44 - Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices</i>       |
| (2) The procedures for checking the accuracy of the net contents of packaged goods  | <del>((2011))</del> <u>2013</u> Edition of <i>NIST Handbook 133 - Checking the Net Contents of Packaged Goods</i>  |
| (3) The requirements for packaging and labeling, method of sale of commodities, examination procedures for price verification, and engine fuels, petroleum products and automotive lubricants | <del>((2012))</del> <u>2013</u> Edition of <i>NIST Handbook 130 - Uniform Laws and Regulations in the areas of legal metrology and engine fuel quality</i> . Specifically: |

| National standard for:   | Contained in the:   |
|--|---|
| (a) Weights and measures requirements for all food and nonfood commodities in package form   | <i>Uniform Packaging and Labeling Regulation</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130</i> , (( <del>2012</del> )) <u>2013</u> Edition.                 |
| (b) Weights and measures requirements for the method of sale of food and nonfood commodities   | <i>Uniform Regulation for the Method of Sale of Commodities</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130</i> , (( <del>2012</del> )) <u>2013</u> Edition.  |
| (c) Weights and measures requirements for price verification   | <i>Examination Procedure for Price Verification</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130</i> , (( <del>2012</del> )) <u>2013</u> Edition.              |
| (d) Definitions; standard fuel specifications; classification and method of sale of petroleum products; retail storage tanks and dispenser filters; condemned product; product registration; and test methods and reproducibility limits | <i>Uniform Engine Fuels and Automotive Lubricants Regulation</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130</i> , (( <del>2012</del> )) <u>2013</u> Edition. |
| <u>(4) Specifications and tolerances for reference standards and field standard weights and measures</u>   | <i>NIST Handbook 105-1, Specifications and Tolerances for Field Standard Weights (NIST Class F) - 1990;</i>   |
|  | <i>NIST Handbook 105-2, Specifications and Tolerances for Field Standard Measuring Flasks - 1996;</i>   |
|  | <i>NIST Handbook 105-3, Specifications and Tolerances for Graduated Neck Type Volumetric Field Standards - 2010;</i>  |
|  | <i>NIST Handbook 105-4, Specifications and Tolerances for Liquefied Petroleum Gas and Anhydrous Ammonia Liquid Volumetric Provers - 2010;</i>   |
|  | <i>NIST Handbook 105-5, Specifications and Tolerances for Field Standard Stopwatches - 1997;</i>  |

| National standard for: | Contained in the:  |
|------------------------|--|
|                        | <i>NIST Handbook 105-6, Specifications and Tolerances for Thermometers - 1997;</i>                 |
|                        | <i>NIST Handbook 105-7, Specifications and Tolerances for Dynamic Small Volume Provers - 1997;</i> |
|                        | <i>NIST Handbook 105-8, Specifications and Tolerances for Field Standard Weight Carts - 2003.</i>  |

AMENDATORY SECTION (Amending WSR 12-02-021, filed 12/28/11, effective 1/28/12)

**WAC 16-662-110 Modifications to NIST Handbook 44.** The WSDA adopts the following modifications to *NIST Handbook 44*, which is identified in WAC 16-662-105(1):

| Modified Section:   | Modification:   |
|---|---|
| <u>NIST Handbook 44, 2013 Edition, Section 3-30, Liquid-Measuring Devices</u>                   | The standards and specifications in <i>NIST Handbook 44, 2012 Edition Section 3-30. Liquid-Measuring Devices</i> will be used instead of the 2013 edition.  |
| <u>NIST Handbook 44, 2013 Edition, General Code: Section G-UR.4.1. Maintenance of Equipment</u> | In the last sentence of G-UR.4.1., Maintenance of Equipment, change the words "device user" to "device owner or operator." As a result of this modification, the last sentence of G-UR.4.1. will read:<br>"Equipment in service at a single place of business found to be in error predominantly in a direction favorable to the device owner or operator (see also Introduction, Section Q) shall not be considered "maintained in a proper operating condition.""   |
| <u>NIST Handbook 44, 2012 Edition, Liquid-Measuring Devices: Section S.1.6.4.1. Unit Price</u>  | At the end of the first sentence of S.1.6.4.1.(b), Unit Price, add the words "or after prepayment for the product but prior to its delivery." As a result of this modification, the sentence will read: "Whenever a grade, brand, blend, or mixture is offered for sale from a device at more than one unit price, then all of the unit prices at which that product is offered for sale shall be displayed or shall be capable of being displayed on the dispenser using controls available to the customer prior to the delivery of the product or after prepayment for the product but prior to its delivery." |

AMENDATORY SECTION (Amending WSR 12-08-041, filed 3/30/12, effective 4/30/12)

**WAC 16-662-115 Modifications to NIST Handbook 130.** The WSDA adopts the following modifications to the listed sections of the *Uniform Regulation for the Method of Sale of Commodities* requirements published in *NIST Handbook 130*, identified in WAC 16-662-105 (3)(b):

| Modified Section:   | Modification:   |
|---|---|
| (1) Section 2.20.1. Method of Retail Sale                         | Modify section 2.20.1. Method of Retail Sale. Type of Oxygenate must be Disclosed, to read: "All automotive gasoline or automotive gasoline-oxygenate blends kept, offered, or exposed for sale, or sold at retail containing at least 1.5 mass percent oxygen shall be identified as "with" or "containing" (or similar wording) the predominant oxygenate in the engine fuel. For example, the label may read "contains ethanol." The oxygenate contributing the largest mass percent oxygen to the blend shall be considered the predominant oxygenate. Where mixtures of only ethers are present, the retailer may post the predominant oxygenate followed by the phrase "or other ethers." In addition, gasoline-methanol blend fuels containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This information shall be posted on the upper fifty percent of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type). Methanol at one percent or greater, by volume, in gasoline for use as motor vehicle fuel must be labeled with the maximum percentage of methanol contained in the motor vehicle fuel. Ethanol at no less than one percent and no more than ten percent, by volume, must be labeled "Contains up to 10% Ethanol." Ethanol at greater than ten percent by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol." (Example: E85 Ethanol.)" |
| (2) Section 2.20.2. Documentation for Dispenser Labeling Purposes | Modify section 2.20.2. Documentation for Dispenser Labeling Purposes, to read: "At the time of delivery of the fuel, the retailer shall be provided, on an invoice, bill of lading, shipping paper, or other documentation a declaration of the predominant oxygenate or combination of oxygenates present in concentrations sufficient to yield an oxygen content of at least 1.5 mass percent in the fuel. Where mixtures of only ethers are present, the fuel supplier may identify the predominant oxygenate in the fuel (i.e., the oxygenate contributing the largest mass percent oxygen). In addition, any gasoline containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This documentation is only for dispenser labeling purposes; it is the responsibility of any potential blender to   |

| Modified Section:                                 | Modification:  |
|---|--|
|   | determine the total oxygen content of the engine fuel before blending. When ethanol and/or methanol is blended at one percent or greater, by volume, in gasoline for use as motor vehicle fuel, documentation must include the volumetric percentage of ethanol and/or methanol."  |
| (3) Section 2.23. Animal Bedding                  | Add a new subsection which reads: "2.23.2. Sawdust, Barkdust, Decorative Wood Particles, and Similar Products. As used in this subsection, "unit" means a standard volume equal to 200 cubic feet. When advertised, offered for sale, or sold within Washington state, quantity representations for sawdust, barkdust, decorative wood particles, and similar loose bulk materials must be in cubic measures or units and fractions thereof."  |
| (4) Section 2.31.2. Labeling of Retail Dispensers | Add a new subsection which reads: "2.31.2.5. Labeling of Retail Dispensers Containing Not More Than 5% Biodiesel. Each retail dispenser of biodiesel or biodiesel blend containing not more than five percent biodiesel must be labeled "May contain up to 5% Biodiesel.""<br>Add a new subsection which reads: "2.31.2.6. Labeling of Retail Dispensers Containing More Than 5% Biodiesel. Each retail dispenser of biodiesel or biodiesel blend containing more than five percent biodiesel must be labeled with the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either "biodiesel" or "biodiesel blend" (examples: B100 Biodiesel; B60 Biodiesel Blend)." |
| (5) Section 2.31.4. Exemption                     | Delete section 2.31.4.   |

The WSDA adopts the following modifications to the listed sections of the *Uniform Engine Fuels and Automotive Lubricants Regulation* requirements published in *NIST Handbook 130*, identified in WAC 16-662-105 (3)(d):

| Modified Section:   | Modification:   |
|---|---|
| (1) Section (( <del>2.1.3.</del> ) <u>2.1.2.</u> Gasoline-Ethanol Blends                | Modify section (( <del>2.1.3.</del> ) <u>2.1.2.</u> to read: "When gasoline is blended with 1 to 10 volume percent ethanol, the ethanol shall meet the requirements of ASTM D4806 and either:<br>(a) The base gasoline used for blending with ethanol shall meet the requirements of ASTM D4814; except that the base gasoline shall meet the minimum temperature for a Vapor-Liquid Ratio of 20 for the applicable vapor lock protection class as follows:<br>(1) Class 1 shall be 60°C (140°F)<br>(2) Class 2 shall be 56°C (133°F)<br>(3) Class 3 shall be 51°C (124°F)<br>(4) Class 4 shall be 47°C (116°F)<br>(5) Class 5 shall be 41°C (105°F)<br>or<br>(b) The blend shall meet the requirements of ASTM D4814."<br>Add a new subsection to read: "(( <del>2.1.3.1.</del> ) <u>2.1.2.1.</u> Maximum Vapor Pressure. The maximum vapor pressure of a gasoline-ethanol blend shall not exceed ASTM D4814 limits by more than 1.0 psi for:<br>(a) Only 9 to 10 volume percent ethanol blends from June 1 through September 15.<br>(b) All blends of 1 to 10 volume percent ethanol from September 16 through May 31." |
| (2) Section 2.12. Motor Oil   | Delete section 2.12.  |
| (3) Section 2.13. Products for Use in Lubricating Manual Transmissions, Gears, or Axles | Delete section 2.13.  |
| (4) Section 2.14. Products for Use in Lubricating Automatic Transmissions               | Delete section 2.14.  |

| Modified Section:  | Modification:  |
|--|--|
| (5) Section 3.2.6. Method of Retail Sale                         | Modify section 3.2.6. to read: "Type of Oxygenate must be Disclosed. All automotive gasoline or automotive gasoline-oxygenate blends kept, offered, or exposed for sale, or sold at retail containing at least 1.5 mass percent oxygen shall be identified as "with" or "containing" (or similar wording) the predominant oxygenate in the engine fuel. For example, the label may read "contains ethanol." The oxygenate contributing the largest mass percent oxygen to the blend shall be considered the predominant oxygenate. Where mixtures of only ethers are present, the retailer may post the predominant oxygenate followed by the phrase "or other ethers." In addition, gasoline-methanol blend fuels containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This information shall be posted on the upper fifty percent of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type). Methanol at one percent or greater, by volume, in gasoline for use as motor vehicle fuel must be labeled with the maximum percentage of methanol contained in the motor vehicle fuel. Ethanol at no less than one percent and no more than ten percent, by volume, must be labeled "Contains up to 10% Ethanol." Ethanol at greater than ten percent by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol" (example: E85 Ethanol)." |
| (6) Section 3.2.7. Documentation for Dispenser Labeling Purposes | Modify section 3.2.7. to read: "The retailer shall be provided, at the time of delivery of the fuel, on an invoice, bill of lading, shipping paper, or other documentation, a declaration of the predominant oxygenate or combination of oxygenates present in concentrations sufficient to yield an oxygen content of at least 1.5 mass percent in the fuel. Where mixtures of only ethers are present, the fuel supplier may identify the predominant oxygenate in the fuel (i.e., the oxygenate contributing the largest mass percent oxygen). In addition, any gasoline containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This documentation is only for dispenser labeling purposes; it is the responsibility of any potential blender to determine the total oxygen content of the engine fuel before blending. When ethanol and/or methanol is blended at one percent or greater, by volume, in gasoline for use as motor vehicle fuel, documentation must include the volumetric percentage of ethanol and/or methanol."   |
| (7) Section 3.8.2. Labeling Requirements                         | Add a new subsection which reads: "(c) Each retail dispenser of greater than ten percent fuel ethanol by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol" (example: E85 Ethanol)."   |
| (8) Section 3.9.2. Retail Dispenser Labeling                     | Add a new subsection which reads: "(c) Each retail dispenser of fuel methanol shall be labeled by the capital letter M followed by the numerical value maximum volume percent and ending with the word "methanol." (Example: M85 Methanol.)"   |
| (9) Section 3.13. Oil  | Delete section 3.13.   |
| (10) Section 3.14. Automatic Transmission Fluid                  | Delete section 3.14.   |
| (11) Section 3.15.2. Labeling of Retail Dispensers               | Add a new subsection which reads: "3.15.2.5. Labeling of Retail Dispensers Containing Not More Than 5% Biodiesel. Each retail dispenser of biodiesel blend containing not more than five percent biodiesel must be labeled "May contain up to 5% Biodiesel.""<br>Add a new subsection which reads: "3.15.2.6. Labeling of Retail Dispensers Containing More Than 5% Biodiesel. Each retail dispenser of biodiesel or biodiesel blend containing more than five percent biodiesel must be labeled with the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either "biodiesel" or "biodiesel blend" (examples: B100 Biodiesel; B60 Biodiesel blend)."  |
| (12) Section 3.15.4. Exemption                                   | Delete section 3.15.4.   |

NEW SECTION

**WAC 16-662-140 Retail sales of motor fuels.** All devices used for retail motor fuel sales shall:

- (1) Display the price per gallon or price per liter as set forth in *NIST Handbook 44* adopted under this chapter;
- (2) Indicate the amount of fuel delivered during a single retail transaction as set forth in *NIST Handbook 44* adopted under this chapter;
- (3) Compute and display the selling price per unit as set forth in *NIST Handbook 44* adopted under this chapter;
- (4) Compute and display the total selling price for a single retail transaction as set forth in *NIST Handbook 44* adopted under this chapter; and
- (5) Provide a receipt for retail transactions as set forth in *NIST Handbook 44* adopted under this chapter.

NEW SECTION

**WAC 16-662-145 Posting of motor fuel prices—Cash and credit sales.** The following rules apply to the posting of prices of retail sales of motor fuels. As used herein, motor fuel means any fuel used in motor vehicles including, but not limited to, gasoline, diesel, propane, and alcohol-gasoline blends. As used herein, motor vehicles shall include all wheeled motorized vehicles, and all boats and airplanes.

- (1) The posted or advertised price of motor fuel at retail outlets must be available to all consumers. The grade of fuel and any condition or qualification required to obtain the posted price must be clearly displayed in letters of contrasting color at least one-half the size of the posted price and immediately adjacent thereto.
- (2) A cash price may be posted or advertised if the posting of the price clearly shows it to be limited to cash purchases. The information shall be in letters at least one-half the size of the posted price and immediately adjacent thereto.
- (3) Cash and credit sales. If a retailer elects to establish separate islands or individual dispensers for cash and credit sales, the islands or dispensers shall be clearly marked as such in letters at least six inches in height and of proportional width.
- (4) Posted prices of motor fuels at retail outlets shall include all federal, state, and local taxes.

**WSR 13-03-057****PERMANENT RULES****HORSE RACING COMMISSION**

[Filed January 11, 2013, 2:00 p.m., effective February 11, 2013]

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

Purpose: Adopts new and amends some current definitions to reflect current uses in racing.

Citation of Existing Rules Affected by this Order: Amending WAC 260-12-010.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 12-24-022 on November 28, 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: January 11, 2013.

Douglas L. Moore  
Deputy Secretary

AMENDATORY SECTION (Amending WSR 10-09-012, filed 4/9/10, effective 5/10/10)

**WAC 260-12-010 Definitions.** The definitions in this section apply throughout these rules unless the context requires otherwise.

- (1) "Added money." Money added to the purse of a race by the association, or other fund, in the amount paid by owners for nominations, entry, and starting fees.
- (2) "Allowance race." An overnight race for which there is no claiming price established.
- (3) "Also eligible."
  - (a) A number of eligible horses, properly entered, which were not drawn for inclusion in a race, but which become eligible according to preference or lot if an entry is scratched prior to the scratch time deadline; or
  - (b) In a trial race, the next preferred contestant that is eligible to participate when an entry is scratched, pursuant to the written conditions of the race.
- (4) "Apprentice jockey." A jockey who has not won a certain number of races within a specific period of time who is granted an extra weight allowance as provided in WAC 260-32-370(9).
- (5) "Apprentice allowance." A weight allowance given to an apprentice jockey ranging from five to ten pounds.
- (6) "Authorized agent." A person appointed by a written document signed by the owner with authority to act for the owner.

(7) "Assistant trainer." A person employed by a licensed trainer whom has the authority to represent the trainer in all racing matters. An assistant trainer may also perform all the duties of a groom.

(8) "Association." Any person or persons, associations, or corporations licensed by the commission to conduct pari-mutuel wagering on a race meet.

(9) "Association employee." Any person hired by a racing association.

~~((8))~~ (10) "Association grounds." All real property utilized by the association in the conduct of its race meeting, including the race track, grandstand, concession stands, offices, barns, stable area, and parking lots and any other areas under the jurisdiction of the commission.

~~((9))~~ (11) "Bar shoe." A special shoe with a solid bar that runs across the rear of the shoe for extra protection.

(12) "Barn superintendent." An association employee who is responsible to assign stalls and maintain records of number of horses in a trainer's care on a daily basis.

~~((10))~~ (13) "Bit." The metal mouthpiece on a bridle used to guide and control a horse.

~~((11))~~ (14) "Bleeder." A horse that demonstrates exercise induced pulmonary hemorrhaging.

~~((12))~~ (15) "Blinkers." A hood with different size cups to limit the peripheral vision of a horse.

~~((13))~~ (16) "Breakage." The remaining cents after pari-mutuel payoffs are rounded down to a dime or nickel.

~~((14))~~ (17) "Breeder." For thoroughbreds, the breeder is the owner of the horse's dam at the time of foaling. For quarter horses, appaloosas, arabians and paint horses, the breeder is the owner of the dam at the time of service.

(18) "Cheek pieces." Two pieces of sheepskin or other material which are attached to the cheek pieces of a bridle which may restrict vision.

~~((15))~~ (19) "Claiming." The act of buying a horse out of a race for a specific price.

~~((16))~~ (20) "Claim box." A box in a specified location where a claim must be deposited to be valid.

~~((17))~~ (21) "Claiming race." Races in which horses are entered subject to being claimed for a specified price.

~~((18))~~ (22) "Clerk of scales." An official who weighs the jockeys prior to and after each race.

~~((19))~~ (23) "Clocker." An official that times horses when horses are performing an official workout.

~~((20))~~ (24) "Colors." Racing silks with owners' distinct designs and color worn by jockeys while racing.

~~((21))~~ (25) "Colt." Male horse under the age of five.

~~((22))~~ (26) "Commission."

(a) The five-member commission established by RCW 67.16.012; or

(b) The state agency known as the Washington horse racing commission.

~~((23))~~ (27) "Condition book." A book issued by the racing secretary with specific eligibility conditions for scheduled races.

~~((24))~~ (28) "Coupled entry." Two or more horses running as a single betting interest for pari-mutuel wagering purposes.

~~((25))~~ (29) "Daily double." Type of wager calling for the selection of the winner of two consecutive races.

~~((26))~~ (30) "Dead heat." Two or more horses in an exact tie at the finish line.

~~((27))~~ (31) "Denial." The refusal to grant an applicant a license after the applicant has made application for a license, but prior to the individual performing the duties associated with the license.

~~((28))~~ (32) "Eligible." A horse that is qualified to start in a race as established by the racing secretary's conditions.

~~((29))~~ (33) "Engagement." A commitment given by a jockey or his/her agent to accept a mount in a specified race.

~~((30))~~ (34) "Entry."

(a) A horse eligible for and entered in a race.

(b) Two or more horses which are entered or run in a race with common ownership.

~~((31))~~ (35) "Equipment." Tack carried or used on a racehorse including whips, blinkers, tongue ties, muzzle, nosebands, bits, shadow rolls, martingales, breast plates, bandages, boots and plates.

~~((32))~~ (36) "Exacta." A wager involving selecting the first two finishers in a race in exact order.

~~((33))~~ (37) "Exercise rider." A person licensed by the commission to ride horses for the purpose of exercising. Exercise riders working at a race track must be licensed as "Exercise rider - track," while those working at the farm or training centers must be licensed as "Exercise rider - farm" if the trainer wishes to provide their employee industrial insurance coverage under the horse industry account.

~~((34))~~ (38) "Field." The total horses scheduled to run in a race.

~~((35))~~ (39) "Filly." A female horse four years and younger.

~~((36))~~ (40) "Front leg wraps." Bandages that extend at least four inches up the horse's front legs for support.

~~((37))~~ (41) "Furlong." One-eighth of a mile, two hundred twenty yards, or six hundred sixty feet.

~~((38))~~ (42) "Furosemide." Generic term for a medication used for the treatment of bleeders.

~~((39))~~ (43) "Furosemide list." A list of horses maintained by the official veterinarian eligible to race in this jurisdiction on furosemide.

~~((40))~~ (44) "Gelding." A male horse that has been castrated.

~~((41))~~ (45) "Groom." A person licensed by the commission who is employed by a licensed trainer to care for the trainer's horses.

~~((42))~~ (46) "Handicap."

(a) A race in which the racing secretary designates the weight to be carried for each horse.

(b) Making wagering selections on the basis of a horse's past performances.

~~((43))~~ (47) "Handle." Total amount of money wagered in the pari-mutuel pool for a race, race card, or a race meet.

~~((44))~~ (48) "Horse."

(a) A registered filly, mare, colt, horse, gelding or ridgling of a breed that is eligible to race in the state of Washington.

(b) Any male horse five years old or older.

~~((45))~~ (49) "Intact male." Any male horse, colt, or ridgling.

~~((46))~~ (50) "Inquiry." A review of a race conducted by the board of stewards to determine if a racing violation was committed.

~~((47))~~ (51) "Jockey." A person licensed by the commission to ride a horse in a race meet, whether a jockey or an apprentice jockey.

~~((48))~~ (52) "Jockey fee." The money paid to a jockey for riding in a race.

~~((49))~~ (53) "Maiden." A horse, which at the time of starting in a race, has never won a race on the flat in any country, at a track which is covered by a recognized racing publication showing the complete results of the race. A maiden who has been disqualified after finishing first is still considered a maiden.

~~((50))~~ (54) "Mare." A female horse five years old or older.

~~((51))~~ (55) "Minus pool." A mutuel pool caused when one horse is heavily bet and after all mandatory deductions there is not enough money in the pool to pay the legally prescribed minimum on each winning wager.

~~((52))~~ (56) "Morning line." A handicapper's approximate odds quoted in the program.

~~((53))~~ (57) "Mutuel field." A group of horses, with no common ties, coupled by the association for wagering purposes in a single race.

~~((54))~~ (58) "Net pool price calculations." The method of calculating the parimutuel pools when international pools are conducted (WAC 260-48-800).

~~((55))~~ (59) "Nerved" or "heel nerved." A horse upon which a digital neurectomy has been performed.

~~((56))~~ (60) "Nomination." The naming of a horse to a certain race or series of races generally accompanied by payment of a prescribed fee.

~~((57))~~ (61) "Objection." When a claim of foul is lodged by a jockey, owner, or trainer following the running of the race.

~~((58))~~ (62) "Official."

(a) When the board of stewards has determined that the order of finish of a race is correct for the mutuel payouts.

(b) An individual designated to perform functions to regulate a race meet.

~~((59))~~ (63) "Off-track betting." Parimutuel wagering on horse races conducted at a location other than the racing association's grounds, often referred to as a satellite location.

~~((60))~~ (64) "Optional claiming race." A race offered in which horses may be entered either for a claiming price or under specific allowance conditions.

~~((61))~~ (65) "Overnight race." A contest for which entries close at a time set by the racing secretary.

~~((62))~~ (66) "Overweight." Extra weight carried by the jockey that is greater than the listed weight in the official program.

~~((63))~~ (67) "Owner." Any person licensed by the commission with an ownership interest in a horse, including a lessee. An interest only in the winnings of a horse does not constitute part ownership.

~~((64))~~ (68) "Owners' bonus." A percentage of the gross mutuel pool the association is required by RCW 67.16.102 to withhold to be paid to owners of Washington bred horses at the conclusion of the meet based on the owner's horse finishing first, second, third or fourth.

~~((65))~~ (69) "Paddock." Enclosure or area where horses are saddled prior to the post parade.

~~((66))~~ (70) "Paddock judge." An official who monitors the saddling of the horses before a race to ensure consistent equipment on each horse and supervises the paddock.

~~((67))~~ (71) "Penalty weight." Additional weight to be carried by the horse as stated in the condition book.

~~((68))~~ (72) "Pick n." A type of wager requiring the patron to select the winners of a specified number of consecutive races.

~~((69))~~ (73) "Pick three." A type of wager requiring the patron to select the winners of three consecutive races.

~~((70))~~ (74) "Place." To finish second in a race.

~~((71))~~ (75) "Poles." Markers positioned around the track indicating the distance to the finish line.

(76) "Pony rider." A person licensed by the commission to escort horses either in the morning during training or in the afternoon during racing. A pony rider may not exercise horses. Pony riders working at a race track must be licensed as "Pony rider - track," while those working at the farm or training centers must be licensed as "Pony rider - farm" if the trainer wishes to provide their employee industrial insurance coverage under the horse industry account.

~~((72))~~ (77) "Post." The starting position on the track.

~~((73))~~ (78) "Post parade." Horses passing in front of the stewards stand and public prior to warming up for the race.

~~((74))~~ (79) "Post position." Position assigned to the horse to break from the starting gate determined by lot at the time of the draw of the race.

~~((75))~~ (80) "Post time." The scheduled time for the horses to arrive at the starting gate for a race.

(81) "Program/paper trainer." A licensed trainer who, solely for the purposes of the official race program, is identified as the trainer of a horse that is actually under the control of and trained by another person who may or may not hold a current trainer's license.

~~((76))~~ (82) "Purse." The amount of prize money offered by the racing association for each race.

~~((77))~~ (83) "Protest." A complaint filed regarding a horse running in a race that is filed in writing with the board of stewards.

~~((78))~~ (84) "Quinella." A wager in which the patron selects the first two finishers regardless of order.

~~((79))~~ (85) "Race meet." The dates of live horse racing that have been approved by the commission. (Also refer to RCW 67.16.010.)

~~((80))~~ (86) "Racing plates." Shoes designed for race-horses, usually made of aluminum.

~~((81))~~ (87) "Racing secretary." An official who drafts conditions of each race and accepts entries and conducts the post position draw of the races.

~~((82))~~ (88) "Receiving barn." Structure where horses may be identified prior to proceeding to the paddock.

~~((83))~~ (89) "Recognized race meet." Any race meet involving parimutuel wagering held under the sanction of a racing authority.

(90) "Retired horse." A horse that at the time of sale or gift is no longer fit to race. No retired horse is eligible to run in a race under the jurisdiction of the commission.

~~((84))~~ (91) "Revocation." The cancellation of an existing license for a minimum of three hundred sixty-five days and up to an indefinite period of time (e.g., life-time). Individuals revoked are ineligible for a license during the period of revocation. Individuals revoked are banned from all facilities under the jurisdiction of the commission during the period of their revocation.

~~((85))~~ (92) "Ridgling." A male horse with one or both testicles undescended.

~~((86))~~ (93) "Scale of weights." Fixed weight assignments to be carried by horses according to age, sex, distance, and time of year.

~~((87))~~ (94) "Scratch." Withdrawing an entered horse from the race after the closing of entries.

~~((88))~~ (95) "Scratch time." The established deadline for the withdrawal of entries from a scheduled performance.

~~((89))~~ (96) "Sex allowance." Weight allowance given to fillies and mares when competing against males.

~~((90))~~ (97) "Show." To finish third in a race.

~~((91))~~ (98) "Simulcast." Broadcasting a live race from another racing association for purposes of parimutuel wagering on that race, or sending a broadcast of a live race to another racing association for purposes of parimutuel wagering on that race.

(99) "Spouse groom." The spouse of a trainer, licensed by the commission and permitted to perform all the duties of a groom, but is not extended industrial insurance coverage under the horse industry account.

~~((92))~~ (100) "Stake race." A race for which nominations close more than seventy-two hours in advance of its running and for which owners or nominators contribute money toward its purse, or a race for which horses are invited by an association to run for a guaranteed purse of thirty thousand dollars or more without payment of nomination, entry, or starting fees.

~~((93))~~ (101) "Stallion." A male horse or colt which can be used for breeding purposes.

~~((94))~~ (102) "Standard price calculations." A method of calculating the parimutuel payoffs used mostly when calculating pools nationally.

~~((95))~~ (103) "Starter."

(a) A horse is a "starter" for a race when the stall doors of the starting gate open in front of it at the time the starter dispatches the horses; or

(b) An official responsible for dispatching the horses from the starting gate.

~~((96))~~ (104) "Starter's list." A list, maintained by the official starter, of horses that have been unruly when loading in the starting gate. Horses on the starter's list are ineligible to enter.

~~((97))~~ (105) "Starter race." An allowance or handicap race restricted to horses who have started for a specific claiming price or less.

~~((98))~~ (106) "Stewards." The officials designated by the commission responsible for enforcing the rules of racing.

~~((99))~~ (107) "Stewards' list." A list, maintained by the stewards, of horses which are ineligible to enter for various reasons, e.g., poor performance, ownership disputes, etc.

~~((100))~~ (108) "Suspension." The temporary loss of license privileges for a specific period of time (not to exceed three hundred sixty-five days), or until specific conditions are met. All suspensions for a specific period of time will be in calendar days; with the exception of riding suspensions, which will be race days. Individuals suspended may be banned from all facilities under the jurisdiction of the commission during the period of their suspension.

~~((101))~~ (109) "Test barn." The enclosure to which selected horses are taken for post race testing.

~~((102))~~ (110) "Tongue tie." Bandage or other apparatus used to tie down a horse's tongue to prevent the tongue from getting over the bit, which can affect the horse's breathing and the jockey's ability to control the horse.

(111) "Trainer." A person who holds a valid trainer's license who has a horse eligible to race under his/her care, custody, or control at the time of entry.

~~((103))~~ (112) "Trifecta." A wager picking the first three finishers in exact order in a specific race.

~~((104))~~ (113) "Turf course." A racing surface comprised of grass.

~~((105))~~ (114) "Veterinarian's list." A list of horses ineligible to enter due to sickness, lameness, or other conditions as determined by an official veterinarian.

~~((106))~~ (115) "Walk over." A race that has only one participant.

~~((107))~~ (116) "Washington bred." A horse that was foaled in the state of Washington.

(117) "Washington race track." A race track licensed and regulated by the commission during the track's licensed race meet and periods of training.

~~((108))~~ (118) "Weigh-in." The clerk of scales weighing of a jockey immediately follows the race.

~~((109))~~ (119) "Weigh-out." The clerk of scales weighing of a jockey prior to a race.

~~((110))~~ (120) "Weight allowance." A reduction in weight to be carried by a horse as established by the conditions for each race.

~~((111))~~ (121) "Workout" or "official workout." An exercise at moderate to extreme speed for a predetermined distance of a horse as required in WAC 260-40-105 to make a horse eligible to be entered or run in a race.

## WSR 13-03-058

### PERMANENT RULES

#### HORSE RACING COMMISSION

[Filed January 11, 2013, 2:17 p.m., effective February 11, 2013]

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

Purpose: Requires assistant starters to wear safety helmets while performing their duties.

Citation of Existing Rules Affected by this Order: Amending WAC 260-24-580.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 12-24-019 on November 28, 2012.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: January 11, 2013.

Douglas L. Moore  
Deputy Secretary

AMENDATORY SECTION (Amending WSR 10-05-064, filed 2/12/10, effective 3/15/10)

**WAC 260-24-580 Starter and assistant starters.** (1)

The starter is responsible for the following duties:

(a) Approve all horses which have never started to ensure that the horse is familiar with, and capable of, breaking from the starting gate((-));

(b) Ensure all participants have an equal opportunity to a fair start;

(c) Supervise the assistant starters;

(d) Provide a sufficient number of assistant starters for each race;

(e) Assign the starting gate stall positions to assistant starters and notify the assistant starters of their respective stall positions, or assign a foreman to act in his behalf, before post time for each race;

(f) Assess and make recommendations to the board of stewards on the ability of each person applying for an initial jockey license in breaking from the gate and working a horse in the company of other horses;

(g) Load horses into the gate in any order necessary to ensure a safe and fair start;

(h) Recommend to the stewards horses that should be scratched because a horse at the starting gate is refusing to load or is unruly.

(2) The starter will place and remove horses on the starter's list for poor or unruly behavior in the starting gate. Horses placed on the starter's list will be refused entry until the horse has been satisfactorily schooled in the starting gate. Schooling will be under the direct supervision of the starter or his designee.

(3) The starter has complete authority over the starting gate, the starting of horses, and the authority to give orders, which are not in conflict with these rules.

(4) The starter will appoint all assistant starters. Assistant starters must first demonstrate they are adequately trained to safely handle horses in the starting gate. In emergencies the starter may appoint qualified individuals to act as substitute assistant starters.

All assistant starters, and anyone appointed by the starter to act as a substitute assistant starter, must wear a securely fastened safety vests and helmets, which meet ~~((s the shock-absorbing protection required))~~ the standards in WAC 260-12-180 ~~((2))~~ (1) and (2), at all times when performing their duties.

(5) Assistant starters may not:

(a) Handle or take charge of any horse in the starting gate without the expressed permission of the starter;

(b) Impede the start of a race;

(c) Strike a horse with a whip;

(d) Use a device, unless approved by the stewards, to assist in the loading of a horse into the starting gate;

(e) Slap, boot or otherwise dispatch a horse from the starting gate;

(f) Strike or use abusive language to a jockey; or

(g) Accept or solicit any gratuity or payment other than his/her regular salary, directly or indirectly, for services in starting a race.

(6) The starter and assistant starters will report all unauthorized activities to the stewards.

**WSR 13-03-059**

**PERMANENT RULES**

**HORSE RACING COMMISSION**

[Filed January 11, 2013, 2:19 p.m., effective February 11, 2013]

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

Purpose: Amends the weight allowances given to apprentice jockeys and allows the waiving of the allowance without further penalty.

Citation of Existing Rules Affected by this Order: Amending WAC 260-32-370.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 12-24-020 on November 28, 2012.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: January 11, 2013.

Douglas L. Moore  
Deputy Secretary

AMENDATORY SECTION (Amending WSR 12-03-076, filed 1/13/12, effective 2/13/12)

**WAC 260-32-370 Apprentice jockeys.** (1) An applicant for an apprentice jockey license may be prohibited from riding until the stewards or the commission has sufficient opportunity (not to exceed 14 days) to verify the applicant's previous riding experience.

(2) An apprentice jockey may be granted an apprentice certificate by the board of stewards. The apprentice certificate will grant an apprentice all the allowances and conditions stated in these rules.

(3) An apprentice jockey ~~((eligible for a ten pound allowance))~~ that has ridden less than five winners may not accept mounts on two year olds and first time starters, without prior approval of the board of stewards.

(4) The conditions of an apprentice jockey license do not apply to quarter horse or mixed breed racing. A jockey's per-

performances in quarter horse or mixed breed racing do not apply to the conditions of an apprentice jockey.

(5) An applicant with an approved apprentice certificate from another jurisdiction may be licensed as an apprentice jockey.

(6) An apprentice certificate may be obtained from the stewards on a form provided by the commission. A person may not receive more than one apprentice certificate. In case of emergencies, a copy of the original may be obtained from the commission where it was issued.

(7) The apprentice jockey will be responsible to have his/her apprentice certificate with them at all times. Prior to riding, the apprentice certificate will be submitted to the clerk of scales at each racing association in which the apprentice is licensed and riding.

(8) The apprentice jockey must keep an accurate updated record of his/her first forty winners, to be recorded on the certificate by the clerk of scales.

(9) An apprentice jockey may claim ~~((the following weight allowances in all overnight races except stakes and handicaps:~~

~~(a) Ten pound allowance beginning with the first mount and continuing until the apprentice has ridden five winners;~~

~~(b) Seven pound allowance until the apprentice has ridden an additional thirty-five winners; and~~

~~(c) If an apprentice has ridden a total of forty winners prior to the end of a period of one year from the date of riding their fifth winner, the apprentice jockey will have an allowance of five pounds until the end of that year;~~

~~(d) If after one year from the date of the fifth winning mount, the apprentice jockey has not ridden forty winners, the applicable weight allowance will continue for one more year or until the 40th winner, whichever comes first. In no event may a weight allowance be claimed for more than two years from the date of the fifth winning mount, unless an extension has been granted.~~

~~(e) An apprentice may waive any or all of the above weight allowances, but may not be eligible to reinstate any of the allowances once voluntarily waived.~~

~~(f) An apprentice may be named as a replacement rider on a mount entered without the apprentice weight allowance only after entries have been drawn at which time the apprentice allowance will not be deemed to have been voluntarily waived)) a five-pound allowance beginning with his/her first mount and for one full year from the date of his/her fifth winning mount. If after riding one year from the date of his/her fifth winning mount, the apprentice jockey has failed to ride a total of forty winners he/she may continue to ride with a five-pound weight allowance for one additional year from the date of his/her fifth winner or until he/she has ridden forty winners, whichever comes first.~~

(a) Apprentice allowances may be waived at the time of entry by the owner, trainer, or authorized agent.

(b) Apprentice allowances may not be claimed in stakes and handicap races.

(10) The commission may extend the period in which an apprentice jockey is allowed a weight allowance when, at the discretion of the commission, an apprentice jockey is unable to continue riding due to:

(a) Physical disablement or illness;

(b) Military service;

(c) Attendance in an institution of secondary or higher education;

(d) Restriction on racing;

(e) Other valid reasons.

(11) In order to qualify for an extension, an apprentice jockey must have been rendered unable to ride for a period of not less than seven consecutive days during the period in which the apprentice was entitled to an apprentice weight allowance.

(12) The commission currently licensing the apprentice jockey will have the authority to grant an extension to an eligible applicant, but only after the apprentice has produced documentation, verifying time lost as defined by this regulation.

(13) An apprentice may petition the jurisdictions in which he or she is licensed and riding for an extension of the time for claiming apprentice weight allowances granted by the commission, and the apprentice will be bound by the decision of the jurisdiction so petitioned.

## WSR 13-03-060

### PERMANENT RULES

#### HORSE RACING COMMISSION

[Filed January 11, 2013, 2:20 p.m., effective February 11, 2013]

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

Purpose: Address the new equipment, "cheek pieces" and the requirement of trainers to declare their use.

Citation of Existing Rules Affected by this Order: WAC 260-44-010.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 12-24-021 on November 28, 2012.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: January 11, 2013.

Douglas L. Moore  
Deputy Secretary

AMENDATORY SECTION (Amending WSR 07-07-035, filed 3/12/07, effective 4/12/07)

**WAC 260-44-010 Equipment changes.** (1) Permission to change any equipment from that which a horse carried in its previous race must be obtained from the stewards.

(2) Permission for a horse to add or remove blinkers or cheek pieces must be approved by the starter before being granted by the stewards.

(3) A trainer may tie down a horse's tongue but only with materials that are not dangerous or likely to cause injury to the horse. An official veterinarian will decide any question about the appropriateness of the material used for a tongue-tie. The stewards may monitor the use of tongue-ties.

(4) Whips will be considered standard equipment in all horse races, unless declared at time of entry.

### WSR 13-03-061

#### PERMANENT RULES

#### HORSE RACING COMMISSION

[Filed January 11, 2013, 2:21 p.m., effective February 11, 2013]

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

Purpose: Amends how extracorporeal shock wave therapy is used and reported along with penalties for violations.

Citation of Existing Rules Affected by this Order: Amending WAC 260-70-545 and 260-84-130.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 12-24-024 on November 28, 2012.

Changes Other than Editing from Proposed to Adopted Version: In WAC 260-70-545 (3), (4)(a), the word train was replaced by the term, workout.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 2, Repealed 0.

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

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

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

Date Adopted: January 11, 2013.

Douglas L. Moore  
Deputy Secretary

AMENDATORY SECTION (Amending WSR 07-07-036, filed 3/12/07, effective 4/12/07)

**WAC 260-70-545 Prohibited practices.** The following are prohibited practices:

(1) The possession or use of any drug, substance, or medication if the use may endanger the health or welfare of the horse or endanger the safety of the rider, or which may adversely affect the integrity of racing; or

(2) The possession or use of a drug or medication on the premises of a facility under the jurisdiction of the commission that has not been approved by the United States Food and Drug Administration (FDA) for any use in human or animal, or any substance forbidden by an official veterinarian.

(3) The possession and/or use of blood doping agents(;) including, but not limited to, those listed below, on the premises of a facility under the jurisdiction of the commission:

(a) Erythropoietin;

(b) (~~Darbepoietin~~) Darbepoetin;

(c) Oxyglobin; and

(d) Hemopure.

(4) Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy unless the following conditions are met:

(a) Any treated horse may not race or workout for a minimum of ten days following treatment;

(b) Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy machines may only be used by veterinarians licensed by the commission and only approved machines at a previously disclosed location may be used;

(c) The practicing veterinarian has filed a report with an official veterinarian notifying the commission that an Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy machine is on association grounds;

(d) All Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy treatments are reported to an official veterinarian on the prescribed form not later than twenty-four hours after treatment.

The horse will be added to a list of ineligible horses. This list will be kept in the race office and be posted in an accessible location.

(5) The use of a (~~naso-gastric~~) nasogastric tube (a tube longer than six inches) for the administration of any substance within twenty-four hours prior to the post time of the race in which the horse is entered and without the prior approval of an official veterinarian.

AMENDATORY SECTION (Amending WSR 11-03-053, filed 1/14/11, effective 2/14/11)

#### **WAC 260-84-130 Penalties for prohibited practices.**

For a person or persons found to be responsible for violation of WAC 260-70-545, including the treating veterinarian, the following penalties will be assessed:

(1) For violations of WAC 260-70-545, except WAC 260-70-545 (4)(b)(;),

(a) For first offense - Thirty day suspension and \$1,000 fine;

(b) For second offense - Sixty day suspension and \$2,000 fine;

(c) For third offense - One year suspension, \$2,500 fine; and

(d) For subsequent offense(s) - Revocation of license and a \$2500 fine.

(2) For violations of WAC 260-70-545 (4)(a), the person or persons found to be responsible for the violation, including

the treating veterinarian a \$2,500 fine and ~~((revocation of license))~~ a minimum of a one-year suspension.

**WSR 13-03-062**  
**PERMANENT RULES**  
**GAMBLING COMMISSION**

[Order 682—Filed January 11, 2013, 3:03 p.m., effective February 11, 2013]

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

Purpose: Currently, raffle tickets must be sold with consecutive numbering. A petition for rule change from the public was approved to allow charitable and nonprofit organizations to sell raffle tickets that are not consecutively numbered for raffles that take place during the same event at the same location. Raffle ticket numbers will need to be recorded on a ticket distribution log to document the gaps in the numbers. The intent of this change is to allow organizations to use up left over theatre style tickets from previous raffles rather than throw them away. This may result in gaps in ticket numbering.

Reasons Supporting Proposal: See above.

Citation of Existing Rules Affected by this Order: Amending WAC 230-11-010.

Statutory Authority for Adoption: RCW 9.46.070, 9.46.0277.

Adopted under notice filed as WSR 12-21-024 on October 8, 2012.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: January 11, 2013.

Susan Newer  
Rules Coordinator

AMENDATORY SECTION (Amending Order 602, filed 9/26/06, effective 1/1/08)

**WAC 230-11-010 Number tickets consecutively.** All raffle tickets must:

(1) Be consecutively numbered; or

(2) Be printed with numbers which do not repeat within the population of all tickets sold for a particular raffle. All aspects of the raffle must take place during the same event at the same location and you must maintain a raffle ticket distribution log in the format we require; or

(3) Be printed with letters or symbols which do not repeat within the population of all tickets sold for a particular raffle.

**WSR 13-03-063**  
**PERMANENT RULES**  
**GAMBLING COMMISSION**

[Order 683—Filed January 11, 2013, 3:10 p.m., effective February 11, 2013]

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

Purpose: A petition for rule change from the public was approved to increase the amount of payout in chips or cash for player-supported jackpot prizes from \$2,500 to \$5,000.

Reasons Supporting Proposal: This change will make doing business easier for card room licensees. Card room licensees will be able to pay jackpot winners in a timelier manner and will no longer have to issue checks for amounts between \$2,500 and \$5,000; they can pay the prize immediately in cash or chips rather than a check. The change also reduces the need to call in an off-duty card room employee to issue checks.

Citation of Existing Rules Affected by this Order: Amending 230-15-405.

Statutory Authority for Adoption: RCW 9.46.070, 9.46.0282.

Adopted under notice filed as WSR 12-21-023 on October 8, 2012.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: January 11, 2013.

Susan Newer  
Rules Coordinator

AMENDATORY SECTION (Amending Order 608, filed 4/10/07, effective 1/1/08)

**WAC 230-15-405 Paying out prizes on a player-supported jackpot.** (1) Class F or house-banked licensees must award all player-supported jackpot funds as prizes; and

(2) ~~((Cash))~~ Prizes of ~~((two thousand five hundred))~~ five thousand dollars or less may be paid in cash or chips; and

(3) Prizes not awarded in cash must be paid within twenty-four hours with a check that provides a duplicate copy; and

(4) Licensees must maintain a record of all prizes paid in the format we prescribe; and

(5) When a player wins a prize of five hundred dollars or more, in view of the surveillance camera, the dealer must:

(a) Display the value and suit of each card in the winning hand; and

(b) Count and put in numerical order by suit the remaining cards in the deck to confirm a complete deck; and

(6) Licensees must collect the hand and seal it with a copy of the prize record. Licensees must keep the winning hand and remaining deck on the business premises for seven days.

**WSR 13-03-064**  
**PERMANENT RULES**  
**GAMBLING COMMISSION**

[Order 684—Filed January 11, 2013, 3:11 p.m., effective February 11, 2013]

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

Purpose: Shuffle Master, a licensed manufacturer, submitted a petition for rule change requesting the ability to connect external tools to card shufflers, ace finders and similar gambling equipment to conduct standard maintenance. The petitioner's request was approved at the January 2013 commission meeting.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 12-21-116 on October 23, 2012.

Changes Other than Editing from Proposed to Adopted Version: At the January 2013 commission meeting, staff recommended placing this new rule in the "manufacturer" section (chapter 230-16 WAC) of gambling rules, rather than in the "licensing and permitting" section (chapter 230-03 WAC). This was recommended because this rule is a manufacturer requirement and placing the rule in the "manufacturer" section of our rules manual will make it easier for our licensees to find it. The petitioner supported the number change.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 0.

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

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

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

Date Adopted: January 11, 2013.

Susan Newer  
Rules Coordinator

## GAMBLING EQUIPMENT

### NEW SECTION

**WAC 230-16-151 Gambling equipment connecting to external tools for standard maintenance.** (1) The following gambling equipment can be connected to external tools for standard maintenance only through a closed network:

(a) Card shuffling devices; and

(b) Ace finders or no peek devices; and

(c) Similar gambling equipment that has been approved by us.

(2) For purposes of this rule:

(a) A closed network includes only the gambling equipment and the external tool.

(b) Standard maintenance means:

(i) Reviewing event logs on gambling equipment, which can consist of card and software errors.

(ii) Installing and uninstalling card libraries and card calibration files.

(iii) Configuring touch screen calibration.

(iv) Gathering diagnostic information.

(v) Verifying the hardware board type(s).

(vi) Reviewing the number of times the equipment has been powered up.

(vii) Reviewing the total number of operating cycles.

(c) External tools may only include laptops, tablets, USB products, or similar products approved by us, containing troubleshooting programs, which will connect to the gambling equipment via their Ethernet or USB ports.

(3) The following requirements apply when using external tools:

(a) A functional replica of the external tools and their troubleshooting programs must be tested and approved by us before they are first used; and

(b) During standard maintenance, the gambling equipment must not be in play or have access to live gaming data; and

(c) Wireless capabilities must not be used when an external tool is connected to gambling equipment. If an external tool has wireless capabilities, it must be tested by us to ensure wireless capabilities are disabled when connected to the gambling equipment; and

(d) There must be no access to the internet; and

(e) The connection for maintenance must only exist while the manufacturer representative or distributor representative is performing maintenance; and

(f) When standard maintenance is performed, the operator must keep a log in the format we require and access to the gambling equipment must be recorded by surveillance; and

(g) The external tools must only be in possession of a manufacturer representative or distributor representative.

**WSR 13-03-068**  
**PERMANENT RULES**  
**HEALTH CARE AUTHORITY**

(Medicaid Program)

[Filed January 14, 2013, 9:15 a.m., effective February 14, 2013]

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

Purpose: The health care authority is amending current rules and implementing new rules on provider screening and enrollment in response to the Patient Protection and Affordable Care Act. Implementation of these rules is required by federal law and required to maintain federally delegated or authorized programs.

Citation of Existing Rules Affected by this Order: Amending WAC 182-502-0010, 182-502-0012, 182-502-0014, 182-502-0016, and 182-502-0020.

Statutory Authority for Adoption: RCW 41.05.021.

Other Authority: 42 C.F.R. 455.

Adopted under notice filed as WSR 12-24-088 on December 5, 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 5, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: January 14, 2012.

Kevin M. Sullivan  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 12-15-015, filed 7/10/12, effective 9/1/12)

**WAC 182-502-0010 When the medicaid agency enrolls.** (1) Nothing in this chapter obligates the medicaid agency to enroll any eligible health care professional, health care entity, supplier or contractor of service who requests enrollment.

(2) To enroll as a provider with the ~~((medicaid))~~ agency, a health care professional, health care entity, supplier or contractor of service must, on the date of application:

(a) Be currently licensed, certified, accredited, or registered according to Washington state laws and rules. Persons or entities outside of Washington state, see WAC 182-502-0120;

(b) Be enrolled with medicare, when required in specific program rules;

(c) Have current professional liability coverage, individually or as a member of a group;

(d) Have a current federal drug enforcement agency (DEA) certificate, if applicable to the profession's scope of practice;

(e) Meet the conditions in this chapter and other chapters regulating the specific type of health care practitioner;

(f) Sign, without modification, a core provider agreement (CPA) (HCA 09-015), disclosure of ownership form, and debarment form ((09-048)) (HCA 09-016) or a contract with the agency ~~((Note: Section 13 of the CPA, 09-048 (REV. 08/2005), is hereby rescinded. The medicaid agency and each provider signing a core provider agreement will hold each other harmless from a legal action based on the negligent actions or omissions of either party under the terms of the agreement.))~~);

(g) Agree to accept the payment from the ~~((medicaid))~~ agency as payment in full (in accordance with 42 C.F.R. § 447.15 acceptance of state payment as payment in full and WAC 182-502-0160 billing a client);

(h) Fully disclose ownership, employees who manage, and other control ((information)) interests (e.g., member of a board of directors or office), as requested by the agency. Indian health services clinics are exempt from this requirement. If payment for services is to be made to a group practice, partnership, or corporation, the group, partnership, or corporation must enroll and ~~((obtain a CPA number))~~ provide its national provider identifier (NPI) (if eligible for an NPI) to be used for submitting claims as the billing provider((-All owners must be identified and fully disclosed in the application)); ((and))

(i) Have screened employees and contractors with whom they do business prior to hiring or contracting to assure that employees and contractors are not excluded from receiving federal funds as required by 42 U.S.C. 1320a-7 and 42((-)) U.S.C. 1320c-5;

(j) Pass the agency's screening process, including license verifications, data base checks, site visits, and criminal background checks, including fingerprint-based criminal background checks as required by 42 C.F.R. 455.434 if considered high-risk under 42 C.F.R. 455.450. The agency uses the same screening level risk categories that apply under medicare. For those provider types that are not recognized under medicare, the agency assesses the risk of fraud, waste, and abuse using similar criteria to those used in medicare; and

(k) Agree to pay an application fee, if required by CMS under 42 C.F.R. 455.460.

**AMENDATORY SECTION** (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-502-0012 When the ~~((department))~~ medicaid agency does not enroll.** (1) The ~~((department))~~ medicaid agency does not enroll a health care professional, health care entity, supplier or contractor of service for reasons which include, but are not limited to, the following:

(a) The ~~((department))~~ agency determines that:

(i) There is a quality of care issue with significant risk factors that may endanger client health and/or safety (see WAC ~~((388-502-0030))~~ 182-502-0030 (1)(a)); or

(ii) There are risk factors that affect the credibility, honesty, or veracity of the health care practitioner (see WAC ~~(388-502-0030)~~ 182-502-0030 (1)(b)).

(b) The health care professional, health care entity, supplier or contractor of service:

(i) Is excluded from participation in medicare, medicaid or any other federally funded health care program;

(ii) Has a current formal or informal pending disciplinary action, statement of charges, or the equivalent from any state or federal professional disciplinary body at the time of initial application;

(iii) Has been disciplined based on allegation of sexual misconduct or admitted to sexual misconduct;

(iv) Has a suspended, terminated, revoked, or surrendered professional license as defined under chapter 18.130 RCW;

(v) Has a restricted, suspended, terminated, revoked, or surrendered professional license in any state;

(vi) Is noncompliant with the department of health's or other state health care agency's stipulation of informal disposition, agreed order, final order, or similar licensure restriction;

(vii) Is suspended or terminated by any agency within the state of Washington that arranges for the provision of health care;

(viii) Fails a background check, including a fingerprint-based criminal background check, performed by the ~~((department))~~ agency. See WAC ~~((388-502-0014))~~ 182-502-0014 and ~~((388-502-0016))~~ 182-502-0016; ~~((or))~~

(ix) Does not have sufficient liability insurance according to WAC ~~((388-502-0016))~~ 182-502-0016 for the scope of practice; or

(x) Fails to meet the requirements of a site visit, as required by 42 C.F.R. 455.432.

(2) The ~~((department))~~ agency may not pay for any health care service, drug, supply or equipment prescribed or ordered by a health care professional, health care entity, supplier or contractor of service whose application for a core provider agreement (CPA) has been denied or terminated.

(3) The ~~((department))~~ agency may not pay for any health care service, drug, supply, or equipment prescribed or ordered by a health care professional, health care entity, supplier or contractor of service who does not have a current CPA with the ~~((department))~~ agency when the ~~((department))~~ agency determines there is a potential danger to a client's health and/or safety.

(4) Nothing in this chapter precludes the ~~((department))~~ agency from entering into other forms of written agreements with a health care professional, health care entity, supplier or contractor of service.

(5) If the ~~((department))~~ agency denies an enrollment application, the applicant does not have any dispute rights within the ~~((department))~~ agency.

(6) Under 42 C.F.R. 455.470, the agency:

(a) Will impose a temporary moratorium on enrollment when directed by CMS; or

(b) May initiate and impose a temporary moratorium on enrollment when approved by CMS.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-502-0014 Review and consideration of an applicant's history.** (1) The ~~((department))~~ medicaid agency may consider enrolling a health care professional, health care entity, supplier or contractor of service for reasons which include, but are not limited to, the following:

(a) The ~~((department))~~ agency determines that:

(i) There is not a quality of care issue with significant risk factors that endanger client health ~~((and/))~~ or safety, or both;

(ii) There are not risk factors that affect the credibility, honesty, or veracity of the applicant; and

(iii) The applicant is not likely to repeat the violation that led to a restriction or sanction.

(b) The health care professional, health care entity, supplier or contractor of service has:

(i) Been excluded from participation in medicare, medicaid, or any other federally funded health care program but is not currently excluded; or

(ii) A history of probation, suspension, termination, revocation, or a surrendered professional license, certification, accreditation, or registration as defined under chapter 18.130 RCW but currently has an active license, certification, accreditation, or registration; or

(iii) A restricted or limited professional license, certification, accreditation, or registration as defined under RCW 18.130.160; or

(iv) A history of denial, limitation, suspension or termination of participation or privileges by any health care institution, plan, facility, clinic, or state agency for quality of care issues or inappropriate billing practices and the quality of care issue or inappropriate billing practices have been corrected to the ~~((department's))~~ agency's satisfaction.

(2) The ~~((department may conduct a background check))~~ agency conducts a screening process as specified in WAC 182-502-0010 (2)(j) on any applicant applying for a core provider agreement (CPA) or enrolling to provide services to eligible clients.

(3) The ~~((department's))~~ agency's response to a review of a request for enrollment is based on the information available to the ~~((department))~~ agency at the time of application.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-502-0016 Continuing requirements.** (1) To continue to provide services for eligible clients and be paid for those services, a provider must:

(a) Provide all services without discriminating on the grounds of race, creed, color, age, sex, sexual orientation, religion, national origin, marital status, the presence of any sensory, mental or physical handicap, or the use of a trained dog guide or service animal by a person with a disability;

(b) Provide all services according to federal and state laws and rules, ~~((department))~~ medicaid agency billing instructions, numbered memoranda issued by the ~~((department))~~ agency, and other written directives from the ~~((department))~~ agency;

(c) Inform the ~~((department))~~ agency of any changes to the provider's application or contract, including but not limited to, changes in:

- (i) Ownership (see WAC ~~((388-502-0018))~~ 182-502-0018);
  - (ii) Address or telephone number;
  - (iii) Professional practicing under the billing provider number; or
  - (iv) Business name.
- (d) Retain a current professional state license, registration, certification and ~~((/or))~~ applicable business license for the service being provided, and update the ~~((department))~~ agency of all changes;

(e) Inform the ~~((department))~~ agency in writing within seven calendar days of changes applicable to the provider's clinical privileges;

(f) Inform the ~~((department))~~ agency in writing within seven business days of receiving any informal or formal disciplinary order, decision, disciplinary action or other action(s), including, but not limited to, restrictions, limitations, conditions and suspensions resulting from the practitioner's acts, omissions, or conduct against the provider's license, registration, or certification in any state;

(g) Screen employees and contractors with whom they do business prior to hiring or contracting, and on a monthly ongoing basis thereafter, to assure that employees and contractors are not excluded from receiving federal funds as required by 42 U.S.C. 1320a-7 and 42 U.S.C. 1320c-5~~((-))~~;

(h) Report immediately to the ~~((department))~~ agency any information discovered regarding an employee's or contractor's exclusion from receiving federal funds in accordance with 42 U.S.C. 1320a-7 and 42 U.S.C. 1320c-5. See WAC ~~((388-502-0010))~~ 182-502-0010 (2)(j);

(i) Pass ~~((a background check, when the department requires such information to fully evaluate))~~ any portion of the agency's screening process as specified in WAC 182-502-0010 (2)(j) when the agency requires such information to reassess a provider;

(j) Maintain professional and general liability coverage requirements, if not covered under agency, center, or facility, in the amounts identified by the ~~((department))~~ medicaid agency;

(k) Not surrender, voluntarily or involuntarily, his or her professional state license, registration, or certification in any state while under investigation by that state or due to findings by that state resulting from the practitioner's acts, omissions, or conduct; ~~((and))~~

(l) Furnish documentation or other assurances as determined by the ~~((department))~~ agency in cases where a provider has an alcohol or chemical dependency problem, to adequately safeguard the health and safety of medical assistance clients that the provider:

(i) Is complying with all conditions, limitations, or restrictions to the provider's practice both public and private; and

(ii) Is receiving treatment adequate to ensure that the dependency problem will not affect the quality of the provider's practice; and

(m) Submit to a revalidation process at least every five years. This process includes, but is not limited to:

(i) Updating provider information including, but not limited to, disclosures;

(ii) Submitting forms as required by the agency including, but not limited to, a new core provider agreement; and

(iii) Passing the agency's screening process as specified in WAC 182-502-0010 (2)(j).

(2) A provider may contact the ~~((department))~~ agency with questions regarding its programs. However, the ~~((department's))~~ agency's response is based solely on the information provided to the ~~((department's))~~ agency's representative at the time of inquiry, and in no way exempts a provider from following the laws and rules that govern the ~~((department's))~~ agency's programs.

(3) The ~~((department))~~ agency may refer the provider to the appropriate state health professions quality assurance commission.

**AMENDATORY SECTION** (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-502-0020 Health care record requirements.** This section applies to providers, as defined under WAC ~~((388-500-0005))~~ 182-500-0085 and under WAC ~~((388-538-050))~~ 182-538-050. Providers must:

(1) Maintain documentation in the client's medical or health care records to verify the level, type, and extent of services provided to each client to fully justify the services and billing, including, but not limited to:

- (a) Client's name and date of birth;
- (b) Dates of services;
- (c) Name and title of person performing the service;
- (d) Chief complaint or reason for each visit;
- (e) Pertinent past and present medical history;
- (f) Pertinent findings on examination at each visit;
- (g) Medication(s) or treatment prescribed and/or administered;
- (h) Name and title of individual prescribing or administering medication(s);
- (i) Equipment and/or supplies prescribed or provided;
- (j) Name and title of individual prescribing or providing equipment and/or supplies;
- (k) Detailed description of treatment provided;
- (l) Subjective and objective findings;
- (m) Clinical assessment and diagnosis;
- (n) Recommendations for additional treatments, procedures, or consultations;
- (o) Radiographs (X rays), diagnostic tests and results;
- (p) Plan of treatment and/or care, and outcome;
- (q) Specific claims and payments received for services;
- (r) Correspondence pertaining to client dismissal or termination of health care practitioner/patient relationship;
- (s) Advance directives, when required under WAC ~~((388-501-0125))~~ 182-501-0125;
- (t) Patient treatment agreements (examples: Opioid agreement, medication and treatment compliance agreements); and
- (u) Informed consent documentation.

(2) Keep legible, accurate, and complete charts and records;

(3) Meet any additional record requirements of the department of health (DOH);

(4) Assure charts are authenticated by the person who gave the order, provided the care, or performed the observation, examination, assessment, treatment or other service to which the entry pertains;

(5) Make charts and records available to the ~~((department))~~ medicaid agency, its contractors or designees, and the United States Department of Health and Human Services (DHHS) upon request, for six years from the date of service or longer if required specifically by federal or state law or regulation. The ~~((department))~~ agency does not separately reimburse for copying of health care records, reports, client charts and/or radiographs, and related copying expenses; and

(6) Permit the ~~((department))~~ agency, DHHS, and its agents or designated contractors, access to its physical facilities and its records to enable the ~~((department))~~ agency and DHHS to conduct audits, inspections, or reviews without prior announcement.

### WSR 13-03-070

#### PERMANENT RULES

#### SECRETARY OF STATE

(E-Recording Standards Commission)

[Filed January 14, 2013, 11:40 a.m., effective February 14, 2013]

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

Purpose: Real property electronic recording, the e-recording standards commission established under RCW 65.24.040 develops recommendations for rules necessary to implement the Uniform Real Property Electronic Records Act (chapter 65.24 RCW).

Statutory Authority for Adoption: Chapter 65.24 RCW.

Adopted under notice filed as WSR 12-24-076 on December 4, 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 10, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: January 14, 2013.

Steve Excell  
Assistant Secretary of State

### Chapter 434-661 WAC

#### REAL PROPERTY ELECTRONIC RECORDING

#### ELECTRONIC RECORDING STANDARDS

##### NEW SECTION

**WAC 434-661-010 General purpose.** (1) This rule prescribes standards for electronic recording of real property documents in those Washington counties in which the county recording officer elects to accept electronic real property documents for recordation.

(2) These standards are based on recommendations of the Washington state electronic recording standards commission and promulgated by the secretary of state pursuant to chapter 65.24 RCW, Uniform Real Property Electronic Recording Act.

##### NEW SECTION

**WAC 434-661-020 Definitions.** For the purpose of this chapter:

(1) "Delivery package" means a document, group of documents, related or unrelated, bundled into a single entity for electronic transfer.

(2) "Document" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium, is retrievable in perceivable form, and is eligible to be recorded in the land records maintained by the county recording officer.

(3) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(4) "Electronic document" means a document that is received or sent by the recording officer in an electronic form.

(5) "Electronic signature" means an electronic sound, symbol or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

(6) "Electronic notarization" means a notarial act performed in accordance with chapter 42.44 RCW and chapter 308-30 WAC by a notary public, appointed by the Washington state department of licensing, who provides notarial acts using electronic interface.

(7) "Electronic recording standards commission" or "eRecording standards commission" or "ERSC" means the body of stakeholders appointed by the secretary of state to review electronic recording standards and make recommendations to the secretary in accordance with RCW 65.24.040.

(8) "eRecording" means electronic recording of real property documents.

(9) "Metadata" means data describing other data to facilitate the understanding, use, and management of that data.

(10) "Open architecture" means computer architecture or software architecture that employs specifications that are open to the public to allow for adding, upgrading and exchange of components produced by a broad range of manufacturers.

(11) "PDF (portable document format)" means the file format originally created by Adobe Systems for document exchange allowing documents to be viewed as they were intended to appear. PDFs are a common format for image exchange or world wide web presentation.

(12) "Recording" means making a matter of record in the office of the recording officer in accordance with RCW 65.04.030.

(13) "Recording officer" means the county auditor or other official county recording officer.

(14) "TIFF" (tagged image file format) means the variable-resolution bitmapped image format originally developed by the Aldus Corporation (now part of Adobe Systems) and published as ISO 12639:2004, Graphic technology-Prepress digital data exchange-Tag image file format for image technology (TIFF/IT). TIFF is a common format for high-quality black and white, gray-scaled, or color graphics of any resolution and is made up of individual dots or pixels.

(15) "URPERA (Uniform Real Property Electronic Recording Act)" means the body of recommended legislation released in 2004 by the National Conference of Commissioners on Uniform State Laws (NCCUSL) for adoption by state legislatures. URPERA authorizes recording officers to accept electronic documents for recording in accordance with established standards. Washington state adopted a modified version of URPERA in 2008 (chapter 65.24 RCW).

(16) "Washington state archives" means the office of the secretary of state, division of archives and records management.

(17) "Web portal (gateway)" means a site that functions as a point of access to information or services on the world wide web.

(18) "XML (extensible markup language)" means an extensible document language for specifying document content. XML is not a predefined markup language but a meta-language (a language for describing other languages) allowing the user to specify a document type definition (DTD) and design customized markup languages for different classes of documents.

#### NEW SECTION

#### **WAC 434-661-030 Washington real property electronic recording standards. (1) Technical standards and implementation guidelines.**

(a) Electronic recording of real property documents shall meet technical standards for document formatting and document data fields and follow implementation guidelines as prescribed by the Property Records Industry Association (PRIA) which are hereby incorporated by reference, made a part of this rule, and listed below:

- (i) PRIA Request Version 2.4.2, August 2007;
- (ii) PRIA Response Version 2.4.2, August 2007;
- (iii) Document Version 2.4.1, October 2007;
- (iv) Notary Version 2.4.1, October 2007;
- (v) eRecording XML Implementation Guide for Version 2.4.1, Revision 2, March 2007;
- (vi) URPERA Enactment and eRecording Standards Implementation Guide, December 2005.

These standards are available from the Property Records Industry Association, 2501 Aerial Center Parkway, Ste. 103, Morrisville, NC 27560, and at <http://www.pria.us/>.

(b) eRecording shall be offered and conducted in accordance with the models of submission described in the URPERA Enactment and eRecording Standards Implementation Guide, Section 2.3, eRecording Models.

(c) Each recording officer who accepts documents for eRecording shall provide open architecture for reception of electronic documents. All reception software, including web portals, must support PRIA eRecording SML Implementation Guide for Version 2.4.1 standards.

#### **(2) Web portals.**

(a) The world wide web will be the most common delivery medium for electronic documents.

(b) A document delivered over the web should provide a minimum amount of information in the delivery package sufficient to identify and authenticate the sender to the recording officer, while also itemizing the contents of the package.

(c) Payment processing, if supplied at the portal, shall comply with the 2012 NACHA Operating Rules & Guidelines, which is hereby incorporated by reference and made a part of this rule. This publication is available from NACHA: The Electronic Payments Association, 13450 Sunrise Valley Drive, Suite 100, Herndon, VA 20171, and at <http://www.nacha.org/>. The recording officer and portal provider shall determine the portal's payment processing capabilities, and each recording officer shall designate approved methods of payment, which may include credit cards, ACH (automated clearing house), escrow accounts, electronic checks, or other methods.

(3) **Business rules.** Recording officers shall establish and publish business rules that govern how eRecording will be conducted. The business rules may be in electronic or hard copy format and may appear on a portal or the recording officer web site. The transmitting parties' electronic acknowledgment of acceptance of the terms of the business rules is acceptable. The business rules must cover the following items:

- (a) Memorandum of understanding or contract;
- (b) Defined technical specifications;
- (c) Document formatting and indexing specifications;
- (d) Hours of operations and processing schedules;
- (e) Payment options;
- (f) Termination terms;
- (g) Document rejection rights;
- (h) Statement that any amendments and/or alterations to the business rules will be published with adequate notice before taking effect;
- (i) Statement clarifying the liability of the recording offices.

#### **(4) Security.**

(a) All electronic documents must be secured in such a way that both the transmitting and receiving parties are assured of each other's identity and that no unauthorized party can view or alter the electronic document during transmission, processing, and delivery. If followed through the entire electronic document process of execution through recording, the security measures identified in chapter 6 of the

eRecording XML Implementation Guide for Version 2.4.1, Revision 2, March 2007, satisfy this requirement.

(b) Each recording officer who elects to accept electronic real property documents for recordation shall implement reasonable measures such that each electronic document accepted for recordation is protected from alteration and unauthorized access.

(5) **Electronic signatures.** Recording officers are only required to accept electronic signatures that they have the technology to support. Recording officers have no responsibility to authenticate electronic signatures embedded within the body of the document.

(6) **Notarizations.** Pursuant to chapter 65.24 RCW, notarizations must:

(a) Be performed by a notary public who has been appointed by the Washington state department of licensing in accordance with chapter 43.44 RCW; and

(b) Comply with all requirements for performing a notarial act as found in chapter 42.44 RCW and chapter 308-30 WAC, as amended from time to time, except that in the case of an electronic notarization, an impression of the official seal or stamp is not required.

Recording officers have no responsibility for verifying or authenticating notary signatures and acknowledgments.

(7) **File formats for eRecording.** The electronic recording standards commission recommends that electronic recordings be converted to (if necessary) and preserved as image files along with their associated metadata. If submissions are accepted in XHTML (extensible hypertext markup language) format, they shall be converted to a digital image until the viability of preserving these eRecordings in their native format has been demonstrated. Document images should be submitted as defined in WAC 434-663-305 and meet all state requirements for recorded instruments as defined in RCW 65.04.045.

(8) **Records retention and preservation.** Recording officers must not destroy public records, including electronic records, without the approval of the local records committee, in accordance with RCW 40.14.070.

Recording officers must retain electronic public records in electronic format such that the records remain usable, searchable, retrievable, and authentic for the length of the designated retention period in accordance with WAC 434-662-040.

The local records committee has approved the local government common records retention schedule (CORE) and the county auditor records retention schedule authorizing the minimum retention periods for recording officer records, and designating those records with enduring value as "archival."

Recording officers may transfer public records designated as "archival," including electronic records, to Washington state archives for preservation and for facilitating public access to the records.

(9) **Payment of recording fees.** Electronic payment of recording fees and excise tax, where applicable, shall be collected by the county agency responsible for such as prescribed in accordance with Washington state law and accepted industry standards without incurring unreasonable electronic processing fees.

## ELECTRONIC RECORDING STANDARDS COMMISSION

### NEW SECTION

**WAC 434-661-100 Electronic recording standards commission.** The electronic recording standards commission is established in accordance with RCW 65.24.040.

### NEW SECTION

**WAC 434-661-110 Purpose.** The purpose of the electronic recording standards commission is to advise the secretary of state in the following areas:

(1) Rules necessary to implement the Uniform Real Property Electronic Recording Act (URPERA);

(2) Standards and practices affecting electronic recording in this state and other jurisdictions that enact URPERA to keep the technology used by recording officers in this state compatible with technology used by recording offices in other jurisdictions that enact URPERA, including:

(a) Standards adopted by national standard-setting bodies, such as the property records industry association;

(b) The views of interested persons and governmental officials and entities;

(c) The needs of counties of varying size, population and resources; and

(d) Standards requiring adequate information-security protection to ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering;

(3) Emerging issues and trends affecting electronic recording which may necessitate amendments to or repeal of published standards;

(4) Other related issues at the request of the secretary of state.

### NEW SECTION

**WAC 434-661-120 Membership.** (1) The commission will consist of at least seven and no more than thirteen members chosen by the secretary of state to represent a range of recording offices by size, geographic regions of the state, and general expertise in electronic recording. A majority of the commission must be county auditors, and other members may include assessors, treasurers, the state archivist, land title company representatives, escrow agents, mortgage brokers, or any other party the secretary of state deems appropriate. The commission will elect a chairperson from its members.

(2) Members serve at the pleasure of the secretary of state. Terms are two or three years, and there are no limits to how long a member can serve. Vacancies will be filled by the secretary of state upon notice of a vacancy from the member.

### NEW SECTION

**WAC 434-661-130 Meetings.** Commission meetings will take place at least once a year and may occur at the annual Washington state association of county auditors recording conference. Additional meetings may be called by the secretary of state or the commission. All meeting dates and times will be posted on the secretary of state's web page.

NEW SECTION

**WAC 434-661-140 Quorum.** A simple majority of the regularly appointed commission members constitute a quorum. If seven positions are filled, the quorum is four.

NEW SECTION

**WAC 434-661-150 Compensation.** Commission members are not compensated for their service, but may be reimbursed for expenses incurred in the conduct of their official duties. Reimbursement is at current state rates for travel and all reimbursement requests must be received within thirty days of incurring the expense.

NEW SECTION

**WAC 434-661-160 Retention of records.** The state archivist will act as secretary for the commission and will ensure the retention and lawful disposition of records of the commission in accordance with chapter 40.14 RCW.

**WSR 13-03-085****PERMANENT RULES****UNIVERSITY OF WASHINGTON**

[Filed January 15, 2013, 10:17 a.m., effective February 15, 2013]

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

Purpose: Amendments to the University of Washington's rules for student housing now limit the scope of the rules to the Seattle campus, update the types of housing offered to students, and streamline administrative practices.

Citation of Existing Rules Affected by this Order: Repealing WAC 478-156-015 and 478-156-018; and amending WAC 478-156-010, 478-156-011, 478-156-013, 478-156-016, and 478-156-017.

Statutory Authority for Adoption: RCW 28B.15.031 and 28B.20.130.

Adopted under notice filed as WSR 12-21-076 on October 19, 2012.

Changes Other than Editing from Proposed to Adopted Version: The last sentence in WAC 478-156-016 was modified to include consultation with student leadership for changes to family housing eligibility criteria, as shown here: "Changes to these eligibility criteria shall be approved through the office of the vice-president and vice-provost for student life after consultation with student leadership from the Associated Students of the University of Washington (ASUW) and the Graduate and Professional Student Senate (GPSS)."

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 5, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, Repealed 2.

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

Date Adopted: January 10, 2013.

Rebecca Goodwin Deardorff  
Director of Rules Coordination

**Chapter 478-156 WAC****RULES FOR THE UNIVERSITY OF WASHINGTON,  
SEATTLE CAMPUS RESIDENCE HALLS, SINGLE  
STUDENT AND FAMILY HOUSING APARTMENTS**

AMENDATORY SECTION (Amending WSR 97-24-048, filed 11/26/97, effective 12/27/97)

**WAC 478-156-010 Legal authority to enact.** Pursuant to the authority granted by RCW 28B.20.130 and 28B.15.031, the board of regents of the University of Washington has established the following rules governing the operation of the university's residence halls, single student and family housing apartments for the University of Washington, Seattle campus.

AMENDATORY SECTION (Amending WSR 97-24-048, filed 11/26/97, effective 12/27/97)

**WAC 478-156-011 Purpose of residence halls, single student and family housing apartments.** The residence halls, single student and family housing apartments exist primarily to provide a conveniently located living environment for university students which will contribute to their educational development.

AMENDATORY SECTION (Amending WSR 97-24-048, filed 11/26/97, effective 12/27/97)

**WAC 478-156-013 Priority for residence halls(— Eligibility) and single student apartments.** Priority for use of residence hall space and single student apartments is given to enrolled students at the University of Washington, Seattle.

Priority for use of any remaining housing space is specific to each residence hall or apartment building. Up-to-date information pertaining to residence hall and single student apartment use priority is available on the University of Washington, Seattle housing and food services' web site.

Subject to space availability, the following may be granted residence privileges in the order of their applications after the needs of enrolled students have been fulfilled:

- (1) Participants in university-sponsored short courses, conferences, and state tests and examinations.
- (2) Visiting scholars sponsored by academic departments.
- (3) Students attending nearby community colleges.

(4) On a transient basis, visiting students from other institutions, visiting faculty members and guests of student residents.

(5) Other groups when approved by the committee on the use of university facilities.

(6) Other groups or individuals approved by housing and food services, on a space available basis.

AMENDATORY SECTION (Amending WSR 97-24-048, filed 11/26/97, effective 12/27/97)

**WAC 478-156-016 Family housing apartments—Assignment and unit size eligibility.** Residents must be enrolled as full-time students at the University of Washington three of the four quarters of an academic year, and be married couples; registered, same-sex domestic partners (that is, the partnerships are registered with the ~~((city of Seattle))~~ state of Washington or other jurisdictions where domestic partner registrations are offered); or single parents with dependent children. In addition, financial eligibility must be verified ~~((annually))~~ prior to move-in for those students in priority groups (1) through (3), which are described in WAC 478-156-017. The office of student financial aid will ~~((annually))~~ update financial need figures for family housing eligibility and will ~~((annually))~~ evaluate the resources of each new applicant ~~((and each current resident of family housing))~~ to determine if their requirements for financial assistance exceed the established need figures. Separate financial need figures are established for each unit size. ~~((The applicable dollar amounts and deadlines for submission of the financial aid form are published by and available at the housing and food services office in January of each year. Eligibility will be for the period July 1 through June 30.))~~ Any expenses related to the processing of the financial aid form will be borne by the applicant or the current resident. ~~((Residents not meeting the eligibility requirements who feel they have mitigating circumstances may appeal to the application appeal and eviction review committee.))~~ Assignment eligibility criteria for each unit size of university-owned housing is specific to the property and outlined on the University of Washington, Seattle housing and food services web site.

Changes to these eligibility criteria shall be approved through the office of the vice-president and vice-provost for student life after consultation with student leadership from the Associated Students of the University of Washington (ASUW) and the Graduate and Professional Student Senate (GPSS).

AMENDATORY SECTION (Amending WSR 97-24-048, filed 11/26/97, effective 12/27/97)

**WAC 478-156-017 Assignment priority.** Applicants for university-owned family housing apartments who are judged eligible for assignment pursuant to WAC 478-156-016 are assigned in the following order of priority, based on the date of application:

(1) Students who have special housing needs due to:

• Disability-related reasons ~~((financial eligibility may be waived on a case-by-case basis for students with disabilities.))~~);

• Students in the university's educational opportunity program ~~((and others with extreme financial or personal hardship.))~~);

~~((2))~~);

• Students who are single parents and have dependent children meeting financial eligibility criteria as set forth in WAC 478-156-016; and

• Others with extreme financial or personal hardship.

~~((3))~~ (2) Other students meeting financial eligibility criteria as set forth in WAC 478-156-016.

~~((4))~~ (3) Other students exceeding financial eligibility criteria.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 478-156-015 Occupancy deadline.

WAC 478-156-018 Unit size—Eligibility standards.

#### **WSR 13-03-092**

#### **PERMANENT RULES**

#### **DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Special Commitment Center)

[Filed January 15, 2013, 2:04 p.m., effective February 15, 2013]

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

Purpose: The purpose of this rule change is to clarify business practices and expectations as they pertain to the special commitment center's (SCC) security activities and public safety responsibilities related to how resident escorted leave from the total confinement facility is safely and securely conducted when leave is approved under the conditions authorized in RCW 71.09.210. Additionally, these changes are necessary to align WAC language with the requirements found in RCW 71.09.200. SCC is authorized to make this rule change under RCW 71.09.800 and 72.01.090.

Citation of Existing Rules Affected by this Order: Amending WAC 388-880-110.

Statutory Authority for Adoption: RCW 71.09.800 and 72.01.090.

Adopted under notice filed as WSR 12-24-012 on November 27, 2012.

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

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

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

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

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

Date Adopted: January 9, 2013.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-13-130, filed 6/22/10, effective 7/23/10)

**WAC 388-880-110 Procedures for resident escorted leave from the total confinement facility.** (1) Only ~~((persons))~~ an employee approved by the superintendent, or designee, will be authorized to serve as ~~((escorts))~~ an escort. All escorts from the total confinement facility must be employees of ~~((either))~~ the department of social and health services ~~((or the department of corrections and must have attained permanent employee status. At least one of the escorts must be experienced in the escort procedures))~~.

(2) ~~((The superintendent, or designee, shall determine the use and type of restraints necessary for each escorted leave on an individual basis.~~

~~((3) Escorted leaves supervised by department of corrections staff shall require the approval of the SCC superintendent, or designee, and be done in accordance with applicable department of corrections policy and procedures. The department of corrections shall be reimbursed, according to rates and procedures established between the department of social and health services and the department of corrections. Correctional officers may wear civilian clothing when escorting a resident for a bedside visit or a funeral))~~ Escorted leave will only be granted for the reasons set forth in RCW 71.09.210.

(3) As a matter to standard procedure, the minimum level of restraint used on all escorted leaves performed under RCW 71.09.210 will be ankle and waist restraints which are intended to limit the person's ability to run and/or swing their arms.

(4) The superintendent, or designee, shall:

(a) As needed, on an individual basis, determine the need to use any additional types of restraint above and beyond the standard ankle and waist restraints.

(b) Determine if escort staff will be authorized to wear civilian clothing when escorting a resident to a bedside visit or funeral.

(c) Determine the number of staff and job classification of staff that shall conduct the escort.

(d) Ensure escort staff are trained and experienced in the escort procedures.

(e) Ensure that escorted leaves are supervised by staff in accordance with written procedures approved by the superintendent, or designee.

(f) Ensure that one escort is designated as a lead worker when more than one employee participates on the escort.

(5) The escort shall:

(a) Supervise the resident per written procedure.

(b) Adhere to the restraint level determination.

(c) Ensure that if a resident escapes, or disappears, that local law enforcement is immediately notified and that notifi-

cation shall include a description of the resident's physical person, clothing and photo.

(d) Carry a copy of the resident's photo and description.

(e) Not deviate from the approved route or make unplanned stops unless an emergency situation arises.

## WSR 13-03-093

### PERMANENT RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed January 15, 2013, 2:14 p.m., effective February 15, 2013]

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

Purpose: WAC 388-105-0005 contains the rate table used to calculate the daily Medicaid rate for adult family homes and assisted living facilities (formerly called boarding homes) contracted to provide assisted living, adult residential care, and enhanced adult residential care. To comply with the budgetary directives put forth by the legislature in ESHB [3ESHB] 2127 (2012 supplementary budget), changes need to be made to WAC 388-105-0005 including: Adult family homes will have their rates adjusted to include adjusted funding for training costs and a vendor rate increase corresponding to a higher license fee. Assisted living facilities (formerly called boarding homes) contracted to provide assisted living, adult residential care, and enhanced adult residential care will have their rates adjusted to include adjusted funding for training costs and a two percent reduction in rates.

Citation of Existing Rules Affected by this Order: Amending WAC 388-105-0005.

Statutory Authority for Adoption: RCW 74.39A.030 (3)(a).

Adopted under notice filed as WSR 12-21-093 on October 22, 2012.

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

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

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

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

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

Date Adopted: January 8, 2013.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-02-050, filed 12/30/11, effective 1/30/12)

**WAC 388-105-0005** The daily medicaid payment rates for clients assessed using the comprehensive assessment reporting evaluation (CARE) tool and that reside in adult family homes (AFH) and (~~boarding homes~~) assisted living facilities contracted to provide assisted living (AL), adult residential care (ARC), and enhanced adult residential care (EARC) services. For contracted AFH and (~~boarding homes~~) assisted living facilities contracted to provide AL, ARC, and EARC services, the department pays the following daily rates for care of a medicaid resident:

| COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE |                               |                               |                               |                               |                               |
|---|-------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|
| KING COUNTY   |                               |                               |                               |                               |                               |
| CARE CLASSIFICATION   | AL Without Capital            | AL With Capital               | ARC                           | EARC                          | AFH                           |
|   | Add-on                        | Add-on                        |                               |                               |                               |
| A Low   | \$((66.52))<br><u>65.58</u>   | \$((71.94))<br><u>71.00</u>   | \$((47.06))<br><u>46.51</u>   | \$((47.06))<br><u>46.51</u>   | \$((46.61))<br><u>47.45</u>   |
| A Med   | \$((72.02))<br><u>70.97</u>   | \$((77.44))<br><u>76.39</u>   | \$((53.39))<br><u>52.71</u>   | \$((53.39))<br><u>52.71</u>   | \$((52.86))<br><u>53.70</u>   |
| A High  | \$((80.81))<br><u>79.58</u>   | \$((86.23))<br><u>85.00</u>   | \$((58.63))<br><u>57.85</u>   | \$((58.63))<br><u>57.85</u>   | \$((59.12))<br><u>59.96</u>   |
| B Low   | \$((66.52))<br><u>65.58</u>   | \$((71.94))<br><u>71.00</u>   | \$((47.06))<br><u>46.51</u>   | \$((47.06))<br><u>46.51</u>   | \$((46.84))<br><u>47.68</u>   |
| B Med   | \$((74.22))<br><u>73.13</u>   | \$((79.64))<br><u>78.55</u>   | \$((59.72))<br><u>58.92</u>   | \$((59.72))<br><u>58.92</u>   | \$((59.41))<br><u>60.25</u>   |
| B Med-High  | \$((84.05))<br><u>82.76</u>   | \$((89.47))<br><u>88.18</u>   | \$((63.50))<br><u>62.62</u>   | \$((63.50))<br><u>62.62</u>   | \$((63.64))<br><u>64.48</u>   |
| B High  | \$((88.48))<br><u>87.10</u>   | \$((93.90))<br><u>92.52</u>   | \$((72.58))<br><u>71.52</u>   | \$((72.58))<br><u>71.52</u>   | \$((72.73))<br><u>73.57</u>   |
| C Low   | \$((72.02))<br><u>70.97</u>   | \$((77.44))<br><u>76.39</u>   | \$((53.39))<br><u>52.71</u>   | \$((53.39))<br><u>52.71</u>   | \$((52.86))<br><u>53.70</u>   |
| C Med   | \$((80.81))<br><u>79.58</u>   | \$((86.23))<br><u>85.00</u>   | \$((67.00))<br><u>66.05</u>   | \$((67.00))<br><u>66.05</u>   | \$((67.44))<br><u>68.28</u>   |
| C Med-High  | \$((100.58))<br><u>98.96</u>  | \$((106.00))<br><u>104.38</u> | \$((89.29))<br><u>87.89</u>   | \$((89.29))<br><u>87.89</u>   | \$((88.28))<br><u>89.12</u>   |
| C High  | \$((101.58))<br><u>99.94</u>  | \$((107.00))<br><u>105.36</u> | \$((90.14))<br><u>88.73</u>   | \$((90.14))<br><u>88.73</u>   | \$((89.51))<br><u>90.35</u>   |
| D Low   | \$((74.22))<br><u>73.13</u>   | \$((79.64))<br><u>78.55</u>   | \$((72.14))<br><u>71.09</u>   | \$((72.14))<br><u>71.09</u>   | \$((68.74))<br><u>69.58</u>   |
| D Med   | \$((82.46))<br><u>81.20</u>   | \$((87.88))<br><u>86.62</u>   | \$((83.57))<br><u>82.29</u>   | \$((83.57))<br><u>82.29</u>   | \$((84.09))<br><u>84.93</u>   |
| D Med-High  | \$((106.61))<br><u>104.87</u> | \$((112.03))<br><u>110.29</u> | \$((106.26))<br><u>104.52</u> | \$((106.26))<br><u>104.52</u> | \$((101.14))<br><u>101.98</u> |
| D High  | \$((114.88))<br><u>112.97</u> | \$((120.30))<br><u>118.39</u> | \$((114.88))<br><u>112.97</u> | \$((114.88))<br><u>112.97</u> | \$((115.12))<br><u>115.96</u> |
| E Med   | \$((138.82))<br><u>136.43</u> | \$((144.24))<br><u>141.85</u> | \$((138.82))<br><u>136.43</u> | \$((138.82))<br><u>136.43</u> | \$((139.06))<br><u>139.90</u> |
| E High  | \$((162.76))<br><u>159.89</u> | \$((168.18))<br><u>165.31</u> | \$((162.76))<br><u>159.89</u> | \$((162.76))<br><u>159.89</u> | \$((163.01))<br><u>163.85</u> |

| COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE<br>METROPOLITAN COUNTIES* |                               |                               |                               |                               |                               |
|---|-------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|
| CARE CLASSIFICATION   | AL Without Capital            | AL With Capital               | ARC                           | EARC                          | AFH                           |
|   | Add-on                        | Add-on                        |                               |                               |                               |
| A Low   | \$((61.02))<br><u>60.19</u>   | \$((65.94))<br><u>65.11</u>   | \$((47.06))<br><u>46.51</u>   | \$((47.06))<br><u>46.51</u>   | \$((46.61))<br><u>47.45</u>   |
| A Med   | \$((64.33))<br><u>63.43</u>   | \$((69.25))<br><u>68.35</u>   | \$((51.28))<br><u>50.64</u>   | \$((51.28))<br><u>50.64</u>   | \$((50.77))<br><u>51.61</u>   |
| A High  | \$((78.64))<br><u>77.43</u>   | \$((83.53))<br><u>82.35</u>   | \$((55.91))<br><u>55.18</u>   | \$((55.91))<br><u>55.18</u>   | \$((55.98))<br><u>56.82</u>   |
| B Low   | \$((61.02))<br><u>60.19</u>   | \$((65.94))<br><u>65.11</u>   | \$((47.06))<br><u>46.51</u>   | \$((47.06))<br><u>46.51</u>   | \$((46.84))<br><u>47.68</u>   |
| B Med   | \$((69.84))<br><u>68.80</u>   | \$((74.73))<br><u>73.72</u>   | \$((56.56))<br><u>55.82</u>   | \$((56.56))<br><u>55.82</u>   | \$((56.26))<br><u>57.10</u>   |
| B Med-High  | \$((79.07))<br><u>77.88</u>   | \$((83.99))<br><u>82.80</u>   | \$((60.14))<br><u>59.33</u>   | \$((60.14))<br><u>59.33</u>   | \$((60.32))<br><u>61.16</u>   |
| B High  | \$((86.29))<br><u>84.95</u>   | \$((91.21))<br><u>89.87</u>   | \$((70.53))<br><u>69.51</u>   | \$((70.53))<br><u>69.51</u>   | \$((70.68))<br><u>71.52</u>   |
| C Low   | \$((64.33))<br><u>63.43</u>   | \$((69.25))<br><u>68.35</u>   | \$((51.49))<br><u>50.85</u>   | \$((51.49))<br><u>50.85</u>   | \$((51.15))<br><u>51.99</u>   |
| C Med   | \$((78.64))<br><u>77.43</u>   | \$((83.53))<br><u>82.35</u>   | \$((66.14))<br><u>65.21</u>   | \$((66.14))<br><u>65.21</u>   | \$((65.80))<br><u>66.64</u>   |
| C Med-High  | \$((97.27))<br><u>95.71</u>   | \$((102.19))<br><u>100.63</u> | \$((82.96))<br><u>81.69</u>   | \$((82.96))<br><u>81.69</u>   | \$((82.04))<br><u>82.88</u>   |
| C High  | \$((98.24))<br><u>96.67</u>   | \$((103.16))<br><u>101.59</u> | \$((88.24))<br><u>86.87</u>   | \$((88.24))<br><u>86.87</u>   | \$((87.03))<br><u>87.87</u>   |
| D Low   | \$((69.84))<br><u>68.80</u>   | \$((74.73))<br><u>73.72</u>   | \$((71.15))<br><u>70.12</u>   | \$((71.15))<br><u>70.12</u>   | \$((67.23))<br><u>68.07</u>   |
| D Med   | \$((80.24))<br><u>79.00</u>   | \$((85.13))<br><u>83.92</u>   | \$((81.90))<br><u>80.65</u>   | \$((81.90))<br><u>80.65</u>   | \$((81.83))<br><u>82.67</u>   |
| D Med-High  | \$((103.11))<br><u>101.44</u> | \$((108.03))<br><u>106.36</u> | \$((103.63))<br><u>101.95</u> | \$((103.63))<br><u>101.95</u> | \$((98.06))<br><u>98.90</u>   |
| D High  | \$((111.72))<br><u>109.88</u> | \$((116.64))<br><u>114.80</u> | \$((111.72))<br><u>109.88</u> | \$((111.72))<br><u>109.88</u> | \$((111.38))<br><u>112.22</u> |
| E Med   | \$((134.51))<br><u>132.21</u> | \$((139.43))<br><u>137.13</u> | \$((134.51))<br><u>132.21</u> | \$((134.51))<br><u>132.21</u> | \$((134.17))<br><u>135.01</u> |
| E High  | \$((157.30))<br><u>154.54</u> | \$((162.22))<br><u>159.46</u> | \$((157.30))<br><u>154.54</u> | \$((157.30))<br><u>154.54</u> | \$((156.96))<br><u>157.80</u> |

\*Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, and Yakima counties.

| COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE<br>NONMETROPOLITAN COUNTIES** |                             |                             |                             |                             |                             |
|---|-----------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
| CARE CLASSIFICATION   | AL Without Capital          | AL With Capital             | ARC                         | EARC                        | AFH                         |
|   | Add-on                      | Add-on                      |                             |                             |                             |
| A Low   | \$((59.94))<br><u>59.13</u> | \$((65.18))<br><u>64.37</u> | \$((47.06))<br><u>46.51</u> | \$((47.06))<br><u>46.51</u> | \$((46.61))<br><u>47.45</u> |
| A Med   | \$((64.33))<br><u>63.43</u> | \$((69.57))<br><u>68.67</u> | \$((50.23))<br><u>49.62</u> | \$((50.23))<br><u>49.62</u> | \$((49.74))<br><u>50.58</u> |

|            |                               |                               |                               |                               |                               |
|------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|
| A High     | \$((78.61))<br><u>77.43</u>   | \$((83.85))<br><u>82.67</u>   | \$((55.04))<br><u>54.30</u>   | \$((55.04))<br><u>54.30</u>   | \$((54.95))<br><u>55.79</u>   |
| B Low      | \$((59.94))<br><u>59.13</u>   | \$((65.18))<br><u>64.37</u>   | \$((47.06))<br><u>46.51</u>   | \$((47.06))<br><u>46.51</u>   | \$((46.84))<br><u>47.68</u>   |
| B Med      | \$((69.81))<br><u>68.80</u>   | \$((75.05))<br><u>74.04</u>   | \$((55.54))<br><u>54.79</u>   | \$((55.54))<br><u>54.79</u>   | \$((55.22))<br><u>56.06</u>   |
| B Med-High | \$((79.07))<br><u>77.88</u>   | \$((84.31))<br><u>83.12</u>   | \$((59.04))<br><u>58.22</u>   | \$((59.04))<br><u>58.22</u>   | \$((59.14))<br><u>59.98</u>   |
| B High     | \$((86.29))<br><u>84.95</u>   | \$((91.53))<br><u>90.19</u>   | \$((66.71))<br><u>65.77</u>   | \$((66.71))<br><u>65.77</u>   | \$((66.86))<br><u>67.70</u>   |
| C Low      | \$((64.33))<br><u>63.43</u>   | \$((69.57))<br><u>68.67</u>   | \$((50.23))<br><u>49.62</u>   | \$((50.23))<br><u>49.62</u>   | \$((49.74))<br><u>50.58</u>   |
| C Med      | \$((78.61))<br><u>77.43</u>   | \$((83.85))<br><u>82.67</u>   | \$((62.52))<br><u>61.66</u>   | \$((62.52))<br><u>61.66</u>   | \$((63.29))<br><u>64.13</u>   |
| C Med-High | \$((97.27))<br><u>95.71</u>   | \$((102.51))<br><u>100.95</u> | \$((79.79))<br><u>78.58</u>   | \$((79.79))<br><u>78.58</u>   | \$((78.92))<br><u>79.76</u>   |
| C High     | \$((98.24))<br><u>96.67</u>   | \$((103.48))<br><u>101.91</u> | \$((83.41))<br><u>82.13</u>   | \$((83.41))<br><u>82.13</u>   | \$((82.32))<br><u>83.16</u>   |
| D Low      | \$((69.81))<br><u>68.80</u>   | \$((75.05))<br><u>74.04</u>   | \$((67.26))<br><u>66.30</u>   | \$((67.26))<br><u>66.30</u>   | \$((63.59))<br><u>64.43</u>   |
| D Med      | \$((80.21))<br><u>79.00</u>   | \$((85.45))<br><u>84.24</u>   | \$((77.42))<br><u>76.26</u>   | \$((77.42))<br><u>76.26</u>   | \$((77.39))<br><u>78.23</u>   |
| D Med-High | \$((103.11))<br><u>101.44</u> | \$((108.35))<br><u>106.68</u> | \$((97.95))<br><u>96.38</u>   | \$((97.95))<br><u>96.38</u>   | \$((92.74))<br><u>93.58</u>   |
| D High     | \$((105.60))<br><u>103.88</u> | \$((110.84))<br><u>109.12</u> | \$((105.60))<br><u>103.88</u> | \$((105.60))<br><u>103.88</u> | \$((105.32))<br><u>106.16</u> |
| E Med      | \$((127.14))<br><u>124.99</u> | \$((132.38))<br><u>130.23</u> | \$((127.14))<br><u>124.99</u> | \$((127.14))<br><u>124.99</u> | \$((126.86))<br><u>127.70</u> |
| E High     | \$((148.68))<br><u>146.10</u> | \$((153.92))<br><u>151.34</u> | \$((148.68))<br><u>146.10</u> | \$((148.68))<br><u>146.10</u> | \$((148.41))<br><u>149.25</u> |

\*\* Nonmetropolitan counties: Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Orielle, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla and Whitman.

**WSR 13-03-098**  
**PERMANENT RULES**  
**UTILITIES AND TRANSPORTATION**  
**COMMISSION**

[Docket PG-120345, General Order R-567—Filed January 16, 2013, 8:24 a.m., effective April 1, 2013]

In the matter of amending and adopting WAC 480-93-200 Reporting requirements, relating to Gas companies—Safety.

**1 STATUTORY OR OTHER AUTHORITY:** The Washington utilities and transportation commission (commission) takes this action under Notice No. WSR 12-21-140, filed with the code reviser on October 24, 2012. The commission has

authority to take this action under RCW 80.01.040(4), 81.01.-010, 81.04.160, 81.88.040, 81.88.065, and sections 1, 2, and 5, chapter 142, Laws of 2007.

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

**3 DATE OF ADOPTION:** The commission amends this rule to be effective on April 1, 2013.

**4 CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** RCW 34.05.325(6) requires the commission to prepare and publish a concise explanatory statement about an

adopted rule. The statement must identify the commission's reasons for adopting the rule, describe the differences between the version of the proposed rules published in the register and the rules adopted (other than editing changes), summarize the comments received regarding the proposed rule changes, and state the commission's responses to the comments reflecting the commission's consideration of them.

5 The commission amends WAC 480-93-200 Reporting requirements, to provide supplemental reporting and evidentiary records and documentation needed by the commission to assist the commission in implementing recent amendments to the underground utilities law, chapter 19.122 RCW. This new law, enacted as chapter 263, Laws of 2011, authorizes the commission to enforce the underground utilities law as it relates to pipelines. Changes to this law take effect on January 1, 2013. The new rule adds new reporting and records retention requirements for gas pipeline companies in the event of damage to a gas pipeline and also requires additional reporting of excavations within thirty-five feet of a transmission pipeline if there has been no facilities locate and when a person intentionally damages or removes marks indicating the location of pipelines. The commission designates the discussion in this order, including Appendix A, as its concise explanatory statement.

6 **REFERENCE TO AFFECTED RULES:** This order amends the following section of the Washington Administrative Code: Amend WAC 480-93-200 Reporting requirements.

7 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:** The commission filed a preproposal statement of inquiry (CR-101) on March 21, 2012, at WSR 12-07-086. The statement advised interested persons that the commission was considering establishing rules to require gas pipeline companies to report additional information about damage to their pipeline facilities caused by excavators that have violated the underground utilities law, and to provide to violators information about their rights under the revised law. The commission also informed persons of this inquiry by providing notice of the subject and the CR-101 to everyone on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending notice to a list of all gas pipeline companies. The commission posted the relevant rule-making information on its internet web site at <http://www.utc.wa.gov/120345>. Pursuant to the notice, the commission hosted a stakeholder workshop on May 10, 2012, to discuss the establishment of additional reporting rules, and received written comments by May 25, 2012. On October 26, 2012, the commission issued draft rules to all interested persons with a November 26, 2012, deadline for filing comments.

8 **MEETINGS OR WORKSHOPS; ORAL COMMENTS:** The commission held one workshop on May 10, 2012, at 1:30 p.m. In addition to staff, the following stakeholders attended the workshop: Gary Hyatt, Northwest Natural; Sharon Banfield and Randy Bareither, Avista Utilities Corporation; Ed Hawthorn, City of Enumclaw; Scott Sammons, Puget Sound Energy; Holly Williamson, Olympic Pipeline; Jason Lambert, Williams-Northwest Pipeline; and Steve Kessie and Tina Beach, Cascade Natural Gas Corporation. There was general consensus that additional reporting requirements would not be financially burdensome to the companies.

There was however some confusion among some of the stakeholders regarding staff's proposal for companies to report violators who excavate within thirty-five feet of a transmission pipeline. They believe it was the commission's expectation that pipeline companies be required to continuously monitor their transmission pipeline rights-of-way in order to identify violators. This requirement would result in significant cost increases to companies.

9 **NOTICE OF PROPOSED RULE MAKING:** The commission filed a notice of proposed rule making (CR-102) on October 24, 2012, at WSR 12-21-140. The commission scheduled this matter for oral comment and adoption under Notice No. WSR 12-21-140 at 9:30 a.m., Wednesday, December 19, 2012, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. The notice provided interested persons the opportunity to submit written comments to the commission.

10 **WRITTEN COMMENTS:** The commission received written comments from Dan Kirschner, representing the Northwest Gas Association, and Linda Gervais, representing Avista Utilities Corporation. A summary of written comments and commission responses are contained in Appendix A, shown below, and made part of, this order.

APPENDIX A  
Docket PG-121345

Summary of Written Comments

Rule Making to Consider Amending WAC 480-93-200, Relating to Gas Companies' Safety For November 26, 2012, Comments  
Docket PG-120345

| ISSUE            | INTERESTED PERSON                | COMMENTS  | STAFF RESPONSE  |
|------------------|----------------------------------|---|---|
| General comments | Northwest Gas Association (NWGA) | <p>1) In order to ensure that the information operators are required to disseminate to excavators in subsection (8) related to chapter 19.122 RCW is consistent regardless of location or parties involved, the Commission should provide guidance as to the form this material should take.</p> <p>2) The commission should provide guidance in the rule concerning how an operator is to demonstrate compliance with subsection (8). For instance, would documenting the distribution of the recommended digging guidelines booklet designed and written by the Washington utilities coordinating council (or similar resource) constitute compliance?</p> <p>3) Subsection (8)(c) requires the operator to provide information about the safety committee including its process for filing complaints. The adoption hearing for this rule is scheduled for December 19, 2012, yet the safety committee has not yet published its process for filing complaints. This creates a timing misalignment and the potential for noncompliance.</p> <p>4) The DIRT web site does not yet allow for all of the information requested in RCW 19.122.053 thereby creating another timing misalignment. NWGA requests that the commission consider postponing adoption until such a time that:</p> | <p><b>Staff response:</b> Operators should make their own decisions on what form the guidance material should take as long as material adequately describes <b>1)</b> The excavator's responsibilities under RCW 19.122.050 and 19.122.053 and <b>2)</b> The process for filing a complaint with the safety committee. The next edition of the WUCC recommended digging guidelines, projected to be published by the end of CY 2012, is expected to contain sufficient details to allow operators to comply with the proposed rule requirements.</p> <p><b>Staff response:</b> Documenting the distribution of the recommended digging guidelines or other form of guidance material the operator chooses to use would be sufficient to demonstrate compliance. It should be stressed however that any process the operator chooses to adopt for the distribution of materials, and documentation of these actions should be incorporated into their operations and maintenance plans and procedures, or public awareness plans.</p> <p><b>Staff response:</b> Staff understands that the safety committee has committed to provide this information by early 2013. Rules adopted by the commission typically go into effect on the thirty-first day after adopted rules are filed with the code reviser's office. Staff agrees with the NWGA that there could be a timing issue for operators in their efforts to comply with the proposed rules. Staff will propose that adopted rules have an effective date of April 1, 2013.</p> <p><b>Staff response:</b> Please refer to staff's responses to the first three issues you raised.</p> |

| ISSUE            | INTERESTED PERSON | COMMENTS   | STAFF RESPONSE  |
|------------------|-------------------|--|---|
|                  |                   | <ul style="list-style-type: none"> <li>• The commission has advised pipeline operators on what form the notification to excavators should take and how to demonstrate compliance with the requirement;</li> <li>• The safety committee has published procedures by which a party may submit a complaint;</li> <li>• The DIRT web site is able to receive all of the damage data as stated in RCW 19.122.053.</li> </ul> <p>5) NWGA suggests that the rule could be adopted with an effective date of June 30, 2013, to provide adequate time to work through the issues note[d] above.</p> | <p>Regarding the DIRT web site, staff disagrees with NWGA that the DIRT web site does not allow for the collection of this information. Data required under these proposed rules can be readily entered under <b>Part J - Additional Comments</b> of the DIRT report form without requiring additional modification to the reporting form.</p> <p><b>Staff response:</b> Staff agrees with the NWGA that there could be timing issue for operators but only with respect to excavator notification requirements. Staff will propose that adopted rules have an effective date of April 1, 2013.</p> |
| General comments | Avista Corp.      | "Avista is supportive of the rule as it is written and appreciates Commission staff incorporating input from previous comments and the workshop to appease the Company's previous concerns."   |   |

**11 RULE-MAKING HEARING:** The commission considered the proposed rules for adoption at a rule-making hearing on Wednesday, December 19, 2012, before Chairman Jeffrey D. Goltz, and Commissioner Patrick J. Oshie. No interested person made oral comments.

**12 COMMISSION ACTION:** After considering all of the information regarding this proposal, including comments filed by interested stakeholders, the commission finds and concludes that it should amend the rule as proposed in the CR-102 at WSR 12-21-140, with an effective date of April 1, 2013, with the changes described below.

**13 CHANGES FROM PROPOSAL:** After reviewing the entire record, the commission adopts the CR-102 proposal with the following changes from the text noticed at WSR 12-21-140: WAC 480-93-200 Reporting requirements.

The commission modifies language in WAC 480-93-200 (7)(b), second sentence to read:

The company must include this information in the comment section of the web-based damage reporting tool form or ~~sent~~ **send it** to the commission separately.

The commission modifies language in WAC 480-93-200 (9)(a) and (b) as follows:

(a) An excavator digs within thirty-five feet of a transmission pipeline, as defined by RCW 19.122.020(26), without first obtaining a **facilities** locate; or

(b) ~~Some maliciously~~ **A person** intentionally damages or removes marks indicating the location or presence of pipeline facilities.

**14 STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the commission determines that WAC 480-93-200 should be amended to read as set forth in Appendix B, as a rule of the Washington utilities and transportation commission, to take effect pursuant to RCW 34.05.380(2) on April 1, 2013, to allow the gas pipeline

companies adequate time to comply with the new reporting requirements.

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

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

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

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

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

**ORDER**

**15 THE COMMISSION ORDERS:**

**16** The commission amends WAC 480-93-200 to read as set forth in Appendix B, as a rule of the Washington utilities and transportation commission, to take effect April 1, 2013.

**17** This order and the rule set out below, after being recorded in the register of the Washington utilities and transportation commission, shall be forwarded to the Code Reviser for filing pursuant to chapters 80.01 and 34.05 RCW and 1-21 WAC.

DATED at Olympia, Washington, January 16, 2013.

Washington State Utilities and Transportation Commission

Jeffrey D. Goltz, Chairman  
Philip B. Jones, Commissioner

## APPENDIX B

## Docket PG-120345

## WAC 480-93-200 Reporting requirements

AMENDATORY SECTION (Amending Docket PG-070975, General Order R-549, filed 5/30/08, effective 6/30/08)

**WAC 480-93-200 Reporting requirements.** (1) Each gas pipeline company must give notice to the commission by telephone using the emergency notification line (see WAC 480-93-005(8)) within two hours of discovering an incident or hazardous condition arising out of its operations that results in:

- (a) A fatality or personal injury requiring hospitalization;
- (b) Property damage valued at more than fifty thousand dollars;
- (c) The evacuation of a building, or a high occupancy structure or area;
- (d) The unintentional ignition of gas;
- (e) The unscheduled interruption of service furnished by any gas pipeline company to twenty-five or more distribution customers;
- (f) A pipeline or system pressure exceeding the MAOP plus ten percent or the maximum pressure allowed by proximity considerations outlined in WAC 480-93-020; or
- (g) A significant occurrence, in the judgment of the gas pipeline company, even though it does not meet the criteria of (a) through (g) of this subsection.

(2) Each gas pipeline company must give notice to the commission by telephone using the emergency notification line (see WAC 480-93-005(8)) within twenty-four hours of each incident or hazardous condition arising out of its operations that results in:

- (a) The uncontrolled release of gas for more than two hours;
  - (b) The taking of a high pressure supply or transmission pipeline or a major distribution supply gas pipeline out of service;
  - (c) A gas pipeline operating at low pressure dropping below the safe operating conditions of attached appliances and gas equipment; or
  - (d) A gas pipeline pressure exceeding the MAOP.
- (3) Routine or planned maintenance and operational activities of the gas pipeline company that result in operator-controlled plant and equipment shut downs, reduction in system pressures, flaring or venting of gas, and normal leak repairs are not reportable items under this section.

(4) Each gas pipeline company must provide to the commission a written report within thirty days of the initial telephonic report required under subsections (1) and (2) of this section. At a minimum, the written reports must include the following:

- (a) Name(s) and address(es) of any person or persons injured or killed, or whose property was damaged;
- (b) The extent of such injuries and damage;
- (c) A description of the incident or hazardous condition including the date, time, and place, and reason why the incident occurred. If more than one reportable condition arises from a single incident, each must be included in the report;

(d) A description of the gas pipeline involved in the incident or hazardous condition, the system operating pressure at that time, and the MAOP of the facilities involved;

(e) The date and time the gas pipeline company was first notified of the incident;

(f) The date and time the gas pipeline company's first responders arrived on-site;

(g) The date and time the gas pipeline was made safe;

(h) The date, time, and type of any temporary or permanent repair that was made;

(i) The cost of the incident to the gas pipeline company;

(j) Line type;

(k) City and county of incident; and

(l) Any other information deemed necessary by the commission.

(5) Each gas pipeline company must submit a supplemental report if required information becomes available after the thirty-day report is submitted.

(6) Each gas pipeline company must provide to the commission a copy of each failure analysis report completed or received by the gas pipeline company, concerning any incident or hazardous condition due to construction defects or material failure within five days of completion or receipt of such report.

(7) In the event of damage to a gas pipeline, each gas pipeline company must provide to the commission the following information using either the commission's web-based damage reporting tool or its successor, or the damage reporting form located on the commission's web site:

(a) The reporting requirements set forth in RCW 19.122.053 (3)(a) through (n);

(b) If the damage is believed by the company to be the result of an excavation conducted without a facilities locate first being completed, the gas pipeline company must also report the name, address, and phone number of the person or entity that the company has reason to believe may have caused the damage. The company must include this information in the comment section of the web-based damage reporting tool form or send it to the commission separately. If the company chooses to send the information separately, it must include sufficient information to allow the commission to link the name of the party believed to have caused the damage with the damage event reported through the damage reporting tool.

(c) Each gas pipeline company must retain all damage and damage claim records it creates related to damage events, including photographs and documentation supporting the conclusion that a facilities locate was not completed, reported under subsection (b) of this section, for a period of two years and make those records available to the commission upon request.

(8) Each gas pipeline company must provide, to an excavator who damages a gas pipeline facility, the following information set forth in chapter 19.122 RCW:

(a) Notification requirements for excavators under RCW 19.122.050(1);

(b) A description of the excavator's responsibilities for reporting damages under RCW 19.122.053; and

(c) Information concerning the safety committee referenced under RCW 19.122.130, including committee contact

information, and the process for filing a complaint with the safety committee.

(9) Each gas pipeline company must report to the commission the details of each instance of the following when the company or its contractor observes or becomes aware of either of these events:

(a) An excavator digs within thirty-five feet of a transmission pipeline, as defined by RCW 19.122.020(26) without first obtaining a facilities locate; or

(b) A person intentionally damages or removes marks indicating the location or presence of gas pipeline facilities.

The company must only report information to the extent that an employee or contractor of the company observes or becomes aware of these events.

(10) Each gas pipeline company must file with the commission the following annual reports no later than March 15 for the preceding calendar year:

(a) A copy of every Pipeline and Hazardous Materials Safety Administration (PHMSA) F-7100.1-1 and F-7100.2-1 annual report required by U.S. Department of Transportation, Office of Pipeline Safety.

~~(b) ((A report titled, "Damage Prevention Statistics." The Damage Prevention Statistics report must include in detail the following information:~~

~~(i) Number of gas-related one-call locate requests completed in the field;~~

~~(ii) Number of third-party damages incurred; and~~

~~(iii) Cause of damage, where cause of damage is classified as one of the following:~~

~~(A) Inaccurate locate;~~

~~(B) Failure to use reasonable care;~~

~~(C) Excavated prior to a locate being conducted; or~~

~~(D) Excavator failed to call for a locate.~~

~~(e))~~ A report detailing all construction defects and material failures resulting in leakage. Each gas pipeline company must categorize the different types of construction defects and material failures anticipated for their system. The report must include the following:

(i) Types and numbers of construction defects; and

(ii) Types and numbers of material failures.

~~((8))~~ (11) Each gas pipeline company must file with the commission, and with appropriate officials of all municipalities where gas pipeline companies have facilities, the names, addresses, and telephone numbers of the responsible officials of the gas pipeline company who may be contacted in the event of an emergency. In the event of any changes in such personnel, the gas pipeline company must immediately notify the commission and municipalities.

~~((9))~~ (12) Each gas pipeline company must send to the commission, by e-mail, daily reports of construction and repair activities. Reports may be faxed only if the gas pipeline company does not have e-mail capability. Reports must be received no later than 10:00 a.m. each day of the scheduled work, and must include both gas pipeline company and contractor construction and repair activities. Report information must be broken down by individual crews and the scheduled work must be listed by address, as much as practical. To the extent possible the reports will only contain construction and repair activity scheduled for that day, but they may

include a reasonable allowance for scheduling conflicts or disruptions.

~~((10))~~ (13) When a gas pipeline company is required to file a copy of a DOT Drug and Alcohol Testing Management Information System (MIS) Data Collection Form with the U.S. Department of Transportation, Office of Pipeline Safety, the gas pipeline company must simultaneously submit a copy of the form to the commission.

## WSR 13-03-099

### PERMANENT RULES

### UTILITIES AND TRANSPORTATION

### COMMISSION

[Docket PL-120350, General Order R-568—Filed January 16, 2013, 8:27 a.m., effective April 1, 2013]

In the matter of amending and adopting WAC 480-75-630 Incident reporting, relating to Hazardous liquid companies—Safety.

*1 STATUTORY OR OTHER AUTHORITY:* The Washington utilities and transportation commission (commission) takes this action under Notice No. WSR 12-21-141, filed with the code reviser on October 24, 2012. The commission has authority to take this action under RCW 80.01.040(4), 81.01.010, 81.04.160, 81.88.040, 81.88.065, and sections 1, 2, and 5, chapter 142, Laws of 2007.

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

*3 DATE OF ADOPTION:* The commission amends this rule to be effective on April 1, 2013.

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

*5* The commission amends WAC 480-75-630 Incident reporting, to provide supplemental reporting and evidentiary records and documentation needed by the commission to assist the commission in implementing recent amendments to the underground utilities law, chapter 19.122 RCW. This new law, enacted as chapter 263, Laws of 2011, authorizes the commission to enforce the underground utilities law as it relates to pipelines. Changes to this law take effect on January 1, 2013. The new rule adds new reporting and records retention requirements for hazardous liquid pipeline companies in the event of damage to a hazardous liquid pipeline and also requires additional reporting of excavations within thirty-five feet of a transmission pipeline if there has been no facilities locate completed and when a person intentionally damages or removes marks indicating the location of pipelines. The commission designates the discussion in this

order, including Appendix A, as its concise explanatory statement.

**6 REFERENCE TO AFFECTED RULES:** This order amends the following section of the Washington Administrative Code: Amend WAC 480-75-630 Incident reporting.

**7 PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:** The commission filed a preproposal statement of inquiry (CR-101) on March 21, 2012, at WSR 12-07-087. The statement advised interested persons that the commission was considering establishing rules to require hazardous liquid pipeline companies to report information about damage to their pipeline facilities caused by excavators that have violated the underground utilities law, and to provide to violators information about their rights under the revised law. The commission also informed persons of this inquiry by providing notice of the subject and the CR-101 to everyone on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending notice to a list of all hazardous liquid pipeline companies. The commission posted the relevant rule-making information on its internet web site at <http://www.utc.wa.gov/120350>. Pursuant to the notice, the commission hosted a stakeholder workshop on May 10, 2012, to discuss the establishment of additional reporting rules, and received written comments by May 25, 2012. On October 26, 2012, the commission issued draft rules to all interested persons with a November 26, 2012, deadline for filing comments.

**8 MEETINGS OR WORKSHOPS; ORAL COMMENTS:** The commission held one workshop on May 10, 2012, at 1:30 p.m. In addition to staff, the following stakeholders attended the workshop: Gary Hyatt, Northwest Natural; Sharon Banfield and Randy Bareither, Avista Utilities Corporation; Ed Hawthorn, City of Enumclaw; Scott Sammons, Puget Sound Energy; Holly Williamson, Olympic Pipeline; Jason Lambert, Williams-Northwest Pipeline; and Steve Kessie and Tina Beach, Cascade Natural Gas Corporation. There was general consensus that additional reporting requirements would not be financially burdensome to the companies. There was however some confusion among some of the stakeholders regarding staff's proposal for companies to report violators who excavate within thirty-five feet of a transmission pipeline. They believe it was the commission's expectation that pipeline companies be required to continuously monitor their transmission pipeline rights-of-way in order to identify violators. This requirement would result in significant cost increases to companies.

**9 NOTICE OF PROPOSED RULE MAKING:** The commission filed a notice of proposed rule making (CR-102) on October 24, 2012, at WSR 12-21-141. The commission scheduled this matter for oral comment and adoption under Notice No. WSR 12-21-141 at 9:30 a.m., Wednesday, December 19, 2012, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. The notice provided interested persons the opportunity to submit written comments to the commission.

**10 WRITTEN COMMENTS:** The commission did not receive comments on the hazardous liquid rule making.

**11 RULE-MAKING HEARING:** The commission considered the proposed rule for adoption at a rule-making hearing

on Wednesday, December 19, 2012, before Chairman Jeffrey D. Goltz, and Commissioner Patrick J. Oshie. No other interested person made oral comments.

**12 COMMISSION ACTION:** After considering all of the information regarding this proposal, including comments filed by interested stakeholders, the commission finds and concludes that it should amend the rule as proposed in the CR-102 at WSR 12-21-141, with an effective date of April 1, 2013, with the changes described below.

**13 CHANGES FROM PROPOSAL:** After reviewing the entire record, the commission adopts the CR-102 proposal with the following changes from the text noticed at WSR 12-21-141:

**14 WAC 480-75-630 Incident reporting.**

The commission modifies language in WAC 480-75-630 (4)(b), second sentence to read:

The company must include this information in the comment section of the web-based damage reporting tool form or ~~sent~~ **send it** to the commission separately.

The commission modifies language in WAC 480-75-630 (6)(a) and (b) as follows:

(a) An excavator digs within thirty-five feet of a transmission pipeline, as defined by RCW 19.122.020(26), without first obtaining a **facilities** locate; or

(b) ~~Some maliciously~~ **A person** intentionally damages or removes marks indicating the location or presence of pipeline facilities.

**15 STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the commission determines that WAC 480-75-630 should be amended to read as set forth in Appendix A, as a rule of the Washington utilities and transportation commission, to take effect pursuant to RCW 34.05.380(2) on April 1, 2013, to allow the hazardous liquid pipeline companies adequate time to comply with the new reporting requirements.

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

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

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

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

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

**ORDER**

**16 THE COMMISSION ORDERS:**

**17** The commission amends WAC 480-75-630 to read as set forth in Appendix A, as a rule of the Washington utilities and transportation commission, to take effect April 1, 2013.

**18** This order and the rule set out below, after being recorded in the register of the Washington utilities and transportation commission, shall be forwarded to the code reviser

for filing pursuant to chapters 80.01 and 34.05 RCW and 1-21 WAC.

DATED at Olympia, Washington, January 16, 2013.

Washington State Utilities and Transportation Commission

Jeffrey D. Goltz, Chairman  
Philip B. Jones, Commissioner

**APPENDIX A**  
**Docket PL-120350**  
**WAC 480-75-630 Incident reporting**

AMENDATORY SECTION (Amending Docket PL-070974, General Order R-548, filed 5/30/08, effective 6/30/08)

**WAC 480-75-630 Incident reporting.** (1) Each hazardous liquid pipeline company must give telephonic notice to the commission within two hours of discovery of an incident involving that company's pipeline, such as a release of a hazardous liquid, that results in:

- (a) A fatality;
- (b) Personal injury requiring hospitalization;
- (c) Fire or explosion not intentionally set by the pipeline company;
- (d) Spills of five gallons or more of product from the pipeline;
- (e) Damage to the property of the hazardous liquid pipeline company and others of a combined total cost exceeding twenty-five thousand dollars (automobile collisions and other equipment accidents not involving hazardous liquid or hazardous-liquid-handling equipment need not be reported under this rule);
- (f) A significant occurrence in the judgment of the hazardous liquid pipeline company, even though it does not meet the criteria of (a) through (e) of this subsection;
- (g) The news media reports the occurrence, even though it does not meet the criteria of (a) through (f) of this subsection.

(2) Each hazardous liquid pipeline company that has an incident described in subsection (1) of this section shall send a written report to the commission within thirty calendar days of the incident. The report must include the following:

- (a) Name(s) and address(es) of any person or persons injured or killed or whose property was damaged;
- (b) The extent of injuries and damage;
- (c) A description of the incident including date, time, and place;
- (d) A description and maximum operating pressure of the pipeline implicated in the incident and the system operating pressure at the time of the incident;
- (e) The date and time the pipeline returns to safe operations; and
- (f) The date, time, and type of any temporary or permanent repair.

(3) A hazardous liquid pipeline company must give the commission telephonic notification within twenty-four hours of emergency situations including emergency shutdowns, material defects, or physical damage that impairs the serviceability of the pipeline.

(4) In the event of damage to a hazardous liquid pipeline, each hazardous liquid pipeline company must provide to the commission the following information using either the commission's web-based damage reporting tool or its successor, or the damage reporting form located on the commission's web site:

(a) The reporting requirements set forth in RCW 19.122.053 (3)(a) through (n);

(b) If the damage is believed by the company to be the result of an excavation conducted without a facilities locate first being completed, the hazardous liquid pipeline company must also report the name, address, and phone number of the person or entity that the company has reason to believe may have caused the damage. The company must include this information in the comment section of the web-based damage reporting tool form or send it to the commission separately. If the company chooses to send the information separately it must include sufficient information to allow the commission to link the name of the party believed to have caused the damage with the damage event reported through the damage reporting tool;

(c) Each hazardous liquid pipeline company must retain all damage and damage claim records it creates related to damage events, including photographs and documentation supporting the conclusion that a facilities locate was not completed, reported under subsection (b) of this section for a period of two years and make those records available to the commission upon request.

(5) Each hazardous liquid pipeline company must provide to an excavator who damages a hazardous liquid pipeline facility, the following information set forth in chapter 19.122 RCW:

(a) Notification requirements for excavators under RCW 19.122.050(1);

(b) A description of the excavator's responsibilities for reporting damages under RCW 19.122.053; and

(c) Information concerning the safety committee referenced under RCW 19.122.130, including committee contact information, and how the excavator may file a complaint with the safety committee.

(6) Each hazardous liquid pipeline company must report to the commission the details of each instance of the following when the company or its contractor observes or becomes aware of either of these events:

(a) An excavator digs within thirty-five feet of a transmission pipeline, as defined by RCW 19.122.020(26) without first obtaining a facilities locate; or

(b) A person intentionally damages or removes marks indicating the location or presence of pipeline facilities.

The company must only report information to the extent that an employee or contractor of the company observes or becomes aware of these events.

**WSR 13-03-109**  
**PERMANENT RULES**  
**STATE BOARD OF HEALTH**

[Filed January 17, 2013, 5:02 p.m., effective May 1, 2013]

Effective Date of Rule: May 1, 2013.

Purpose: Chapter 246-215 WAC, the purpose of the rules is to promote and protect public health by setting requirements to prevent the spread of disease through food. These rules have been revised to reflect requirements of the 2009 FDA Food Code. The rules also address gaps and overlaps in food safety for preschools, and are revised to clarify requirements by incorporating selected 2009 FDA Food Code requirements in full rather than adopting them by reference.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-215-001 Purpose and authority, 246-215-005 Minimum performance standards, 246-215-011 Definitions, 246-215-021 Management and personnel, 246-215-031 Employee hygiene, 246-215-041 Food supplies, 246-215-051 Public health labeling, 246-215-061 Food handling, 246-215-071 Equipment and utensils, 246-215-081 Water, plumbing, and waste, 246-215-091 Physical facilities, 246-215-121 Mobile food units, 246-215-131 Temporary food establishments, 246-215-141 Bed and breakfast operations, 246-215-151 Donated food distributing organizations, 246-215-181 Compliance and enforcement, 246-215-191 Exempt from permit, 246-215-200 Permits required, suspension, revocation, enforcement, 246-215-210 Service of notices, 246-215-220 Hearings, 246-215-240 Examination, hold orders, condemnation, and destruction of food, 246-215-251 Employee health, 246-215-260 Procedure when disease transmission is suspected, 246-215-280 Interpretation, 246-215-290 Separability clause, 246-215-300 Penalty clause, and 246-215-311 Effective date.

Statutory Authority for Adoption: RCW 43.20.050 and 43.20.145.

Other Authority: RCW 43.20.050 and 43.20.145.

Adopted under notice filed as WSR 12-17-160 on August 22, 2012.

Changes Other than Editing from Proposed to Adopted Version: Adopted rules address an inconsistency by referencing WAC 51-56-0600 Water supply and distribution in WAC 246-215-05250. All other changes are only editorial.

A final cost-benefit analysis is available by contacting Joe Graham, Department of Health, P.O. Box 47825, Olympia, WA 98504, phone (360) 236-3305, fax (360) 236-2261, e-mail joe.graham@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 405, Amended 0, Repealed 19; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 447, Amended 0, Repealed 27.

Date Adopted: October 10, 2012.

Michelle A. Davis  
Executive Director

## PART 1: INTENT, SCOPE, AND DEFINITIONS

### NEW SECTION

**WAC 246-215-01100 Intent—Food safety, illness prevention, and honest presentation (2009 FDA Food Code 1-102.10).** The purpose of this chapter is to safeguard public health and provide to CONSUMERS FOOD that is safe, unADULTERATED, and honestly presented.

### NEW SECTION

**WAC 246-215-01105 Scope—Statement (2009 FDA Food Code 1-103.10).** This chapter establishes definitions; sets standards for management and personnel, FOOD operations, and EQUIPMENT and facilities; and provides for FOOD ESTABLISHMENT plan review, PERMIT issuance, inspection, EMPLOYEE RESTRICTION, and PERMIT suspension.

### NEW SECTION

**WAC 246-215-01110 Applicability.** (1) The requirements of this chapter apply to an operation that meets the definition of a FOOD ESTABLISHMENT as defined in WAC 246-215-01115(48).

(2) When a LOCAL BOARD OF HEALTH adopts rules with more stringent provisions than those contained in this chapter, the more stringent rules apply.

### NEW SECTION

**WAC 246-215-01115 Definitions, abbreviations, and acronyms (2009 FDA Food Code 1-201.10(B)).** The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) "Accredited program."

(a) ACCREDITED PROGRAM means a FOOD protection manager certification program that has been evaluated and listed by an accrediting agency as conforming to national standards for organizations that certify individuals.

(b) ACCREDITED PROGRAM refers to the certification process and is a designation based upon an independent evaluation of factors such as the sponsor's mission; organizational structure; staff resources; revenue sources; policies; public information regarding program scope, eligibility requirements, recertification, discipline, and grievance procedures; and test development and administration.

(c) Accredited program does not refer to training functions or educational programs.

(2) "ADDITIVE."

(a) "FOOD ADDITIVE" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, Section 201(s) and 21 C.F.R. 170.3(e)(1).

(b) "COLOR ADDITIVE" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, Section 201(t) and 21 C.F.R. 70.3(f).

(3) "ADULTERATED" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, Section 402.

(4) "APPROVED" means acceptable to the REGULATORY AUTHORITY based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.

(5) "ASYMPTOMATIC."

(a) ASYMPTOMATIC means without obvious symptoms; not showing or producing indications of a disease or other medical condition, such as an individual infected with a pathogen but not exhibiting or producing any signs or symptoms of vomiting, diarrhea, or jaundice.

(b) ASYMPTOMATIC includes not showing symptoms because symptoms have resolved or subsided, or because symptoms never manifested.

(6) "A<sub>w</sub>" means water activity which is a measure of the free moisture in a FOOD, is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol A<sub>w</sub>.

(7) "BALUT" means an embryo inside a fertile EGG that has been incubated for a period sufficient for the embryo to reach a specific stage of development after which it is removed from incubation before hatching.

(8) "BED AND BREAKFAST OPERATION" means a private home or inn offering one or more lodging units on a temporary basis to travelers.

(9) "BEVERAGE" means a liquid for drinking, including water.

(10) "BOTTLED DRINKING WATER" means water that is SEALED in bottles, packages, or other containers and offered for sale for human consumption, including bottled mineral water.

(11) "CATERING OPERATION."

(a) CATERING OPERATION means a PERSON who contracts with a client to prepare a specific menu and amount of FOOD in an APPROVED FOOD ESTABLISHMENT for service to the client's guests or customers at a different location.

(b) Consistent with its application under WAC 246-215-08325, a CATERING OPERATION APPROVED for a PERMIT may cook or perform final preparation on certain FOOD at the service location.

(12) "CERTIFICATION NUMBER" means a unique combination of letters and numbers assigned by a SHELLFISH CONTROL AUTHORITY to a MOLLUSCAN SHELLFISH DEALER according to the provisions of the National Shellfish Sanitation Program.

(13) "C.F.R." means Code of Federal Regulations. Citations in this chapter to the C.F.R. refer sequentially to the Title, Part, and Section numbers, such as 40 C.F.R. 180.194 refers to Title 40, Part 180, Section 194.

(14) "CIP."

(a) CIP means cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and SANITIZING solution onto or over EQUIPMENT surfaces that require cleaning, such as the method used, in part, to clean and SANITIZE a frozen dessert machine.

(b) CIP does not include the cleaning of EQUIPMENT such as band saws, slicers, or mixers that are subject to in-place manual cleaning without the use of a CIP system.

(15) "COMMINGLE" means:

(a) To combine SHELLSTOCK harvested on different days or from different growing areas as identified on the tag or label; or

(b) To combine SHUCKED SHELLFISH from containers with different container codes or different shucking dates.

(16) "COMMUNUTED."

(a) COMMUNUTED means reduced in size by methods that include chopping, flaking, grinding, or mincing.

(b) COMMUNUTED includes FISH or MEAT products that are reduced in size and restructured or reformulated such as gefilte FISH, gyros, ground beef, and sausage; and a mixture of two or more types of MEAT that have been reduced in size and combined, such as sausage made from two or more MEATS.

(17) "COMMISSARY" means an APPROVED FOOD ESTABLISHMENT where FOOD is stored, prepared, portioned, or PACKAGED for service elsewhere.

(18) "CONDITIONAL EMPLOYEE" means a potential FOOD EMPLOYEE to whom a job offer is made, conditional on responses to subsequent medical questions or examinations designed to identify potential EMPLOYEES who might be suffering from a disease that can be transmitted through FOOD and done in compliance with Title 1 of the Americans with Disabilities Act of 1990.

(19) "CONFIRMED DISEASE OUTBREAK" means a FOOD-BORNE DISEASE OUTBREAK in which laboratory analysis of appropriate specimens identifies a causative agent and epidemiological analysis implicates the FOOD as the source of the illness.

(20) "CONSUMER" means a PERSON who is a member of the public, takes possession of FOOD, is not functioning in the capacity of an operator of a FOOD ESTABLISHMENT or FOOD PROCESSING PLANT, and does not offer the FOOD for resale.

(21) "CORROSION-RESISTANT" means a material that maintains acceptable surface cleanliness characteristics under prolonged influence of the FOOD to be contacted, the normal use of cleaning compounds and SANITIZING solutions, and other conditions of the use environment.

(22) "COUNTER-MOUNTED EQUIPMENT" means EQUIPMENT that is not portable and is designed to be mounted off the floor on a table, counter, or shelf (previously table-mounted EQUIPMENT).

(23) "CRITICAL CONTROL POINT" means a point or procedure in a specific FOOD system where loss of control might result in an unacceptable health RISK.

(24) "CRITICAL LIMIT" means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a CRITICAL CONTROL POINT to minimize the RISK that the identified FOOD safety HAZARD might occur.

(25) "CUT LEAFY GREENS" means fresh leafy greens whose leaves have been cut, shredded, sliced, chopped, or torn. The term "leafy greens" includes iceberg lettuce, romaine lettuce, leaf lettuce, butter lettuce, baby leaf lettuce (i.e., immature lettuce or leafy greens), escarole, endive, spring mix, spinach, cabbage, kale, arugula, and chard. The term "leafy greens" does not include herbs such as cilantro or

parsley. The term "cut" does not include removing and discarding the exterior leaves.

(26) "DEALER" means a PERSON who is authorized by a SHELLFISH CONTROL AUTHORITY for the activities of SHELLSTOCK shipper, shucker-packer, repacker, reshipper, or depuration processor of MOLLUSCAN SHELLFISH according to the provisions of the National Shellfish Sanitation Program.

(27) "DISCLOSURE" means a written statement that clearly identifies the animal-derived FOODS which are, or can be ordered, raw, undercooked, or without otherwise being processed to eliminate pathogens, or items that contain an ingredient that is raw, undercooked, or without otherwise being processed to eliminate pathogens.

(28) "DONATED FOOD DISTRIBUTING ORGANIZATION" means a charitable nonprofit organization under Section 501(c) of the federal Internal Revenue Code that distributes FOOD free of charge to the needy.

(29) "DONOR" means a person, corporation, association, or other organization that donates FOOD to a DONATED FOOD DISTRIBUTING ORGANIZATION under the provisions of chapter 69.80 RCW, known as the Good Samaritan Food Donation Act.

(30) "DONOR KITCHEN" means a kitchen that is used by a DONOR to handle, store, or prepare FOOD for donation to needy persons through a DONATED FOOD DISTRIBUTING ORGANIZATION and which is not a residential kitchen in a private home.

(31) "DRINKING WATER."

(a) DRINKING WATER means water that meets 40 C.F.R. 141, National Primary Drinking Water Regulations.

(b) DRINKING WATER is traditionally known as "potable water."

(c) DRINKING WATER includes the term "water" except where the term used connotes that the water is not potable, such as "boiler water," "mop water," "rainwater," "wastewater," and "nondrinking" water.

(d) DRINKING WATER means potable water that is supplied in compliance with chapters 246-290 and 246-291 WAC.

(32) "DRY STORAGE" means a room or area designated for the storage of PACKAGED or containerized bulk nonPOTENTIALLY HAZARDOUS FOOD and dry goods such as SINGLE-SERVICE ARTICLES.

(33) "EASILY CLEANABLE."

(a) EASILY CLEANABLE means a characteristic of a surface that:

(i) Allows effective removal of soil by normal cleaning methods;

(ii) Is dependent on the material, design, construction, and installation of the surface; and

(iii) Varies with the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into FOOD based on the surface's APPROVED placement, purpose and use.

(b) EASILY CLEANABLE includes a tiered application of the requirements that qualify the surface as EASILY CLEANABLE as specified in (a) of this subsection to different situations in which varying degrees of cleanability are required such as:

(i) The appropriateness of stainless steel for a FOOD preparation surface as opposed to the lack of need for stainless steel to be used for floors or for tables used for CONSUMER dining; or

(ii) The need for a different degree of cleanability for a utilitarian attachment or accessory in the kitchen as opposed to a decorative attachment or accessory in the CONSUMER dining area.

(34) "EASILY MOVABLE" means:

(a) Portable; mounted on casters, gliders, or rollers; or provided with a mechanical means to safely tilt a unit of EQUIPMENT for cleaning; and

(b) Having no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the EQUIPMENT to be moved for cleaning of the EQUIPMENT and adjacent area.

(35) "EGG."

(a) EGG means the shell EGG of avian species such as chicken, duck, goose, guinea, quail, RATITES, turkey, or any other species of fowl.

(b) EGG does not include:

(i) A BALUT;

(ii) The EGG of a reptile species such as alligator; or

(iii) An EGG PRODUCT.

(36) "EGG PRODUCT."

(a) EGG PRODUCT means all, or a portion of, the contents found inside EGGS separated from the shell and pasteurized in a FOOD PROCESSING PLANT, with or without added ingredients, intended for human consumption such as dried, frozen, or liquid EGGS.

(b) EGG PRODUCT does not include FOOD which contains EGGS only in a relatively small portion such as cake mixes.

(37) "EMPLOYEE" means the PERMIT HOLDER, PERSON IN CHARGE, FOOD EMPLOYEE, PERSON having supervisory or management duties, PERSON on the payroll, family member, volunteer, PERSON performing work under contractual agreement, or other PERSON working in a FOOD ESTABLISHMENT.

(38) "ENTEROHEMORRHAGIC *ESCHERICHIA COLI* (EHEC)" means *E. coli* which cause hemorrhagic colitis, meaning bleeding enterically or bleeding from the intestine. The term is typically used in association with *E. coli* that have the capacity to produce Shiga toxins and to cause attaching and effacing lesions in the intestines. EHEC is a subset of STEC, whose members produce additional virulence factors. Infections with EHEC might be ASYMPTOMATIC but are classically associated with bloody diarrhea (hemorrhagic colitis) and hemolytic uremic syndrome (HUS) or thrombotic thrombocytopenic purpura (TTP). Examples of serotypes of EHEC include: *E. coli* O157:H7; *E. coli* O157:NM; *E. coli* O26:H11; *E. coli* O145:NM; *E. coli* O103:H2; or *E. coli* O111:NM. Also see Shiga Toxin-producing *E. coli*.

(39) "EPA" means the United States Environmental Protection Agency.

(40) "EQUIPMENT."

(a) EQUIPMENT means an article that is used in the operation of a FOOD ESTABLISHMENT such as a freezer, grinder, hood, ice maker, MEAT block, mixer, oven, reach-in refrigerator, scale, sink slicer, stove, table, TEMPERATURE MEASURING DEVICE for ambient air, VENDING MACHINE, or WARE-WASHING machine.

(b) EQUIPMENT does not include items used for handling or storing large quantities of PACKAGED FOODS that are received from a supplier in a cased or overwrapped lot, such as hand trucks, forklifts, dollies, pallets, racks, and skids.

(41) "EXCLUDE" means to prevent a PERSON from working as an EMPLOYEE in a FOOD ESTABLISHMENT or entering a FOOD ESTABLISHMENT as an EMPLOYEE.

(42) "FDA" means the United States Food and Drug Administration.

(43) "FISH."

(a) FISH means fresh or saltwater finfish, crustaceans, and other forms of aquatic life (including alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals) other than birds or mammals, and all mollusks, if such animal life is intended for human consumption.

(b) FISH includes an edible human FOOD product derived in whole or in part from FISH, including FISH that have been processed in any manner.

(44) "FOOD" means a raw, cooked, or processed edible substance, ice, BEVERAGE, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

(45) "FOODBORNE DISEASE OUTBREAK" means the occurrence of two or more cases of a similar illness resulting from the ingestion of a common FOOD.

(46) "FOOD-CONTACT SURFACE" means:

(a) A surface of EQUIPMENT or a UTENSIL with which FOOD normally comes into contact; or

(b) A surface of EQUIPMENT or a UTENSIL from which FOOD might drain, drip or splash:

(i) Into a FOOD; or

(ii) Onto a surface normally in contact with FOOD.

(47) "FOOD EMPLOYEE" means an individual working with unPACKAGED FOOD, FOOD EQUIPMENT or UTENSILS, or FOOD-CONTACT SURFACES.

(48) "FOOD ESTABLISHMENT."

(a) FOOD ESTABLISHMENT means an operation that:

(i) Stores, prepares, PACKAGES, serves, and vends FOOD directly to the CONSUMER, or otherwise provides FOOD for human consumption such as a restaurant; satellite or catered feeding location; CATERING OPERATION if the operation provides FOOD directly to a CONSUMER; or to a conveyance used to transport people; institution; or FOOD bank; and

(ii) Relinquishes possession of FOOD to a CONSUMER directly, or indirectly through a delivery service such as home delivery or grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(b) FOOD ESTABLISHMENT includes:

(i) An element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is PERMITTED by the REGULATORY AUTHORITY; and

(ii) An operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the PREMISES; and regardless of whether there is a charge for the FOOD.

(c) FOOD ESTABLISHMENT does not include:

(i) An establishment that offers only nonPOTENTIALLY HAZARDOUS FOODS prePACKAGED in a licensed FOOD ESTABLISHMENT or FOOD PROCESSING PLANT;

(ii) An establishment that offers only nonPOTENTIALLY HAZARDOUS, nonREADY-TO-EAT minimally cut, unprocessed fruits, vegetables, and fresh herbs;

(iii) A FOOD PROCESSING PLANT, cottage FOOD operation, or other establishment for activities regulated by the Washington state department of agriculture or the United States Department of Agriculture;

(iv) An establishment that offers only nonPOTENTIALLY HAZARDOUS, READY-TO-EAT FOODS produced in a licensed FOOD ESTABLISHMENT or FOOD PROCESSING PLANT (such as premixed soda pop, powdered creamer, pretzels, cookies, doughnuts, cake, or MEAT jerky) that are served without direct hand contact, with limited portioning, directly onto or into sanitary SINGLE-USE ARTICLES or SINGLE-SERVICE ARTICLES from the original package;

(v) An establishment that offers only nonPOTENTIALLY HAZARDOUS hot BEVERAGES (such as coffee, hot tea, or hot apple cider) served directly into sanitary SINGLE-SERVICE ARTICLES;

(vi) An establishment that offers only dry nonPOTENTIALLY HAZARDOUS, nonREADY-TO-EAT FOODS (such as dry beans, dry grains, in-shell nuts, coffee beans, tea leaves, or herbs for tea);

(vii) An establishment that offers only prePACKAGED frozen confections produced in a licensed FOOD ESTABLISHMENT or FOOD PROCESSING PLANT;

(viii) A residential kitchen in a private home or other location, if only FOODS that are nonPOTENTIALLY HAZARDOUS baked goods are prepared and wrapped in a sanitary manner for sale or service by a nonprofit organization operating for religious, charitable, or educational purposes and if the CONSUMER is informed by a clearly visible placard at the sales or service location that the FOODS are prepared in a kitchen that is not inspected by a REGULATORY AUTHORITY;

(ix) A location where FOODS that are prepared as specified in (b)(viii) of this subsection are sold or offered for human consumption;

(x) A hotel/motel or other similar business that maintains an ice dispensing machine for self-service use by guests and the ice is not used by a FOOD ESTABLISHMENT;

(xi) A kitchen in a private home operated as a family day care provider as defined in RCW 43.215.010 (1)(c) or an adult family home as defined in RCW 70.128.010, used only to prepare FOOD for residents and other people for whom the operation is licensed to provide care;

(xii) A private home that receives catered or home-delivered FOOD;

(xiii) A private home or other location used for a PRIVATE EVENT;

(xiv) A DONOR KITCHEN; and

(xv) A location used for a POTLUCK.

(49) "FOOD PROCESSING PLANT."

(a) FOOD PROCESSING PLANT means a commercial operation that manufactures, packages, labels, or stores FOOD for human consumption, and provides FOOD for sale or distribution to other business entities such as FOOD PROCESSING PLANTS or FOOD ESTABLISHMENTS.

(b) **FOOD PROCESSING PLANT** does not include a **FOOD ESTABLISHMENT**.

(50) **"FOOD WORKER CARD"** means a **FOOD** and **BEVERAGE** service worker's **PERMIT** as required under chapter 69.06 RCW.

(51) **"GAME ANIMAL."**

(a) **GAME ANIMAL** means an animal, the products of which are **FOOD** that is not classified as livestock, sheep, swine, goat, horse, mule, or other equine in 9 C.F.R. 301 Definitions, or as **POULTRY**, or **FISH**.

(b) **GAME ANIMAL** includes mammals such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, opossum, raccoon, nutria, or muskrat, and nonaquatic reptiles such as land snakes.

(c) **GAME ANIMAL** does not include **RATITES**.

(52) **"GRADE A STANDARDS"** means the requirements of the United States Public Health Service/FDA "Grade A Pasteurized Milk Ordinance" with which certain fluid and dry milk and milk products comply.

(53) **"GRILL MARKED"** means **FOOD** that has been seared using a **NONCONTINUOUS COOKING** process in which the **FOOD** is placed on a heated cooking surface for no more than one minute on each side.

(54) **"HACCP PLAN"** means a written document that delineates the formal procedures for following the Hazard Analysis and Critical Control Point principles developed by The National Advisory Committee on Microbiological Criteria for Foods.

(55) **"HANDWASHING SINK."**

(a) **HANDWASHING SINK** means a lavatory, a basin or vessel for washing, a wash basin, or a **PLUMBING FIXTURE** especially placed for use in personal hygiene and designed for the washing of hands.

(b) **HANDWASHING SINK** includes an automatic handwashing facility.

(56) **"HAZARD"** means a biological, chemical, or physical property that might cause an unacceptable **CONSUMER** health **RISK**.

(57) **"HEALTH PRACTITIONER"** means a physician licensed to practice medicine, or if allowed by **LAW**, a nurse practitioner, physician assistant or similar medical professional.

(58) **"HERMETICALLY SEALED CONTAINER"** means a container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned **FOODS**, to maintain the commercial sterility of its contents after processing.

(59) **"HIGHLY SUSCEPTIBLE POPULATION"** means persons who are more likely than other people in the general population to experience foodborne disease because they are:

(a) Immunocompromised, **PRESCHOOL** age children, or older adults; and

(b) Obtaining **FOOD** at a facility that provides custodial care, health care, assisted living, nutritional services, or socialization services including, but not limited to, child or adult day care center, kidney dialysis center, hospital, nursing home, or senior center.

(60) **"IMMEDIATE SERVICE"** means service to the public within thirty minutes of preparation.

(61) **"IMMINENT HEALTH HAZARD"** means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on a fire, flood, extended interruption of electrical or water service, **SEWAGE** backup, misuse of **POISONOUS OR TOXIC MATERIALS**, onset of an apparent **FOODBORNE DISEASE OUTBREAK**, gross insanitary occurrence or condition, or other circumstance that might endanger public health.

(62) **"INJECTED"** means manipulating a **MEAT** to which a solution has been introduced into its interior by processes that are referred to as "injecting," "pump marinating," or "stitch pumping."

(63) **"JUICE."**

(a) **JUICE** means the aqueous liquid expressed or extracted from one or more fruits or vegetables, purees of the edible portions of one or more fruits or vegetables, or any concentrates of such liquid or puree.

(b) **JUICE** does not include, for purposes of **HACCP**, liquids, purees, or concentrates that are not used as **BEVERAGES** or ingredients of **BEVERAGES**.

(64) **"KITCHENWARE"** means **FOOD** preparation and storage **UTENSILS**.

(65) **"LAW"** means applicable local, state, and federal statutes, regulations, and ordinances.

(66) **"LINENS"** means fabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments including cloth gloves.

(67) **"LOCAL BOARD OF HEALTH"** means the county or district board of health.

(68) **"LOCAL HEALTH OFFICER"** means the legally qualified physician who has been appointed as the health officer for the county or district public health department.

(69) **"MAJOR FOOD ALLERGEN."**

(a) **MAJOR FOOD ALLERGEN** means:

(i) Milk, **EGG**, **FISH** (such as bass, flounder, cod, and including crustacean shellfish such as crab, lobster, or shrimp), tree nuts (such as almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or

(ii) A **FOOD** ingredient that contains protein derived from a **FOOD** as specified in (a)(i) of this subsection.

(b) **MAJOR FOOD ALLERGEN** does not include:

(i) Any highly refined oil derived from a **FOOD** specified in (a)(i) of this subsection and any ingredient derived from such highly refined oil; or

(ii) An ingredient that is exempt under the petition or notification process specified in the Food Allergen Labeling and Consumer Protection Act of 2004. (Public Law 108-282.)

(70) **"MEAT"** means the flesh of animals used as **FOOD** including the dressed flesh of cattle, swine, sheep, or goats and other edible animals, except **FISH** and **POULTRY**.

(71) **"MECHANICALLY TENDERIZED."**

(a) **MECHANICALLY TENDERIZED** means manipulating **MEAT** with deep penetration by processes which might be referred to as "blade tenderizing," "jaccarding," "pinning," "needling," or using blades, pins, needles, or any mechanical device.

(b) MECHANICALLY TENDERIZED does not include processes by which solutions are INJECTED into MEAT.

(72) "MG/L" means milligrams per liter, which is the metric equivalent of parts per million.

(73) "MOBILE FOOD UNIT" means a readily movable FOOD ESTABLISHMENT.

(74) "MOLLUSCAN SHELLFISH" means any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, except when the scallop product consists only of the shucked adductor muscle.

(75) "NONCONTINUOUS COOKING."

(a) NONCONTINUOUS COOKING means the cooking of FOOD in a FOOD ESTABLISHMENT using a process in which the initial heating of the FOOD is intentionally halted so that it may be cooled and held for complete cooking at a later time prior to sale or service.

(b) NONCONTINUOUS COOKING does not include cooking procedures that only involve temporarily interrupting or slowing an otherwise continuous cooking process.

(76) "PACKAGED."

(a) PACKAGED means bottled, canned, cartoned, securely bagged, or securely wrapped, whether PACKAGED in a FOOD ESTABLISHMENT or a FOOD PROCESSING PLANT.

(b) PACKAGED does not include a wrapper, carry-out box, or other nondurable container used to containerize FOOD with the purpose of facilitating FOOD protection:

(i) During service and receipt of the FOOD by the CONSUMER; or

(ii) During the display at a staffed, self-service buffet line, such as at a school.

(77) "PERMIT" means the document issued by the REGULATORY AUTHORITY that authorizes a PERSON to operate a FOOD ESTABLISHMENT.

(78) "PERMIT HOLDER" means the entity that:

(a) Is legally responsible for the operation of the FOOD ESTABLISHMENT such as the owner, the owner's agent, or other person; and

(b) Possesses a valid PERMIT to operate a FOOD ESTABLISHMENT.

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

(80) "PERSON IN CHARGE" means the individual present at a FOOD ESTABLISHMENT who is responsible for the operation at the time.

(81) "PERSONAL CARE ITEMS."

(a) PERSONAL CARE ITEMS means items or substances that might be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person's health, hygiene, or appearance.

(b) PERSONAL CARE ITEMS include items such as medicines; first-aid supplies; and other items such as cosmetics, and toiletries such as toothpaste and mouthwash.

(82) "pH" means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution. Values between zero and seven indicate acidity and values between seven and fourteen indicate alkalinity. The value for pure distilled water is seven, which is considered neutral.

(83) "PHYSICAL FACILITIES" means the structure and interior surfaces of a FOOD ESTABLISHMENT including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system vents.

(84) "PLUMBING FIXTURE" means a receptacle or device that:

(a) Is permanently or temporarily connected to the water distribution system of the PREMISES and demands a supply of water from the system; or

(b) Discharges used water, waste materials, or SEWAGE directly or indirectly to the drainage system of the PREMISES.

(85) "PLUMBING SYSTEM" means the water supply and distribution pipes; PLUMBING FIXTURES and traps; soil, waste, and vent pipes; sanitary and storm sewers and building drains, including their respective connections, devices, and appurtenances within the PREMISES; and water treating EQUIPMENT.

(86) "POISONOUS OR TOXIC MATERIALS" means substances that are not intended for ingestion and are included in four categories:

(a) Cleaners and SANITIZERS, which include cleaning and SANITIZING agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;

(b) Pesticides, except SANITIZERS, which include substances such as insecticides and rodenticides;

(c) Substances necessary for the operation and maintenance of the establishment such as nonFOOD grade lubricants and PERSONAL CARE ITEMS that might be deleterious to health; and

(d) Substances that are not necessary for the operation and maintenance of the establishment and are on the PREMISES for retail sale, such as petroleum products and paints.

(87) "POOLED" is the combination of four or more raw EGGS, EGG yolks, or EGG whites.

(88) "POTENTIALLY HAZARDOUS FOOD (PHF)."

(a) POTENTIALLY HAZARDOUS FOOD means a FOOD that requires time/temperature control for safety to limit pathogenic microorganism growth or toxin formation.

(b) POTENTIALLY HAZARDOUS FOOD includes:

(i) An animal FOOD that is raw or heat-treated, a plant FOOD that is heat-treated or consists of raw seed sprouts, cut melons, CUT LEAFY GREENS, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation, fresh herb-in-oil mixtures, or garlic-in-oil mixtures unless modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation; and

(ii) Except as specified in (c)(iv) of this subsection, a FOOD that because of the interaction of its  $A_w$  and pH values is designated as product assessment required (PA) in Table A or B of this subsection:

**Table A. Interaction of pH and A<sub>w</sub> for Control of Spores in Food Heat-treated to Destroy Vegetative Cells and Subsequently Packaged**

| A <sub>w</sub> values | pH values   |            |         |
|-----------------------|-------------|------------|---------|
|                       | 4.6 or less | >4.6 - 5.6 | >5.6    |
| ≤0.92                 | non-PHF     | non-PHF    | non-PHF |
| >0.92 - .95           | non-PHF     | non-PHF    | PA**    |
| >0.95                 | non-PHF     | PA         | PA      |

\*\* PA means product assessment required.

**Table B\*. Interaction of pH and A<sub>w</sub> for Control of Vegetative Cells and Spores in Food Not Heat-treated or Heat-treated but not PACKAGED.**

| A <sub>w</sub> values | pH values |           |            |         |
|-----------------------|-----------|-----------|------------|---------|
|                       | <4.2      | 4.2 - 4.6 | >4.6 - 5.0 | >5.0    |
| <0.88                 | Non-PHF   | Non-PHF   | Non-PHF    | Non-PHF |
| 0.88 - 0.90           | Non-PHF   | Non-PHF   | Non-PHF    | PA**    |
| >0.90 - 0.92          | Non-PHF   | Non-PHF   | PA         | PA      |
| >0.92                 | Non-PHF   | PA        | PA         | PA      |

\*\* PA means product assessment required.

(c) POTENTIALLY HAZARDOUS FOOD does not include:

(i) An air-cooled hard-boiled EGG with shell intact, or an EGG with the shell intact that is not hard-boiled, but has been pasteurized to destroy all viable salmonellae;

(ii) A FOOD in an unopened HERMETICALLY SEALED CONTAINER that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution;

(iii) A FOOD that because of its pH or A<sub>w</sub> value, or interaction of A<sub>w</sub> and pH values, is designated as a non-PHF FOOD in Table A or B of this subsection;

(iv) A FOOD that is designated as product assessment required (PA) in Table A or B of this subsection and has undergone a product assessment showing that the growth or toxin formation of pathogenic microorganisms that are reasonably likely to occur in that FOOD is precluded due to:

(A) Intrinsic factors including added or natural characteristics of the FOOD such as preservatives, antimicrobials, humectants, acidulants or nutrients;

(B) Extrinsic factors including environmental or operational factors that affect the FOOD such as packaging, modified atmosphere such as REDUCED OXYGEN PACKAGING, shelf life and use, or temperature range of storage and use; or

(C) A combination of intrinsic and extrinsic factors; or

(v) A FOOD that does not support the growth or toxic formation of pathogenic microorganisms in accordance with (c)(i) or (iv) of this subsection even though the FOOD might contain a pathogenic microorganism or chemical or physical contaminant at a level sufficient to cause illness or injury.

(89) "POTLUCK" means an event where:

(a) People are gathered to share FOOD;

(b) People attending the event are expected to bring FOOD to share;

(c) There is no compensation provided for people bringing FOOD to the event;

(d) There is no charge for any FOOD or BEVERAGE provided at the event; and

(e) The event is not conducted for commercial purposes.

(90) "POULTRY" means:

(a) Any domesticated bird (chickens, turkeys, ducks, geese, guineas, RATITES, or squabs), whether live or dead, as defined in 9 C.F.R. 381.1 Poultry Products Inspection Regulations Definitions, Poultry; and

(b) Any migratory waterfowl or game bird, pheasant, partridge, quail, grouse, or pigeon, whether live or dead, as defined in 9 C.F.R. 362.1 Voluntary Poultry Inspection Regulations, Definitions.

(91) "PREMISES" means:

(a) The physical facility, its contents, and the contiguous land or property under the control of the PERMIT HOLDER; or

(b) The physical facility, its contents, and the land or property not described under (a) of this subsection if its facilities and contents are under control of the PERMIT HOLDER and might impact FOOD ESTABLISHMENT personnel, facilities, or operations, and a FOOD ESTABLISHMENT is only one component of a larger operation such as a health care facility, hotel, motel, school, recreational camp, or prison.

(92) "PRESCHOOL."

(a) PRESCHOOL means a program that provides organized care and education for children below the age required for kindergarten entry. A PRESCHOOL operates for two or more days per week with no child enrolled on a regular basis for more than four hours per day.

(b) A PRESCHOOL does not include:

(i) Programs where the parent or guardian is present at each session;

(ii) Parent-child classes where the focus is on parent education;

(iii) Short-term parks and recreation programs;

(iv) Informal parent and child groups;

(v) Irregular babysitting;

(vi) Licensed child care; or

(vii) FOOD preparation and service operations otherwise under PERMIT or license by the REGULATORY AUTHORITY.

(93) "PRIMAL CUT" means a basic major cut into which carcasses and sides of MEAT are separated, such as beef round, pork loin, lamb flank, or veal breast.

(94) "PRIVATE EVENT" means a private gathering limited to members and guests of members of a family, organization, or club, where the event is not open to the general public, and where FOOD is provided without compensation.

(95) "PUBLIC WATER SYSTEM" means a DRINKING WATER system that is operated in compliance with chapters 246-290 and 246-291 WAC.

(96) "RATITE" means a flightless bird such as an emu, ostrich, or rhea.

(97) "READY-TO-EAT FOOD."

(a) READY-TO-EAT FOOD means FOOD that:

(i) Is in a form that is edible without additional preparation to achieve FOOD safety, as specified under WAC 246-215-03400 (1) through (3) or WAC 246-215-03405 or 246-215-03425; or

(ii) Is raw or partially cooked animal FOOD and the CONSUMER is advised as specified under WAC 246-215-03400 (4)(a) and (c); or

(iii) Is prepared in accordance with a VARIANCE that is granted as specified under WAC 246-215-03400 (4)(d); and  
 (iv) Might receive additional preparation for palatability or aesthetic, epicurean, gastronomic, or culinary purposes.

(b) READY-TO-EAT FOOD includes:

(i) Raw animal FOOD that is cooked as specified under WAC 246-215-03400 or 246-215-03405, or frozen as specified under WAC 246-215-03425;

(ii) Raw fruits and vegetables that are washed as specified under WAC 246-215-03318;

(iii) Fruits and vegetables that are cooked for hot holding, as specified under WAC 246-215-03410;

(iv) All POTENTIALLY HAZARDOUS FOOD that is cooked to the temperature and time required for the specific FOOD under WAC 246-215-03400 through 246-215-03445 and cooled as specified under WAC 246-215-03515;

(v) Plant FOOD for which further washing, cooking, or other processing is not required for FOOD safety, and from which rinds, peels, husks, or shells, if naturally present, are removed;

(vi) Substances derived from plants such as spices, seasonings, and sugar;

(vii) A bakery item such as bread, cakes, pies, fillings, or icing for which further cooking is not required for FOOD safety;

(viii) The following products that are produced in accordance with USDA guidelines and that have received a lethality treatment for pathogens: Dry, fermented sausages, such as dry salami or pepperoni; salt cured MEAT and POULTRY products, such as prosciutto ham, country cured ham, and Parma ham; and dried MEAT and POULTRY products, such as jerky or beef sticks; and

(ix) FOODS manufactured according to 21 C.F.R. Part 113, Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers.

(98) "RED HIGH RISK FACTORS" are improper practices or procedures identified as the most prevalent contributing factors to foodborne illness or injury, as listed on the food Establishment Inspection Report form.

(99) "REDUCED OXYGEN PACKAGING."

(a) REDUCED OXYGEN PACKAGING means:

(i) The reduction of the amount of oxygen in a package by removing oxygen; displacing oxygen and replacing it with another gas or combination of gases; or otherwise controlling the oxygen content to a level below that normally found in the surrounding atmosphere (approximately twenty-one percent at sea level); and

(ii) A process as specified in (a)(i) of this subsection that involves a FOOD for which the hazards *Clostridium botulinum* or *Listeria monocytogenes* require control in the final PACKAGED form.

(b) REDUCED OXYGEN PACKAGING includes:

(i) Vacuum packaging, in which air is removed from a package of FOOD and the package is hermetically SEALED so that a vacuum remains inside the package;

(ii) Modified atmosphere packaging, in which the atmosphere of a package of FOOD is modified so that its composition is different from air but the atmosphere might change over time due to the permeability of the packaging material or the respiration of the FOOD. Modified atmosphere packaging

includes reduction of the proportion of oxygen, total replacement of oxygen, or an increase in the proportion of other gases such as carbon dioxide or nitrogen;

(ii) Controlled atmosphere packaging, in which the atmosphere of a package of FOOD is modified so that until the package is opened, its composition is different from air, and continuous control of that atmosphere is maintained, such as by using oxygen scavengers or a combination of total replacement of oxygen, nonrespiring FOOD, and impermeable packaging material;

(iv) Cook chill packaging, in which cooked FOOD is hot filled into impermeable bags which have the air expelled and are then SEALED or crimped closed. The bagged FOOD is rapidly chilled and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens; or

(v) Sous vide packaging, in which raw or partially cooked FOOD is placed in hermetically SEALED, impermeable bag, cooked in the bag, rapidly chilled, and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens.

(100) "REFUSE" means solid waste not carried by water through a SEWAGE system.

(101) "REGULATORY AUTHORITY" means the local, state, or federal enforcement body or authorized representative having jurisdiction over the FOOD ESTABLISHMENT. The LOCAL BOARD OF HEALTH, acting through the LOCAL HEALTH OFFICER, is the REGULATORY AUTHORITY for the activity of a FOOD ESTABLISHMENT, except as otherwise provided by LAW.

(102) "REMINDER" means a written statement concerning the health RISK of consuming animal FOODS raw, undercooked, or without otherwise being processed to eliminate pathogens.

(103) "RESERVICE" means the transfer of FOOD that is unused and returned by a CONSUMER after being served or sold and in the possession of the CONSUMER, to another person.

(104) "RESTRICT" means to limit the activities of a FOOD EMPLOYEE so that there is no RISK of transmitting a disease that is transmissible through FOOD and the FOOD EMPLOYEE does not work with exposed FOOD, clean EQUIPMENT, UTENSILS, LINENS; and unwrapped SINGLE-SERVICE or SINGLE-USE ARTICLES.

(105) "RESTRICTED EGG" means any check, dirty EGG, incubator reject, inedible, leaker, or loss as defined in 9 C.F.R. 590.

(106) "RESTRICTED USE PESTICIDE" means a pesticide product that contains the active ingredients specified in 40 C.F.R. 152.175 Pesticides classified for restricted use, and that is limited to use by or under the direct supervision of a certified operator.

(107) "RISK" means the likelihood that an adverse health effect will occur within a population as a result of a HAZARD in a FOOD.

(108) "SAFE MATERIAL" means:

(a) An article manufactured from or composed of materials that might not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any FOOD;

(b) An ADDITIVE that is used as specified in Section 409 of the federal food, Drug, and Cosmetic Act; or

(c) Other materials that are not ADDITIVES and that are used in conformity with applicable regulations of the FDA.

(109) "SANITIZATION" means the application of cumulative heat or chemicals on cleaned FOOD-CONTACT SURFACES that, when evaluated for efficacy, is sufficient to yield a reduction of five logs, which is equal to a 99.999% reduction, of representative disease microorganisms of public health importance.

(110) "SEALED" means free of cracks or other openings that allow the entry or passage of moisture.

(111) "SERVICE ANIMAL" means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability, as specified in RCW 49.60.218.

(112) "SERVICING AREA" means an operating base location to which a MOBILE FOOD UNIT or transportation vehicle returns regularly for such things as vehicle and EQUIPMENT cleaning, discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding FOOD.

(113) "SEWAGE" means liquid waste containing animal or vegetable matter in suspension or solution and might include liquids containing chemicals in solution.

(114) "SHELLFISH CONTROL AUTHORITY" means a state, federal, foreign, tribal, or other government entity legally responsible for administering a program that includes certification of MOLLUSCAN SHELLFISH harvesters and DEALERS for interstate commerce.

(115) "SHELLSTOCK" means raw, in-shell MOLLUSCAN SHELLFISH.

(116) "SHIGA TOXIN-PRODUCING *ESCHERICHIA COLI* (STEC)" means any *E. coli* capable of producing Shiga toxins (also called verocytotoxins or "Shiga-like" toxins). Examples of serotypes of STEC include both O157 and non-O157 *E. coli*. Also see *ENTEROHEMORRHAGIC ESCHERICHIA COLI*.

(117) "SHUCKED SHELLFISH" means MOLLUSCAN SHELLFISH that have one or both shells removed.

(118) "SINGLE-SERVICE ARTICLES" means TABLEWARE, carry-out UTENSILS, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one-time, one-PERSON use after which they are intended for discard.

(119) "SINGLE-USE ARTICLES."

(a) SINGLE-USE ARTICLES means utensils and bulk FOOD containers designed and constructed to be used once and discarded.

(b) SINGLE-USE ARTICLES includes items such as wax paper, butcher paper, plastic wrap, formed aluminum FOOD containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number 10 cans which do not meet the materials, durability, strength, and cleanability specifications under WAC 246-215-04100, 246-215-04200, and 246-215-04204 for multiuse UTENSILS.

(120) "SLACKING" means the process of moderating the temperature of a FOOD such as allowing a food to gradually increase from a temperature of -10°F (-23°C) to 25°F (-4°C) in preparation for deep-fat frying or to facilitate even heat

penetration during the cooking of previously block-frozen FOOD such as shrimp.

(121) "SMOOTH" means:

(a) A FOOD-CONTACT SURFACE having a surface free of pits and inclusions with a cleanability equal to or exceeding that of (100 grit) number three stainless steel;

(b) A nonFOOD-CONTACT SURFACE of EQUIPMENT having a surface equal to that of commercial grade hot-rolled steel free of visible scale; and

(c) A floor, wall, or ceiling having an even or level surface with no roughness or projections that render it difficult to clean.

(122) "TABLEWARE" means eating, drinking, and serving UTENSILS for table use such as flatware including forks, knives, and spoons; hollowware including bowls, cups, serving dishes, and tumblers; and plates.

(123) "TEMPERATURE MEASURING DEVICE" means a thermometer, thermocouple, thermistor, or other device that indicates the temperature of FOOD, air, or water.

(124) "TEMPORARY FOOD ESTABLISHMENT" means a FOOD ESTABLISHMENT:

(a) Operating at a fixed location, with a fixed menu, for not more than twenty-one consecutive days in conjunction with a single event or celebration, such as a fair or festival; or

(b) Operating not more than three days a week at a fixed location, with a fixed menu, in conjunction with an APPROVED, recurring, organized event, such as a farmers market.

(125) "USDA" means the United States Department of Agriculture.

(126) "UTENSIL" means a FOOD-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of FOOD, such as KITCHENWARE or TABLEWARE that is multiuse, SINGLE-SERVICE, or SINGLE-USE; gloves used in contact with FOOD; temperature sensing probes of FOOD TEMPERATURE MEASURING DEVICES; and probe-type price or identification tags used in contact with FOOD.

(127) "VARIANCE" means a written document issued by the REGULATORY AUTHORITY that authorizes a modification or waiver of one or more requirements of this chapter if, in the opinion of the REGULATORY AUTHORITY, a health HAZARD or nuisance will not result from the modification or waiver.

(128) "VENDING MACHINE" means a self-service device that, upon insertion of a coin, paper currency, token, card, or key, or by optional manual operation, dispenses unit servings of FOOD in bulk or in packages without the necessity of replenishing the device between each vending operation.

(129) "VENDING MACHINE LOCATION" means the room, enclosure, space, or area where one or more VENDING MACHINES are installed and operated and includes the storage areas and areas on the PREMISES that are used to service and maintain the VENDING MACHINES.

(130) "WAREWASHING" means the cleaning and SANITIZING of UTENSILS and FOOD-CONTACT SURFACES of EQUIPMENT.

(131) "WHOLE-MUSCLE, INTACT BEEF" means whole muscle beef that is not INJECTED, MECHANICALLY TENDER-

IZED, reconstructed, or scored and marinated, from which beef steaks may be cut.

## PART 2: MANAGEMENT AND PERSONNEL

### Subpart A - Supervision

#### NEW SECTION

**WAC 246-215-02100 Responsibility—Assignment (2009 FDA Food Code 2-101.11).** (1) Except as specified in subsection (2) of this section, the PERMIT HOLDER shall be the PERSON IN CHARGE or shall designate a PERSON IN CHARGE and shall ensure that a PERSON IN CHARGE is present at the FOOD ESTABLISHMENT during all hours of operation.

(2) In a FOOD ESTABLISHMENT with two or more separately PERMITTED departments that are the legal responsibility of the same PERMIT HOLDER and that are located on the same PREMISES, the PERMIT HOLDER may, during specific time periods when FOOD is not being prepared, PACKAGED, or served, designate a single PERSON IN CHARGE who is present on the PREMISES during all hours of operation, and who is responsible for each separately PERMITTED FOOD ESTABLISHMENT on the PREMISES.

#### NEW SECTION

**WAC 246-215-02105 Demonstration of knowledge (2009 FDA Food Code 2-102.11).** Based on the RISKS of foodborne illness inherent to the FOOD operation, during inspections and upon request, the PERSON IN CHARGE shall demonstrate to the REGULATORY AUTHORITY knowledge of foodborne disease prevention, application of the HAZARD analysis and CRITICAL CONTROL POINT principles, and the requirements of this chapter. The PERSON IN CHARGE shall demonstrate this knowledge by:

(1) Complying with this chapter by having no violations of RED HIGH RISK FACTORS during the current inspection;

(2) Being a certified FOOD protection manager who has shown proficiency of required information through passing a test that is part of an accredited program; or

(3) Responding correctly to the inspector's questions as they relate to the specific FOOD operation. The areas of knowledge include:

(a) Describing the relationship between the prevention of foodborne disease and the personal hygiene of a FOOD EMPLOYEE;

(b) Explaining the responsibility of the PERSON IN CHARGE for preventing the transmission of foodborne disease by a FOOD EMPLOYEE who has a disease or medical condition that might cause foodborne disease;

(c) Describing the symptoms associated with the diseases that are transmissible through FOOD;

(d) Explaining the significance of the relationship between maintaining the time and temperature of POTENTIALLY HAZARDOUS FOOD and the prevention of foodborne illness;

(e) Explaining the hazards involved in the consumption of raw or undercooked MEAT, POULTRY, EGGS, and FISH;

(f) Stating the required FOOD temperatures and times for safe cooking of POTENTIALLY HAZARDOUS FOOD including MEAT, POULTRY, EGGS, and FISH;

(g) Stating the required temperatures and times for the safe refrigerated storage, hot holding, cooling, and reheating of POTENTIALLY HAZARDOUS FOOD;

(h) Describing the relationship between the prevention of foodborne illness and the management and control of the following:

(i) Cross contamination;

(ii) Hand contact with READY-TO-EAT FOODS;

(iii) Handwashing; and

(iv) Maintaining the FOOD ESTABLISHMENT in a clean condition and in good repair;

(i) Describing FOODS identified as MAJOR FOOD ALLERGENS and the symptoms that a MAJOR FOOD ALLERGEN could cause in a sensitive individual who has an allergic reaction;

(j) Explaining the relationship between FOOD safety and providing EQUIPMENT that is:

(i) Sufficient in number and capacity; and

(ii) Properly designed, constructed, located, installed, operated, maintained, and cleaned;

(k) Explaining correct procedures for cleaning and SANITIZING UTENSILS and FOOD-CONTACT SURFACES of EQUIPMENT;

(l) Identifying the source of water used and measures taken to ensure that it remains protected from contamination such as providing protection from backflow and precluding the creation of cross connections;

(m) Identifying POISONOUS OR TOXIC MATERIALS in the FOOD ESTABLISHMENT and the procedures necessary to ensure that they are safely stored, dispensed, used, and disposed of according to LAW;

(n) Identifying CRITICAL CONTROL POINTS in the operation from purchasing through sale or service that when not controlled can contribute to the transmission of foodborne illness and explaining steps taken to ensure that the points are controlled in accordance with the requirements of this chapter;

(o) Explaining the details of how the PERSON IN CHARGE and FOOD EMPLOYEES comply with the HACCP PLAN if a plan is required by the LAW, this chapter, or an agreement between the REGULATORY AUTHORITY and the FOOD ESTABLISHMENT;

(p) Explaining the responsibilities, rights, and authorities assigned by this chapter to the:

(i) FOOD EMPLOYEE;

(ii) CONDITIONAL EMPLOYEE;

(iii) PERSON IN CHARGE; and

(iv) REGULATORY AUTHORITY;

(q) Explaining how the PERSON IN CHARGE, FOOD EMPLOYEES and CONDITIONAL EMPLOYEES comply with reporting responsibilities and EXCLUSION or RESTRICTION of FOOD EMPLOYEES.

#### NEW SECTION

**WAC 246-215-02110 Duties—Food protection manager certification (2009 FDA Food Code 2-102.20).** A PERSON IN CHARGE who is certified by a FOOD protection man-

ager certification program is deemed to comply with WAC 246-215-02105(2). The certification program must be evaluated and listed by a Conference for Food Protection-recognized accrediting agency as conforming to the Conference for Food Protection Standards for Accreditation of Food Protection Manager Certification Programs.

#### NEW SECTION

**WAC 246-215-02115 Duties—Person in charge (2009 FDA Food Code 2-103.11).** The PERSON IN CHARGE shall ensure that:

(1) FOOD ESTABLISHMENT operations are not conducted in a private home or in a room used as living or sleeping quarters as specified under WAC 246-215-06290;

(2) Persons unnecessary to the FOOD ESTABLISHMENT operation are not allowed in the FOOD preparation, FOOD storage, or WAREWASHING areas, except that brief visits and tours may be authorized by the PERSON IN CHARGE if steps are taken to ensure that exposed FOOD; clean EQUIPMENT, UTENSILS, and LINENS; and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES are protected from contamination;

(3) EMPLOYEES and other persons such as delivery and maintenance persons and pesticide applicators entering the FOOD preparation, FOOD storage, and WAREWASHING areas comply with this chapter;

(4) EMPLOYEES are effectively cleaning their hands by routinely monitoring the EMPLOYEES' handwashing;

(5) EMPLOYEES are visibly observing FOODS as they are received to determine that they are from APPROVED sources, delivered at the required temperatures, protected from contamination, unADULTERATED, and accurately presented, by routinely monitoring the EMPLOYEES' observations and periodically evaluating FOODS upon their receipt;

(6) EMPLOYEES are properly cooking POTENTIALLY HAZARDOUS FOOD, being particularly careful in cooking those FOODS known to cause severe foodborne illness and death, such as EGGS and COMMINUTED MEATS, through daily oversight of the EMPLOYEES' routine monitoring of the cooking temperatures using appropriate TEMPERATURE MEASURING DEVICES properly scaled and calibrated as specified under WAC 246-215-04220 and 246-215-04580(2);

(7) EMPLOYEES are using proper methods to rapidly cool POTENTIALLY HAZARDOUS FOODS that are not held hot or are not for consumption within four hours, through daily oversight of the EMPLOYEES' routine monitoring of FOOD temperatures during cooling;

(8) CONSUMERS who order raw or partially cooked READY-TO-EAT FOODS of animal origin are informed as specified under WAC 246-215-03620 that the FOOD is not cooked sufficiently to ensure its safety;

(9) EMPLOYEES are properly SANITIZING cleaned multi-use EQUIPMENT and UTENSILS before they are reused, through routine monitoring of solution temperature and exposure time for hot water SANITIZING, and chemical concentration, pH, temperature, and exposure time for chemical SANITIZING;

(10) CONSUMERS are notified that clean TABLEWARE is to be used when they return to self-service areas such as salad bars and buffets as specified under WAC 246-215-03345;

(11) Except when approval is obtained from the REGULATORY AUTHORITY as specified under WAC 246-215-03300(4), EMPLOYEES are preventing cross-contamination of READY-TO-EAT FOOD with bare hands by properly using suitable UTENSILS such as deli tissue, spatulas, tongs, SINGLE-USE gloves, or dispensing EQUIPMENT;

(12) EMPLOYEES are properly trained in FOOD safety, including FOOD allergy awareness, as it relates to their assigned duties; and

(13) FOOD EMPLOYEES and CONDITIONAL EMPLOYEES are informed of their responsibility to report in accordance with LAW, to the PERSON IN CHARGE, information about their health and activities as they relate to diseases that are transmissible through FOOD, as specified under WAC 246-215-02205.

#### NEW SECTION

**WAC 246-215-02120 Food worker cards.** (1) The PERMIT HOLDER and PERSON IN CHARGE of the FOOD ESTABLISHMENT shall ensure that all FOOD EMPLOYEES are in compliance with the provisions of chapter 69.06 RCW and chapter 246-217 WAC for obtaining and renewing valid FOOD WORKER CARDS.

(2) The PERMIT HOLDER and PERSON IN CHARGE of the FOOD ESTABLISHMENT shall display or file the original or a copy of the FOOD WORKER CARD of each FOOD EMPLOYEE at the EMPLOYEE'S place of employment, to be available for inspection by the REGULATORY AUTHORITY upon request.

(3) This section does not add to, or remove from, the provisions of chapter 69.06 RCW and chapter 246-217 WAC regarding FOOD WORKER CARDS.

### **Subpart B - Employee Health**

#### NEW SECTION

**WAC 246-215-02200 Employee health—Reporting policy.** The PERMIT HOLDER shall require FOOD EMPLOYEES and CONDITIONAL EMPLOYEES to report to the PERSON IN CHARGE information about their health and activities as they relate to diseases that are transmissible through FOOD. A FOOD EMPLOYEE or CONDITIONAL EMPLOYEE shall report the information in a manner that allows the PERSON IN CHARGE to reduce the RISK of foodborne disease transmission, including providing necessary additional information, such as the date of onset of illness symptoms.

#### NEW SECTION

**WAC 246-215-02205 Employee health—Reportable history of illness.** (1) FOOD EMPLOYEES and CONDITIONAL EMPLOYEES shall report to the PERSON IN CHARGE if they:

(a) Have diarrhea, vomiting, sore throat with fever, or jaundice (yellow skin or eyes), except as specified under WAC 246-215-02235;

(b) Have a lesion containing pus such as a boil or infected wound that is open or draining and is:

(i) On the hands or wrist;

(ii) On exposed portions of the arms; or

(iii) On other parts of the body, unless the lesion is covered by a dry, durable, tight-fitting bandage; or

(c) Have an illness diagnosed by a HEALTH PRACTITIONER as due to an infection with:

(i) Hepatitis A virus;

(ii) *Salmonella* Typhi (Typhoid Fever);

(iii) *Shigella*; or

(iv) Enterohemorrhagic or SHIGA TOXIN-PRODUCING *ESCHERICHIA COLI*.

(2) In addition to the reporting in subsection (1) of this section, FOOD EMPLOYEES and CONDITIONAL EMPLOYEES in a FOOD ESTABLISHMENT serving a HIGHLY SUSCEPTIBLE POPULATION shall report to the PERSON IN CHARGE if they:

(a) Have an illness diagnosed by a HEALTH PRACTITIONER as due to an infection with Norovirus or *Salmonella* other than *Salmonella* Typhi;

(b) Have consumed or prepared FOOD implicated in a CONFIRMED DISEASE OUTBREAK;

(c) Have attended or worked in a setting where there is a CONFIRMED DISEASE OUTBREAK;

(d) Live in the same household as someone who works at or attended a setting where there is a CONFIRMED DISEASE OUTBREAK; or

(e) Live in the same household as or have consumed FOOD prepared by a PERSON who is infected or ill with:

(i) Enterohemorrhagic or SHIGA TOXIN-PRODUCING *ESCHERICHIA COLI*;

(ii) *Shigella*;

(iii) *Salmonella* Typhi; or

(iv) Hepatitis A virus or jaundice.

#### NEW SECTION

**WAC 246-215-02210 Employee health—Prohibit a conditional employee from becoming a food employee.**

The PERSON IN CHARGE shall ensure that a CONDITIONAL EMPLOYEE who reports symptoms or a diagnosed disease as described in WAC 246-215-02205 (1) or (2)(a) does not become a FOOD EMPLOYEE until they meet the requirements for the removal of RESTRICTION or EXCLUSION in WAC 246-215-02245 and 246-215-02250. A CONDITIONAL EMPLOYEE that reports a history of exposure to disease in WAC 246-215-02205 (2)(b) through (e) may not become a FOOD EMPLOYEE in a FOOD ESTABLISHMENT serving a HIGHLY SUSCEPTIBLE POPULATION until the requirements in WAC 246-215-02250 are met.

#### NEW SECTION

**WAC 246-215-02215 Employee health—Notify health officer.** The PERSON IN CHARGE shall notify the LOCAL HEALTH OFFICER and the REGULATORY AUTHORITY, if not the same agency, when a FOOD EMPLOYEE is:

(1) Jaundiced; or

(2) Diagnosed with an illness due to a pathogen as specified under WAC 246-215-02205 (1)(c) and (2)(a).

#### NEW SECTION

**WAC 246-215-02220 Employee health—Conditions of exclusion.** Except as provided in WAC 246-215-02235,

the PERSON IN CHARGE of a FOOD ESTABLISHMENT shall EXCLUDE any FOOD EMPLOYEE who is known to have:

(1) Diarrhea or vomiting;

(2) Jaundice;

(3) A diagnosed infection (symptomatic or ASYMPTOMATIC) with *Salmonella* Typhi, *Shigella*, Enterohemorrhagic or SHIGA TOXIN-PRODUCING *ESCHERICHIA COLI*, or hepatitis A virus;

(4) A sore throat with fever or a diagnosed infection with Norovirus or *Salmonella* other than *Salmonella* Typhi, and works in a FOOD ESTABLISHMENT serving a HIGHLY SUSCEPTIBLE POPULATION; or

(5) A previous infection with *Salmonella* Typhi within the past three months without having antibiotic therapy.

#### NEW SECTION

**WAC 246-215-02225 Employee health—Conditions of restriction.** The PERSON IN CHARGE of a FOOD ESTABLISHMENT shall RESTRICT any FOOD EMPLOYEE who is known to have:

(1) A lesion that appears inflamed or contains pus and that is not covered;

(2) Exposure to foodborne pathogens as described in WAC 246-215-02205 (2)(b) through (e) and works in a FOOD ESTABLISHMENT serving a HIGHLY SUSCEPTIBLE POPULATION; or

(3) A sore throat with fever.

#### NEW SECTION

**WAC 246-215-02230 Employee health—Aiding illness investigations.** The PERSON IN CHARGE of a FOOD ESTABLISHMENT and all EMPLOYEES shall cooperate with the REGULATORY AUTHORITY and the LOCAL HEALTH OFFICER investigating:

(1) A FOODBORNE DISEASE OUTBREAK or a suspected FOODBORNE DISEASE OUTBREAK; or

(2) A FOOD EMPLOYEE suspected to be infected with a disease agent that can be transmitted from a FOOD EMPLOYEE through FOOD.

#### NEW SECTION

**WAC 246-215-02235 Employee health—Other conditions.** A FOOD EMPLOYEE with a symptom of gastrointestinal illness, such as vomiting, diarrhea, or jaundice, may work in a FOOD ESTABLISHMENT without special RESTRICTION, provided that the FOOD EMPLOYEE furnishes written medical documentation to the REGULATORY AUTHORITY from a HEALTH PRACTITIONER that the symptom is due to a medical condition not transmissible through FOOD, such as Crohn's disease, irritable bowel syndrome, ulcerative colitis, or hepatitis C.

#### NEW SECTION

**WAC 246-215-02240 Employee health—Complying with LOCAL HEALTH OFFICER.** The PERSON IN CHARGE of a FOOD ESTABLISHMENT and FOOD EMPLOYEES shall comply with orders issued by the LOCAL HEALTH OFFICER for

EXCLUDING EMPLOYEES from a FOOD ESTABLISHMENT OR RESTRICTING EMPLOYEE activities due to a diagnosed or suspected infection by a disease agent that can be transmitted from a FOOD EMPLOYEE through FOOD until the LOCAL HEALTH OFFICER rescinds the order.

#### NEW SECTION

**WAC 246-215-02245 Employee health—Removal of exclusion or restriction based on diagnosis.** Except as specified under WAC 246-215-02250, the PERSON IN CHARGE shall obtain approval from the LOCAL HEALTH OFFICER before reinstating a FOOD EMPLOYEE who was RESTRICTED or EXCLUDED based on:

(1) The 19th edition of the *Control of Communicable Disease Manual*, published by the American Public Health Association; or

(2) Other measures the LOCAL HEALTH OFFICER deems necessary based on his or her professional judgment, current standards of practice and the best available medical and scientific information.

#### NEW SECTION

**WAC 246-215-02250 Employee health—Removal of exclusion or restriction based on symptoms.** The PERSON IN CHARGE shall adhere to the following conditions when reinstating a FOOD EMPLOYEE who was RESTRICTED or EXCLUDED due to:

(1) Diarrhea or vomiting: Remove EXCLUSION when ASYMPTOMATIC for more than twenty-four hours;

(2) Jaundice: Remove EXCLUSION with approval of the LOCAL HEALTH OFFICER;

(3) Sore throat with fever: Remove EXCLUSION or RESTRICTION when ASYMPTOMATIC; or

(4) Uncovered infected wound or pustular boil: Remove RESTRICTION when skin, wound, or pustular boil is properly protected by an impermeable cover and, if on the hand or wrist, with a SINGLE-USE glove.

#### NEW SECTION

**WAC 246-215-02255 Employee health—Removal of exclusion or restriction based on exposure.** The PERSON IN CHARGE shall adhere to the following conditions when reinstating a FOOD EMPLOYEE who was RESTRICTED due to:

(1) Exposure to Norovirus, *Shigella* spp., or Enterohemorrhagic or SHIGA TOXIN-PRODUCING *ESCHERICHIA COLI*: Remove RESTRICTION when more than three days since potential exposure or more than three days since household contact became ASYMPTOMATIC;

(2) Exposure to *Salmonella* Typhi: Remove RESTRICTION when more than fourteen days since the last potential exposure or more than fourteen days since household contact became ASYMPTOMATIC;

(3) Exposure to hepatitis A: Remove RESTRICTION when:

(a) The FOOD EMPLOYEE is immune to hepatitis A virus infection because of prior illness from hepatitis A, vaccination, or IgG administration; or

(b) More than thirty days have passed since the last day the FOOD EMPLOYEE was potentially exposed or since the FOOD EMPLOYEE'S household contact became jaundiced.

### **Subpart C - Personal Cleanliness**

#### NEW SECTION

**WAC 246-215-02300 Hands and arms—Clean condition (2009 FDA Food Code 2-301.11).** FOOD EMPLOYEES shall keep their hands and exposed portions of their arms clean.

#### NEW SECTION

**WAC 246-215-02305 Hands and arms—Cleaning procedure (2009 FDA Food Code 2-301.12).** (1) Except as specified in subsection (4) of this section, FOOD EMPLOYEES shall clean their hands and exposed portions of their arms, including surrogate prosthetic devices for hands or arms for at least 20 seconds, using a cleaning compound in a HAND-WASHING SINK that is equipped as specified under WAC 246-215-05210 and Part 6, Subpart C.

(2) FOOD EMPLOYEES shall use the following cleaning procedure in the order stated to clean their hands and exposed portions of their arms, including surrogate prosthetic devices for hands and arms:

(a) Rinse under clean, running warm water;

(b) Apply an amount of cleaning compound recommended by the cleaning compound manufacturer;

(c) Rub together vigorously for at least ten to fifteen seconds while:

(i) Paying particular attention to removing soil from underneath the fingernails during the cleaning procedure; and

(ii) Creating friction on the surfaces of the hands and arms or surrogate prosthetic devices for hands and arms, finger tips, and areas between the fingers;

(d) Thoroughly rinse under clean, running warm water; and

(e) Immediately follow the cleaning procedure with thorough drying using a method as specified under WAC 246-215-06310.

(3) To avoid recontaminating their hands or surrogate prosthetic devices, FOOD EMPLOYEES may use disposable paper towels or similar clean barriers when touching surfaces such as manually operated faucet handles on a HANDWASHING SINK or the handle of a restroom door.

(4) If APPROVED and capable of removing the types of soils encountered in the FOOD operations involved, an automatic handwashing facility may be used by FOOD EMPLOYEES to clean their hands or surrogate prosthetic devices.

#### NEW SECTION

**WAC 246-215-02310 Hands and arms—When to wash (2009 FDA Food Code 2-301.14).** FOOD EMPLOYEES shall clean their hands and exposed portions of their arms as specified under WAC 246-215-02305 immediately before engaging in FOOD preparation including working with exposed FOOD, clean EQUIPMENT and UTENSILS, and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES and:

- (1) After touching bare human body parts other than clean hands and clean, exposed portions of arms;
- (2) After using the toilet room;
- (3) After caring for or handling SERVICE ANIMALS or aquatic animals as specified under WAC 246-215-02415(2);
- (4) Except as specified under WAC 246-215-02400(2), after coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking;
- (5) After handling soiled EQUIPMENT or UTENSILS;
- (6) During FOOD preparation, as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks;
- (7) When switching between working with raw FOOD and working with READY-TO-EAT FOOD;
- (8) Before donning gloves for working with READY-TO-EAT FOOD unless a glove change is not the result of contamination; and
- (9) After engaging in other activities that contaminate the hands or gloves.

NEW SECTION

**WAC 246-215-02315 Hands and arms—Where to wash (2009 FDA Food Code 2-301.15).** FOOD EMPLOYEES shall clean their hands in a HANDWASHING SINK or APPROVED automatic handwashing facility and may not clean their hands in a sink used for FOOD preparation or WAREWASHING, or in a service sink or a curbed cleaning facility used for the disposal of mop water and similar liquid waste.

NEW SECTION

**WAC 246-215-02320 Hands and arms—Hand antiseptics (2009 FDA Food Code 2-301.16).** (1) A hand antiseptic used as a topical application, hand antiseptic solution used as a hand dip, or a hand antiseptic soap must:

- (a) Comply with one of the following:
  - (i) Be an APPROVED drug that is listed in the FDA publication *Approved Drug Products with Therapeutic Equivalence Evaluations* as an APPROVED drug based on safety and effectiveness; or
  - (ii) Have active antimicrobial ingredients that are listed in the FDA monograph or OTC Health-Care Antiseptic Drug Products as an antiseptic handwash; and
- (b) Comply with one of the following:
  - (i) Have components that are exempted from the requirement of being listed in federal FOOD ADDITIVE regulations as specified in 21 C.F.R. 170.39 – Threshold of regulation for substances used in FOOD contact articles; or
  - (ii) Comply with and be listed in:
    - (A) 21 C.F.R. 178 – Indirect FOOD ADDITIVES: Adjuncts, production aids, and SANITIZERS as regulated for use as a FOOD ADDITIVE with conditions of safe use; or
    - (B) 21 C.F.R. 182 – Substances generally recognized as safe, 21 C.F.R. 184 – Direct food substances affirmed as generally recognized as safe, or 21 C.F.R. 186 – Indirect food substances affirmed as generally recognized as safe for use in contact with FOOD; and
  - (c) Be applied only to hands that are cleaned as specified under WAC 246-215-02305.

(2) If a hand antiseptic or a hand antiseptic solution used as a hand dip does not meet the requirements specified under subsection (1)(b) of this section, use must be:

- (a) Followed by thorough hand rinsing in clean water before hand contact with FOOD or by the use of gloves; or
- (b) Limited to situations that involve no direct contact with FOOD by the bare hands.
- (3) A hand antiseptic solution used as a hand dip must be maintained clean and at a strength equivalent to at least 100 MG/L chlorine.

NEW SECTION

**WAC 246-215-02325 Fingernails—Maintenance (2009 FDA Food Code 2-302.11).** (1) FOOD EMPLOYEES shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough.

(2) Unless wearing intact gloves in good repair, a FOOD EMPLOYEE may not wear fingernail polish or artificial fingernails while preparing FOOD.

NEW SECTION

**WAC 246-215-02330 Jewelry—Prohibition (2009 FDA Food Code 2-303.11).** Except for a single ring or wedding ring set covered by a glove in good repair, FOOD EMPLOYEES may not wear jewelry on their arms or hands while preparing FOOD.

NEW SECTION

**WAC 246-215-02335 Outer clothing—Clean condition (2009 FDA Food Code 2-304.11).** FOOD EMPLOYEES shall wear clean outer clothing to prevent contamination of FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES.

**Subpart D - Hygienic Practices**NEW SECTION

**WAC 246-215-02400 Food contamination prevention—Eating, drinking, or using tobacco (2009 FDA Food Code 2-401.11).** (1) Except as specified in subsection (2) of this section, an EMPLOYEE may eat, drink, or use any form of tobacco only in designated areas where the contamination of exposed FOOD; clean EQUIPMENT, UTENSILS, and LINENS; unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES; or other items needing protection cannot result.

(2) A FOOD EMPLOYEE may drink from a closed BEVERAGE container if the container is handled to prevent contamination of:

- (a) The EMPLOYEE'S hands;
- (b) The container; and
- (c) Exposed FOOD; clean EQUIPMENT, UTENSILS, and LINENS; and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES.

NEW SECTION

**WAC 246-215-02405 Food contamination prevention—Discharges from the eyes, nose, and mouth (2009 FDA Food Code 2-401.12).** FOOD EMPLOYEES experiencing persistent sneezing, coughing, or a runny nose that causes discharges from the eyes, nose, or mouth may not work with exposed FOOD; clean EQUIPMENT, UTENSILS, and LINENS; or unwrapped SINGLE-SERVICE or SINGLE-USE ARTICLES.

NEW SECTION

**WAC 246-215-02410 Hair restraints—Effectiveness (2009 FDA Food Code 2-402.11).** FOOD EMPLOYEES shall wear short hair or use hair restraints such as hats, hair coverings or nets, rubber bands, or hair clips to keep their hair off the face and behind their shoulders, and clothing that covers body hair to protect exposed FOOD; clean EQUIPMENT, UTENSILS, and LINENS; and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES.

NEW SECTION

**WAC 246-215-02415 Animals—Handling prohibition (2009 FDA Food Code 2-403.11).** (1) Except as specified in subsection (2) of this section, FOOD EMPLOYEES may not care for or handle animals that may be present such as patrol dogs, SERVICE ANIMALS, or pets that are allowed as specified under WAC 246-215-06570 (2)(b) through (e).

(2) FOOD EMPLOYEES with SERVICE ANIMALS may handle or care for their SERVICE ANIMALS and FOOD EMPLOYEES may handle or care for FISH in aquariums or MOLLUSCAN SHELLFISH or crustacean in display tanks if they wash their hands as specified under WAC 246-215-02305 and 246-215-02315.

**PART 3: FOOD****Subpart A - Characteristics**NEW SECTION

**WAC 246-215-03100 Condition—Safe, unadulterated, and honestly presented (2009 FDA Food Code 3-101.11).** FOOD must be safe, UNADULTERATED, and, as specified under WAC 246-215-03605, honestly presented.

**Subpart B - Sources, Specifications, and Original Containers and Records**NEW SECTION

**WAC 246-215-03200 Sources—Compliance with food law (2009 FDA Food Code 3-201.11).** (1) FOOD must be obtained from sources that comply with LAW.

(2) FOOD prepared in a private home may not be used or offered for human consumption in a FOOD ESTABLISHMENT.

(3) PACKAGED FOOD must be labeled as specified under LAW, including chapter 69.04 RCW; 21 C.F.R. 101 Food Labeling; 9 C.F.R. 317 Labeling, Marking Devices, and Con-

tainers; 9 C.F.R. 381 Subpart N Labeling and Containers; and as specified under WAC 246-215-03265 and 246-215-03270.

(4) FISH, other than those specified under WAC 246-215-03425(2), that are intended for consumption in raw or undercooked form and allowed as specified under WAC 246-215-03400(4) may be offered for sale or service if they are obtained from a supplier that freezes the FISH as specified under WAC 246-215-03425; or if they are frozen on the PREMISES as specified under WAC 246-215-03425 and records are retained as specified under WAC 246-215-03430.

(5) WHOLE-MUSCLE, INTACT BEEF steaks that are intended for consumption in an undercooked form without a CONSUMER advisory as specified under WAC 246-215-03400(3) must be:

(a) Obtained from a FOOD PROCESSING PLANT that, upon request by the purchaser, PACKAGES the steaks and labels them, to indicate that the steaks meet the definition of WHOLE-MUSCLE, INTACT BEEF; or

(b) Deemed acceptable by the REGULATORY AUTHORITY based on other evidence, such as written buyer specifications or invoices, that indicates that the steaks meet the definition of WHOLE-MUSCLE, INTACT BEEF; and

(c) If individually cut in a FOOD ESTABLISHMENT:

(i) Cut from WHOLE-MUSCLE, INTACT BEEF that is labeled by a FOOD PROCESSING PLANT as specified in (a) of this subsection or identified as specified in (b) of this subsection;

(ii) Prepared so they remain intact; and

(iii) If PACKAGED for undercooking in a FOOD ESTABLISHMENT, labeled as specified in (a) of this subsection or identified as specified in (b) of this subsection.

(6) MEAT and POULTRY that is not a READY-TO-EAT FOOD and is in a PACKAGED form when it is offered for sale or otherwise offered for consumption, must be labeled to include safe handling instructions as specified in LAW, including 9 C.F.R. 317.2(I) and 9 C.F.R. 381.125(b).

(7) EGGS that have not been specifically treated to destroy all viable *salmonellae* must be labeled to include safe handling instructions as specified in LAW, including 21 C.F.R. 101.17(h).

NEW SECTION

**WAC 246-215-03205 Sources—Food in a hermetically sealed container (2009 FDA Food Code 3-201.12).** FOOD in a HERMETICALLY SEALED CONTAINER must be obtained from a FOOD PROCESSING PLANT that is regulated by the FOOD regulatory agency that has jurisdiction over the plant.

NEW SECTION

**WAC 246-215-03210 Sources—Fluid milk and milk products (2009 FDA Food Code 3-201.13).** Fluid milk and milk products must be obtained from sources that comply with GRADE A STANDARDS as specified in LAW.

NEW SECTION

**WAC 246-215-03215 Sources—Fish (2009 FDA Food Code 3-201.14).** (1) FISH that are received for sale or service must be:

- (a) Commercially and legally caught or harvested; or
- (b) APPROVED for sale or service.

(2) MOLLUSCAN SHELLFISH that are recreationally caught may not be received for sale or service.

NEW SECTION

**WAC 246-215-03220 Sources—Molluscan shellfish (2009 FDA Food Code 3-201.15).** (1) MOLLUSCAN SHELLFISH must be obtained from sources according to LAW and the requirements specified in the United States Department of Health and Human Services, Public Health Service, FDA, National Shellfish Sanitation Program Guide for the Control of MOLLUSCAN SHELLFISH.

(2) MOLLUSCAN SHELLFISH received in interstate commerce must be from sources that are listed in the Interstate Certified Shellfish Shippers List.

NEW SECTION

**WAC 246-215-03225 Sources—Wild mushrooms.** (1) The PERMIT HOLDER shall obtain wild harvested mushrooms only from sources in Washington, Oregon, Idaho, California, Montana and British Columbia where each mushroom is individually identified in the fresh state.

(2) Only the following wild harvested mushroom species may be offered for sale or service in a FOOD ESTABLISHMENT:

- (a) Hedgehog (*Hydnum repandum*, *H. umbilicatum*);
- (b) Porcini/King Bolete (*Boletus edulis*);
- (c) Lobster (*Hypomyces lactifluorum* growing on *Russula brevipes*);
- (d) Pacific Golden Chanterelle (*Cantharellus formosus*, *C. cascadenis*, *C. cibarius* var *roseocanus*);
- (e) White Chanterelle (*Cantharellus subalbidus*);
- (f) Yellow Foot/Winter Chanterelle (*Craterellus tubaeformis*);
- (g) Black Trumpet (*Craterellus cornucopioides*);
- (h) Saffron milk cap (*Lactarius deliciosus*);
- (i) Coral Hydnum/Bears Tooth (*Hericium coralloides*, *H. abietis*, *H. americanum*);
- (j) Oyster (*Pleurotus populinus*, *P. pulmonarius*, *P. ostreatus*);
- (k) Cauliflower mushroom (*Sparassis crispa*);
- (l) Oregon Black Truffle (*Leucangium carthusianum*);
- (m) Oregon White Truffle (*Tuber gibbosum*, *T. oregonense*);
- (n) Blue Chanterelle (*Polyozellus multiplex*);
- (o) *Morchella* species including, but not limited to, Black Morels (*Morchella elata*) and Blonde Morels (*Morchella esculenta*);
- (p) Matsutake/Japanese Pine Mushroom (*Tricholoma magnivelare*).

(3) Wild harvested mushrooms prepared for IMMEDIATE SERVICE by a FOOD ESTABLISHMENT must be cooked to 135°F except for those sold for home use from grocery or farmer's markets.

(4) The PERMIT HOLDER shall keep written documentation supplied by the mushroom identifier for any wild harvested mushrooms offered for sale or service on file for ninety days after receipt. The documentation must include:

- (a) The common name and Latin binomial name of the mushroom;
- (b) The name, original signature, business name, mailing address, e-mail and telephone number of the mushroom identifier;
- (c) The province, state, and county or counties where harvested;
- (d) The date or dates of harvest;
- (e) The date of sale to the FOOD ESTABLISHMENT; and
- (f) The amount of product by weight.

(5) This section does not apply to dried or fresh mushrooms that are grown, processed or PACKAGED in a FOOD PROCESSING PLANT regulated by a state or federal FOOD REGULATORY AUTHORITY.

NEW SECTION

**WAC 246-215-03230 Sources—Game animals (2009 FDA Food Code 3-201.17).** (1) If GAME ANIMALS are received for sale or service they must be:

- (a) Commercially raised for FOOD and:
  - (i) Raised, slaughtered, and processed under a voluntary inspection program that is conducted by the agency that has animal health jurisdiction; or
  - (ii) Under a routine inspection program conducted by a regulatory agency other than the agency that has animal health jurisdiction; and
  - (iii) Raised, slaughtered, and processed according to:
    - (A) LAWS governing MEAT and POULTRY as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program; and
    - (B) Requirements which are developed by the agency that has animal health jurisdiction and the agency that conducts the inspection program with consideration of factors such as the need for antemortem and postmortem examination by an APPROVED veterinarian or veterinarian's designee;
- (b) Under a voluntary inspection program administered by the USDA for GAME ANIMALS such as exotic animals (reindeer, elk, deer, antelope, water buffalo, or bison) that are "inspected and APPROVED" in accordance with 9 C.F.R. 352 Exotic Animals; Voluntary Inspection of rabbits that are "inspected and certified" in accordance with 9 C.F.R. 354 Voluntary Inspection of Rabbits and Edible Products Thereof.

(2) A GAME ANIMAL may not be received for sale or service if it is a species of wildlife that is listed in 50 C.F.R. 17 Endangered and Threatened Wildlife and Plants.

NEW SECTION

**WAC 246-215-03235 Specifications for receiving—Temperature (2009 FDA Food Code 3-202.11).** (1) Except as specified in subsection (2) of this section, refrigerated, POTENTIALLY HAZARDOUS FOOD must be at a temperature of 41°F (5°C) or below when received.

(2) If a temperature other than 41°F (5°C) for a POTENTIALLY HAZARDOUS FOOD is specified in LAW governing its distribution, such as LAWS governing milk and MOLLUSCAN SHELLFISH, the FOOD may be received at the specified temperature.

(3) Raw EGGS must be received in refrigerated EQUIPMENT that maintains an ambient air temperature of 45°F (7°C) or less.

(4) POTENTIALLY HAZARDOUS FOOD that is cooked to a temperature and for a time specified under WAC 246-215-03400 through 246-215-03410 and received hot must be at a temperature of 135°F (57°C) or above.

(5) A FOOD that is labeled frozen and shipped frozen by a FOOD PROCESSING PLANT must be received frozen.

(6) Upon receipt, POTENTIALLY HAZARDOUS FOOD must be free of evidence of previous temperature abuse.

#### NEW SECTION

**WAC 246-215-03240 Specifications for receiving—Additives (2009 FDA Food Code 3-202.12).** FOOD may not contain unAPPROVED ADDITIVES or ADDITIVES that exceed the amounts specified in 21 C.F.R. 170-180 relating to FOOD ADDITIVES, generally recognized as safe or prior sanctioned substances that exceed amounts specified in 21 C.F.R. 181-186, substances that exceed amounts specified in 9 C.F.R., Subpart C, Section 424.21(b) Food Ingredients and Sources of Radiation, or pesticide residues that exceed provisions specified in 40 C.F.R. 180 Tolerances for Pesticides Chemicals in Food, and exceptions.

#### NEW SECTION

**WAC 246-215-03245 Specifications for receiving—Eggs (2009 FDA Food Code 3-202.13).** EGGS must be received clean and sound and may not exceed the RESTRICTED EGG tolerances for United States Consumer Grade B as specified in United States Standards, Grades, and Weight Classes for Shell Eggs, AMS 56.200 et seq., administered by the Agricultural Marketing Service of USDA.

#### NEW SECTION

**WAC 246-215-03250 Specifications for receiving—Eggs and milk products, pasteurized (2009 FDA Food Code 3-202.14).** (1) EGG PRODUCTS must be obtained pasteurized.

(2) Fluid milk, fluid milk products, dry milk, and dry milk products must meet "Grade A pasteurized" milk standards of chapter 15.36 RCW, except "Grade A raw milk" products meeting standards of chapter 15.36 RCW may be sold in retail stores in the original container for off-PREMISES consumption.

(3) Frozen milk products, such as ice cream, must be obtained pasteurized as specified in 21 C.F.R. 135 - Frozen Desserts.

(4) Cheese must be obtained pasteurized unless alternative procedures to pasteurization are specified in the C.F.R., such as 21 C.F.R. 133 - Cheeses and Related Cheese Products, for curing certain cheese varieties.

#### NEW SECTION

**WAC 246-215-03255 Specifications for receiving—Package integrity (2009 FDA Food Code 3-202.15).** FOOD packages must be in good condition and protect the integrity of the contents so that the FOOD is not exposed to adulteration or potential contaminants.

#### NEW SECTION

**WAC 246-215-03260 Specifications for receiving—Ice (2009 FDA Food Code 3-202.16).** Ice used as a FOOD or a cooling medium must be made from DRINKING WATER.

#### NEW SECTION

**WAC 246-215-03265 Specifications for receiving—Shucked shellfish, packaging and identification (2009 FDA Food Code 3-202.17).** (1) Raw SHUCKED SHELLFISH must be obtained in nonreturnable packages which bear a legible label that identifies the:

(a) Name, address, and CERTIFICATION NUMBER of the shucker, packer, or repacker of the MOLLUSCAN SHELLFISH; and

(b) The "sell by" or "best if used by" date for packages with a capacity of less than 1.89 L (one-half gallon) or the date shucked for packages with a capacity of 1.89 L (one-half gallon) or more.

(2) A package of raw SHUCKED SHELLFISH that does not bear a label or which bears a label which does not contain all of the information as specified under subsection (1) of this section is subject to a hold order, as allowed by LAW, or seizure and destruction in accordance with 21 C.F.R. Subpart D - Specific Administrative Decisions Regarding Interstate Shipments, Section 1240.60(d) Molluscan Shellfish.

#### NEW SECTION

**WAC 246-215-03270 Specifications for receiving—Shellstock identification (2009 FDA Food Code 3-202.18).** (1) SHELLSTOCK must be obtained in containers bearing legible source identification tags or labels that are affixed by the harvester or DEALER that depurates, ships, or reships the SHELLSTOCK, as specified in the *National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish*, and that list:

(a) Except as specified under subsection (3) of this section, on the harvester's tag or label, the following information in the following order:

(i) The harvester's identification number that is assigned by the SHELLFISH CONTROL AUTHORITY;

(ii) The date of harvest;

(iii) The most precise identification of the harvest location or aquaculture site that is practicable based on the system of harvest area designations that is in use by the SHELLFISH CONTROL AUTHORITY and including the abbreviation of the name of the state or country in which the shellfish are harvested;

(iv) The type and quantity of shellfish; and

(v) The following statement in bold, capitalized type: **"This tag is required to be attached until container is empty or retagged and thereafter kept on file for 90 days."**; and

(b) Except as specified in subsection (4) of this section, on each DEALER'S tag or label, the following information in the following order:

(i) The DEALER'S name and address, and the CERTIFICATION NUMBER assigned by the SHELLFISH CONTROL AUTHORITY;

(ii) The original shipper's CERTIFICATION NUMBER including the abbreviation of the name of the state or country in which the shellfish are harvested;

(iii) The same information as specified for a harvester's tag under (a)(ii) through (iv) of this subsection; and

(iv) The following statement in bold, capitalized type: **"This tag is required to be attached until container is empty and thereafter kept on file for 90 days."**

(2) A container of SHELLSTOCK that does not bear a tag or label or that bears a tag or label that does not contain all of the information as specified under subsection (1)(a) of this section is subject to a hold order, as allowed by LAW, or seizure and destruction in accordance with 21 C.F.R. Subpart D - Specific Administrative Decisions Regarding Interstate Shipments, Section 1240.60(d).

(3) If a place is provided on the harvester's tag or label for a DEALER'S name, address and CERTIFICATION NUMBER, the DEALER'S information must be listed first.

(4) If the harvester's tag or label is designed to accommodate each DEALER'S identification as specified under subsection (1)(a)(i) and (ii) of this section, individual DEALER tags or labels need not be provided.

#### NEW SECTION

**WAC 246-215-03275 Specifications for receiving—Shellstock, condition (2009 FDA Food Code 3-202.19).** When received by a FOOD ESTABLISHMENT, SHELLSTOCK must be reasonably free of mud, dead shellfish, and shellfish with broken shells. Dead shellfish or SHELLSTOCK with badly broken shells must be discarded.

#### NEW SECTION

**WAC 246-215-03280 Specifications for receiving—Juice treated (2009 FDA Food Code 3-202.110).** PrePACKAGED JUICE must:

(1) Be obtained from a processor with a HACCP system as specified in 21 C.F.R. Part 120 Hazard Analysis and Critical Control (HACCP) Systems; and

(2) Be obtained pasteurized or otherwise treated to attain a 5-log reduction of the most resistant microorganism of public health significance as specified in 21 C.F.R. Part 120.24 Process Controls.

#### NEW SECTION

**WAC 246-215-03285 Original containers and records—Molluscan shellfish, original container (2009 FDA Food Code 3-203.11).** (1) Except as specified in subsections (2), (3), and (4) of this section, MOLLUSCAN SHELLFISH may not be removed from the container in which they

are received other than immediately before sale or preparation for service.

(2) For display purposes, SHELLSTOCK may be removed from the container in which they are received, displayed on drained ice, or held in a display container, and a quantity specified by a CONSUMER may be removed from the display or display container and provided to the CONSUMER if:

(a) The source of the SHELLSTOCK on display is identified as specified under WAC 246-215-03270 and recorded as specified under WAC 246-215-03290; and

(b) The SHELLSTOCK are protected from contamination.

(3) SHUCKED SHELLFISH may be removed from the container in which they were received and held in a display container from which individual servings are dispensed upon a CONSUMER'S request if:

(a) The labeling information for the shellfish on display as specified under WAC 246-215-03265 is retained and correlated to the date when, or dates during which, the shellfish are sold or served; and

(b) The shellfish are protected from contamination.

(4) SHUCKED SHELLFISH may be removed from the container in which they were received and rePACKAGED in CONSUMER self-service containers where allowed by LAW if:

(a) The labeling information for the shellfish is on each CONSUMER self-service container as specified under WAC 246-215-03265 and 246-215-03610 (1) and (2)(a) through (e);

(b) The labeling information as specified under WAC 246-215-03265 is retained and correlated with the date when, or dates during which, the shellfish is sold or served;

(c) The labeling information and dates specified under (b) of this subsection are maintained for ninety days; and

(d) The shellfish are protected from contamination.

(5) SHELLSTOCK may be removed from the container in which they are received and repacked in CONSUMER self-service containers if:

(a) Each self-service container of SHELLSTOCK is plainly marked with the harvest area name, harvest area date, and original shellfish DEALER'S CERTIFICATION NUMBER, including the abbreviation of the name of the state or country in which the shellfish are harvested, or otherwise marked with a code that can be used to link the product with tag or label information as specified under WAC 246-215-03270;

(b) The tag or label information as specified under WAC 246-215-03270 for SHELLSTOCK is retained in a written or electronic log for ninety days that correlates the date when, or dates during which, the SHELLSTOCK sold;

(c) The SHELLSTOCK are protected from contamination; and

(d) The packaging material allows air to get to the shellfish.

#### NEW SECTION

**WAC 246-215-03290 Original containers and records—Shellstock, maintaining identification (2009 FDA Food Code 3-203.12).** (1) Except as specified under subsection (3)(b) of this section, SHELLSTOCK tags or labels must remain attached to the container in which the SHELLSTOCK are received until the container is empty.

(2) The date when the last SHELLSTOCK from the container is sold or served must be recorded on the tag or label.

(3) The identity of the source of SHELLSTOCK that are sold or served must be maintained by retaining SHELLSTOCK tags or labels for ninety calendar days from the date that is recorded on the tag or label, as specified under subsection (2) of this section by:

(a) Using an APPROVED record keeping system that keeps the tags or labels in chronological order correlated to the date that is recorded on the tag or label, as specified under subsection (2) of this section; and

(b) If SHELLSTOCK are removed from its tagged or labeled container:

(i) Preserving source identification by using a record-keeping system as specified under (a) of this subsection; and

(ii) Ensuring that SHELLSTOCK from one tagged or labeled container are not COMMINGLED with SHELLSTOCK from another container.

### **Subsection C - Preventing Contamination After Receiving**

#### NEW SECTION

**WAC 246-215-03300 Preventing contamination by employees—Preventing contamination from hands (2009 FDA Food Code 3-301.11).** (1) FOOD EMPLOYEES shall wash their hands as specified under WAC 246-215-02305.

(2) Except when washing fruits and vegetables as specified under WAC 246-215-03318 or as specified in subsection (4) of this section, FOOD EMPLOYEES may not contact exposed, READY-TO-EAT FOOD with their bare hands and shall use suitable UTENSILS such as deli tissue, spatulas, tongs, SINGLE-USE gloves, or dispensing EQUIPMENT.

(3) FOOD EMPLOYEES shall minimize bare hand and arm contact with exposed FOOD that is not in a READY-TO-EAT form.

(4) FOOD EMPLOYEES not serving a HIGHLY SUSCEPTIBLE POPULATION may contact exposed, READY-TO-EAT FOOD with their bare hands if:

(a) The PERMIT HOLDER obtains prior approval from the REGULATORY AUTHORITY;

(b) Written procedures are maintained in the FOOD ESTABLISHMENT and made available to the REGULATORY AUTHORITY upon request that include:

(i) For each bare hand contact procedure, a listing of the specific READY-TO-EAT FOODS that are touched by the hands;

(ii) Diagrams and other information showing that handwashing facilities, installed, located, equipped, and maintained as specified under WAC 246-215-05230, 246-215-05255, 246-215-05265, 246-215-06310, and 246-215-06320, are in an easily accessible location and in close proximity to the work station where bare hand contact procedure is conducted.

(c) A written EMPLOYEE health policy that details how the FOOD ESTABLISHMENT complies with Part 2, Subpart B of this chapter.

(d) Documentation that FOOD EMPLOYEES acknowledge they have received training in:

(i) The RISKS of contacting the specific READY-TO-EAT FOODS with bare hands;

(ii) Proper handwashing as specified under WAC 246-215-02305;

(iii) When to wash their hands as specified under WAC 246-215-02310;

(iv) Where to wash their hands as specified under WAC 246-215-02315;

(v) Proper fingernail maintenance as specified under WAC 246-215-02325;

(vi) Prohibition of jewelry as specified under WAC 246-215-02330; and

(vii) Good hygienic practices as specified under WAC 246-215-02400 and 246-215-02405.

(e) Documentation that hands are washed before FOOD preparation and as necessary to prevent cross contamination by FOOD EMPLOYEES as specified under WAC 246-215-02300, 246-215-02305, 246-215-02310, and 246-215-02315 during all hours of operation when the specific READY-TO-EAT FOODS are prepared;

(f) Documentation that FOOD EMPLOYEES contacting READY-TO-EAT FOOD with bare hands use two or more of the following control measures to provide additional safeguards to hazards associated with bare hand contact:

(i) Double handwashing;

(ii) Nail brushes;

(iii) A hand antiseptic after handwashing as specified under WAC 246-215-02320;

(iv) Incentive programs such as paid sick leave that assist or encourage FOOD EMPLOYEES not to work when they are ill; or

(v) Other APPROVED control measures; and

(g) Documentation that corrective action is taken when (a) through (f) of this subsection are not followed.

#### NEW SECTION

**WAC 246-215-03303 Preventing contamination by employees—Preventing contamination when tasting (2009 FDA Food Code 3-301.12).** A FOOD EMPLOYEE may not use a UTENSIL more than once to taste FOOD that is to be sold or served.

#### NEW SECTION

**WAC 246-215-03306 Preventing food and ingredient contamination—Packaged and unpackaged food—Separation, packaging, and segregation (2009 FDA Food Code 3-302.11).** (1) A FOOD must be protected from cross contamination by:

(a) Except as specified in (a)(iii) of this subsection, separating raw animal FOODS during storage, preparation, holding and display from:

(i) Raw READY-TO-EAT FOOD including other raw animal FOOD such as FISH for sushi or MOLLUSCAN SHELLFISH, or other raw READY-TO-EAT FOOD such as fruits and vegetables; and

(ii) Cooked READY-TO-EAT FOOD;

(iii) Frozen, commercially processed and PACKAGED raw animal FOOD may be stored and displayed with or above fro-

zen, commercially processed and PACKAGED, READY-TO-EAT FOOD.

(b) Except when combined as ingredients, separating types of raw animal FOODS from each other such as beef, FISH, lamb, pork, and POULTRY during storage, preparation, holding and display by:

(i) Using separate EQUIPMENT for each type; or

(ii) Arranging each type of FOOD in EQUIPMENT so that cross contamination of one type with another is prevented; and

(iii) Preparing each type of FOOD at different times or in separate areas.

(c) Cleaning EQUIPMENT and UTENSILS as specified under WAC 246-215-04605(1) and SANITIZING as specified under WAC 246-215-04710;

(d) Except as specified under WAC 246-215-03520 (2)(b) and subsection (2) of this section, storing the FOOD in packages, covered containers, or wrappings;

(e) Cleaning HERMETICALLY SEALED CONTAINERS of FOOD of visible soil before opening;

(f) Protecting FOOD containers that are received PACKAGED together in a case or overwrap from cuts when the case or overwrap is opened;

(g) Storing damaged, spoiled, or recalled FOOD being held in the FOOD ESTABLISHMENT as specified under WAC 246-215-06415; and

(h) Separating fruits and vegetables, before they are washed as specified under WAC 246-215-03318 from READY-TO-EAT FOOD.

(2) Subsection (1)(d) of this section does not apply to:

(a) Whole, uncut, raw fruits and vegetables and nuts in the shell, that require peeling or hulling before consumption;

(b) PRIMAL CUTS, quarters, or sides of raw MEAT or slab bacon that are hung on clean, SANITIZED hooks or placed on clean, SANITIZED racks;

(c) Whole, uncut, processed MEATS such as country hams, and smoked or cured sausages that are placed on clean, SANITIZED racks;

(d) FOOD being cooled as specified under WAC 246-215-03520; or

(e) SHELLSTOCK.

#### NEW SECTION

**WAC 246-215-03309 Preventing food and ingredient contamination—Food storage containers, identified with common name of food (2009 FDA Food Code 3-302.12).** Except for containers holding FOOD that can be readily and unmistakably recognized such as dry pasta, working containers holding FOOD or FOOD ingredients that are removed from their original packages for use in the FOOD ESTABLISHMENT, such as cooking oils, flour, herbs, potato flakes, salt, spices, and sugar must be identified with the common name of the FOOD.

#### NEW SECTION

**WAC 246-215-03312 Preventing food and ingredient contamination—Pasteurized eggs, substitute for raw eggs for certain recipes (2009 FDA Food Code 3-302.13).** Pasteurized EGGS or EGG PRODUCTS must be substituted for raw

EGGS in the preparation of FOODS such as Caesar salad, hollandaise or Bearnaise sauce, mayonnaise, meringue, eggnog, ice cream, and EGG-fortified BEVERAGES that are not:

(1) Cooked as specified under WAC 246-215-03400 (1)(a) or (b); or

(2) Included in WAC 246-215-03400(4).

#### NEW SECTION

**WAC 246-215-03315 Preventing food and ingredient contamination—Protection from unapproved additives (2009 FDA Food Code 3-302.14).** (1) FOOD must be protected from contamination that might result from the addition of, as specified under WAC 246-215-03240:

(a) Unsafe or unAPPROVED FOOD ADDITIVES or COLOR ADDITIVES; and

(b) Unsafe or unAPPROVED levels of APPROVED FOOD ADDITIVES and COLOR ADDITIVES.

(2) A FOOD EMPLOYEE may not:

(a) Apply sulfiting agents to fresh fruits and vegetables intended for raw consumption or to a FOOD considered to be a good source of vitamin B<sub>1</sub>; or

(b) Serve or sell FOOD specified under (a) of this subsection that is treated with sulfiting agents before receipt by the FOOD ESTABLISHMENT.

#### NEW SECTION

**WAC 246-215-03318 Preventing food and ingredient contamination—Washing fruits and vegetables (2009 FDA Food Code 3-302.15).** (1) Except as specified in subsection (2) of this section, and except for whole, raw fruits and vegetables that are intended for washing by the CONSUMER before consumption, raw fruits and vegetables must be thoroughly rinsed under running water to remove soil and other contaminants after any soaking and before being cut, combined with other ingredients, cooked, served, or offered for human consumption in READY-TO-EAT form.

(2) Raw fruits and vegetables may be washed by using chemicals as specified under WAC 246-215-07225.

(3) For the purposes of this section, raw vegetables include fresh herbs and sprouts.

#### NEW SECTION

**WAC 246-215-03321 Preventing food and ingredient contamination—Pooling of raw eggs prohibited.** Except EGGS that are used in batters or POOLED immediately before cooking, raw EGGS may not be POOLED.

#### NEW SECTION

**WAC 246-215-03324 Preventing contamination from ice used as a coolant—Ice used as exterior coolant, prohibited as ingredient (2009 FDA Food Code 3-303.11).** After uses as a medium for cooling the exterior surfaces of FOOD such as melons or FISH, PACKAGED FOOD such as canned BEVERAGES, or cooling coils and tubes of EQUIPMENT, ice may not be used as a FOOD.

NEW SECTION**WAC 246-215-03327 Preventing contamination from ice used as a coolant—Storage or display of food in contact with water or ice (2009 FDA Food Code 3-303.12).**

(1) PACKAGED FOOD may not be stored in direct contact with ice or water if the FOOD is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the ice or water.

(2) Except as specified in subsections (3) and (4) of this section, unPACKAGED FOOD may not be stored in direct contact with undrained ice.

(3) Whole, raw fruits or vegetables; cut, raw vegetables such as celery or carrot sticks or cut potatoes; and tofu may be immersed in ice or water.

(4) Raw POULTRY and raw FISH that are received immersed in ice in shipping containers may remain in that condition while in storage awaiting preparation, display, service, or sale.

NEW SECTION**WAC 246-215-03330 Preventing contamination from equipment, utensils, and linens—Food contact with equipment and utensils (2009 FDA Food Code 3-304.11).** FOOD must only contact surfaces of:

(1) EQUIPMENT and UTENSILS that are cleaned as specified under WAC 246-215-04600 through 246-215-04650 and SANITIZED as specified under WAC 246-215-04700 through 246-215-04710; or

(2) SINGLE-SERVICE ARTICLES and SINGLE-USE ARTICLES.

NEW SECTION**WAC 246-215-03333 Preventing contamination from equipment, utensils, and linens—In-use utensils, between-use storage (2009 FDA Food Code 3-304.12).** During pauses in FOOD preparation or dispensing, FOOD preparation and dispensing UTENSILS must be stored:

(1) Except as specified under subsection (2) of this section, in the FOOD with their handles above the top of FOOD and the container;

(2) In FOOD that is not POTENTIALLY HAZARDOUS with their handles above the top of the FOOD within containers or EQUIPMENT that can be closed, such as bins of sugar, flour, or cinnamon;

(3) On a clean portion of the FOOD preparation table or cooking EQUIPMENT only if the in-use UTENSIL and the FOOD-CONTACT SURFACE of the FOOD preparation table or cooking EQUIPMENT are cleaned and SANITIZED at a frequency specified under WAC 246-215-04605 and 246-215-04705;

(4) In running water of sufficient velocity to flush particulates to the drain, if used with moist FOOD such as ice cream or mashed potatoes;

(5) In a clean, protected location if the utensils, such as ice scoops, are used only with a FOOD that is not POTENTIALLY HAZARDOUS FOOD; or

(6) In a container of water maintained at a temperature of 135°F (57°C) or greater or 41°F (5°C) or less and the con-

tainer is cleaned at a frequency specified under WAC 246-215-04605 (4)(g).

NEW SECTION**WAC 246-215-03336 Preventing contamination from equipment, utensils, and linens—Linens and napkins, use limitation (2009 FDA Food Code 3-304.13).** LINENS and napkins may not be used in contact with FOOD unless they are used to line a container for the service of FOODS and the LINENS and napkins are replaced each time the container is refilled for a new CONSUMER.NEW SECTION**WAC 246-215-03339 Preventing contamination from equipment, utensils, and linens—Wiping cloths, use limitation (2009 FDA Food Code 3-304.14).** (1) Cloths that are in use for wiping FOOD spills from TABLEWARE and carry out containers that occur as FOOD is being served must be:

(a) Maintained dry; and

(b) Used for no other purpose.

(2) Cloths in-use for wiping counters and other EQUIPMENT surfaces must be:

(a) Held between uses in a chemical SANITIZER solution at a concentration specified under WAC 246-215-04565; and

(b) Laundered daily as specified under WAC 246-215-04805(4); or

(c) Dry disposable towels used in conjunction with a spray bottle of chemical SANITIZER solution at a concentration specified under WAC 246-215-04565 are not required to be held in a chemical SANITIZER solution as long as the towels are disposed of after each use.

(3) Cloths in-use for wiping surfaces in contact with raw animal FOODS must be kept separate from cloths used for other purposes.

(4) Dry wiping cloths and the chemical SANITIZING solutions specified in subsection (2)(a) of this section in which wet wiping cloths are held between uses must be free of FOOD debris and visible soil.

(5) Containers of chemical SANITIZING solutions specified in subsection (2)(a) of this section in which wet wiping cloths are held between uses must be stored and used in a manner that prevents contamination of FOOD, EQUIPMENT, UTENSILS, LINENS, SINGLE-SERVICE or SINGLE-USE ARTICLES.

(6) SINGLE-USE disposable SANITIZER wipes must be used in accordance with EPA-APPROVED manufacturer's label use instructions.

NEW SECTION**WAC 246-215-03342 Preventing contamination from equipment, utensils, and linens—Gloves, use limitation (2009 FDA Food Code 3-304.15).** (1) If used, SINGLE-USE gloves must be used for only one task such as working with READY-TO-EAT FOOD or with raw animal FOOD, used for no other purpose, and discarded when damaged or soiled, or when interruptions occur in the operation.

(2) Except as specified in subsection (3) of this section, slash-resistant gloves that are used to protect the hands during operations requiring cutting must be used in direct con-

tact only with FOOD that is subsequently cooked as specified under Part 3, Subpart D of this chapter such as frozen FOOD or a PRIMAL CUT of MEAT.

(3) Slash-resistant gloves may be used with READY-TO-EAT FOOD that will not be subsequently cooked if the slash-resistant gloves have a SMOOTH, durable, and nonabsorbent outer surface; or if the slash-resistant gloves are covered with a SMOOTH, durable, nonabsorbent glove, or a SINGLE-USE glove.

(4) Cloth gloves may not be used in direct contact with FOOD unless the FOOD is subsequently cooked as required under Part 3, Subpart D such as frozen FOOD or a PRIMAL CUT of MEAT.

#### NEW SECTION

**WAC 246-215-03345 Preventing contamination from equipment, utensils, and linens—Using clean tableware for second portions and refills (2009 FDA Food Code 3-304.16).** (1) Except for refilling a CONSUMER'S drinking cup or container without contact between the pouring UTENSIL and the lip-contact area of the drinking cup or container, FOOD EMPLOYEES may not use TABLEWARE, including SINGLE-SERVICE ARTICLES, soiled by the CONSUMER, to provide second portions or refills.

(2) Except as specified in subsection (3) of this section, self-service CONSUMERS may not be allowed to use soiled TABLEWARE, including SINGLE-SERVICE ARTICLES, to obtain additional FOOD from the display and serving EQUIPMENT.

(3) Drinking cups and containers may be reused by self-service CONSUMERS if refilling is a contamination-free process as specified under WAC 246-215-04230 (1), (2), and (3).

#### NEW SECTION

**WAC 246-215-03348 Preventing contamination from equipment, utensils, and linens—Refilling returnables (2009 FDA Food Code 3-304.17).** (1) A take-home FOOD container returned to a FOOD ESTABLISHMENT may not be refilled at a FOOD ESTABLISHMENT with a POTENTIALLY HAZARDOUS FOOD.

(2) Except as specified in subsection (3) of this section, a take-home FOOD container refilled with FOOD that is not POTENTIALLY HAZARDOUS FOOD must be cleaned as specified under WAC 246-215-04650(2).

(3) Single service cups and personal take out BEVERAGE containers, such as thermally insulated bottles, nonspill coffee cups, and promotional BEVERAGE glasses, may be refilled by EMPLOYEES or the CONSUMER if refilling is a contamination-free process as specified under WAC 246-215-04230 (1), (2), and (4).

#### NEW SECTION

**WAC 246-215-03351 Preventing contamination from the premises—Food storage (2009 FDA Food Code 3-305.11).** (1) Except as specified in subsections (2) and (3) of this section, FOOD must be protected from contamination by storing the FOOD:

(a) In a clean, dry location;

(b) Where it is not exposed to splash, dust, or other contamination; and

(c) At least six inches (15 cm) above the floor.

(2) FOOD in packages and working containers may be stored less than six inches (15 cm) above the floor on case lot handling EQUIPMENT as specified under WAC 246-215-04268.

(3) Pressurized BEVERAGE containers, cased FOOD in waterproof containers such as bottles or cans, and milk containers in plastic crates may be stored on a floor that is clean and not exposed to floor moisture.

#### NEW SECTION

**WAC 246-215-03354 Preventing contamination from the premises—Food storage, prohibited areas (2009 FDA Food Code 3-305.12).** FOOD may not be stored:

- (1) In locker rooms;
- (2) In toilet rooms;
- (3) In dressing rooms;
- (4) In garbage rooms;
- (5) In mechanical rooms;
- (6) Under sewer lines that are not shielded to intercept potential drips;
- (7) Under leaking water lines, including leaking automatic fire sprinkler heads, or under lines on which water has condensed;
- (8) Under open stairwells; or
- (9) Under other sources of contamination.

#### NEW SECTION

**WAC 246-215-03357 Preventing contamination from the premises—Vended potentially hazardous food, original container (2009 FDA Food Code 3-305.13).** POTENTIALLY HAZARDOUS FOOD dispensed through a VENDING MACHINE must be in the package in which it was placed at the FOOD ESTABLISHMENT or FOOD PROCESSING PLANT at which it was prepared.

#### NEW SECTION

**WAC 246-215-03360 Preventing contamination from the premises—Food preparation (2009 FDA Food Code 3-305.14).** During preparation, unPACKAGED FOOD must be protected from environmental sources of contamination.

#### NEW SECTION

**WAC 246-215-03363 Preventing contamination by consumers—Food display (2009 FDA Food Code 3-306.11).** (1) Except for nuts in the shell and whole raw fruits and vegetables that are intended for hulling, peeling, or washing by the CONSUMER before consumption, FOOD on display must be protected from contamination by the use of packaging; counter, service line, or salad bar FOOD guards; display cases; or other effective means;

(2) If PACKAGED for CONSUMER self-service, hard crusted breads such as baguettes must be completely covered and may be open at one end.

NEW SECTION

**WAC 246-215-03366 Preventing contamination by consumers—Condiments, protection (2009 FDA Food Code 3-306.12).** (1) Condiments must be protected from contamination by being kept in dispensers that are designed to provide protection, protected food displays with the proper UTENSILS, original containers designed for dispensing, or individual packages or portions.

(2) Condiments at a VENDING MACHINE LOCATION must be in individual packages or provided in dispensers that are filled at an APPROVED location, such as the FOOD ESTABLISHMENT that provides FOOD to the VENDING MACHINE LOCATION, a FOOD PROCESSING PLANT that is regulated by the agency that has jurisdiction over the operation, or a properly equipped facility that is located on the site of the VENDING MACHINE LOCATION.

NEW SECTION

**WAC 246-215-03369 Preventing contamination by consumers—Consumer self-service operations (2009 FDA Food Code 3-306.13).** (1) Raw unPACKAGED animal FOOD such as beef, lamb, pork, and FISH may not be offered for CONSUMER self-service. This subsection does not apply to:

(a) CONSUMER self-service of READY-TO-EAT FOODS at buffets or salad bars that serve FOODS such as sushi or raw shellfish;

(b) Ready-to-cook individual portions for cooking and immediate consumption on the PREMISES such as CONSUMER-cooked MEATS or CONSUMER-selected ingredients for Mongolian barbecue; or

(c) Raw, frozen shrimp, lobster, finfish, calamari, or adductor muscle of scallop; or frozen, breaded seafood.

(2) CONSUMER self-service operations for READY-TO-EAT FOODS must be provided with suitable utensils or effective dispensing methods that protect the FOOD from contamination.

(3) CONSUMER self-service operations such as buffets and salad bars must be monitored by FOOD EMPLOYEES trained in safe operating procedures.

(4) Containers for display and service of READY-TO-EAT, unPACKAGED, bulk FOODS for CONSUMER self-service must have a CONSUMER access point no less than 30 inches above floor level, except for APPROVED containers of liquids.

NEW SECTION

**WAC 246-215-03372 Preventing contamination by consumers—Returned food and reservice of food (2009 FDA Food Code 3-306.14).** (1) Except as specified in subsection (2) of this section, after being served or sold and in the possession of a CONSUMER, FOOD that is unused or returned by the CONSUMER may not be offered as FOOD for human consumption.

(2) Except as specified under WAC 246-215-03800(7), a container of FOOD that is not POTENTIALLY HAZARDOUS FOOD may be re-served from one CONSUMER to another if:

(a) The FOOD is dispensed so that it is protected from contamination and the container is closed between uses, such

as a narrow-neck bottle containing catsup, steak sauce, or wine; or

(b) The FOOD, such as crackers, salt, or pepper, is in an unopened original package and is maintained in sound condition.

NEW SECTION

**WAC 246-215-03375 Preventing contamination by consumers—Miscellaneous sources of contamination (2009 FDA Food Code 3-307.11).** FOOD must be protected from contamination that might result from a factor or source not specified under Part 3, Subparts A through F.

**Subpart D - Destruction of Organisms of Public Health Concern**

NEW SECTION

**WAC 246-215-03400 Cooking—Raw animal foods (2009 FDA Food Code 3-401.11).** (1) Except as specified under subsections (2), (3), and (4) of this section, raw animal FOODS such as EGGS, FISH, MEAT, POULTRY, and FOODS containing these raw animal FOODS, must be cooked to heat all parts of the FOOD to a temperature and for a time that complies with one of the following methods based on the FOOD that is being cooked:

(a) 145°F (63°C) or above for fifteen seconds for:

(i) Raw EGGS that are broken and prepared in response to a CONSUMER'S order and for IMMEDIATE SERVICE; and

(ii) Except as specified under (b) and (c) of this subsection and subsections (2) and (3) of this section, FISH and MEAT, including GAME ANIMALS commercially raised for FOOD as specified under WAC 246-215-03230 (1)(a) and GAME ANIMALS under a voluntary inspection program as specified under WAC 246-215-03230 (1)(b);

(b) 155°F (68°C) for fifteen seconds or a temperature and time combination specified in the following chart, provided that FOOD EMPLOYEES monitor both temperature and time under an APPROVED plan, for RATITES; MECHANICALLY TENDERIZED and INJECTED MEATS; and COMMINUTED FISH, MEAT, GAME ANIMALS commercially raised for FOOD as specified under WAC 246-215-03230 (1)(a), GAME ANIMALS under a voluntary inspection program as specified under WAC 246-215-03230 (1)(a); and raw EGGS that are not prepared as specified under (a)(i) of this subsection; or

**Table 3-1: Minimum Temperatures**

| Temperature °F (°C) | Time                       |
|---------------------|----------------------------|
| 145 (63)            | 3 minutes                  |
| 150 (66)            | 1 minute                   |
| 158 (70)            | < 1 second (instantaneous) |

(c) 165°F (74°C) or above for 15 seconds for POULTRY; BALUTS; wild GAME ANIMALS; stuffed FISH; stuffed MEAT; stuffed pasta; stuffed RATITES; or stuffing containing FISH, MEAT, POULTRY, or RATITES.

(2) Whole MEAT roasts, including beef, corned beef, lamb, pork, and cured pork roasts such as ham, must be cooked:

(a) In an oven that is preheated to the temperature specified for the roast's weight in Table 3-2 and that is held at that temperature; and

**Table 3-2: Oven Temperature Based on Weight**

| Oven Type                  | Less Than 10 lbs. (4.5 kg) | 10 lbs. (4.5 kg) or More |
|----------------------------|----------------------------|--------------------------|
| Still Dry                  | 350°F (177°C) or more      | 250°F (121°C) or more    |
| Convection                 | 325°F (163°C) or more      | 250°F (121°C) or more    |
| High Humidity <sup>1</sup> | 250°F (121°C) or less      | 250°F (121°C) or less    |

<sup>1</sup> Relative humidity greater than 90% for at least one hour as measured in the cooking chamber or exit of the oven; or in a moisture-impermeable bag that provides 100% humidity.

(b) As specified in the following chart, to heat all parts of the FOOD to a temperature and for the holding time that corresponds to that temperature:

**Table 3-3: Temperature and Holding Time**

| Temperature °F (°C) | Time in Minutes <sup>1</sup> | Temperature °F (°C) | Time in Seconds <sup>1</sup> |
|---------------------|------------------------------|---------------------|------------------------------|
| 130 (54.4)          | 112                          | 147 (63.9)          | 134                          |
| 131 (55.0)          | 89                           | 149 (65.0)          | 85                           |
| 133 (56.1)          | 56                           | 151 (66.1)          | 54                           |
| 135 (57.2)          | 36                           | 153 (67.2)          | 34                           |
| 136 (57.8)          | 28                           | 155 (68.3)          | 22                           |
| 138 (58.9)          | 18                           | 157 (69.4)          | 14                           |
| 140 (60.0)          | 12                           | 158 (70.0)          | 0                            |
| 142 (61.1)          | 8                            |                     |                              |
| 144 (62.2)          | 5                            |                     |                              |
| 145 (62.8)          | 4                            |                     |                              |

<sup>1</sup> Holding time may include postoven heat rise.

(3) A raw or undercooked WHOLE-MUSCLE, INTACT BEEF steak may be served or offered for sale in a READY-TO-EAT form if:

(a) The FOOD ESTABLISHMENT serves a population that is not a HIGHLY SUSCEPTIBLE POPULATION;

(b) The steak is labeled to indicate that it meets the definition of WHOLE-MUSCLE, INTACT BEEF as specified under WAC 246-215-03200(5); and

(c) The steak is cooked on both the top and the bottom to a surface temperature of 145°F (63°C) or above and a cooked color change is achieved on all external surfaces.

(4) A raw animal FOOD such as raw EGG, raw FISH, raw-marinated FISH, raw MOLLUSCAN SHELLFISH, or steak tartare; or a partially cooked FOOD such as lightly cooked FISH, soft cooked EGGS, or rare MEAT other than WHOLE-MUSCLE, INTACT BEEF steaks as specified in subsection (3) of this section, may be served or offered for sale in a READY-TO-EAT form if:

(a) As specified under WAC 246-215-03800 (3)(a) and (b), the FOOD ESTABLISHMENT serves a population that is not a HIGHLY SUSCEPTIBLE POPULATION;

(b) The FOOD is not offered from a children's menu or children's section of any menu; and

(c) The CONSUMER is informed as specified under WAC 246-215-03620 that to ensure its safety, the FOOD should be cooked as specified under subsection (1) or (2) of this section; or

(d) The REGULATORY AUTHORITY grants a VARIANCE from subsection (1) or (2) of this section as specified under WAC 246-215-08110 based on a HACCP PLAN that:

(i) Is submitted by the PERMIT HOLDER and APPROVED as specified under WAC 246-215-08115;

(ii) Documents scientific data or other information showing that a lesser time and temperature regimen results in safe FOOD; and

(iii) Verifies that EQUIPMENT and procedures for FOOD preparation and training of FOOD EMPLOYEES at the FOOD ESTABLISHMENT meet the conditions of the VARIANCE.

NEW SECTION

**WAC 246-215-03405 Cooking—Microwave cooking (2009 FDA Food Code 3-401.12).** Raw animal FOODS cooked in a microwave oven must be:

(1) Rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat;

(2) Covered to retain surface moisture;

(3) Heated to a temperature of at least 165°F (74°C) in all parts of the FOOD; and

(4) Allowed to stand covered for two minutes after cooking to obtain temperature equilibrium.

NEW SECTION

**WAC 246-215-03410 Cooking—Plant food cooking for hot holding (2009 FDA Food Code 3-401.13).** Fruits and vegetables that are cooked for hot holding must be cooked to a temperature of 135°F (57°C).

NEW SECTION

**WAC 246-215-03415 Cooking—Noncontinuous cooking of raw animal foods (2009 FDA Food Code 3-401.14).** Except as specified in subsection (7) of this section, raw animal FOODS that are cooked using a NONCONTINUOUS cooking process must be:

(1) Subject to an initial heating process that is no longer than sixty minutes in duration;

(2) Immediately after initial heating, cooled according to the time and temperature parameters specified for cooked, POTENTIALLY HAZARDOUS FOOD under WAC 246-215-03515(1);

(3) After cooling, held frozen or cold, as specified for POTENTIALLY HAZARDOUS FOOD under WAC 246-215-03525 (1)(b);

(4) Prior to sale or service, cooked using a process that heats all parts of the FOOD to a temperature of at least 165°F (74°C) for fifteen seconds;

(5) Cooled according to the time and temperature parameters specified for cooked POTENTIALLY HAZARDOUS FOOD under WAC 246-215-03515(1) if not either hot held as specified under WAC 246-215-03525(1), served immediately, or held using time as a public health control as specified under WAC 246-215-03530 after complete cooking;

(6) Prepared and stored according to written procedures that:

(a) Have obtained prior approval from the REGULATORY AUTHORITY;

(b) Are maintained in the FOOD ESTABLISHMENT and are available to the REGULATORY AUTHORITY upon request;

(c) Describe how the requirements specified under subsections (1) through (5) of this section are to be monitored and documented by the PERMIT HOLDER and the corrective actions to be taken if the requirements are not met;

(d) Describe how the FOODS, after initial heating, but prior to complete cooking, are to be marked or otherwise identified as FOODS that must be cooked as specified under subsection (4) of this section prior to being offered for sale or service; and

(e) Describe how the FOODS, after initial heating but prior to cooking as specified under subsection (4) of this section, are to be separated from READY-TO-EAT FOODS as specified under WAC 246-215-03306(1); and

(7) Raw animal FOODS that are GRILL MARKED must be:

(a) Immediately after initial heating, cooled according to the time and temperature parameters specified for cooked POTENTIALLY HAZARDOUS FOOD under WAC 246-215-03515(1);

(b) Marked or otherwise identified as FOODS that must be cooked;

(c) Separated from READY-TO-EAT FOODS as specified under WAC 246-215-03306(1);

(d) Prior to sale or service, cooked to the temperatures specified under WAC 246-215-03400;

(e) Hot held as specified under WAC 246-215-03525(1), served immediately, or held using time as a public health control as specified under WAC 246-215-03530 after complete cooking; and

(f) Disposed if left over after cooking and hot holding.

#### NEW SECTION

**WAC 246-215-03420 Cooking—Unattended cooking and hot holding.** Unattended cooking and unattended hot holding are prohibited without continuous temperature monitoring under an APPROVED plan.

#### NEW SECTION

**WAC 246-215-03425 Freezing—Parasite destruction (2009 FDA Food Code 3-402.11).** (1) Except as specified in subsection (2) of this section, before service or sale in READY-TO-EAT form, raw, raw marinated, partially cooked, or marinated partially cooked FISH must be:

(a) Frozen and stored at a temperature of -4°F (-20°C) or below for one hundred sixty-eight hours (seven days) in a freezer; or

(b) Frozen at -31°F (-35°C) or below until solid and stored at -31°F (-35°C) for fifteen hours; or

(c) Frozen at -31°F (-35°C) or below until solid and stored at -4°F (-20°C) or below for a minimum of twenty-four hours.

(2) Subsection (1) of this section does not apply to:

(a) MOLLUSCAN SHELLFISH;

(b) Tuna of the species *Thunnus alalunga*, *Thunnus albacores* (Yellowfin tuna), *Thunnus atlanticus*, *Thunnus maccoyii* (Bluefin tuna, Southern), *Thunnus obesus* (Bigeye tuna), or *Thunnus thynnus* (Bluefin tuna, Northern); or

(c) Aquacultured FISH, such as salmon, that:

(i) If raised in open water, are raised in net pens; or

(ii) Are raised in land-based operations such as ponds or tanks; and

(iii) Are fed formulated feed, such as pellets, that contains no live parasites infective to the aquacultured FISH.

(3) FISH EGGS that have been removed from the skein and rinsed.

#### NEW SECTION

**WAC 246-215-03430 Freezing—Records, creation and retention (2009 FDA Food Code 3-402.12).** (1) Except as specified under WAC 246-215-03425(2) and subsection (2) of this section, if raw, raw marinated, partially cooked, or marinated partially cooked FISH are served or sold in READY-TO-EAT form, the PERSON IN CHARGE shall record the freezing temperature and time to which the FISH are subjected and shall retain the records of the FOOD ESTABLISHMENT for ninety calendar days beyond the time of service or sale of the FISH.

(2) If the FISH are frozen by a supplier, a written agreement or statement from the supplier stipulating that the FISH supplied are frozen to a temperature and for a time specified under Section 3-402.11 may substitute for the records specified under subsection (1) of this section.

(3) If raw, raw marinated, partially cooked, or marinated partially cooked FISH are served or sold in READY-TO-EAT form, and the FISH are raised and fed as specified under WAC 246-215-03425 (2)(c), a written agreement or statement from the supplier or aquaculturist stipulating that the FISH were raised and fed as specified under WAC 246-215-03425 (2)(c), must be obtained by the PERSON IN CHARGE and retained in the records of the FOOD ESTABLISHMENT for ninety calendar days beyond the time of service or sale of the FISH.

#### NEW SECTION

**WAC 246-215-03435 Reheating—Preparation for immediate service (2009 FDA Food Code 3-403.10).** Cooked and refrigerated FOOD that is prepared for IMMEDIATE SERVICE in response to an individual CONSUMER order, such as a roast beef sandwich au jus, may be served at any temperature.

NEW SECTION

**WAC 246-215-03440 Reheating—Reheating for hot holding (2009 FDA Food Code 3-403.11).** (1) Except as specified under subsections (2), (3), and (5) of this section, POTENTIALLY HAZARDOUS FOOD that is cooked, cooled, and reheated for hot holding must be reheated so that all parts of the FOOD reach a temperature of at least 165°F (74°C) for fifteen seconds.

(2) Except as specified under subsection (3) of this section, POTENTIALLY HAZARDOUS FOOD reheated in a microwave oven for hot holding must be reheated so that all parts of the FOOD reach a temperature of at least 165°F (74°C) and the FOOD is rotated or stirred, covered, and allowed to stand covered for two minutes after reheating.

(3) READY-TO-EAT FOOD taken from a commercially processed, HERMETICALLY SEALED CONTAINER, or from an intact package from a FOOD PROCESSING PLANT that is inspected by the FOOD REGULATORY AUTHORITY that has jurisdiction over the plant, must be heated to a temperature of at least 135°F (57°C) for hot holding.

(4) Reheating for hot holding as specified under subsections (1) through (3) of this section must be done rapidly and the time the FOOD is between 41°F (5°C) and the temperature specified under subsections (1) through (3) of this section may not exceed two hours.

(5) Remaining unsliced portions of MEAT roasts that are cooked as specified under WAC 246-215-03400(2) may be reheated for hot holding using the oven parameters and minimum time and temperature conditions specified under WAC 246-215-03400(2).

NEW SECTION

**WAC 246-215-03445 Other methods—Treating juice (2009 FDA Food Code 3-404.11).** JUICE PACKAGED in a FOOD ESTABLISHMENT must be:

(1) Treated under a HACCP PLAN as specified under WAC 246-215-08215 (2) through (5) to attain a 5-log reduction, which is equal to a 99.999% reduction, of the most resistant microorganism of public health significance; or

(2) Labeled, if not treated to yield a 5-log reduction of the most resistant microorganism of public health significance:

(a) As specified under WAC 246-215-03610; and

(b) As specified in 21 C.F.R. 101.17(g) Food labeling, warning, notice, and safe handling statements, JUICES that have not been specifically processed to prevent, reduce, or eliminate the presence of pathogens with the following, "*Warning: This product has not been pasteurized and, therefore, may contain harmful bacteria that can cause serious illness in children, the elderly, and persons with weakened immune systems.*"

**Subpart E - Limitation of Growth of Organisms of Public Health Concern**NEW SECTION

**WAC 246-215-03500 Temperature and time control—Frozen food (2009 FDA Food Code 3-501.11).** Stored frozen FOODS must be maintained frozen.

NEW SECTION

**WAC 246-215-03505 Temperature and time control—Potentially hazardous food, slacking (2009 FDA Food Code 3-501.12).** Frozen POTENTIALLY HAZARDOUS FOOD that is slacked to moderate the temperature must be held:

(1) Under refrigeration that maintains the FOOD temperature at 41°F (5°C) for less; or

(2) At any temperature if the FOOD remains frozen.

NEW SECTION

**WAC 246-215-03510 Temperature and time control—Thawing. (2009 FDA Food Code 3-501.13).** Except as specified in subsection (4) of this section, POTENTIALLY HAZARDOUS FOOD must be thawed:

(1) Under refrigeration that maintains the FOOD temperature at 41°F (5°C) or less; or

(2) Completely submerged under running water:

(a) At a water temperature of 70°F (21°C) or below;

(b) With sufficient water velocity to agitate and float off loose particles in an overflow; and

(c) For a period of time that does not allow thawed portions of READY-TO-EAT FOOD to rise above 41°F (5°C); or

(d) For a period of time that does not allow thawed portions of raw animal FOOD requiring cooking as specified under WAC 246-215-03400 (1) or (2) to be above 41°F (5°C) for more than four hours including:

(i) The time the FOOD is exposed to the running water and the time needed for preparation for cooking; or

(ii) The time it takes under refrigeration to lower the FOOD temperature to 41°F (5°C);

(3) As part of a cooking process if the FOOD that is frozen is:

(a) Cooked as specified under WAC 246-215-03400 (1) or (2) or 246-215-03405; or

(b) Thawed in a microwave oven and immediately transferred to conventional cooking EQUIPMENT, with no interruption in the process; or

(4) Using any procedure if a portion of frozen, READY-TO-EAT FOOD is thawed and prepared for IMMEDIATE SERVICE in response to an individual customer's order.

NEW SECTION

**WAC 246-215-03515 Temperature and time control—Cooling (2009 FDA Food Code 3-501.14).** (1) Cooked POTENTIALLY HAZARDOUS FOOD must be cooled:

(a) Within two hours from 135°F (57°C) to 70°F (21°C);

(b) Within a total of six hours from 135°F (57°C) to 41°F (5°C) or less; or

(c) As alternatives to the cooling provisions of (a) and (b) of this subsection, the following rapid cooling procedures are allowed:

(i) Continuous cooling of FOODS in a shallow layer of two inches or less, uncovered, protected from cross contamination, in cooling EQUIPMENT maintaining an ambient air temperature of 41°F (5°C) or less; or

(ii) Continuous cooling of intact pieces of MEAT that is not COMMINUTED and is no greater than four inches thick, uncovered, unwrapped, not touching other pieces of FOOD, protected from cross contamination, in cooling EQUIPMENT maintaining an ambient temperature of 41°F (5°C) or less.

(2) POTENTIALLY HAZARDOUS FOOD must be cooled within four hours to 41°F (5°C) or less if prepared from ingredients at ambient temperature, such as reconstituted FOODS and canned tuna.

(3) Except as specified in subsection (4) of this section, a POTENTIALLY HAZARDOUS FOOD received in compliance with LAWS allowing a temperature above 41°F (5°C) during shipment from the supplier as specified under WAC 246-215-03235(2), must be cooled within four hours to 41°F (5°C) or less.

(4) Raw EGGS must be received as specified under WAC 246-215-03235(3) and immediately placed in refrigerated EQUIPMENT that maintains an ambient air temperature of 45°F (7°C) or less.

#### NEW SECTION

##### **WAC 246-215-03520 Temperature and time control—Cooling methods (2009 FDA Food Code 3-501.15).**

(1) Cooling must be accomplished in accordance with the time and temperature requirements specified under WAC 246-215-03515 by using one or more of the following methods based on the type of FOOD being cooled:

- (a) Placing the FOOD in shallow pans;
- (b) Separating the FOOD into smaller or thinner portions;
- (c) Using rapid cooling EQUIPMENT;
- (d) Stirring the FOOD in a container placed in an ice water bath;
- (e) Using containers that facilitate heat transfer;
- (f) Adding ice as an ingredient; or
- (g) Other effective methods.

(2) When placed in cooling or cold holding EQUIPMENT, FOOD containers in which FOOD is being cooled must be:

- (a) Arranged in the EQUIPMENT to provide maximum heat transfer through the container walls; and
- (b) Loosely covered, or uncovered if using the alternative cooling provisions in WAC 246-215-03515 (1)(c) and if protected from overhead contamination as specified under WAC 246-215-03351 (1)(b), during the cooling period to facilitate heat transfer from the surface of the FOOD.

#### NEW SECTION

##### **WAC 246-215-03525 Temperature and time control—Potentially hazardous food, hot and cold holding (2009 FDA Food Code 3-501.16).** (1) Except during active

preparation for up to two hours, cooking, or cooling or when time is used as the public health control as specified under WAC 246-215-03530, and except as specified in subsections (2) and (3) of this section, POTENTIALLY HAZARDOUS FOOD must be maintained:

(a) At 135°F (57°C) or above, except that roasts cooked to a temperature and for a time specified under WAC 246-215-03400(2) or reheated as specified under WAC 246-215-03440 may be held at a temperature of 130°F (54°C) or above; or

(b) At 41°F (5°C) or less.

(2) EGGS that have not been treated to destroy all viable salmonellae must be stored in refrigerated EQUIPMENT that maintains an ambient air temperature of 45°F (7°C) or less.

(3) POTENTIALLY HAZARDOUS FOOD in a homogenous liquid form may be maintained outside the temperature control requirements, as specified under subsection (1) of this section, while contained within specially designed EQUIPMENT that complies with the design and construction requirements as specified under WAC 246-215-04230(5).

#### NEW SECTION

##### **WAC 246-215-03530 Temperature and time control—Time as a public health control (2009 FDA Food Code 3-501.19).**

(1) Except as specified under subsection (3) of this section, if time without temperature control is used as the public health control for a working supply of POTENTIALLY HAZARDOUS FOOD before cooking, or for READY-TO-EAT POTENTIALLY HAZARDOUS FOOD that is displayed or held for sale or service for immediate consumption:

(a) Written procedures must be prepared in advance, maintained in the FOOD ESTABLISHMENT and made available to the REGULATORY AUTHORITY upon request that specify:

- (i) Methods of compliance with subsections (2)(a) through (c) of this section; and
- (ii) Methods of compliance with WAC 246-215-03515 for FOOD that is prepared, cooked, and refrigerated before time is used as a public health control.

(2) If time without temperature control is used as the public health control up to a maximum of four hours:

(a) The FOOD must have an internal temperature of 41°F (5°C) or less when removed from cold holding temperature control, or 135°F (57°C) or greater when removed from hot holding temperature control;

(b) The FOOD must be marked or otherwise identified to indicate the time that is four hours past the point in time when the FOOD is removed from temperature control;

(c) The FOOD must be cooked and served, served at any temperature if READY-TO-EAT or discarded, within four hours from the point in time when the FOOD is removed from temperature control; and

(d) The FOOD in unmarked containers or packages, or marked to exceed a four-hour limit, must be discarded.

(3) A FOOD ESTABLISHMENT that serves a HIGHLY SUSCEPTIBLE POPULATION may not use time as specified under subsections (1) and (2) of this section as the public health control for raw EGGS.

NEW SECTION

**WAC 246-215-03535 Specialized processing methods—Variance requirement (2009 FDA Food Code 3-502.11).** A FOOD ESTABLISHMENT shall obtain a VARIANCE from the REGULATORY AUTHORITY as specified under WAC 246-215-08110 and 246-215-08115 before:

- (1) Smoking FOOD as a method of FOOD preservation rather than as a method of flavor enhancement;
- (2) Curing FOOD;
- (3) Using FOOD ADDITIVES or adding components such as vinegar:
  - (a) As a method of FOOD preservation rather than as a method of flavor enhancement; or
  - (b) To render a FOOD so that it is not POTENTIALLY HAZARDOUS FOOD;
- (4) Packaging FOOD using a REDUCED OXYGEN PACKAGING method except where the growth of and toxin formation by *Clostridium botulinum* and the growth of *Listeria monocytogenes* are controlled as specified under WAC 246-215-03540;
- (5) Operating a MOLLUSCAN SHELLFISH life-support system display tank used to store or display shellfish that are offered for human consumption;
- (6) Custom processing animals that are for personal use as FOOD and not for sale or service in a FOOD ESTABLISHMENT;
- (7) Preparing FOOD by another method that is determined by the REGULATORY AUTHORITY to require a VARIANCE; or
- (8) Sprouting seeds or beans.

NEW SECTION

**WAC 246-215-03540 Specialized processing methods—Reduced oxygen packaging without a variance, criteria (2009 FDA Food Code 3-502.12).** (1) Except for a FOOD ESTABLISHMENT that obtains a VARIANCE as specified under WAC 246-215-03535, a FOOD ESTABLISHMENT that packages POTENTIALLY HAZARDOUS FOOD using a REDUCED OXYGEN PACKAGING method shall control the growth and toxin formation of *Clostridium botulinum* and the growth of *Listeria monocytogenes*.

(2) A FOOD ESTABLISHMENT that packages POTENTIALLY HAZARDOUS FOOD using a REDUCED OXYGEN PACKAGING method shall have a HACCP PLAN that contains the information specified under WAC 246-215-08215(4) and that:

- (a) Identifies the FOOD to be PACKAGED;
- (b) Except as specified under subsections (3) through (5) of this section, requires that the PACKAGED FOOD must be maintained at 41°F (5°C) or less and meet at least one of the following requirements:
  - (i) Has an  $A_w$  of 0.91 or less;
  - (ii) Has a pH of 4.6 or less;
  - (iii) Is a MEAT or POULTRY product cured at a FOOD PROCESSING PLANT regulated by the USDA using substances specified in 9 C.F.R. 424.21, Use of Food Ingredients and Sources of Radiation, and is received in an intact package; or
  - (iv) Is a FOOD with a high level of competing organisms such as raw MEAT, raw POULTRY, or raw vegetables;

(c) Describes how the package must be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to:

- (i) Maintain the FOOD at 41°F (5°C) or below; and
- (ii) Discard the FOOD if within fourteen calendar days of its packaging it is not served for on-PREMISES consumption, or consumed if served or sold for off-PREMISES consumption;
- (d) Limits the refrigerated shelf life to no more than fourteen calendar days from packaging to consumption, except the time the product is maintained frozen, or the original manufacturer's "sell by" or "use by" date, whichever occurs first:
  - (e) Includes operational procedures that:
    - (i) Prohibit contacting READY-TO-EAT FOOD with bare hands as specified under WAC 246-215-03300(2);
    - (ii) Identify a designated work area and the method by which:
      - (A) Physical barriers or methods of separation of raw FOODS and READY-TO-EAT FOODS minimize cross contamination; and
      - (B) Access to the processing EQUIPMENT is limited to responsible trained personnel familiar with the potential hazards of the operation; and
    - (iii) Delineate cleaning and sanitization procedures for FOOD-CONTACT SURFACES; and
  - (f) Describes the training program that ensures that the individual responsible for the REDUCED OXYGEN PACKAGING operation understands the:
    - (i) Concepts required for a safe operation;
    - (ii) EQUIPMENT and facilities; and
    - (iii) Procedures specified under (e) of this subsection and WAC 246-215-08215(4).

(3) Except for FISH that is frozen before, during, and after PACKAGING, a FOOD ESTABLISHMENT may not PACKAGE FISH using a REDUCED OXYGEN PACKAGING method.

(4) Except as specified under subsection (3) of this section, a FOOD ESTABLISHMENT that PACKAGES FOOD using a cook-chill or sous vide process shall:

- (a) Implement a HACCP PLAN that contains the information as specified under WAC 246-215-08215(4);
- (b) Ensure the FOOD is:
  - (i) Prepared and consumed on the PREMISES, or prepared and consumed off the PREMISES but within the same business entity with no distribution or sale of the PACKAGED product to another business entity or the CONSUMER;
  - (ii) Cooked to heat all parts of the FOOD to a temperature and for a time as specified under WAC 246-215-03400;
  - (iii) Protected from contamination before and after cooking as specified under Part 3, Subpart C and D;
  - (iv) Placed in a package with an oxygen barrier and SEALED before cooking, or placed in a package and SEALED immediately after cooking and before reaching a temperature below 135°F (57°C);
  - (v) Cooled to 41°F (5°C) in the SEALED package or bag as specified under WAC 246-215-03515 and subsequently:
    - (A) Cooled to 34°F (1°C) within forty-eight hours of reaching 41°F (5°C) and held at that temperature until consumed or discarded within thirty days after the date of packaging;

(B) Cooled to 34°F (1°C) within forty-eight hours of reaching 41°F (5°C), removed from refrigeration EQUIPMENT that maintains a 34°F (1°C) FOOD temperature and then held at 41°F (5°C) or less for no more than seventy-two hours, at which time the FOOD must be consumed or discarded;

(C) Cooled to 38°F (3°C) or less within twenty-four hours of reaching 41°F (5°C) and held there for no more than seventy-two hours from packaging, at which time the FOOD must be consumed or discarded;

(D) Held frozen with no shelf life restriction while frozen until consumed or used.

(vi) Held in a refrigeration unit that is equipped with an electronic system that continuously monitors time and temperature and is visually examined for proper operation twice daily;

(vii) If transported off-site to a satellite location of the same business entity, equipped with verifiable electronic monitoring devices to ensure that times and temperatures are monitored during transportation; and

(viii) Labeled with the product name and the date PACKAGED; and

(c) Maintain the records required to confirm that cooling and cold holding refrigeration time/temperature parameters are required as part of the HACCP PLAN and:

(i) Make such records available to the REGULATORY AUTHORITY upon request; and

(ii) Hold such records for at least six months after the last date the product was sold or served.

(d) Implement written operational procedures as specified under subsection (2)(e) of this section and a training program as specified under subsection (2)(f) of this section.

(5) A FOOD ESTABLISHMENT that PACKAGES cheese using a REDUCED OXYGEN PACKAGING method shall:

(a) Limit the cheeses PACKAGED to those that are commercially manufactured in a FOOD PROCESSING PLANT with no ingredients added in the FOOD ESTABLISHMENT and that meet the Standards of Identity as specified in 21 C.F.R. 133.150 Hard cheeses, 21 C.F.R. 133.169 Pasteurized process cheese or 21 C.F.R. 133.187 Semisoft cheeses;

(b) Have a HACCP PLAN that contains the information specified under WAC 246-215-08215(4) and as specified under subsection (2)(a), (c)(i), (e), and (f) of this section;

(c) Labels the package on the principal display panel with a "use by" date that does not exceed thirty days from its packaging or the original manufacturer's "sell by" or "use by" date, whichever comes first; and

(d) Discards the reduced oxygen PACKAGED cheese if it is not sold for off-PREMISES consumption or consumed within thirty calendar days of its packaging.

#### **Subpart F - Food Identity, Presentation, and On-Premises Labeling**

##### NEW SECTION

**WAC 246-215-03600 Accurate representation—Standards of identity (2009 FDA Food Code 3-601.11).** PACKAGED FOOD must comply with standard of identity requirements in 21 C.F.R. 131-169 and 9 C.F.R. 319 Definitions and Standards of Identity or Composition, and the gen-

eral requirements in 21 C.F.R. 130 - Food Standards: General and 9 C.F.R. 319 Subpart A - General.

##### NEW SECTION

**WAC 246-215-03605 Accurate representation—Honestly presented (2009 FDA Food Code 3-601.12).** (1) FOOD must be offered for human consumption in a way that does not mislead or misinform the CONSUMER.

(2) FOOD ADDITIVES or COLOR ADDITIVES, colored overwraps, or lights may not be used to misrepresent the true appearance, color, or quality of a FOOD.

##### NEW SECTION

**WAC 246-215-03610 Labeling—Food labels (2009 FDA Food Code 3-602.11).** (1) FOOD PACKAGED in a FOOD ESTABLISHMENT must be labeled as specified in LAW, including chapter 69.04 RCW; 21 C.F.R. 101 - Food Labeling; and 9 C.F.R. 317 - Labeling, Marking Devices, and Containers.

(2) Label information must include:

(a) The common name of the FOOD, or absent a common name, and adequately descriptive identity statement;

(b) If made from two or more ingredients, a list of ingredients in descending order of predominance by weight, including a declaration of artificial color or flavor and chemical preservatives, if contained in the FOOD;

(c) An accurate declaration of the quantity of contents;

(d) The name and place of business of the manufacturer, packer, or distributor;

(e) The name of the FOOD source for each MAJOR FOOD ALLERGEN contained in the FOOD unless the FOOD source is already part of the common or unusual name of the respective ingredient;

(f) Except as exempted in the Federal Food, Drug, and Cosmetic Act Section 403(Q)(3) through (5), nutrition labeling as specified in 21 C.F.R. 101 - Food Labeling and 9 C.F.R. 317 Subpart B Nutrition Labeling; and

(g) For any salmonid FISH containing canthaxanthin as a COLOR ADDITIVE, the labeling of the bulk FISH container, including a list of ingredients, displayed on the retail container or by other written means, such as a counter card, that discloses the use of canthaxanthin.

(3) Bulk FOOD that is available for CONSUMER self-dispensing must be prominently labeled with the following information in plain view of the CONSUMER:

(a) The manufacturer's or processor's label that was provided with the FOOD; or

(b) A card, sign, or other method of notification that includes the information specified under subsection (2)(a), (b), and (e) of this section.

(4) Bulk, unPACKAGED FOODS such as bakery products and unPACKAGED FOODS that are portioned to CONSUMER specification need not be labeled if:

(a) A health, nutrient content, or other claim is not made;

(b) There are no state or local LAWS requiring labeling; and

(c) The FOOD is manufactured or prepared on the PREMISES of the FOOD ESTABLISHMENT or at another FOOD ESTABLISHMENT or a FOOD PROCESSING PLANT that is owned by the

same PERSON and is regulated by the FOOD regulatory agency that has jurisdiction.

(5) Whenever unpasteurized milk and FOODS containing unpasteurized milk are offered for sale at a FOOD ESTABLISHMENT, except hard or semi-soft raw milk cheeses properly fermented and aged for a minimum of sixty days in compliance with 21 C.F.R. Part 133, the PERMIT HOLDER and PERSON IN CHARGE shall ensure that:

(a) The product is conspicuously labeled "*raw milk*" or "*contains raw milk*"; and

(b) A sign is posted in a conspicuous manner near the product stating: "*Warning: Raw milk or foods prepared from raw milk may be contaminated with dangerous bacteria capable of causing severe illness. Contact your local health agency for advice or to report a suspected illness.*"

(6) The PERMIT HOLDER and PERSON IN CHARGE shall ensure that required information contained on FOOD labels is in the English language, except that duplicate labeling in other languages is allowed.

#### NEW SECTION

**WAC 246-215-03615 Labeling—Other forms of information (2009 FDA Food Code 3-602.12).** (1) If required by LAW, CONSUMER warnings must be provided.

(2) FOOD ESTABLISHMENT or manufacturers' dating information on FOODS may not be concealed or altered.

#### NEW SECTION

**WAC 246-215-03620 Consumer advisory—Consumption of animal foods that are raw, undercooked, or not otherwise processed to eliminate pathogens (2009 FDA Food Code 3-603.11).** (1) Except as specified under WAC 246-215-03400 (3) and (4)(d) and 246-215-03800(3) if an animal FOOD such as beef, EGGS, FISH, lamb, pork, POULTRY, or shellfish is served or sold raw, undercooked, or without otherwise being processed to eliminate pathogens, either in a READY-TO-EAT form or as an ingredient in another READY-TO-EAT FOOD, the PERMIT HOLDER shall inform CONSUMERS of the significantly increased RISK of consuming such FOODS by way of a DISCLOSURE and REMINDER, as specified in subsections (2) and (3) of this section using brochures, deli case menu advisories, label statements, table tents, placards, or other effective written means.

(2) DISCLOSURE must include:

(a) A description of the animal-derived FOODS such as "oysters on the half shell (raw oysters)," "raw egg Caesar salad," and "hamburgers (can be cooked to order)"; or

(b) Identification of the animal-derived FOODS by asterisking them to a footnote that states that the items are served raw or undercooked and contain (or might contain) raw or undercooked ingredients.

(3) REMINDER must include asterisking the animal-derived FOODS requiring DISCLOSURE to a footnote that states:

(a) "*Regarding the safety of these items, written information is available upon request;*"

(b) "*Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs might increase your risk of food-borne illness;*" or

(c) "*Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs might increase your risk of food-borne illness, especially if you have certain medical conditions.*"

### Subpart G - Contaminated Food

#### NEW SECTION

**WAC 246-215-03700 Disposition—Discarding or reconditioning unsafe, adulterated, or contaminated food (2009 FDA Food Code 3-701.11).** (1) A FOOD that is unsafe, ADULTERATED, or not honestly presented as specified under WAC 246-215-03100 must be discarded or reconditioned according to an APPROVED procedure.

(2) FOOD that is not from an APPROVED source as specified under WAC 246-215-03200 through 246-215-03230 must be discarded.

(3) READY-TO-EAT FOOD that might have been contaminated by an EMPLOYEE who has been RESTRICTED or EXCLUDED as specified under WAC 246-215-02220 and 246-215-02225 must be discarded.

(4) FOOD that is contaminated by FOOD EMPLOYEES, CONSUMERS, or other persons through contact with their hands, bodily discharges, such as nasal or oral discharges, or other means must be discarded.

#### NEW SECTION

**WAC 246-215-03705 Disposition—Examination, hold orders, condemnation, and destruction of food.** (1) The PERMIT HOLDER or PERSON IN CHARGE of a FOOD ESTABLISHMENT in which FOOD has been improperly handled, stored, or prepared shall:

(a) Voluntarily destroy the questionable FOOD; or

(b) Contact the REGULATORY AUTHORITY to determine if the FOOD is safe for human consumption.

(2) The PERMIT HOLDER or PERSON IN CHARGE of a FOOD ESTABLISHMENT shall denature or destroy any FOOD if the REGULATORY AUTHORITY determines the FOOD presents an imminent or actual health hazard.

(3) The REGULATORY AUTHORITY may examine or collect samples of FOOD as often as necessary for enforcement of these regulations.

(4) The REGULATORY AUTHORITY may, after notice to the PERMIT HOLDER or PERSON IN CHARGE, place a written hold order on any suspect FOOD until a determination on its safety can be made and shall:

(a) Tag;

(b) Label; or

(c) Otherwise identify any FOOD subject to the hold order and complete a form APPROVED by the Washington state department of health for all suspect FOOD.

(5) The hold order issued by the REGULATORY AUTHORITY must include:

(a) Instructions for filing a written request for a hearing with the REGULATORY AUTHORITY within ten calendar days; and

(b) Notification that if a hearing is not requested in accordance with the instructions provided in the hold order, and the REGULATORY AUTHORITY does not vacate the hold

order, the FOOD must be destroyed under the supervision of a representative of the REGULATORY AUTHORITY.

(6) When FOOD is subject to a hold order by the REGULATORY AUTHORITY, the PERMIT HOLDER and PERSON IN CHARGE are prohibited from:

- (a) Using;
- (b) Serving; or
- (c) Moving the FOOD from the FOOD ESTABLISHMENT.

(7) The REGULATORY AUTHORITY may allow storage of FOOD under conditions specified in the hold order, unless storage is not possible without RISK to the public health, in which case immediate destruction shall be ordered and must be accomplished by the PERMIT HOLDER or PERSON IN CHARGE of the FOOD ESTABLISHMENT.

(8) Based upon evidence provided at the hearing, the REGULATORY AUTHORITY may either:

- (a) Vacate the hold order; or
- (b) Direct the PERMIT HOLDER or PERSON IN CHARGE of the FOOD ESTABLISHMENT by written order to:
  - (i) Denature or destroy such FOOD; or
  - (ii) Bring the FOOD into compliance with the provisions of these regulations.

### Subsection H - Special Requirements for Highly Susceptible Populations

#### NEW SECTION

**WAC 246-215-03800 Additional safeguards—Pasteurized foods, prohibited reservice, and prohibited food (2009 FDA Food Code 3-801.11).** In a FOOD ESTABLISHMENT that serves a HIGHLY SUSCEPTIBLE POPULATION:

(1) The following requirements apply to JUICE:

(a) For the purposes of this paragraph only, children who are age nine or less and receive FOOD in a school, day care setting, or similar facility that provides custodial care are included as HIGHLY SUSCEPTIBLE POPULATIONS;

(b) PrePACKAGED JUICE or a prePACKAGED BEVERAGE containing JUICE, that bears a warning label as specified in 21 C.F.R., Section 101.17(g) Food Labeling, warning, notice and safe handling statements, JUICES that have not been specifically processed to prevent, reduce, or eliminate the presence of pathogens, or a PACKAGED JUICE or BEVERAGE containing JUICE that bears a warning label as specified under WAC 246-215-03445(2) may not be served or offered for sale; and

(c) JUICE that is prepared on the PREMISES for service or sale in a READY-TO-EAT form and not PACKAGED must be processed under a HACCP PLAN that contains the information specified under WAC 246-215-08215 (2) through (5) and as specified in 21 C.F.R. Part 120 - Hazard Analysis and Critical Control Point (HACCP) Systems, Subpart B Pathogen Reduction, 120.24 Process controls.

(2) Pasteurized EGGS or EGG PRODUCTS must be substituted for raw EGGS in the preparation of:

(a) FOODS such as Caesar salad, hollandaise or Bearnaise sauce, mayonnaise, meringue, eggnog, ice cream, and EGG-fortified BEVERAGES; and

(b) Except as specified in subsection (6) of this section, recipes in which more than one EGG is broken and the EGGS are combined;

(3) The following FOODS may not be served or offered for sale in a READY-TO-EAT form:

(a) Raw animal FOODS such as raw FISH, raw marinated FISH, raw MOLLUSCAN SHELLFISH, and steak tartare;

(b) A partially cooked animal FOOD such as lightly cooked FISH, rare MEAT, soft cooked EGGS that are made from raw EGGS, and meringue; and

(c) Raw seed sprouts.

(4) FOOD EMPLOYEES may not contact READY-TO-EAT FOOD as specified under WAC 246-215-03300 (2) and (4).

(5) Time only, as the public health control as specified under WAC 246-215-03530(4), may not be used for raw EGGS.

(6) Subsection (2)(b) of this section does not apply if:

(a) The raw EGGS are combined immediately before cooking for one CONSUMER'S serving at a single meal, cooked as specified under WAC 246-215-03400 (1)(a), and served immediately such as an omelet, souffle, or scrambled EGGS;

(b) The raw EGGS are combined as an ingredient immediately before baking and the EGGS are thoroughly cooked to a READY-TO-EAT form, such as a cake, muffin, or bread; or

(c) The preparation of the FOOD is conducted under a HACCP PLAN that:

(i) Identifies the FOOD to be prepared;

(ii) Prohibits contacting READY-TO-EAT FOOD with bare hands;

(iii) Includes specifications and practices that ensure:

(A) *Salmonella Enteritidis* growth is controlled before and after cooking; and

(B) *Salmonella Enteritidis* is destroyed by cooking the EGGS according to the temperature and time specified under WAC 246-215-03400 (1)(b);

(iv) Contains the information specified under WAC 246-215-08215(4) including procedures that:

(A) Control cross contamination of READY-TO-EAT FOOD with raw EGGS; and

(B) Delineate cleaning and SANITIZING procedures for FOOD-CONTACT SURFACES; and

(v) Describes the training program that ensures that the FOOD EMPLOYEE responsible for the preparation of the FOOD understands the procedures to be used.

(7) Except as specified in subsection (8) of this section, FOOD may be re-served as specified under WAC 246-215-03372 (2)(a) and (b).

(8) FOOD may not be re-served under the following conditions:

(a) Any FOOD served to patients or clients who are under contact precautions in medical isolation or quarantine, or protective environmental isolation may not be re-served to others outside.

(b) Packages of FOOD from any patients, clients, or other CONSUMERS should not be re-served to persons in protective environmental isolation.

**PART 4: EQUIPMENT, UTENSILS AND LINENS**

**Subpart A - Materials for Construction and Repair**

NEW SECTION

**WAC 246-215-04100 Multiuse—Characteristics (2009 FDA Food Code 4-101.11).** Materials that are used in the construction of UTENSILS and FOOD-CONTACT SURFACES of EQUIPMENT may not allow the migration of deleterious substances or impart colors, odors, or tastes to FOOD and under normal use conditions must be:

- (1) Safe;
- (2) Durable, CORROSION-RESISTANT, and nonabsorbent;
- (3) Sufficient in weight and thickness to withstand repeated WAREWASHING;
- (4) Finished to have a SMOOTH, EASILY CLEANABLE surface; and
- (5) Resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition.

NEW SECTION

**WAC 246-215-04105 Multiuse—Cast iron, use limitation (2009 FDA Food Code 4-101.12).** (1) Except as specified in subsections (2) and (3) of this section, cast iron may not be used for UTENSILS or FOOD-CONTACT SURFACES of EQUIPMENT.

- (2) Cast iron may be used as a surface for cooking.
- (3) Cast iron may be used in UTENSILS for serving FOOD if the UTENSILS are used only as part of an uninterrupted process from cooking through service.

NEW SECTION

**WAC 246-215-04110 Multiuse—Lead in ceramic, china, and crystal utensils, use limitation (2009 FDA Food Code 4-101.13).** (1) Ceramic, china, crystal UTENSILS, and decorative UTENSILS such as hand painted ceramic or china that are used in contact with FOOD must be lead-free or contain levels of lead not exceeding the limits of the following UTENSIL categories:

| Utensil Category                            | Description                | Maximum Lead mg/L |
|---|----------------------------|-------------------|
| Hot BEVERAGE Mugs, Cups, Pitchers           | Coffee Mugs                | 0.5               |
| Large Hollow-ware (excluding pitchers)      | Bowls ≥ 1.1 L (1.16 Quart) | 1                 |
| Small Hollow-ware (excluding cups and mugs) | Bowls < 1.1 L (1.16 Quart) | 2.0               |
| Flat TABLEWARE                              | Plates, Saucers            | 3.0               |

(2) Pewter alloys containing lead in excess of 0.05% may not be used as a FOOD-CONTACT SURFACE.

(3) Solder and flux containing lead in excess of 0.2% may not be used as a FOOD-CONTACT SURFACE.

NEW SECTION

**WAC 246-215-04115 Multiuse—Copper, use limitation (2009 FDA Food Code 4-101.14).** (1) Except as specified in subsection (2) of this section, copper and copper alloys such as brass may not be used in contact with a FOOD that has a pH below six such as vinegar, fruit JUICE, or wine or for a fitting or tubing installed between a backflow prevention device and a carbonator.

(2) Copper and copper alloys may be used in contact with beer brewing ingredients that have a pH below six in the prefermentation steps of a beer brewing operation such as a brewpub or microbrewery.

NEW SECTION

**WAC 246-215-04120 Multiuse—Galvanized metal, use limitation (2009 FDA Food Code 4-101.15).** Galvanized metal may not be used for UTENSILS or FOOD-CONTACT SURFACES of EQUIPMENT that are used in contact with acidic FOOD.

NEW SECTION

**WAC 246-215-04125 Multiuse—Sponges, use limitation (2009 FDA Food Code 4-101.16).** Sponges may not be used in contact with cleaned and SANITIZED or in-use FOOD-CONTACT SURFACES.

NEW SECTION

**WAC 246-215-04130 Multiuse—Wood, use limitation (2009 FDA Food Code 4-101.17).** (1) Except as specified in subsections (2), (3), and (4) of this section, wood and wood wicker may not be used as a FOOD-CONTACT SURFACE.

(2) Hard maple or an equivalently hard, close-grained wood may be used for:

(a) Cutting boards; cutting blocks; baker's tables; and UTENSILS such as rolling pins, doughnut dowels, salad bowls, and chopsticks; and

(b) Wooden paddles used in confectionary operations for pressure scraping kettles when manually preparing confections at a temperature of 230°F (110°C) or above.

(3) Whole, uncut, raw fruits and vegetables, and nuts in the shell may be kept in the wood shipping containers in which they were received, until the fruits, vegetables, or nuts are used.

(4) If the nature of the FOOD requires removal of rinds, peels, husks, or shells before consumption, the whole, uncut, raw FOOD may be kept in:

- (a) Untreated wood containers; or
- (b) Treated wood containers if the containers are treated with a preservative that meets the requirements specified in 21 C.F.R. 178.3800 Preservatives for wood.

NEW SECTION

**WAC 246-215-04135 Multiuse—Nonstick coatings, use limitation (2009 FDA Food Code 4-101.18).** Multiuse KITCHENWARE such as frying pans, griddles, sauce pans, cookie sheets, and waffle bakers that have a perfluorocarbon resin coating must be used with nonscoring or nonscratching UTENSILS and cleaning aids.

NEW SECTION

**WAC 246-215-04140 Multiuse—Nonfood-contact surfaces (2009 FDA Food Code 4-101.19).** NonFOOD-CONTACT SURFACES of EQUIPMENT that are exposed to splash, spillage, or other FOOD soiling or that require frequent cleaning must be constructed of a CORROSION-RESISTANT, nonabsorbent, and SMOOTH material.

NEW SECTION

**WAC 246-215-04145 Single-service and single use—Characteristics (2009 FDA Food Code 4-102.11).** Materials that are used to make SINGLE-SERVICE and SINGLE-USE ARTICLES:

- (1) May not:
  - (a) Allow the migration of deleterious substances; or
  - (b) Impart colors, odors, or tastes to FOOD; and
- (2) Must be:
  - (a) Safe; and
  - (b) Clean.

**Subpart B - Design and Construction**NEW SECTION

**WAC 246-215-04200 Durability and strength—Equipment and utensils (2009 FDA Food Code 4-201.11).** EQUIPMENT and UTENSILS must be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions.

NEW SECTION

**WAC 246-215-04202 Durability and strength—Food temperature measuring devices (2009 FDA Food Code 4-201.12).** FOOD TEMPERATURE MEASURING DEVICES may not have sensors or stems constructed of glass, except that thermometers with glass sensors or stems that are encased in a shatterproof coating such as candy thermometers may be used.

NEW SECTION

**WAC 246-215-04204 Cleanability—Food-contact surfaces (2009 FDA Food Code 4-202.11).** (1) Multiuse FOOD-CONTACT SURFACES must be:

- (a) SMOOTH;
- (b) Free of breaks, open seams, cracks, chips, inclusions, pits, and similar imperfections;
- (c) Free of sharp internal angles, corners, and crevices;
- (d) Finished to have SMOOTH welds and joints; and

(e) Except as specified in subsection (2) of this section, accessible for cleaning and inspection by one of the following methods:

- (i) Without being disassembled;
- (ii) By disassembling without the use of tools; or
- (iii) By easy disassembling with the use of handheld tools commonly available to maintenance and cleaning personnel such as screwdrivers, pliers, open-ended wrenches, and Allen wrenches.

(2) Subsection (1)(e) of this section does not apply to cooking oil storage tanks, distribution lines for cooking oils, or BEVERAGE syrup lines or tubes.

NEW SECTION

**WAC 246-215-04206 Cleanability—CIP equipment (2009 FDA Food Code 4-202.12).** (1) CIP EQUIPMENT must meet the characteristics specified under WAC 246-215-04204 and must be designed and constructed so that:

- (a) Cleaning and SANITIZING solutions circulate throughout a fixed system and contact all interior FOOD-CONTACT SURFACES; and
  - (b) The system is self-draining or capable of being completely drained of cleaning and SANITIZING solutions; and
- (2) CIP EQUIPMENT that is not designed to be disassembled for cleaning must be designed with inspection access points to ensure that all interior FOOD-CONTACT SURFACES throughout the fixed system are being effectively cleaned.

NEW SECTION

**WAC 246-215-04208 Cleanability—"V" threads, use limitation (2009 FDA Food Code 4-202.13).** Except for hot oil cooking or filtering EQUIPMENT, "V" type threads may not be used on FOOD-CONTACT SURFACES.

NEW SECTION

**WAC 246-215-04210 Cleanability—Hot oil filtering equipment (2009 FDA Food Code 4-202.14).** Hot oil filtering EQUIPMENT must meet the characteristics specified under WAC 246-215-04204 or 246-215-04206 and must be readily accessible for filter replacement and cleaning of the filter.

NEW SECTION

**WAC 246-215-04212 Cleanability—Can openers (2009 FDA Food Code 4-202.15).** Cutting or piercing parts of can openers must be readily removable for cleaning and for replacement.

NEW SECTION

**WAC 246-215-04214 Cleanability—Nonfood-contact surfaces (2009 FDA Food Code 4-202.16).** NonFOOD-CONTACT SURFACES must be free of unnecessary ledges, projections, and crevices, and designed and constructed to allow easy cleaning and to facilitate maintenance.

NEW SECTION

**WAC 246-215-04216 Cleanability—Kick plates, removable (2009 FDA Food Code 4-202.17).** Kick plates must be designed so that the areas behind them are accessible for inspection and cleaning by being:

- (1) Removable by one of the methods specified under WAC 246-215-04204 (1)(e) or capable of being rotated open; and
- (2) Removable or capable of being rotated open without unlocking EQUIPMENT doors.

NEW SECTION

**WAC 246-215-04218 Cleanability—Ventilation hood systems, filters (2009 FDA Food Code 4-202.18).** Filters or other grease extracting EQUIPMENT must be designed to be readily removable for cleaning and replacement if not designed to be cleaned in place.

NEW SECTION

**WAC 246-215-04220 Accuracy—Temperature measuring devices, food (2009 FDA Food Code 4-203.11).** (1) FOOD TEMPERATURE MEASURING DEVICES that are scaled only in Celsius or dually scaled in Celsius and Fahrenheit must be accurate to  $\pm 1^{\circ}\text{C}$  in the intended range of use.

- (2) FOOD TEMPERATURE MEASURING DEVICES that are scaled only in Fahrenheit must be accurate to  $\pm 2^{\circ}\text{F}$  in the intended range of use.

NEW SECTION

**WAC 246-215-04222 Accuracy—Temperature measuring devices, ambient air and water (2009 FDA Food Code 4-203.12).** (1) Ambient air and water TEMPERATURE MEASURING DEVICES that are scaled in Celsius or dually scaled in Celsius and Fahrenheit must be designed to be easily readable and accurate to  $\pm 1.5^{\circ}\text{C}$  in the intended range of use.

- (2) Ambient air and water TEMPERATURE MEASURING DEVICES that are scaled only in Fahrenheit must be accurate to  $\pm 3^{\circ}\text{F}$  in the intended range of use.

NEW SECTION

**WAC 246-215-04224 Accuracy—Pressure measuring devices, mechanical warewashing equipment (2009 FDA Food Code 4-203.13).** Pressure measuring devices that display the pressures in the water supply line for the fresh hot water SANITIZING rinse must have increments of one pound per square inch (seven kilopascals) or smaller and must be accurate to  $\pm$  two pounds per square inch ( $\pm 14$  kilopascals) in the range indicated on the manufacturer's data plate.

NEW SECTION

**WAC 246-215-04226 Functionality—Ventilation hood systems, drip prevention (2009 FDA Food Code 4-204.11).** Exhaust ventilation hood systems in FOOD preparation and WAREWASHING areas including components such as

hoods, fans, guards, and ducting must be designed to prevent grease or condensation from draining or dripping onto FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES.

NEW SECTION

**WAC 246-215-04228 Functionality—Equipment openings, closures and deflectors (2009 FDA Food Code 4-204.12).** (1) A cover or lid for EQUIPMENT must overlap the opening and be sloped to drain.

- (2) An opening located within the top of a unit of EQUIPMENT that is designed for use with a cover or lid must be flanged upward at least two-tenths of an inch (five millimeters).

(3) Except as specified under subsection (4) of this section, fixed piping, TEMPERATURE MEASURING DEVICES, rotary shafts, and other parts extending into the EQUIPMENT must be provided with a watertight joint at the point where the item enters the EQUIPMENT.

- (4) If a watertight joint is not provided:

(a) The piping, TEMPERATURE MEASURING DEVICES, rotary shafts, and other parts extending through the openings must be equipped with an apron designed to deflect condensation, drips, and dust from openings into the FOOD; and

(b) The opening must be flanged as specified under subsection (2) of this section.

NEW SECTION

**WAC 246-215-04230 Functionality—Dispensing equipment, protection of equipment and food (2009 FDA Food Code 4-204.13).** In EQUIPMENT that dispenses or vends liquid FOOD or ice in unPACKAGED form:

(1) The delivery tube, chute, orifice, and splash surfaces directly above the container receiving the FOOD must be designed in a manner, such as with barriers, baffles, or drip aprons, so that drips from condensation and splash are diverted from the opening of the container receiving the FOOD;

(2) The delivery tube, chute and orifices must be protected from manual contact such as by being recessed;

(3) The delivery tube or chute and orifice of EQUIPMENT used to vend liquid FOOD or ice in unPACKAGED form to self-service CONSUMERS must be designed so that the delivery tube or chute and orifice are protected from dust, insects, rodents, and other contamination by a self-closing door if the EQUIPMENT is:

(a) Located in an outside area that does not otherwise afford the protection of an enclosure against the rain, wind-blown debris, insects, rodents, and other contaminants that are present in the environment; or

(b) Available for self-service during hours when it is not under the full-time supervision of a FOOD EMPLOYEE; and

(4) The dispensing EQUIPMENT actuating level or mechanism and filling device of CONSUMER self-service BEVERAGE dispensing EQUIPMENT must be designed to prevent contact with the lip-contact surface of glasses or cups that are refilled.

(5) Dispensing EQUIPMENT in which POTENTIALLY HAZARDOUS FOOD in a homogenous liquid form is maintained

outside of the temperature control requirements as specified under WAC 246-215-03525(1) must:

(a) Be specifically designed and equipped to maintain the commercial sterility of aseptically PACKAGED FOOD in a homogenous liquid form for a specified duration from the time of opening the packaging within the EQUIPMENT; and

(b) Conform to the requirements for this EQUIPMENT as specified in NSF/ANSI 18-2006 - Manual food and Beverage Dispensing Equipment.

#### NEW SECTION

**WAC 246-215-04232 Functionality—Vending machine, vending stage closure (2009 FDA Food Code 4-204.14).** The dispensing compartment of a VENDING MACHINE including a machine that is designed to vend pre-PACKAGED snack FOOD that is not POTENTIALLY HAZARDOUS FOOD such as chips, party mixes, and pretzels must be equipped with a self-closing door or cover if the machine is:

(1) Located in an outside area that does not otherwise afford the protection of an enclosure against the rain, wind-blown debris, insects, rodents, and other contaminants that are present in the environment; or

(2) Available for self-service during hours when it is not under the full-time supervision of a FOOD EMPLOYEE.

#### NEW SECTION

**WAC 246-215-04234 Functionality—Bearings and gear boxes, leakproof (2009 FDA Food Code 4-204.15).** EQUIPMENT containing bearings and gears that require lubricants must be designed and constructed so that the lubricant cannot leak, drip, or be forced into FOOD or onto FOOD-CONTACT SURFACES.

#### NEW SECTION

**WAC 246-215-04236 Functionality—Beverage tubing, separation (2009 FDA Food Code 4-204.16).** Except for cold plates that are constructed integrally with an ice storage bin, BEVERAGE tubing and cold-plate BEVERAGE cooling devices may not be installed in contact with stored ice.

#### NEW SECTION

**WAC 246-215-04238 Functionality—Ice units, separation of drains (2009 FDA Food Code 4-204.17).** Liquid waste drain lines may not pass through an ice machine or ice storage bin.

#### NEW SECTION

**WAC 246-215-04240 Functionality—Condenser unit, separation (2009 FDA Food Code 4-204.18).** If a condenser unit is an integral component of EQUIPMENT, the condenser unit must be separated from the FOOD and FOOD storage space by a dustproof barrier.

#### NEW SECTION

**WAC 246-215-04242 Functionality—Can openers on vending machines (2009 FDA Food Code 4-204.19).** Cutting or piercing parts of can openers on vending machines must be protected from manual contact, dust, insects, rodents, and other contamination.

#### NEW SECTION

**WAC 246-215-04244 Functionality—Molluscan shellfish tanks (2009 FDA Food Code 4-204.110).** (1) Except as specified under subsection (2) of this section, MOLLUSCAN SHELLFISH life support system display tanks may not be used to store or display shellfish that are offered for human consumption and must be conspicuously marked so that it is obvious to the CONSUMER that shellfish are for display only.

(2) MOLLUSCAN SHELLFISH life-support system display tanks that are used to store or display shellfish that are offered for human consumption must be operated and maintained in accordance with a VARIANCE granted by the REGULATORY AUTHORITY as specified under WAC 246-215-08110 and a HACCP PLAN that:

(a) Is submitted by the PERMIT HOLDER and APPROVED as specified under WAC 246-215-08115; and

(b) Ensures that:

(i) Water used with FISH other than MOLLUSCAN SHELLFISH does not flow into the molluscan tank;

(ii) The safety and quality of the shellfish as they were received are not compromised by the use of the tank; and

(iii) The identity of the source of the SHELLSTOCK is retained as specified under WAC 246-215-03290.

#### NEW SECTION

**WAC 246-215-04246 Functionality—Vending machines, automatic shutoff (2009 FDA Food Code 4-204.111).** (1) A machine vending POTENTIALLY HAZARDOUS FOOD must have an automatic control that prevents the machine from vending FOOD:

(a) If there is a power failure, mechanical failure, or other condition that results in an internal machine temperature that cannot maintain FOOD temperatures as specified under Part 3 of this chapter; and

(b) If a condition specified under (a) of this subsection occurs, until the machine is serviced and restocked with FOOD that has been maintained at temperatures specified under Part 3 of this chapter.

(2) When the automatic shutoff within a machine vending POTENTIALLY HAZARDOUS FOOD is activated:

(a) In a refrigerated VENDING MACHINE, the ambient temperature may not exceed 41°F (5°C) for more than thirty minutes immediately after the machine is filled, serviced, or restocked; or

(b) In a hot holding VENDING MACHINE, the ambient air temperature may not be less than 135°F (57°C) for more than one hundred twenty minutes immediately after the machine is filled, serviced, or restocked.

NEW SECTION

**WAC 246-215-04248 Functionality—Temperature measuring devices (2009 FDA Food Code 4-204.112).** (1) In a mechanically refrigerated or hot FOOD storage unit, the sensor of a TEMPERATURE MEASURING DEVICE must be located to measure the air temperature or a simulated product temperature in the warmest part of a mechanically refrigerated unit and in the coolest part of a hot FOOD storage unit.

(2) Except as specified in subsection (3) of this section, cold or hot holding EQUIPMENT used for POTENTIALLY HAZARDOUS FOOD must be designed to include and must be equipped with at least one integral or permanently affixed TEMPERATURE MEASURING DEVICE that is located to allow easy viewing of the device's temperature display.

(3) Subsection (2) of this section does not apply to EQUIPMENT for which the placement of a TEMPERATURE MEASURING DEVICE is not a practical means for measuring the ambient air surrounding the FOOD because of the design, type, and use of the EQUIPMENT, such as calrod units, heat lamps, cold plates, bainmaries, steam tables, insulated FOOD transport containers, and salad bars.

(4) TEMPERATURE MEASURING DEVICES must be designed to be easily readable.

(5) FOOD TEMPERATURE MEASURING DEVICES and water TEMPERATURE MEASURING DEVICES on WAREWASHING machines must have a numerical scale, printed record, or digital readout in increments no greater than 2°F or 1°C in the intended range of use.

NEW SECTION

**WAC 246-215-04250 Functionality—Warewashing machines, data plate operating specifications (2009 FDA Food Code 4-204.113).** A WAREWASHING machine must be provided with an easily accessible and readable data plate affixed to the machine by the manufacturer that indicates the machine's design and operation specifications including the:

(1) Temperatures required for washing, rinsing, and SANITIZING;

(2) Pressure required for the fresh water SANITIZING rinse unless the machine is designed to use only pumped SANITIZING rinse; and

(3) Conveyor speed for conveyor machines or cycle time for stationary rack machines.

NEW SECTION

**WAC 246-215-04252 Functionality—Warewashing machines, internal baffles (2009 FDA Food Code 4-204.114).** WAREWASHING machine wash and rinse tanks must be equipped with baffles, curtains, or other means to minimize internal cross contamination of the solutions in wash and rinse tanks.

NEW SECTION

**WAC 246-215-04254 Functionality—Warewashing machines, temperature measuring devices (2009 FDA Food Code 4-204.115).** A warewashing machine must be

equipped with a TEMPERATURE MEASURING DEVICE that indicates the temperature of the water:

(1) In each wash and rinse tank; and

(2) As the water enters the hot water SANITIZATION final rinse manifold or in the chemical SANITIZING solution tank.

NEW SECTION

**WAC 246-215-04256 Functionality—Manual warewashing equipment, heaters and baskets (2009 FDA Food Code 4-204.116).** If hot water is used for SANITIZATION in manual WAREWASHING operations, the SANITIZING compartment of the sink must be:

(1) Designed with an integral heating device that is capable of maintaining water at a temperature not less than 171°F (77°C); and

(2) Provided with a rack or basket to allow complete immersion of EQUIPMENT and UTENSILS into the hot water.

NEW SECTION

**WAC 246-215-04258 Functionality—Warewashing machines, automatic dispensing of detergents and sanitizers (2009 FDA Food Code 4-204.117).** A WAREWASHING machine that is installed after adoption of this chapter by the REGULATORY AUTHORITY must be equipped to:

(1) Automatically dispense detergents and SANITIZERS; and

(2) Incorporate a visual means to verify that detergents and SANITIZERS are delivered or a visual or audible alarm to signal if the detergents and SANITIZERS are not delivered to the respective washing and SANITIZING cycles.

NEW SECTION

**WAC 246-215-04260 Functionality—Warewashing machines, flow pressure device (2009 FDA Food Code 4-204.118).** (1) WAREWASHING machines that provide a fresh hot water SANITIZING rinse must be equipped with a pressure gauge or similar device such as a transducer that measures and displays the water pressure in the supply line immediately before entering the WAREWASHING machine; and

(2) If the flow pressure measuring device is upstream of the fresh hot water SANITIZING rinse control valve, the device must be mounted in a one-fourth inch (6.4 mm) iron pipe size (IPS) valve.

(3) Subsections (1) and (2) of this section do not apply to a machine that uses only a pumped or recirculated SANITIZING rinse.

NEW SECTION

**WAC 246-215-04262 Functionality—Warewashing sinks and drainboards, self-draining (2009 FDA Food Code 4-204.119).** Sinks and drainboards of WAREWASHING sinks and machines must be self-draining.

NEW SECTION

**WAC 246-215-04264 Functionality—Equipment compartments, drainage (2009 FDA Food Code 4-**

**204.120).** EQUIPMENT compartments that are subject to accumulation of moisture due to conditions such as condensation, FOOD or BEVERAGE drip, or water from melting ice must be sloped to an outlet that allows complete draining.

#### NEW SECTION

**WAC 246-215-04266 Functionality—Vending machines, liquid waste products (2009 FDA Food Code 4-204.121).** (1) VENDING MACHINES designed to store BEVERAGES that are PACKAGED in containers made from paper products must be equipped with diversion devices and retention pans or drains for container leakage.

(2) VENDING MACHINES that dispense liquid FOOD in bulk must be:

(a) Provided with an internally mounted waste receptacle for the collection of drip, spillage, overflow, or other internal wastes; and

(b) Equipped with an automatic shutoff device that places the machine out of operation before the waste receptacle overflows.

(3) Shutoff devices specified under subsection (2)(b) of this section must prevent water or liquid FOOD from continuously running if there is a failure of a flow control device in the water or liquid FOOD system or waste accumulation that could lead to overflow of the waste receptacle.

#### NEW SECTION

**WAC 246-215-04268 Functionality—Case lot handling equipment, moveability (2009 FDA Food Code 4-204.122).** Apparatuses, such as dollies, pallets, racks, and skids used to store and transport large quantities of PACKAGED FOODS received from a supplier in a cased or overwrapped lot, must be designed to be moved by hand or by conveniently available apparatuses such as hand trucks and forklifts.

#### NEW SECTION

**WAC 246-215-04270 Functionality—Vending machine doors and openings (2009 FDA Food Code 4-204.123).** (1) VENDING MACHINE doors and access opening covers to FOOD and container storage spaces must be tight-fitting so that the space along the entire interface between the doors or covers and the cabinet of the machine, if the doors or covers are in a closed position, is no greater than one-sixteenth inch (1.5 millimeters) by:

(a) Being covered with louvers, screens, or materials that provide an equivalent opening of not greater than one-sixteenth inch (1.5 millimeters). Screening of twelve mesh to one inch (twelve or more mesh to 2.5 centimeters) meets this requirement;

(b) Being effectively gasketed;

(c) Having interface surfaces that are at least one-half inch (13 mm) wide; or

(d) Jambs or surfaces used to form an L-shaped entry path to the interface.

(2) VENDING MACHINE service connection openings through an exterior wall of a machine must be closed by seal-

ants, clamps, or grommets so that the openings are no larger than one-sixteenth inch (1.5 mm).

#### NEW SECTION

**WAC 246-215-04272 Acceptability—Food equipment, certification and classification (2009 FDA Food Code 4-205.10).** FOOD EQUIPMENT that is certified or classified for sanitation by an American National Standards Institute (ANSI) - Accredited certification program is deemed to comply with Subparts A and B of this part.

#### **Subpart C - Numbers and Capacities**

#### NEW SECTION

**WAC 246-215-04300 Equipment—Cooling, heating, and holding capacities (2009 FDA Food Code 4-301.11).** EQUIPMENT for cooling and heating FOOD, and holding cold and hot FOOD, must be sufficient in number and capacity to provide FOOD temperatures as specified under Part 3.

#### NEW SECTION

**WAC 246-215-04305 Equipment—Manual warewashing, sink compartment requirements (2009 FDA Food Code 4-301.12).** (1) Except as specified in subsection (3) of this section, a sink with at least three compartments must be provided for manually washing, rinsing, and SANITIZING EQUIPMENT and UTENSILS.

(2) Sink compartments must be large enough to accommodate immersion of the largest EQUIPMENT and UTENSILS. If EQUIPMENT or UTENSILS are too large for the WAREWASHING sink, a WAREWASHING machine or alternative EQUIPMENT as specified in subsection (3) of this section must be used.

(3) Alternative manual WAREWASHING EQUIPMENT may be used when there are special cleaning needs or constraints and its use is APPROVED. Alternative manual WAREWASHING EQUIPMENT includes, but is not limited to:

(a) High-pressure detergent sprayers;

(b) Low- or line-pressure spray detergent foamers;

(c) Other task-specific cleaning EQUIPMENT;

(d) Brushes or other implements;

(e) Two-compartment sinks as specified under subsections (4) and (5) of this section; or

(f) Receptacles that substitute for the compartments of a multicompartment sink.

(4) Before a two-compartment sink is used:

(a) The PERMIT HOLDER shall have its use APPROVED; and

(b) The PERMIT HOLDER shall limit the number of KITCHENWARE items cleaned and SANITIZED in the two-compartment sink, and shall limit WAREWASHING to batch operations for cleaning KITCHENWARE such as between cutting one type of raw MEAT and another or cleanup at the end of a shift, and shall:

(i) Make up the cleaning and SANITIZING solutions immediately before use and drain them immediately after use; and

(ii) Use APPROVED procedures to properly clean and SANITIZE KITCHENWARE.

(5) A two-compartment sink may not be used for WAREWASHING operations where cleaning and SANITIZING solutions are used for a continuous or intermittent flow of KITCHENWARE or TABLEWARE in an ongoing WAREWASHING process.

#### NEW SECTION

**WAC 246-215-04310 Equipment—Drainboards (2009 FDA Food Code 4-301.13).** Drainboards, UTENSIL racks, or tables large enough to accommodate all soiled and cleaned items that might accumulate during hours of operation must be provided for necessary UTENSILS holding before cleaning and after SANITIZING.

#### NEW SECTION

**WAC 246-215-04315 Equipment—Ventilation hood systems, adequacy (2009 FDA Food Code 4-301.14).** Ventilation hood systems and devices must be sufficient in number and capacity to prevent grease or condensation from collecting on walls and ceilings.

#### NEW SECTION

**WAC 246-215-04320 Equipment—Clothes washers and dryers (2009 FDA Food Code 4-301.15).** (1) Except as specified in subsection (2) of this section, if work clothes or LINENS are laundered on the PREMISES, a mechanical clothes washer and dryer must be provided and used.

(2) If on-PREMISES laundering is limited to wiping cloths intended to be used moist, or wiping cloths are air-dried as specified under WAC 246-215-04905, a mechanical clothes washer and dryer need not be provided.

#### NEW SECTION

**WAC 246-215-04325 Equipment—Designated food preparation sinks.** FOOD ESTABLISHMENTS must have designated FOOD preparation sinks that are:

(1) Sufficient in number and size to wash, soak, rinse, drain, cool, thaw, or otherwise process any FOOD that requires placement in a sink;

(2) Appropriate for the menu, method of FOOD preparation, and volume of FOOD prepared; and

(3) Not used for handwashing, UTENSIL washing, or other activities that could contaminate FOOD.

#### NEW SECTION

**WAC 246-215-04330 Utensils, temperature measuring devices, and testing devices—Utensils, consumer self-service (2009 FDA Food Code 4-302.11).** A FOOD dispensing UTENSIL must be available for each container displayed at a CONSUMER self-service unit such as a buffet or salad bar.

#### NEW SECTION

**WAC 246-215-04335 Utensils, temperature measuring devices, and testing devices—Food temperature measuring devices (2009 FDA Food Code 4-302.12).** (1) FOOD TEMPERATURE MEASURING DEVICES must be provided and readily accessible for use in ensuring attainment and maintenance of FOOD temperatures as specified under Part 3.

(2) A TEMPERATURE MEASURING DEVICE with a suitable diameter probe that is designed to measure the temperature of thin masses must be provided and readily accessible to accurately measure the temperature in thin FOODS such as MEAT patties and FISH fillets.

#### NEW SECTION

**WAC 246-215-04340 Utensils, temperature measuring devices, and testing devices—Temperature measuring devices, manual warewashing (2009 FDA Food Code 4-302.13).** In manual WAREWASHING operations, a TEMPERATURE MEASURING DEVICE must be provided and readily accessible for frequently measuring the washing and SANITIZING temperatures.

#### NEW SECTION

**WAC 246-215-04345 Utensils, temperature measuring devices, and testing devices—Sanitizing solutions, testing devices (2009 FDA Food Code 4-302.14).** A test kit or other device that accurately measures the concentration in mg/L of SANITIZING solutions must be provided.

### Subpart D - Location and Installation

#### NEW SECTION

**WAC 246-215-04400 Location—Equipment, clothes washers and dryers, and storage cabinets, contamination prevention (2009 FDA Food Code 4-401.11).** (1) Except as specified in subsection (2) of this section, EQUIPMENT, a cabinet used for the storage of FOOD, or a cabinet that is used to store cleaned and SANITIZED EQUIPMENT, UTENSILS, laundered LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES may not be located:

- (a) In locker rooms;
- (b) In toilet rooms;
- (c) In garbage rooms;
- (d) In mechanical rooms;
- (e) Under sewer lines that are not shielded to intercept potential drips;
- (f) Under leaking water lines including automatic fire sprinkler heads or under lines on which water has condensed;
- (g) Under open stairwells; or
- (h) Under other sources of contamination.

(2) A storage cabinet used for LINENS or SINGLE-SERVICE or SINGLE-USE ARTICLES may be stored in a locker room.

(3) If a mechanical clothes washer or dryer is provided, it must be located so that the washer or dryer is protected from contamination and only where there is no exposed FOOD; clean EQUIPMENT, UTENSILS, and LINENS; and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES.

NEW SECTION

**WAC 246-215-04405 Installation—Fixed equipment, spacing or sealing (2009 FDA Food Code 4-402.11).** (1) EQUIPMENT that is fixed because it is not EASILY MOVABLE must be installed so that it is:

(a) Spaced to allow access for cleaning along the sides, behind, and above the EQUIPMENT;

(b) Spaced from adjoining EQUIPMENT, walls, and ceilings a distance of not more than one thirty-second inch (1 mm); or

(c) SEALED to adjoining EQUIPMENT or walls, if the EQUIPMENT is exposed to spilling or seepage.

(2) COUNTER-MOUNTED EQUIPMENT that is not EASILY MOVABLE must be installed to allow cleaning of the EQUIPMENT and areas underneath and around the EQUIPMENT by being:

(a) SEALED; or

(b) Elevated on legs as specified under WAC 246-215-04410.

NEW SECTION

**WAC 246-215-04410 Installation—Fixed equipment, elevation or sealing (2009 FDA Food Code 4-402.12).** (1) Except as specified in subsections (2) and (3) of this section, floor-mounted EQUIPMENT that is not EASILY MOVABLE must be SEALED to the floor or elevated on legs that provide at least a six inch (15 cm) clearance between the floor and the EQUIPMENT.

(2) If no part of the floor under the floor-mounted EQUIPMENT is more than six inches (15 cm) from the point of cleaning access, the clearance space may be only four inches (10 cm).

(3) This section does not apply to display shelving units, display refrigeration units, and display freezer units located in the CONSUMER shopping areas of a retail FOOD store, if the floor under the units is maintained clean.

(4) Except as specified in subsection (5) of this section, COUNTER-MOUNTED EQUIPMENT that is not EASILY MOVABLE must be elevated on legs that provide at least a four inch (10 cm) clearance between the table and the EQUIPMENT.

(5) The clearance space between the table and COUNTER-MOUNTED EQUIPMENT may be:

(a) Three inches (7.5 cm) if the horizontal distance of the table top under the EQUIPMENT is no more than 20 inches (50 cm) from the point of access for cleaning; or

(b) Two inches (5 cm) if the horizontal distance of the table top under the EQUIPMENT is no more than three inches (7.5 cm) from the point of access for cleaning.

**Subpart E - Maintenance and Operations**NEW SECTION

**WAC 246-215-04500 Equipment—Good repair and proper adjustment (2009 FDA Food Code 4-501.11).** (1) EQUIPMENT must be maintained in a state of repair and condition that meets the requirements specified under Part 4, Subpart A and Part 4, Subpart B.

(2) EQUIPMENT components such as doors, seals, hinges, fasteners, and kick plates must be kept intact, tight, and adjusted in accordance with the manufacturer's specifications.

(3) Cutting or piercing parts of can openers must be replaced as needed to minimize the creation of metal fragments that can contaminate FOOD when the container is opened.

NEW SECTION

**WAC 246-215-04505 Equipment—Cutting surfaces (2009 FDA Food Code 4-501.12).** Surfaces such as cutting blocks and boards that are subject to scratching and scoring must be resurfaced if they can no longer be effectively cleaned and SANITIZED, or discarded if they are not capable of being resurfaced.

NEW SECTION

**WAC 246-215-04510 Equipment—Microwave ovens (2009 FDA Food Code 4-501.13).** Microwave ovens must meet the safety standards specified in 21 C.F.R. 1030.10 Microwave Ovens.

NEW SECTION

**WAC 246-215-04515 Equipment—Warewashing equipment, cleaning frequency (2009 FDA Food Code 4-501.14).** A WAREWASHING machine; the compartments of sinks, basins, or other receptacles used for washing and rinsing EQUIPMENT, UTENSILS, or raw FOODS, or laundering wiping cloths; and drainboards or other EQUIPMENT used to substitute for drainboards as specified under WAC 246-215-04310 must be cleaned:

(1) Before use;

(2) Throughout the day at a frequency necessary to prevent recontamination of EQUIPMENT and UTENSILS and to ensure that the EQUIPMENT performs its intended function; and

(3) If used, at least every twenty-four hours.

NEW SECTION

**WAC 246-215-04520 Equipment—Warewashing machines, manufacturer's operating instructions (2009 FDA Food Code 4-501.15).** (1) A WAREWASHING machine and its auxiliary components must be operated in accordance with the machine's data plate and other manufacturer's instructions.

(2) A WAREWASHING machine's conveyor speed or automatic cycle times must be maintained accurately timed in accordance with manufacturer's specifications.

NEW SECTION

**WAC 246-215-04525 Equipment—Warewashing sinks, use limitation (2009 FDA Food Code 4-501.16).** (1) A WAREWASHING sink may not be used for handwashing as specified under WAC 246-215-02315.

(2) If a WAREWASHING sink is used to wash wiping cloths, wash produce, or thaw FOOD, the sink must be cleaned as specified under WAC 246-215-04515 before and after each time it is used to wash wiping cloths or wash produce or thaw FOOD. Sinks used to wash or thaw FOOD must be SANITIZED as specified under subpart G of this part before and after using the sink to wash produce or thaw FOOD.

NEW SECTION

**WAC 246-215-04530 Equipment—Warewashing equipment, cleaning agents (2009 FDA Food Code 4-501.17).** When used for WAREWASHING, the wash compartment of a sink, mechanical warewasher, or wash receptacle of alternative manual WAREWASHING EQUIPMENT as specified under WAC 246-215-04305(3), must contain a wash solution of soap, detergent, acid cleaner, alkaline cleaner, degreaser, abrasive cleaner, or other cleaning agent according to the cleaning agent manufacturer's label instructions.

NEW SECTION

**WAC 246-215-04535 Equipment—Warewashing equipment, clean solutions (2009 FDA Food Code 4-501.18).** The wash, rinse and SANITIZE solutions must be maintained clean.

NEW SECTION

**WAC 246-215-04540 Equipment—Manual warewashing equipment, wash solution temperature (2009 FDA Food Code 4-501.19).** The temperature of the wash solution in manual WAREWASHING EQUIPMENT must be maintained at not less than 110°F (43°C) or the temperature specified on the cleaning agent manufacturer's label instructions.

NEW SECTION

**WAC 246-215-04545 Equipment—Mechanical warewashing equipment, wash solution temperature (2009 FDA Food Code 4-501.110).** (1) The temperature of the wash solution in spray-type warewashers that use hot water to SANITIZE may not be less than:

- (a) For a stationary rack, single temperature machine, 165°F (74°C);
- (b) For a stationary rack, dual temperature machine, 150°F (66°C);
- (c) For a single tank, conveyor, dual temperature machine, 160°F (71°C);
- (d) For a multitank, conveyor, multitemperature machine, 150°F (66°C).

(2) The temperature of the wash solution in spray-type warewashers that use chemicals to SANITIZE may not be less than 120°F (49°C).

NEW SECTION

**WAC 246-215-04550 Equipment—Manual warewashing equipment, hot water sanitization temperature (2009 FDA Food Code 4-501.111).** If immersion in hot

water is used for SANITIZING in a manual operation, the temperature of the water must be maintained at 171°F (77°C) or above.

NEW SECTION

**WAC 246-215-04555 Equipment—Mechanical warewashing equipment, hot water sanitization temperatures (2009 FDA Food Code 4-501.112).** (1) Except as specified in subsection (2) of this section, in a mechanical operation, the temperature of the fresh hot water SANITIZING rinse as it enters the manifold may not be more than 194°F (90°C) or less than:

- (a) For a stationary rack, single temperature machine, 165°F (74°C); or
- (b) For all other machines, 180°F (82°C).

(2) The maximum temperature specified under subsection (1) of this section, does not apply to the high pressure and temperature systems with wand-type, hand-held, spraying devices used for the in-place cleaning and SANITIZING of EQUIPMENT such as MEAT saws.

NEW SECTION

**WAC 246-215-04560 Equipment—Mechanical warewashing equipment, sanitization pressure (2009 FDA Food Code 4-501.113).** The flow pressure of the fresh hot water SANITIZING rinse in a WAREWASHING machine, as measured in the water line immediately downstream or upstream from the fresh hot water SANITIZING rinse control valve, must be within the range specified on the machine manufacturer's data plate and may not be less than five pounds per square inch (35 kilopascals) or more than thirty pounds per square inch (200 kilopascals).

NEW SECTION

**WAC 246-215-04565 Equipment—Manual and mechanical warewashing equipment, chemical sanitization—Temperature, pH, concentration, and hardness (2009 FDA Food Code 4-501.114).** A chemical SANITIZER used in a SANITIZING solution for a manual or mechanical operation at contact times specified under WAC 246-215-04710(3) must meet the requirements specified under WAC 246-215-07220, must be used in accordance with the EPA-registered label use instructions, and must be used as follows:

(1) A chlorine solution must have a minimum temperature based on the concentration and pH of the solution as listed in the following chart:

| Concentration Range | Minimum Temperature   |                      |
|---------------------|-----------------------|----------------------|
|                     | pH 10 or less °F (°C) | pH 8 or less °F (°C) |
| 25-49               | 120 (49)              | 120 (49)             |
| 50-99               | 100 (38)              | 75 (24)              |
| 100                 | 55 (13)               | 55 (13)              |

- (2) An iodine solution must have a:
  - (a) Minimum temperature of 68°F (20°C);

(b) pH of 5.0 or less or a pH no higher than the level for which the manufacturer specifies the solution is effective; and

(c) Concentration between 12.5 mg/L and 25 mg/L.

(3) A quaternary ammonium compound solution must:

(a) Have a minimum temperature of 75°F (24°C);

(b) Have a concentration as specified under WAC 246-215-07220 and as indicated by the manufacturer's use directions included in the labeling; and

(c) Be used only in water with 500 mg/L hardness or less or in water having a hardness no greater than specified by the EPA-registered label use instructions;

(4) If another solution of a chemical specified under subsections (1) through (3) of this section is used, the PERMIT HOLDER shall demonstrate to the REGULATORY AUTHORITY that the solution achieves SANITIZATION and the use of the solution must be APPROVED; or

(5) If a chemical SANITIZER other than chlorine, iodine, or a quaternary ammonium compound is used, it must be applied in accordance with the EPA-registered label use instructions.

#### NEW SECTION

**WAC 246-215-04570 Equipment—Manual warewashing equipment, chemical sanitization using detergent-sanitizers (2009 FDA Food Code 4-501.115).** If a detergent-SANITIZER is used to SANITIZE in a cleaning and SANITIZING procedure where there is no distinct water rinse between the washing and SANITIZING steps, the agent applied in the SANITIZING step must be the same detergent-SANITIZER that is used in the washing step.

#### NEW SECTION

**WAC 246-215-04575 Equipment—Warewashing equipment, determining chemical sanitizer concentration (2009 FDA Food Code 4-501.116).** Concentration of the SANITIZING solution must be accurately determined by using a test kit or other device.

#### NEW SECTION

**WAC 246-215-04580 Utensils and temperature and pressure measuring devices—Good repair and calibration (2009 FDA Food Code 4-502.11).** (1) UTENSILS must be maintained in a state of repair or condition that complies with the requirements specified under Part 4, Subparts A and B, or must be discarded.

(2) FOOD TEMPERATURE MEASURING DEVICES must be calibrated in accordance with manufacturer's specifications as necessary to ensure their accuracy.

(3) Ambient air temperature, water pressure, and water TEMPERATURE MEASURING DEVICES must be maintained in good repair and be accurate within the intended range of use.

#### NEW SECTION

**WAC 246-215-04585 Utensils and temperature and pressure measuring devices—Single-service and single-use articles, required use (2009 FDA Food Code 4-**

**502.12).** A FOOD ESTABLISHMENT without facilities specified under Part 4, Subparts 6 and 7 for cleaning and SANITIZING KITCHENWARE and TABLEWARE must provide only SINGLE-USE KITCHENWARE, SINGLE-SERVICE ARTICLES, and SINGLE-USE ARTICLES for use by FOOD EMPLOYEES and SINGLE-SERVICE ARTICLES for use by CONSUMERS.

#### NEW SECTION

**WAC 246-215-04590 Utensils and temperature and pressure measuring devices—Single-service and single-use articles, use limitation (2009 FDA Food Code 4-502.13).** (1) SINGLE-SERVICE and SINGLE-USE ARTICLES may not be reused.

(2) The bulk milk container dispensing tube must be cut on the diagonal leaving no more than one inch protruding from the chilled dispensing head.

#### NEW SECTION

**WAC 246-215-04595 Utensils and temperature and pressure measuring devices—Shells, use limitation (2009 FDA Food Code 4-502.14).** Mollusk and crustacea shells may not be used more than once as serving containers.

#### Subsection F - Cleaning of Equipment and Utensils

#### NEW SECTION

**WAC 246-215-04600 Objective—Equipment, food-contact surfaces, nonfood-contact surfaces, and utensils (2009 FDA Food Code 4-601.11).** (1) EQUIPMENT, FOOD-CONTACT SURFACES, and UTENSILS must be clean to sight and touch.

(2) The FOOD-CONTACT SURFACES of cooking EQUIPMENT and pans must be kept free of encrusted grease deposits and other soil accumulations.

(3) NonFOOD-CONTACT SURFACES of EQUIPMENT must be kept free of an accumulation of dust, dirt, FOOD residue, and other debris.

#### NEW SECTION

**WAC 246-215-04605 Objective—Equipment food-contact surfaces and utensils (2009 FDA Food Code 4-602.11).** (1) EQUIPMENT, FOOD-CONTACT SURFACES, and UTENSILS must be cleaned:

(a) Except as specified in subsection (2) of this section, before each use with a different type of raw animal FOOD such as beef, FISH, lamb, pork, or POULTRY;

(b) Each time there is a change from working with raw FOODS to working with READY-TO-EAT FOODS;

(c) Between uses with raw fruits and vegetables and with POTENTIALLY HAZARDOUS FOOD;

(d) Before using or storing a FOOD TEMPERATURE MEASURING DEVICE; and

(e) At any time during the operation when contamination might have occurred.

(2) Subsection (1)(a) of this section does not apply if the FOOD-CONTACT SURFACE or UTENSIL is in contact with a succession of different raw animal FOODS each requiring a

higher cooking temperature as specified under WAC 246-215-03400 than the previous FOOD, such as preparing raw FISH followed by cutting raw POULTRY on the same cutting board.

(3) Except as specified in subsection (4) of this section, if used with POTENTIALLY HAZARDOUS FOOD, EQUIPMENT, FOOD-CONTACT SURFACES, and UTENSILS must be cleaned throughout the day at least every four hours.

(4) Surfaces of UTENSILS and EQUIPMENT contacting POTENTIALLY HAZARDOUS FOOD may be cleaned less frequently than every four hours if:

(a) In storage, containers of POTENTIALLY HAZARDOUS FOOD and their contents are maintained at temperatures specified under Part 3 and the containers are cleaned when they are empty;

(b) UTENSILS and EQUIPMENT are used to prepare FOOD in a refrigerated room or area that is maintained at one of the temperatures in the following chart and:

(i) The UTENSILS and EQUIPMENT are cleaned at the frequency in the following chart that corresponds to the temperature; and

| Temperature                          | Cleaning Frequency |
|--------------------------------------|--------------------|
| 41°F or less<br>(5.0°C or less)      | 24 hours           |
| > 41°F - 45°F<br>(> 5.0°C - 7.2°C)   | 20 hours           |
| > 45°F - 50°F<br>(> 7.2°C - 10.0°C)  | 16 hours           |
| > 50°F - 55°F<br>(> 10.0°C - 12.8°C) | 10 hours           |

(ii) The cleaning frequency based on the ambient temperature of the refrigerated room or area is documented in the FOOD ESTABLISHMENT.

(c) Containers in serving situations such as salad bars, delis, and cafeteria lines hold READY-TO-EAT POTENTIALLY HAZARDOUS FOOD that is maintained at the temperatures specified under Part 3, are intermittently combined with additional supplies of the same FOOD that is at the required temperature, and the containers are cleaned every twenty-four hours;

(d) TEMPERATURE MEASURING DEVICES are maintained in contact with FOOD, such as when left in a container of deli FOOD or in a roast, held at temperatures specified under Part 3;

(e) EQUIPMENT is used for storage of PACKAGED or unPACKAGED FOOD such as a reach-in refrigerator and the EQUIPMENT is cleaned at a frequency necessary to preclude accumulation of soil residues;

(f) The cleaning schedule is APPROVED based on consideration of:

- (i) Characteristics of the EQUIPMENT and its use;
- (ii) The type of food involved;
- (iii) The amount of FOOD residue accumulation; and
- (iv) The temperature at which the FOOD is maintained during the operation and the potential for the rapid and progressive multiplication of pathogenic or toxigenic microorganisms that are capable of causing foodborne disease; or

(g) In-use UTENSILS are intermittently stored in a container of water in which the water is maintained at 135°F (57°C) or more or 41°F (5°C) or less and the UTENSILS and container are cleaned at least every twenty-four hours or at a frequency necessary to preclude accumulation of soil residues.

(5) Except when dry cleaning methods are used as specified under WAC 246-215-04620, surfaces of UTENSILS and EQUIPMENT contacting FOOD that is not POTENTIALLY HAZARDOUS FOOD must be cleaned:

(a) At any time when contamination might have occurred;

(b) At least every twenty-four hours for iced tea dispensers and CONSUMER self-service UTENSILS such as tongs, scoops, or ladles;

(c) Before restocking CONSUMER self-service EQUIPMENT and UTENSILS such as condiment dispensers and display containers; and

(d) In EQUIPMENT such as ice bins and BEVERAGE dispensing nozzles and enclosed components of EQUIPMENT such as ice makers, cooking oil storage tanks and distribution lines, BEVERAGE and syrup dispensing lines or tubes, coffee bean grinders, and water vending EQUIPMENT:

- (i) At a frequency specified by the manufacturer; or
- (ii) Absent manufacturer specifications, at a frequency necessary to preclude accumulation of soil or mold.

NEW SECTION

**WAC 246-215-04610 Objective—Cooking and baking equipment (2009 FDA Food Code 4-602.12).** (1) The FOOD-CONTACT SURFACES of cooking and baking EQUIPMENT must be cleaned at least every twenty-four hours. This section does not apply to hot oil cooking and filtering EQUIPMENT if it is cleaned as specified under WAC 246-215-04605 (4)(f).

(2) The cavities and door seals of microwave ovens must be cleaned at least every twenty-four hours by using the manufacturer's recommended cleaning procedure.

NEW SECTION

**WAC 246-215-04615 Objective—Nonfood-contact surfaces (2009 FDA Food Code 4-602.13).** NonFOOD-CONTACT SURFACES of EQUIPMENT must be cleaned at a frequency necessary to preclude accumulation of soil residues.

NEW SECTION

**WAC 246-215-04620 Methods—Dry cleaning (2009 FDA Food Code 4-603.11).** (1) If used, dry cleaning methods such as brushing, scraping, and vacuuming may only contact surfaces that are soiled with dry FOOD residues that are not POTENTIALLY HAZARDOUS FOOD.

(2) Cleaning EQUIPMENT used in dry cleaning FOOD-CONTACT SURFACES may not be used for any other purpose.

NEW SECTION

**WAC 246-215-04625 Methods—Precleaning (2009 FDA Food Code 4-603.12).** (1) FOOD debris on EQUIPMENT

and UTENSILS must be scraped over a waste disposal unit or garbage receptacle or must be removed in a WAREWASHING machine with a prewash cycle.

(2) If necessary for effective cleaning, UTENSILS and EQUIPMENT must be preflushed, presoaked, or scrubbed with abrasives.

#### NEW SECTION

**WAC 246-215-04630 Methods—Loading of soiled items, warewashing machines (2009 FDA Food Code 4-603.13).** Soiled items to be cleaned in a WAREWASHING machine must be loaded into racks, trays, or baskets or onto conveyors in a position that:

- (1) Exposes the items to the unobstructed spray from all cycles; and
- (2) Allows the item to drain.

#### NEW SECTION

**WAC 246-215-04635 Methods—Wet cleaning (2009 FDA Food Code 4-603.14).** (1) EQUIPMENT, FOOD-CONTACT SURFACES, and UTENSILS must be effectively washed to remove or completely loosen soils by using the manual or mechanical means necessary such as the application of detergents containing wetting agents and emulsifiers; acid, alkaline, or abrasive cleaners; hot water; brushes; scouring pads; high-pressure sprays; or ultrasonic devices.

(2) The washing procedures selected must be based on the type and purpose of the EQUIPMENT or UTENSIL, and on the type of soil to be removed.

#### NEW SECTION

**WAC 246-215-04640 Methods—Washing, procedures for alternative manual warewashing equipment (2009 FDA Food Code 4-603.15).** If washing in sink compartments or a WAREWASHING machine is impractical such as when the EQUIPMENT is fixed or the UTENSILS are too large, washing must be done by using alternative manual WAREWASHING EQUIPMENT as specified under WAC 246-215-04305(3) in accordance with the following procedures:

- (1) EQUIPMENT must be disassembled as necessary to allow access of the detergent solution to all parts;
- (2) EQUIPMENT components and UTENSILS must be scraped or rough cleaned to remove FOOD particle accumulation; and
- (3) EQUIPMENT and UTENSILS must be washed as specified under WAC 246-215-04635(1).

#### NEW SECTION

**WAC 246-215-04645 Methods—Rinsing procedures (2009 FDA Food Code 4-603.16).** Washed UTENSILS and EQUIPMENT must be rinsed so that abrasives are removed and cleaning chemicals are removed or diluted through the use of water or a detergent-SANITIZER solution by using one of the following procedures:

- (1) Use of a distinct, separate water rinse after washing and before SANITIZING if using:
  - (a) A three-compartment sink;

(b) Alternative manual WAREWASHING EQUIPMENT equivalent to a three-compartment sink as specified under WAC 246-215-04305(3); or

(c) A three-step washing, rinsing, and SANITIZING procedure in a WAREWASHING system for CIP EQUIPMENT;

(2) Use of a detergent-SANITIZER as specified under WAC 246-215-04570 if using:

(a) Alternative WAREWASHING EQUIPMENT as specified under WAC 246-215-04305(3) that is APPROVED for use with a detergent-SANITIZER; or

(b) A WAREWASHING system for CIP EQUIPMENT;

(3) Use of a nondistinct water rinse that is integrated in the hot water SANITIZATION immersion step of a two-compartment sink operation;

(4) If using a WAREWASHING machine that does not recycle the SANITIZING solution as specified under subsection (5) of this section, or alternative manual WAREWASHING EQUIPMENT such as sprayers, use of a nondistinct water rinse that is:

(a) Integrated in the application of the SANITIZING solution; and

(b) Wasted immediately after each application; or

(5) If using a WAREWASHING machine that recycles the SANITIZING solution for use in the next wash cycle, use of a nondistinct water rinse that is integrated in the application of the SANITIZING solution.

#### NEW SECTION

**WAC 246-215-04650 Methods—Returnables, cleaning for refilling (2009 FDA Food Code 4-603.17).** (1) Except as specified in subsections (2) and (3) of this section, returned empty containers intended for cleaning and refilling with FOOD must be cleaned and refilled in a regulated FOOD PROCESSING PLANT.

(2) A FOOD-specific container for BEVERAGES may be refilled at a FOOD ESTABLISHMENT if:

(a) Only a BEVERAGE that is not a POTENTIALLY HAZARDOUS FOOD is used as specified under WAC 246-215-03348(1);

(b) The design of the container and of the rinsing EQUIPMENT and the nature of the BEVERAGE, when considered together, allow effective cleaning at home or in the FOOD ESTABLISHMENT;

(c) Facilities for rinsing before refilling returned containers with fresh, hot water that is under pressure and not recirculated are provided as part of the dispensing system;

(d) The CONSUMER-owned container returned to the FOOD ESTABLISHMENT for refilling is refilled for sale or service only to the same CONSUMER; and

(e) The container is refilled by:

(i) An EMPLOYEE of the FOOD ESTABLISHMENT; or

(ii) The owner of the container if the BEVERAGE system includes a contamination-free transfer process that cannot be bypassed by the container owner.

(3) CONSUMER-owned containers that are not FOOD-specific may be filled at a water VENDING MACHINE or system.

**Subpart G - Sanitization of Equipment and Utensils**NEW SECTION

**WAC 246-215-04700 Objective—Food-contact surfaces and utensils (2009 FDA Food Code 4-701.10).** EQUIPMENT, FOOD-CONTACT SURFACES, and UTENSILS must be SANITIZED.

NEW SECTION

**WAC 246-215-04705 Frequency—Before use after cleaning (2009 FDA Food Code 4-702.11).** UTENSILS and FOOD-CONTACT SURFACES of EQUIPMENT must be SANITIZED before use and after cleaning.

NEW SECTION

**WAC 246-215-04710 Methods—Hot water and chemical (2009 FDA Food Code 4-703.11).** After being cleaned, EQUIPMENT, FOOD-CONTACT SURFACES, and UTENSILS must be SANITIZED in:

(1) Hot water manual operations by immersion for at least thirty seconds and as specified under WAC 246-215-04550;

(2) Hot water mechanical operations by being cycled through EQUIPMENT that is set up as specified under WAC 246-215-04520, 246-215-04555, and 246-215-04560 and achieving a UTENSIL surface temperature of 160°F (71°C) as measured by an irreversible registering temperature indicator; or

(3) Chemical manual or mechanical operations, including the application of SANITIZING chemicals by immersion, manual swabbing, brushing, or pressure spraying methods, using a solution as specified under WAC 246-215-04565. Contact times must be consistent with those on EPA-registered label use instructions by providing:

(a) Except as specified under (b) of this subsection, a contact time of at least ten seconds for a chlorine solution specified under WAC 246-215-04565(1);

(b) A contact time of at least seven seconds for a chlorine solution of 50 MG/L that has a pH of ten or less and a temperature of at least 100°F (38°C) or a pH of eight or less and a temperature of at least 75°F (24°C);

(c) A contact time of at least thirty seconds for other chemical SANITIZING solutions; or

(d) A contact time used in relationship with a combination of temperature, concentration, and pH that, when evaluated for efficacy, yields SANITIZATION as defined in WAC 246-215-01115.

**Subpart H - Laundering**NEW SECTION

**WAC 246-215-04800 Objective—Clean linens (2009 FDA Food Code 4-801.11).** Clean LINENS must be free from FOOD residues and other soiling matter.

NEW SECTION

**WAC 246-215-04805 Frequency—Specifications (2009 FDA Food Code 4-802.11).** (1) LINENS that do not come in direct contact with FOOD must be laundered between operations if they become wet, sticky, or visibly soiled.

(2) Cloth gloves used as specified under WAC 246-215-03342(4) must be laundered before being used with a different type of raw animal FOOD such as beef, FISH, lamb, pork, or POULTRY.

(3) LINENS and napkins that are used as specified under WAC 246-215-03336 and cloth napkins must be laundered between each use.

(4) Wet wiping cloths must be laundered daily.

(5) Dry wiping cloths must be laundered as necessary to prevent contamination of FOOD and clean serving UTENSILS.

NEW SECTION

**WAC 246-215-04810 Methods—Storage of soiled linens (2009 FDA Food Code 4-803.11).** Soiled LINENS must be kept in clean, nonabsorbent receptacles or clean, washable laundry bags and stored and transported to prevent contamination of FOOD, clean EQUIPMENT, clean UTENSILS, and SINGLE-SERVICE and SINGLE-USE ARTICLES.

NEW SECTION

**WAC 246-215-04815 Methods—Mechanical washing (2009 FDA Food Code 4-803.12).** (1) Except as specified in subsection (2) of this section, LINENS must be mechanically washed.

(2) In FOOD ESTABLISHMENTS in which only wiping cloths are laundered as specified under WAC 246-215-04320(2), the wiping cloths may be laundered in a mechanical washer, sink designated only for laundering wiping cloths, or a WAREWASHING sink that is cleaned as specified under WAC 246-215-04515.

NEW SECTION

**WAC 246-215-04820 Methods—Use of laundry facilities (2009 FDA Food Code 4-803.13).** (1) Except as specified in subsection (2) of this section, laundry facilities on the PREMISES of a FOOD ESTABLISHMENT must be used only for the washing and drying of items used in the operation of the establishment.

(2) Separate laundry facilities located on the PREMISES for the purpose of general laundering such as for institutions providing boarding and lodging may also be used for laundering FOOD ESTABLISHMENT items.

**Subpart I - Protection of Clean Items**NEW SECTION

**WAC 246-215-04900 Drying—Equipment and utensils, air-drying required (2009 FDA Food Code 4-901.11).** After cleaning and SANITIZING, EQUIPMENT and UTENSILS:

(1) Must be air-dried or used after adequate draining as specified in the first paragraph of 40 C.F.R. 180.940 Toler-

ance exemptions for active and inert ingredients for use in antimicrobial formulations (FOOD-CONTACT SURFACE SANITIZING solutions), before contact with FOOD; and

(2) May not be cloth-dried except that UTENSILS that have been air-dried may be polished with cloths that are maintained clean and dry.

#### NEW SECTION

**WAC 246-215-04905 Drying—Wiping cloths, air drying locations (2009 FDA Food Code 4-901.12).** Wiping cloths laundered in a FOOD ESTABLISHMENT that does not have a mechanical clothes dryer as specified under WAC 246-215-04320(2) must be air-dried in a location and in a manner that prevents contamination of FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES and the wiping cloths. This section does not apply if wiping cloths are stored after laundering in a SANITIZING solution as specified under WAC 246-215-04565.

#### NEW SECTION

**WAC 246-215-04910 Lubricating and reassembling—Food-contact surfaces (2009 FDA Food Code 4-902.11).** Lubricants as specified under WAC 246-215-07240 must be applied to FOOD-CONTACT SURFACES that require lubrication in a manner that does not contaminate FOOD-CONTACT SURFACES.

#### NEW SECTION

**WAC 246-215-04915 Lubricating and reassembling—Equipment (2009 FDA Food Code 4-902.12).** EQUIPMENT must be reassembled so that FOOD-CONTACT SURFACES are not contaminated.

#### NEW SECTION

**WAC 246-215-04920 Storing—Equipment, utensils, linens, and single-service and single-use articles (2009 FDA Food Code 4-903.11).** (1) Except as specified in subsection (4) of this section, cleaned EQUIPMENT, UTENSILS, laundered LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES must be stored:

- (a) In a clean, dry location;
  - (b) Where they are not exposed to splash, dust, or other contamination; and
  - (c) At least six inches (15 cm) above the floor.
- (2) Clean EQUIPMENT and UTENSILS must be stored as specified under subsection (1) of this section and must be stored:

- (a) In a self-draining position that allows air drying; and
  - (b) Covered or inverted.
- (3) SINGLE-SERVICE and SINGLE-USE ARTICLES must be stored as specified under subsection (1) of this section and must be kept in the original protective package or stored by using other means that afford protection from contamination until used.

(4) Items that are kept in closed packages may be stored less than six inches (15 cm) above the floor on dollies, pal-

lets, racks, and skids that are designed as specified under WAC 246-215-04268.

#### NEW SECTION

**WAC 246-215-04925 Storing—Prohibitions (2009 FDA Food Code 4-903.12).** (1) Except as specified in subsection (2) of this section, cleaned and SANITIZED EQUIPMENT, UTENSILS, laundered LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES may not be stored:

- (a) In locker rooms;
- (b) In toilet rooms;
- (c) In garbage rooms;
- (d) In mechanical rooms;
- (e) Under sewer lines that are not shielded to intercept potential drips;
- (f) Under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;

- (g) Under open stairwells; or
- (h) Under other sources of contamination.

(2) Laundered LINENS and SINGLE-SERVICE and SINGLE-USE ARTICLES that are PACKAGED or in a facility such as a cabinet may be stored in a locker room.

#### NEW SECTION

**WAC 246-215-04930 Preventing contamination—Kitchenware and tableware (2009 FDA Food Code 4-904.11).** (1) SINGLE-SERVICE and SINGLE-USE ARTICLES and cleaned and SANITIZED UTENSILS must be handled, displayed, and dispensed so that contamination of FOOD- and lip-contact surfaces is prevented.

(2) Knives, forks and spoons that are not prewrapped must be presented so that only the handles are touched by EMPLOYEES and by CONSUMERS if CONSUMER self-service is provided.

(3) Except as specified under subsection (2) of this section, SINGLE-SERVICE ARTICLES that are intended for FOOD- or lip-contact must be furnished for CONSUMER self-service with the original individual wrapper intact or from an APPROVED dispenser.

#### NEW SECTION

**WAC 246-215-04935 Preventing contamination—Soiled and clean tableware (2009 FDA Food Code 4-904.12).** Soiled TABLEWARE must be removed from CONSUMER eating and drinking areas and handled so that clean TABLEWARE is not contaminated.

#### NEW SECTION

**WAC 246-215-04940 Preventing contamination—Preset tableware (2009 FDA Food Code 4-904.13).** (1) Except as specified in subsection (2) of this section, TABLEWARE that is preset must be protected from contamination by being wrapped, covered, or inverted;

(2) Preset TABLEWARE may be exposed if:

- (a) Unused settings are removed when a CONSUMER is seated; or

(b) Settings not removed when a CONSUMER is seated are cleaned and SANITIZED before further use.

#### NEW SECTION

**WAC 246-215-04945 Preventing contamination—Rinsing equipment and utensils after cleaning and sanitizing (2009 FDA Food Code 4-904.14).** After being cleaned and SANITIZED, EQUIPMENT and UTENSILS may not be rinsed before air drying or use unless:

(1) The rinse is applied directly from a potable water supply by a WAREWASHING machine that is maintained and operated as specified under WAC 246-215-04226 through 246-215-04270 and 246-215-04500 through 246-215-04575; and

(2) The rinse is applied only after the EQUIPMENT and UTENSILS have been SANITIZED by the application of hot water or by the application of a chemical SANITIZER solution whose EPA-registered label use instructions call for rinsing off the SANITIZER after it is applied in a commercial WAREWASHING machine.

### **PART 5: WATER, PLUMBING AND WASTE**

#### **Subpart A - Water**

#### NEW SECTION

**WAC 246-215-05100 Source—Approved system (2009 FDA Food Code 5-101.11).** DRINKING WATER must be obtained from an APPROVED source that is a PUBLIC WATER SYSTEM.

#### NEW SECTION

**WAC 246-215-05105 Source—System flushing and disinfection (2009 FDA Food Code 5-101.12).** A DRINKING WATER system must be flushed and disinfected before being placed in service after construction, repair, or modification and after an emergency situation, such as a flood, that might introduce contaminants into the system.

#### NEW SECTION

**WAC 246-215-05110 Source—Bottled drinking water (2009 FDA Food Code 5-101.13).** BOTTLED DRINKING WATER used or sold in a FOOD ESTABLISHMENT must be obtained from APPROVED sources in accordance with 21 C.F.R. 129 - Processing and Bottling of Bottled Drinking Water and chapters 246-290 and 246-291 WAC.

#### NEW SECTION

**WAC 246-215-05115 Quality—Standards (2009 FDA Food Code 5-102.11).** Water used in FOOD ESTABLISHMENTS must meet DRINKING WATER quality standards in accordance with chapters 246-290 and 246-291 WAC, except as specified under WAC 246-215-05120.

#### NEW SECTION

**WAC 246-215-05120 Quality—Nondrinking water (2009 FDA Food Code 5-102.12).** (1) A nonDRINKING WATER supply must be used only if its use is APPROVED.

(2) NonDRINKING WATER must be used only for nonculinary purposes such as air conditioning, nonFOOD EQUIPMENT cooling, fire protection and irrigation of nonFOOD landscape foliage.

#### NEW SECTION

**WAC 246-215-05125 Quality—Sampling (2009 FDA Food Code 5-102.13).** Except when used as specified under WAC 246-215-05120, water from a nonPUBLIC WATER SYSTEM must be sampled and tested at least annually and as required by state water quality regulations.

#### NEW SECTION

**WAC 246-215-05130 Quantity and availability—Sample report (2009 FDA Food Code 5-102.14).** The most recent sample report for the nonPUBLIC WATER SYSTEM must be retained on file in the FOOD ESTABLISHMENT or the report must be maintained as specified by state water quality regulations.

#### NEW SECTION

**WAC 246-215-05135 Quantity and availability—Capacity (2009 FDA Food Code 5-103.11).** (1) The water source and system must be of sufficient capacity to meet the peak water demands of the FOOD ESTABLISHMENT.

(2) Hot water generation and distribution systems must be sufficient to meet the peak hot water demands throughout the FOOD ESTABLISHMENT.

#### NEW SECTION

**WAC 246-215-05140 Distribution, delivery and retention—Pressure (2009 FDA Food Code 5-103.12).** Water under pressure must be provided to all fixtures, EQUIPMENT, and nonFOOD EQUIPMENT that are required to use water except that water supplied as specified under WAC 246-215-05150 (1) and (2) to a TEMPORARY FOOD ESTABLISHMENT or in response to a temporary interruption of a water supply need not be under pressure.

#### NEW SECTION

**WAC 246-215-05145 Distribution, delivery and retention—System (2009 FDA Food Code 5-104.11).** Water must be received from the source through the use of:

- (1) An APPROVED public water main; or
- (2) One or more of the following that must be constructed, maintained, and operated according to LAW:
  - (a) Nonpublic water main, water pumps, pipes, hoses, connections and other appurtenances;
  - (b) Water transport vehicles; and
  - (c) Water containers.

NEW SECTION

**WAC 246-215-05150 Distribution, delivery and retention—Alternate water supply (2009 FDA Food Code 5-104.12).** Water meeting the requirements specified under Part 5, Subpart A must be made available for a mobile facility, for a TEMPORARY FOOD ESTABLISHMENT, without a permanent water supply, and for a FOOD ESTABLISHMENT with a temporary interruption of its water supply through:

- (1) A supply of containers of commercially BOTTLED DRINKING WATER;
- (2) One or more closed portable water containers;
- (3) An enclosed vehicular water tank;
- (4) An on-PREMISES water storage tank; or
- (5) Piping, tubing, or hoses connected to an adjacent APPROVED source.

**Subpart B - Plumbing System**NEW SECTION

**WAC 246-215-05200 Materials—Approved (2009 FDA Food Code 5-201.11).** (1) A PLUMBING SYSTEM and hoses conveying water must be constructed and repaired with APPROVED materials according to LAW.

- (2) A water filter must be made of SAFE MATERIALS.

NEW SECTION

**WAC 246-215-05205 Design, construction and installation—Approved system and cleanable fixtures (2009 FDA Food Code 5-202.11).** (1) A PLUMBING SYSTEM must be designed, constructed, and installed according to LAW.

- (2) A PLUMBING FIXTURE such as a handwashing sink, toilet or urinal must be EASILY CLEANABLE.

NEW SECTION

**WAC 246-215-05210 Design, construction and installation—Handwashing facility, installation (2009 FDA Food Code 5-202.12).** (1) A HANDWASHING SINK must be equipped to provide water at a temperature of at least 100°F (38°C) through a mixing valve or combination faucet.

- (2) A steam mixing valve may not be used at a handwashing sink.
- (3) A self-closing, slow closing or metering faucet must provide a flow of water for at least fifteen seconds without the need to reactivate the faucet.
- (4) An automatic handwashing facility must be installed in accordance with manufacturer's instructions.
- (5) HANDWASHING SINKS in FOOD ESTABLISHMENTS must be adequately sized to allow a FOOD EMPLOYEE to wash both hands simultaneously.

(6) FOOD EMPLOYEES offering FOOD samples, such as FOOD demonstrators, may have HANDWASHING SINKS that meet the TEMPORARY FOOD ESTABLISHMENT requirements in WAC 246-215-09225 if not handling raw MEAT, FISH or POULTRY.

NEW SECTION

**WAC 246-215-05215 Design, construction and installation—Backflow prevention, air gap (2009 FDA Food Code 5-202.13).** An air gap between the water supply inlet and the flood level rim of the PLUMBING FIXTURE, EQUIPMENT, or nonFOOD EQUIPMENT must be at least twice the diameter of the water supply inlet and may not be less than one inch (25 mm).

NEW SECTION

**WAC 246-215-05220 Design, construction and installation—Backflow prevention device, design standard (2009 FDA Food Code 5-202.14).** A backflow or backsiphonage prevention device installed on a water supply system must meet American Society of Sanitary Engineering (A.S.S.E.) standards for construction, installation, maintenance, inspection, and testing for that specific application and type of device.

NEW SECTION

**WAC 246-215-05225 Design, construction and installation—Conditioning device, design (2009 FDA Food Code 5-202.15).** A water filter, screen and other water conditioning device installed on water lines must be designed to facilitate disassembly for periodic service and cleaning. A water filter element must be of the replaceable type.

NEW SECTION

**WAC 246-215-05230 Numbers and capacities—Handwashing sinks (2009 FDA Food Code 5-203.11).** (1) Except as specified in subsection (2) of this section, at least one HANDWASHING SINK, a number of HANDWASHING SINKS necessary for their convenient use by EMPLOYEES in areas specified under WAC 246-215-05255, and not fewer than the number of HANDWASHING SINKS required by LAW must be provided.

- (2) If APPROVED and capable of removing the types of soils encountered in the FOOD operations involved, automatic handwashing facilities may be substituted for HANDWASHING SINKS in a FOOD ESTABLISHMENT that has at least one HANDWASHING SINK.

NEW SECTION

**WAC 246-215-05235 Restrooms—Toilets and urinals (2009 FDA Food Code 5-203.12).** (1) At least one toilet and not fewer than the toilets required by LAW must be provided. If authorized by LAW and urinals are substituted for toilets, the substitution must be done as specified by LAW.

- (2) The FOOD ESTABLISHMENT PERMIT HOLDER shall ensure that toilet rooms are conveniently located within 200 feet of the FOOD ESTABLISHMENT and accessible to EMPLOYEES during all hours of operation.

(3) The FOOD ESTABLISHMENT PERMIT HOLDER shall ensure that toilet rooms are conveniently located and accessible to patrons during all hours of operation if:

(a) The establishment has customer seating for on-PREMISES consumption; and

(b) The establishment was constructed or extensively remodeled after May 1, 1992.

(4) Toilet rooms in FOOD ESTABLISHMENTS may be used jointly by patrons and EMPLOYEES, provided patrons accessing the toilet rooms are excluded from FOOD preparation areas and unPACKAGED FOOD storage areas.

#### NEW SECTION

**WAC 246-215-05240 Service sink (2009 FDA Food Code 5-203.13).** (1) At least one service sink or one curbed cleaning facility equipped with a floor drain must be provided and conveniently located for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water and similar liquid waste.

(2) Toilets and urinals may not be used as a service sink for the disposal of mop water and similar liquid waste.

#### NEW SECTION

**WAC 246-215-05245 Backflow prevention device, when required (2009 FDA Food Code 5-203.14).** A PLUMBING SYSTEM must be installed to preclude backflow of a solid, liquid, or gas contaminant into the water supply system at each point of use at the FOOD ESTABLISHMENT, including on a hose bibb if a hose is attached or on a hose bibb if a hose is not attached and backflow prevention is required by LAW, by:

(1) Providing an air gap as specified under WAC 246-215-05215; or

(2) Installing an APPROVED backflow prevention device as specified under WAC 246-215-05220.

#### NEW SECTION

**WAC 246-215-05250 Backflow prevention carbonator.** Backflow prevention systems for carbonators must be installed as specified under WAC 51-56-0600, Chapter 6—Water supply and distribution.

#### NEW SECTION

**WAC 246-215-05255 Location and placement of handwashing sinks (2009 FDA Food Code 5-204.11).** A HANDWASHING SINK must be located:

- (1) To allow convenient use by EMPLOYEES;
- (2) Within 25 feet of FOOD preparation, FOOD dispensing, and WAREWASHING areas; and
- (3) In, or immediately adjacent to, toilet rooms.

#### NEW SECTION

**WAC 246-215-05260 Location and placement of backflow prevention device (2009 FDA Food Code 5-204.12).** A backflow prevention device must be located so that it can be serviced and maintained.

#### NEW SECTION

**WAC 246-215-05265 Location and placement of conditioning device (2009 FDA Food Code 5-204.13).** A water filter, screen, and other water conditioning device installed on water lines must be located to facilitate disassembly for periodic servicing and cleaning.

#### NEW SECTION

**WAC 246-215-05270 Operation and maintenance—Using a handwashing sink (2009 FDA Food Code 5-205.11).** (1) A HANDWASHING SINK must be maintained so that it is accessible at all times for EMPLOYEE use.

(2) A HANDWASHING SINK may not be used for purposes other than handwashing.

(3) An automatic handwashing facility must be used in accordance with manufacturer's instructions.

#### NEW SECTION

**WAC 246-215-05275 Operation and maintenance—Prohibiting a cross connection (2009 FDA Food Code 5-205.12).** (1) A PERSON may not create a cross connection by connecting a pipe or conduit between the DRINKING WATER system and a nonDRINKING WATER system or a water system of unknown quality.

(2) The piping of a nonDRINKING WATER system must be durably identified so that it is readily distinguishable from piping that carries DRINKING WATER.

#### NEW SECTION

**WAC 246-215-05280 Operation and maintenance—Scheduling inspection and service for water system device (2009 FDA Food Code 5-205.13).** A device such as a water treatment device or backflow preventer must be scheduled for inspection and service, in accordance with manufacturer's instructions and as necessary to prevent device failure based on local water conditions, and records demonstrating inspection and service must be maintained by the PERSON IN CHARGE.

#### NEW SECTION

**WAC 246-215-05285 Operation and maintenance—Water reservoir of fogging devices, cleaning (2009 FDA Food Code 5-205.14).** (1) A reservoir that is used to supply water to a device such as a produce fogger must be:

- (a) Maintained in accordance with manufacturer's specifications; and
- (b) Cleaned in accordance with manufacturer's specifications or according to the procedures specified under subsection (2) of this section, whichever is more stringent.

(2) Cleaning procedures must include at least the following steps and must be conducted at least once a week:

- (a) Draining and complete disassembly of the water and aerosol contact parts;
- (b) Brush cleaning the reservoir, aerosol tubing, and discharge nozzles with a suitable detergent solution;

(c) Flushing the complete system with water to remove the detergent solution and particulate accumulation; and

(d) Rinsing by immersing, spraying, or swabbing the reservoir, aerosol tubing, and discharge nozzles with at least 50 MG/L hypochlorite solution.

#### NEW SECTION

**WAC 246-215-05290 Operation and maintenance—System maintained in good repair (2009 FDA Food Code 5-205.15).** A PLUMBING SYSTEM must be:

- (1) Repaired according to LAW; and
- (2) Maintained in good repair.

#### **Subpart C - Mobile Water Tank and Mobile Food Establishment Water Tank**

#### NEW SECTION

**WAC 246-215-05300 Materials—Approved (2009 FDA Food Code 5-301.11).** Materials that are used in the construction of a mobile water tank, MOBILE FOOD UNIT water tank, and appurtenances must be:

- (1) Safe;
- (2) Durable, CORROSION-RESISTANT and nonabsorbent; and
- (3) Finished to have a SMOOTH, EASILY CLEANABLE surface.

#### NEW SECTION

**WAC 246-215-05305 Design and construction—Enclosed system, sloped to drain (2009 FDA Food Code 5-302.11).** A mobile water tank must be:

- (1) Enclosed from the filling inlet to the discharge outlet; and
- (2) Sloped to an outlet that allows complete drainage of the tank.

#### NEW SECTION

**WAC 246-215-05310 Design and construction—Inspection and cleaning port, protected and secured (2009 FDA Food Code 5-302.12).** If a water tank is designed with an access port for inspection and cleaning, the opening must be in the top of the tank and:

- (1) Flanged upward at least one-half inch (13 mm); and
- (2) Equipped with a port cover assembly that is:
  - (a) Provided with a gasket and a device for securing the cover in place; and
  - (b) Flanged to overlap the opening and sloped to drain.

#### NEW SECTION

**WAC 246-215-05315 Design and construction—"V" type threads, use limitation (2009 FDA Food Code 5-302.13).** A fitting with "V" type threads on a water tank or inlet or outlet must be allowed only when a hose is permanently attached.

#### NEW SECTION

**WAC 246-215-05320 Design and construction—Tank vent, protected (2009 FDA Food Code 5-302.14).** If provided, a water tank vent must terminate in a downward direction and must be covered with:

- (1) 16 mesh to one inch (16 mesh to 25.4 mm) screen or equivalent when the vent is in a protected area; or
- (2) A protective filter when the vent is in an area that is not protected from windblown dirt and debris.

#### NEW SECTION

**WAC 246-215-05325 Design and construction—Inlet and outlet, sloped to drain (2009 FDA Food Code 5-302.15).** (1) A water tank and its inlet and outlet must be sloped to drain.

(2) A water tank inlet must be positioned so that it is protected from contaminants such as waste discharge, road dust, oil or grease.

#### NEW SECTION

**WAC 246-215-05330 Design and construction—Hose, construction and identification (2009 FDA Food Code 5-302.16).** A hose used for conveying DRINKING WATER from a water tank must be:

- (1) Safe;
- (2) Durable, CORROSION-RESISTANT, and nonabsorbent;
- (3) Resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition;
- (4) Finished with a smooth interior surface; and
- (5) Clearly and durably identified as to its use if not permanently attached.

#### NEW SECTION

**WAC 246-215-05335 Numbers and capacities—Filter, compressed air (2009 FDA Food Code 5-303.11).** A filter that does not pass oil or oil vapors must be installed in the air supply line between the compressor and DRINKING WATER system when compressed air is used to pressurize the water tank system.

#### NEW SECTION

**WAC 246-215-05340 Numbers and capacities—Protective cover or device (2009 FDA Food Code 5-303.12).** A cap and keeper chain, closed cabinet, closed storage tube, or other APPROVED protective cover or device must be provided for a water inlet, outlet and hose.

#### NEW SECTION

**WAC 246-215-05345 Numbers and capacities—Mobile food unit tank inlet (2009 FDA Food Code 5-303.13).** A MOBILE FOOD UNIT water tank inlet must be:

- (1) Three-fourths inch (19.1 mm) in inner diameter or less; and
- (2) Provided with a hose connection of a size or type that prevents its use for any other service.

NEW SECTION

**WAC 246-215-05350 Operation and maintenance—System flushing and sanitation (2009 FDA Food Code 5-304.11).** A water tank, pump, and hoses must be flushed and SANITIZED before being placed in service after construction, repair, modification, and periods of nonuse.

NEW SECTION

**WAC 246-215-05355 Operation and maintenance—Using a pump and hoses, backflow prevention (2009 FDA Food Code 5-304.12).** A PERSON shall operate a water tank, pump, and hoses so that backflow and other contamination of the water supply are prevented.

NEW SECTION

**WAC 246-215-05360 Operation and maintenance—Protecting inlet, outlet, and hose fitting (2009 FDA Food Code 5-304.13).** If not in use, a water tank and hose inlet and outlet fitting must be protected using a cover or device as specified under WAC 246-215-05340.

NEW SECTION

**WAC 246-215-05365 Operation and maintenance—Tank, pump, and hoses, dedication (2009 FDA Food Code 5-304.14).** (1) Except as specified in subsection (2) of this section, a water tank, pump, and hoses used for conveying DRINKING WATER must be used for no other purpose.

(2) Water tanks, pumps, and hoses APPROVED for liquid FOODS may be used for conveying DRINKING WATER if they are cleaned and SANITIZED before they are used to convey water.

**Subpart D - Sewage, Other Liquid Waste, and Rainwater**NEW SECTION

**WAC 246-215-05400 Mobile holding tank—Capacity and drainage (2009 FDA Food Code 5-401.11).** A SEWAGE holding tank in a MOBILE FOOD UNIT must be:

(1) Sized fifteen percent larger in capacity than the water supply tank; and

(2) Sloped to a drain that is one inch (25 mm) in inner diameter or greater, equipped with a shutoff valve.

NEW SECTION

**WAC 246-215-05405 Retention, drainage, and delivery design, construction, and installation—Establishment drainage system (2009 FDA Food Code 5-402.10).** FOOD ESTABLISHMENT drainage systems, including grease traps, that convey SEWAGE must be designed and installed as specified under WAC 246-215-05205(1).

NEW SECTION

**WAC 246-215-05410 Retention, drainage, and delivery design, construction, and installation—Backflow prevention (2009 FDA Food Code 5-402.11).** (1) Except as

specified in subsections (2), (3), and (4) of this section, a direct connection may not exist between the SEWAGE system and a drain originating from EQUIPMENT in which FOOD, portable EQUIPMENT, or UTENSILS are placed.

(2) Subsection (1) of this section does not apply to floor drains that originate in refrigerated spaces that are constructed as an integral part of the building.

(3) If allowed by LAW, a WAREWASHING machine may have a direct connection between its waste outlet and a floor drain when the machine is located within five feet (1.5 mm) of a trapped floor drain and the machine outlet is connected to the inlet side of a properly vented floor drain trap.

(4) If allowed by LAW, a WAREWASHING sink may have a direct connection.

NEW SECTION

**WAC 246-215-05415 Retention, drainage, and delivery location and placement—Grease trap (2009 FDA Food Code 5-402.12).** If used, a grease trap must be located to be easily accessible for cleaning.

NEW SECTION

**WAC 246-215-05420 Retention, drainage, and delivery operation and maintenance—Conveying sewage (2009 FDA Food Code 5-402.13).** SEWAGE must be conveyed to the point of disposal through an APPROVED sanitary SEWAGE system, on-site SEWAGE system, or other system, including use of SEWAGE transport vehicles, waste retention tanks, pumps, pipes, hoses, and connections that are constructed, installed, maintained, and operated according to LAW.

NEW SECTION

**WAC 246-215-05425 Retention, drainage, and delivery operation and maintenance—Removing mobile food unit wastes (2009 FDA Food Code 5-402.14).** SEWAGE and other liquid wastes must be removed from a MOBILE FOOD UNIT at an APPROVED waste SERVICING area or by a SEWAGE transport vehicle in such a way that a public health HAZARD or nuisance is not created.

NEW SECTION

**WAC 246-215-05430 Retention, drainage, and delivery operation and maintenance—Flushing a waste retention tank (2009 FDA Food Code 5-402.15).** A tank for liquid waste retention must be thoroughly flushed and drained in a sanitary manner during the servicing operation.

NEW SECTION

**WAC 246-215-05435 Disposal facility design and construction—Approved sewage disposal system (2009 FDA Food Code 5-403.11).** SEWAGE must be disposed through an APPROVED facility or system that is:

(1) A public SEWAGE treatment plant; or

(2) A SEWAGE disposal system that is sized, constructed, maintained and operated according to LAW.

NEW SECTION

**WAC 246-215-05440 Disposal facility design and construction—Other liquid wastes and rainwater (2009 FDA Food Code 5-403.12).** Condensate drainage and other liquids and rainwater that are not SEWAGE must be drained from point of discharge to disposal according to LAW.

**Subpart E - Refuse, Recyclables, and Returnables**NEW SECTION

**WAC 246-215-05500 Facilities on the premises, materials, design, construction and installation—Indoor storage area (2009 FDA Food Code 5-501.10).** If located within the FOOD ESTABLISHMENT, a storage area for REFUSE, recyclables and returnables must meet the requirements specified under WAC 246-215-06100, 246-215-06200, 246-215-06235, 246-215-06260, and 246-215-06265.

NEW SECTION

**WAC 246-215-05505 Facilities on the premises, materials, design, construction and installation—Outdoor storage surface (2009 FDA Food Code 5-501.11).** An outdoor storage surface for REFUSE, recyclables, and returnables must be constructed of nonabsorbent material such as concrete or asphalt and must be SMOOTH, durable and sloped to drain.

NEW SECTION

**WAC 246-215-05510 Facilities on the premises, materials, design, construction and installation—Outdoor enclosure (2009 FDA Food Code 5-501.12).** If used, an outdoor enclosure for REFUSE, recyclables, and returnables must be constructed of durable and cleanable materials.

NEW SECTION

**WAC 246-215-05515 Facilities on the premises, materials, design, construction and installation—Receptacles (2009 FDA Food Code 5-501.13).** (1) Except as specified in subsection (2) of this section, receptacles and waste handling units for REFUSE, recyclables, and returnables and for use with materials containing FOOD residue must be durable, cleanable, insect- and rodent-resistant, leakproof, and nonabsorbent.

(2) Plastic bags and wet strength paper bags may be used to line receptacles for storage inside the FOOD ESTABLISHMENT, or within closed outside receptacles.

NEW SECTION

**WAC 246-215-05520 Facilities on the premises, materials, design, construction and installation—Receptacles in vending machines (2009 FDA Food Code 5-501.14).** A REFUSE receptacle may not be located within a VENDING MACHINE, except that a receptacle for BEVERAGE bottle crown closures may be located within a VENDING MACHINE.

NEW SECTION

**WAC 246-215-05525 Facilities on the premises, materials, design, construction and installation—Outside receptacles (2009 FDA Food Code 5-501.15).** (1) Receptacles and waste handling units for REFUSE, recyclables, and returnables used with materials containing FOOD residue and used outside the FOOD ESTABLISHMENT must be designed and constructed to have tight fitting lids, doors, or covers.

(2) Receptacles and waste handling units for REFUSE and recyclables such as an on-site compactor must be installed so that accumulation of debris and insect and other rodent attraction and harborage are minimized and effective cleaning is facilitated around, and if the unit is not installed flush with the base pad, under the unit.

NEW SECTION

**WAC 246-215-05530 Facilities on the premises, numbers and capacities—Storage areas, rooms, and receptacles, capacity and availability (2009 FDA Food Code 5-501.16).** (1) An inside storage room and area and outside storage area and enclosure, and receptacles must be of sufficient capacity to hold REFUSE, recyclables, and returnables that accumulate.

(2) A receptacle must be provided in each area of the FOOD ESTABLISHMENT or PREMISES where REFUSE is generated or commonly discarded, or where recyclables or returnables are placed.

(3) If disposable towels are used at HANDWASHING SINKS, a waste receptacle must be located at each HANDWASHING SINK or group of adjacent HANDWASHING SINKS.

NEW SECTION

**WAC 246-215-05535 Facilities on the premises, numbers and capacities—Toilet room receptacle, covered (2009 FDA Food Code 5-501.17).** A toilet room used by females must be provided with a covered receptacle for sanitary napkins.

NEW SECTION

**WAC 246-215-05540 Facilities on the premises, numbers and capacities—Cleaning implements and supplies (2009 FDA Food Code 5-501.18).** (1) Except as specified in subsection (2) of this section, suitable cleaning implements and supplies such as high pressure pumps, hot water, steam, and detergent must be provided as necessary for effective cleaning of receptacles and waste handling units for REFUSE, recyclables, and returnables.

(2) If APPROVED, off-PREMISES-based cleaning services may be used if on-PREMISES cleaning implements and supplies are not provided.

NEW SECTION

**WAC 246-215-05545 Facilities on the premises, location and placement—Storage areas, redeeming machines, receptacles and waste handling units, location (2009 FDA Food Code 5-501.19).** (1) An area designated for REFUSE,

recyclables, returnables, and, except as specified in subsection (2) of this section, a redeeming machine for recyclables or returnables must be located so that it is separate from FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES and a public health HAZARD or nuisance is not created.

(2) A redeeming machine may be located in the PACKAGED FOOD storage area or CONSUMER area of a FOOD ESTABLISHMENT if FOOD, EQUIPMENT, UTENSILS, LINENS and SINGLE-SERVICE and SINGLE-USE ARTICLES are not subject to contamination from the machines and a public health HAZARD or nuisance is not created.

(3) The location of receptacles and waste handling units for REFUSE, recyclables, and returnables may not create a public health HAZARD or nuisance or interfere with the cleaning of adjacent space.

#### NEW SECTION

**WAC 246-215-05550 Facilities on the premises, operation and maintenance—Storing refuse, recyclables, and returnables (2009 FDA Food Code 5-501.110).** REFUSE, recyclables and returnables must be stored in receptacles or waste handling units so that they are inaccessible to insects and rodents.

#### NEW SECTION

**WAC 246-215-05555 Facilities on the premises, operation and maintenance—Areas, enclosures, and receptacles, good repair (2009 FDA Food Code 5-501.111).** Storage areas, enclosures, and receptacles for REFUSE, recyclables, and returnables must be maintained in good repair.

#### NEW SECTION

**WAC 246-215-05560 Facilities on the premises, operation and maintenance—Outside storage prohibitions (2009 FDA Food Code 5-501.112).** (1) Except as specified in subsection (2) of this section, REFUSE receptacles not meeting the requirements specified under WAC 246-215-05515(1) such as receptacles that are not rodent-resistant, unprotected plastic bags and paper bags, or baled units that contain materials with FOOD residue may not be stored outside.

(2) Cardboard or other packaging material that does not contain FOOD residues and that is awaiting regularly scheduled delivery to a recycling or disposal site may be stored outside without being in a covered receptacle if it is stored so that it does not create a rodent harborage problem.

#### NEW SECTION

**WAC 246-215-05565 Facilities on the premises, operation and maintenance—Covering receptacles (2009 FDA Food Code 5-501.113).** Receptacles and waste handling units for REFUSE, recyclables, and returnables must be kept covered:

(1) Inside the FOOD ESTABLISHMENT if the receptacles and units:

- (a) Contain FOOD residue and are not in continuous use; or
- (b) After they are filled; and
- (2) With tight fitting lids or doors if kept outside the FOOD ESTABLISHMENT.

#### NEW SECTION

**WAC 246-215-05570 Facilities on the premises, operation and maintenance—Using drain plugs (2009 FDA Food Code 5-501.114).** Drains in receptacles and waste handling units for REFUSE, recyclables, and returnables must have drain plugs in place.

#### NEW SECTION

**WAC 246-215-05575 Facilities on the premises, operation and maintenance—Maintaining refuse areas and enclosures (2009 FDA Food Code 5-501.115).** A storage area and enclosure for REFUSE, recyclables, and returnables must be maintained free of unnecessary items, as specified under WAC 246-215-06565, and clean.

#### NEW SECTION

**WAC 246-215-05580 Facilities on the premises, operation and maintenance—Cleaning receptacles (2009 FDA Food Code 5-501.116).** (1) Receptacles and waste handling units for REFUSE, recyclables, and returnables must be thoroughly cleaned in a way that does not contaminate FOOD, EQUIPMENT, UTENSILS, LINENS, or SINGLE-SERVICE and SINGLE-USE ARTICLES, and waste water must be disposed of as specified under WAC 246-215-05420.

(2) Soiled receptacles and waste handling units for REFUSE, recyclables, and returnables must be cleaned at a frequency necessary to prevent them from developing a buildup of soil or becoming attractants for insects and rodents.

#### NEW SECTION

**WAC 246-215-05585 Removal—Frequency (2009 FDA Food Code 5-502.11).** REFUSE, recyclables, and returnables must be removed from the PREMISES at a frequency that minimizes the development of objectionable odors and other conditions that attract or harbor insects and rodents.

#### NEW SECTION

**WAC 246-215-05590 Removal—Receptacles or vehicles (2009 FDA Food Code 5-502.12).** REFUSE, recyclables, and returnables must be removed from the PREMISES by way of:

- (1) Portable receptacles that are constructed and maintained according to LAW; or
- (2) A transport vehicle that is constructed, maintained, and operated according to LAW.

#### NEW SECTION

**WAC 246-215-05595 Facilities for disposal and recycling—Community or individual facility (2009 FDA Food**

**Code 5-503.11).** Solid waste not disposed of through the SEWAGE system such as through grinders and pulpers must be recycled or disposed of in an APPROVED public or private community recycling or REFUSE facility; or solid waste must be disposed of in an individual REFUSE facility such as a land-fill or incinerator which is sized, constructed, maintained, and operated according to LAW.

## PART 6: PHYSICAL FACILITIES

### Subpart A - Materials for Construction and Repair

#### NEW SECTION

**WAC 246-215-06100 Indoor areas—Surface characteristics (2009 FDA Food Code 6-101.11).** (1) Except as specified in subsection (2) of this section, materials for indoor floor, wall, and ceiling surfaces under conditions of normal use must be:

(a) SMOOTH, durable, and EASILY CLEANABLE for areas where FOOD ESTABLISHMENT operations are conducted;

(b) Closely woven and EASILY CLEANABLE carpet for carpeted areas; and

(c) Nonabsorbent for areas subject to moisture such as FOOD preparation areas, walk-in refrigerators, WAREWASHING areas, toilet rooms, MOBILE FOOD UNIT SERVICING AREAS, and areas subject to flushing or spray cleaning methods.

(2) In a TEMPORARY FOOD ESTABLISHMENT:

(a) If graded to drain, a floor may be concrete, machine laid asphalt, or dirt or gravel if it is covered with mats, removable platforms, duckboards, or other APPROVED materials that are effectively treated to control dust and mud.

(b) Walls and ceilings must be constructed from a material that protects the interior from the weather and windblown dust and debris.

#### NEW SECTION

**WAC 246-215-06105 Outdoor areas—Surface characteristics (2009 FDA Food Code 6-102.11).** (1) The outdoor walking and driving areas must be surfaced with concrete, asphalt or gravel or other materials that have been effectively treated to minimize dust, facilitate maintenance, and prevent muddy conditions.

(2) Exterior surfaces of buildings and MOBILE FOOD UNIT must be of weather-resistant materials and must comply with LAW.

(3) Outdoor storage areas for REFUSE, recyclables, or returnables must be of materials specified under WAC 246-215-05505 and 246-215-05510.

### Subpart B - Design, Construction and Installation

#### NEW SECTION

**WAC 246-215-06200 Cleanability—Floors, walls and ceilings (2009 FDA Food Code 6-201.11).** Except as specified under WAC 246-215-06215 and except for antislip floor coverings or applications that may be used for safety reasons, floors, floor coverings, walls, wall coverings and

ceilings must be designed, constructed, and installed so they are SMOOTH and EASILY CLEANABLE.

#### NEW SECTION

**WAC 246-215-06205 Cleanability—Floors, walls, and ceilings, utility lines (2009 FDA Food Code 6-201.12).**

(1) Utility service lines and pipes may not be unnecessarily exposed.

(2) Exposed utility service lines and pipes must be installed so they do not obstruct or prevent cleaning of the floors, walls or ceilings.

(3) Exposed horizontal utility service lines and pipes may not be installed on the floor.

#### NEW SECTION

**WAC 246-215-06210 Cleanability—Floor and wall junctures, covered and enclosed or sealed (2009 FDA Food Code 6-201.13).**

(1) In FOOD ESTABLISHMENTS in which cleaning methods other than water flushing are used for cleaning floors, the floor and wall junctures must be coved and closed to no larger than one thirty-second inch (1 mm).

(2) The floors in FOOD ESTABLISHMENTS in which water flush cleaning methods are used must be provided with drains and be graded to drain, and the floor and wall junctures must be coved and SEALED.

#### NEW SECTION

**WAC 246-215-06215 Cleanability—Floor carpeting, restriction and installation (2009 FDA Food Code 6-201.14).**

(1) A floor covering such as carpeting or similar material may not be installed as a floor covering in FOOD preparation areas, walk-in refrigerators, WAREWASHING areas, toilet room areas where HANDWASHING SINKS, toilets and urinals are located, REFUSE storage rooms, or other areas where the floor is subject to moisture, flushing or spray cleaning methods.

(2) If carpeting is installed as a floor covering in areas other than those specified under subsection (1) of this section, it must be:

(a) Securely attached to the floor with a durable mastic, by using a stretch and tack method, or by another method; and

(b) Installed tightly against the wall under the coving or installed away from the wall with a space between the carpet and the wall and with the edges of the carpet secured by metal stripping or some other means.

#### NEW SECTION

**WAC 246-215-06220 Cleanability—Floor covering, mats and duckboards (2009 FDA Food Code 6-201.15).**

Mats and duckboards must be designed to be removable and EASILY CLEANABLE.

NEW SECTION**WAC 246-215-06225 Cleanability—Wall and ceiling coverings and coatings (2009 FDA Food Code 6-201.16).**

(1) Wall and ceiling covering materials must be attached so that they are EASILY CLEANABLE.

(2) Except in areas used only for DRY STORAGE, concrete, porous blocks, or bricks used for indoor wall construction must be finished and SEALED to provide a SMOOTH, non-absorbent, EASILY CLEANABLE surface.

NEW SECTION**WAC 246-215-06230 Cleanability—Walls and ceilings, attachments (2009 FDA Food Code 6-201.17).**

(1) Except as specified in subsection (2) of this section, attachments to walls and ceilings such as light fixtures, mechanical room ventilation system components, vent covers, wall mounted fans, decorative items, and other attachments must be EASILY CLEANABLE.

(2) In a CONSUMER area, wall and ceiling surfaces and decorative items and attachments that are provided for ambience need not meet this requirement if they are kept clean.

NEW SECTION

**WAC 246-215-06235 Cleanability—Walls and ceilings, studs, joists, and rafters (2009 FDA Food Code 6-201.18).** Except for TEMPORARY FOOD ESTABLISHMENTS, studs, joists, and rafters may not be exposed in areas subject to moisture.

NEW SECTION

**WAC 246-215-06240 Functionality—Light bulbs, protective shielding (2009 FDA Food Code 6-202.11).** (1) Except as specified in subsection (2) of this section, light bulbs must be shielded, coated, or otherwise shatter-resistant in areas where there is exposed FOOD, clean EQUIPMENT, UTENSILS, and LINENS, or unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES.

(2) Shielded, coated, or otherwise shatter-resistant bulbs need not be used in areas used only for storing FOOD in unopened packages if:

(a) The integrity of the packages cannot be affected by broken glass falling into them; and

(b) The packages are capable of being cleaned of debris from broken bulbs before the packages are opened.

(3) An infrared or other heat lamp must be protected against breakage by a shield surrounding and extending beyond the bulb so that only the face of the bulb is exposed.

NEW SECTION

**WAC 246-215-06245 Functionality—Heating, ventilating, air conditioning system vents (2009 FDA Food Code 6-202.12).** Heating, ventilating, and air conditioning systems must be designed and installed so that make-up air intake and exhaust vents do not cause contamination of FOOD, FOOD-CONTACT SURFACES, EQUIPMENT, or UTENSILS.

NEW SECTION**WAC 246-215-06250 Functionality—Insect control devices, design and installation (2009 FDA Food Code 6-202.13).**

(1) Insect control devices that are used to electrocute or stun flying insects must be designed to retain the insect within the device.

(2) Insect control devices must be installed so that:

(a) The devices are not located over a FOOD preparation area; and

(b) Dead insects and insect fragments are prevented from being impelled onto or falling on exposed FOOD, clean EQUIPMENT, UTENSILS, and LINENS, and unwrapped SINGLE-SERVICE or SINGLE-USE ARTICLES.

NEW SECTION**WAC 246-215-06255 Functionality—Toilet rooms, enclosed (2009 FDA Food Code 6-202.14).**

Except where a toilet room is located outside a FOOD ESTABLISHMENT and does not open directly into the FOOD ESTABLISHMENT such as a toilet room that is provided by the management of a shopping mall, a toilet room located on the PREMISES must be completely enclosed and provided with a tight-fitting and self-closing door.

NEW SECTION**WAC 246-215-06260 Functionality—Outer openings, protected (2009 FDA Food Code 6-202.15).**

(1) Except as specified in subsections (2) through (5) of this section, outer openings of a FOOD ESTABLISHMENT must be protected against the entry of insects and rodents by:

(a) Filling or closing holes and other gaps along floors, walls, and ceilings;

(b) Closed, tight-fitting windows; and

(c) Solid, self-closing, tight-fitting doors.

(2) Subsection (1) of this section does not apply if a FOOD ESTABLISHMENT opens into a larger structure, such as a mall, airport or office building, or into an attached structure such as a porch, and the outer openings from the larger or attached structure are protected against the entry of insects and rodents.

(3) Exterior doors used as exits need not be self-closing if they are:

(a) Solid and tight-fitting;

(b) Designated for use only when an emergency exists, by the fire protection authority that has jurisdiction over the FOOD ESTABLISHMENT; and

(c) Limited-use so they are not used for entrance or exit from the building for purposes other than the designated emergency exit use.

(4) Except as specified in subsections (2) and (5) of this section, if the windows or doors of a FOOD ESTABLISHMENT, or of a larger structure within which a FOOD ESTABLISHMENT is located, are kept open for ventilation or other purposes or a TEMPORARY FOOD ESTABLISHMENT is not provided with windows and doors as specified under subsection (1) of this section, the openings must be protected against entry of insects and rodents by:

(a) 16 mesh to one inch (16 mesh to 25.4 mm) screens;

(b) Properly designed and installed air curtains to control flying insects; or

(c) Other effective means.

(5) Subsection (4) of this section does not apply if flying insects and other pests are absent due to the location of the establishment, the weather, or other limiting condition.

#### NEW SECTION

**WAC 246-215-06265 Functionality—Exterior walls and roofs, protective barrier (2009 FDA Food Code 6-202.16).** Perimeter walls and roofs of a FOOD ESTABLISHMENT must effectively protect the establishment from the weather and entry of insects, rodents, and other animals.

#### NEW SECTION

**WAC 246-215-06270 Functionality—Outdoor food vending areas, overhead protection (2009 FDA Food Code 6-202.17).** Except for machines that vend canned BEVERAGES, if located outside, a machine used to vend FOOD must be provided with overhead protection.

#### NEW SECTION

**WAC 246-215-06275 Functionality—Outdoor servicing areas, overhead protection (2009 FDA Food Code 6-202.18).** Except for areas used only for the loading of water or the discharge of SEWAGE and other liquid waste, through the use of a closed system of hoses, SERVICING AREAS must be provided with overhead protection.

#### NEW SECTION

**WAC 246-215-06280 Functionality—Outdoor walking and driving surfaces, graded to drain (2009 FDA Food Code 6-202.19).** Exterior walking and driving services must be graded to drain.

#### NEW SECTION

**WAC 246-215-06285 Functionality—Outdoor refuse areas (2009 FDA Food Code 6-202.110).** Outdoor REFUSE areas must be constructed in accordance with LAW.

#### NEW SECTION

**WAC 246-215-06290 Functionality—Private homes and living or sleeping quarters, use prohibition (2009 FDA Food Code 6-202.111).** A private home, a room used as living or sleeping quarters, or an area directly opening into a room used as living or sleeping quarters may not be used for conducting FOOD ESTABLISHMENT operations.

#### NEW SECTION

**WAC 246-215-06295 Functionality—Living or sleeping quarters, separation (2009 FDA Food Code 6-202.112).** Living or sleeping quarters located on the PREMISES of a FOOD ESTABLISHMENT such as those provided for lodging registration clerks or resident managers must be sep-

arated from rooms and areas used for FOOD ESTABLISHMENT operations by complete partitioning and solid self-closing doors.

### **Subpart C - Numbers and Capacities**

#### NEW SECTION

**WAC 246-215-06300 Handwashing facilities—Minimum number (2009 FDA Food Code 6-301.10).** Handwashing facilities must be provided as specified under WAC 246-215-05230.

#### NEW SECTION

**WAC 246-215-06305 Handwashing facilities—Handwashing cleanser, availability (2009 FDA Food Code 6-301.11).** Each HANDWASHING SINK or group of two adjacent HANDWASHING SINKS must be provided with a supply of hand cleaning liquid, powder, or bar soap.

#### NEW SECTION

**WAC 246-215-06310 Handwashing facilities—Hand-drying provision (2009 FDA Food Code 6-301.12).** Each HANDWASHING SINK or group of adjacent HANDWASHING SINKS must be provided with:

- (1) Individual, disposable towels;
- (2) A continuous towel system that supplies the user with a clean towel;
- (3) A heated-air hand-drying device; or
- (4) A hand-drying device that employs and air-knife system that delivers high velocity, pressurized air at ambient temperatures.

#### NEW SECTION

**WAC 246-215-06315 Handwashing facilities—Handwashing aids and devices, use restriction (2009 FDA Food Code 6-301.13).** A sink used for FOOD preparation or UTENSIL washing, or a service sink or curbed cleaning facility used for the disposal of mop water or similar wastes, may not be provided with the handwashing aids and devices required for a HANDWASHING SINK as specified under WAC 246-215-06305, 246-215-06310, and 246-215-05530(3).

#### NEW SECTION

**WAC 246-215-06320 Handwashing facilities—Handwashing signage (2009 FDA Food Code 6-301.14).** A sign or poster that notifies FOOD EMPLOYEES to wash their hands must be provided at all HANDWASHING SINKS used by FOOD EMPLOYEES and must be clearly visible to FOOD EMPLOYEES.

#### NEW SECTION

**WAC 246-215-06325 Handwashing facilities—Disposable towels, waste receptacle (2009 FDA Food Code 6-301.20).** A HANDWASHING SINK or group of adjacent HANDWASHING SINKS that is provided with disposable towels must

be provided with a waste receptacle as specified under WAC 246-215-05530(3).

NEW SECTION

**WAC 246-215-06330 Toilets and urinals—Minimum number (2009 FDA Food Code 6-302.10).** Toilets and urinals must be provided as specified under WAC 246-215-05235.

NEW SECTION

**WAC 246-215-06335 Toilets and urinals—Toilet tissue, availability (2009 FDA Food Code 6-302.11).** A supply of toilet tissue must be available at each toilet.

NEW SECTION

**WAC 246-215-06340 Lighting—Intensity (2009 FDA Food Code 6-303.11).** The light intensity must be:

(1) At least 10 foot candles (108 lux) at a distance of 30 inches (75 cm) above the floor, in walk-in refrigeration units and dry FOOD storage areas and in other areas and rooms during periods of cleaning;

(2) At least 20 foot candles (215 lux):

(a) At a surface where FOOD is provided for CONSUMER self-service such as buffets and salad bars or where fresh produce or PACKAGED FOODS are sold or offered for consumption;

(b) Inside EQUIPMENT such as reach-in and under-counter refrigerators;

(c) At a distance of 30 inches (75 cm) above the floor in areas used for handwashing, WAREWASHING, and EQUIPMENT and UTENSIL storage, and in toilet rooms; and

(3) At least 50 foot candles (540 lux) at a surface where a FOOD EMPLOYEE is working with FOOD or working with UTENSILS or EQUIPMENT such as knives, slicers, grinders, or saws where EMPLOYEE safety is a factor.

NEW SECTION

**WAC 246-215-06345 Ventilation—Mechanical (2009 FDA Food Code 6-304.11).** If necessary to keep rooms free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke and fumes, mechanical ventilation of sufficient capacity must be provided.

NEW SECTION

**WAC 246-215-06350 Dressing areas and lockers—Designation (2009 FDA Food Code 6-305.11).** (1) Dressing rooms or dressing areas must be designed if EMPLOYEES routinely change their clothes in the establishment.

(2) Lockers or other suitable facilities must be provided for the orderly storage of EMPLOYEES' clothing and other possessions.

NEW SECTION

**WAC 246-215-06355 Service sinks—Availability (2009 FDA Food Code 6-306.10).** A service sink or curbed

cleaning facility must be provided as specified under WAC 246-215-05240.

**Subpart D - Location and Placement**

NEW SECTION

**WAC 246-215-06400 Handwashing facilities—Conveniently located (2009 FDA Food Code 6-401.10).** HAND-WASHING SINKS must be conveniently located as specified under WAC 246-215-05255.

NEW SECTION

**WAC 246-215-06405 Toilet rooms—Convenience and accessibility (2009 FDA Food Code 6-402.11).** Toilet rooms must be conveniently located and accessible to EMPLOYEES during all hours of operation.

NEW SECTION

**WAC 246-215-06410 Employee accommodations—Designated areas (2009 FDA Food Code 6-403.11).** (1) Areas designated for EMPLOYEES to eat, drink, and use tobacco must be located so that FOOD, EQUIPMENT, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES are protected from contamination.

(2) Lockers or other suitable facilities must be located in a designated room or area where contamination of FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES cannot occur.

NEW SECTION

**WAC 246-215-06415 Distressed merchandise—Segregation and location (2009 FDA Food Code 6-404.11).** Products that are held by the PERMIT HOLDER for credit, redemption, or return to the distributor, such as damaged, spoiled, or recalled products, must be segregated and held in designated areas that are separated from FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES.

NEW SECTION

**WAC 246-215-06420 Refuse, recyclables, and returnables—Receptacles, waste handling units, and designated storage areas (2009 FDA Food Code 6-405.10).** Units, receptacles, and areas designated for storage of REFUSE and recyclable and returnable containers must be located as specified under WAC 246-215-05545.

**Subpart E - Maintenance and Operation: Premises, Structures, Attachments, and Fixtures**

NEW SECTION

**WAC 246-215-06500 Methods—Repairing (2009 FDA Food Code 6-501.11).** PHYSICAL FACILITIES must be maintained in good repair.

NEW SECTION

**WAC 246-215-06505 Methods—Cleaning, frequency and restrictions (2009 FDA Food Code 6-501.12).** (1) PHYSICAL FACILITIES must be cleaned as often as necessary to keep them clean.

(2) Except for cleaning that is necessary due to a spill or other accident, cleaning must be done during periods when the least amount of FOOD is exposed such as after closing.

NEW SECTION

**WAC 246-215-06510 Methods—Cleaning floors, dustless methods (2009 FDA Food Code 6-501.13).** (1) Except as specified in subsection (2) of this section, only dustless methods of cleaning must be used, such as wet cleaning, vacuum cleaning, mopping with treated dust mops, or sweeping using a broom and dust-arresting compounds.

(2) Spills or drippage on floors that occur between normal floor cleaning times may be cleaned:

- (a) Without the use of dust-arresting compounds; and
- (b) In the case of liquid spills or drippage, with the use of a small amount of absorbent compound such as sawdust or diatomaceous earth applied immediately before spot cleaning.

NEW SECTION

**WAC 246-215-06515 Methods—Cleaning ventilation systems, nuisance and discharge prohibition (2009 FDA Food Code 6-501.14).** (1) Intake and exhaust air ducts must be cleaned and filters changed so that they are not a source of contamination by dust, dirt, and other materials.

(2) If vented to the outside, ventilation systems may not create a public health HAZARD or nuisance or unlawful discharge.

NEW SECTION

**WAC 246-215-06520 Methods—Cleaning maintenance tools, preventing contamination (2009 FDA Food Code 6-501.15).** FOOD preparation sinks, HANDWASHING SINKS, and WAREWASHING EQUIPMENT may not be used for the cleaning of maintenance tools, the preparation or holding of maintenance materials, or the disposal of mop water and similar liquid wastes.

NEW SECTION

**WAC 246-215-06525 Methods—Drying mops (2009 FDA Food Code 6-501.16).** After use, mops must be placed in a position that allows them to air dry without soiling walls, EQUIPMENT, or supplies.

NEW SECTION

**WAC 246-215-06530 Methods—Absorbent materials on floors, use limitations (2009 FDA Food Code 6-501.17).** Except as specified under WAC 246-215-06510(2), sawdust, wood shavings, granular salt, baked clay, diatomaceous earth, or similar materials may not be used on floors.

NEW SECTION

**WAC 246-215-06535 Methods—Cleaning of plumbing fixtures (2009 FDA Food Code 6-501.18).** PLUMBING FIXTURES such as HANDWASHING SINKS, toilets, and urinals must be cleaned as often as necessary to keep them clean.

NEW SECTION

**WAC 246-215-06540 Methods—Closing toilet room doors (2009 FDA Food Code 6-501.19).** Except during cleaning and maintenance operations, toilet room doors as specified under WAC 246-215-06255 must be kept closed.

NEW SECTION

**WAC 246-215-06545 Methods—Using dressing rooms and lockers (2009 FDA Food Code 6-501.110).** (1) Dressing rooms must be used by EMPLOYEES if the EMPLOYEES regularly change their clothes in the establishment.

(2) Lockers or other suitable facilities must be used for the orderly storage of EMPLOYEE clothing and other possessions.

NEW SECTION

**WAC 246-215-06550 Methods—Controlling pests (2009 FDA Food Code 6-501.111).** The PREMISES must be maintained free of infestations of insects, rodents, and other pests such that there is not a breeding population of pests in the facility. The presence of insects, rodents, and other pests must be controlled to minimize their presence on the PREMISES by:

- (1) Routinely inspecting incoming shipments of FOOD and supplies;
- (2) Routinely inspecting the PREMISES for evidence of pests;
- (3) Using methods, if pests are found, such as trapping devices or other means of pest control as specified under WAC 246-215-07210, 246-215-07250, and 246-215-07255; and
- (4) Eliminating harborage conditions.

NEW SECTION

**WAC 246-215-06555 Methods—Removing dead or trapped birds, insects, rodents, and other pests (2009 FDA Food Code 6-501.112).** Dead or trapped birds, insects, rodents, and other pests must be removed from control devices and the PREMISES at a frequency that prevents their accumulation, decomposition, or the attraction of pests.

NEW SECTION

**WAC 246-215-06560 Methods—Storing maintenance tools (2009 FDA Food Code 6-501.113).** Maintenance tools such as brooms, mops, vacuum cleaners, and similar items must be:

- (1) Stored so they do not contaminate FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES; and

(2) Stored in an orderly manner that facilitates cleaning the area used for storing the maintenance tools.

#### NEW SECTION

**WAC 246-215-06565 Methods—Maintaining premises, unnecessary items and litter (2009 FDA Food Code 6-501.114).** The PREMISES must be free of:

- (1) Items that are unnecessary to the operation or maintenance of the establishment such as EQUIPMENT that is non-functional or no longer used; and
- (2) Litter.

#### NEW SECTION

**WAC 246-215-06570 Methods—Prohibiting animals (2009 FDA Food Code 6-501.115).** (1) Except as specified in subsections (2) and (3) of this section, live animals may not be allowed on the PREMISES of a FOOD ESTABLISHMENT.

(2) Live animals may be allowed in the following situations if the contamination of FOOD; clean EQUIPMENT, UTENSILS, LINENS; and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES cannot result:

(a) Edible FISH or decorative FISH in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems;

(b) Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;

(c) In areas that are not used for FOOD preparation and that are usually open for customers, such as dining and sales areas, SERVICE ANIMALS that are controlled by the disabled EMPLOYEE or person, if a health or safety HAZARD will not result from the presence or activities of the SERVICE ANIMAL;

(d) Pets in the common areas of institutional care facilities such as nursing homes, assisted living facilities, group homes, or residential care facilities at times other than during meals if:

(i) Effective partitioning and self-closing doors separate the common dining areas from FOOD storage or FOOD preparation areas;

(ii) Condiments, EQUIPMENT, and UTENSILS are stored in enclosed cabinets or removed from the common dining areas when pets are present; and

(iii) Dining areas including tables, countertops, and similar surfaces are effectively cleaned before the next meal service; and

(e) In areas that are not used for FOOD preparation, storage, sales, display or dining, in which there are caged animals or animals that are similarly confined, such as in a variety store that sells pets or a tourist park that displays animals.

(3) Live or dead FISH bait may be stored if contamination of FOOD; clean EQUIPMENT, UTENSILS, and LINENS; and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES cannot result.

## PART 7: POISONOUS OR TOXIC MATERIALS

### Subpart A - Labeling and Identification

#### NEW SECTION

**WAC 246-215-07100 Original containers—Identifying information, prominence (2009 FDA Food Code 7-101.11).** Containers of POISONOUS OR TOXIC MATERIALS and PERSONAL CARE ITEMS must bear a legible manufacturer's label.

#### NEW SECTION

**WAC 246-215-07105 Working containers—Common name (2009 FDA Food Code 7-102.11).** Working containers used for storing POISONOUS OR TOXIC MATERIALS such as cleaners and SANITIZERS taken from bulk supplies must be clearly and individually identified with the common name of the material.

### Subpart B - Operational Supplies and Applications

#### NEW SECTION

**WAC 246-215-07200 Storage—Separation (2009 FDA Food Code 7-201.11).** POISONOUS OR TOXIC MATERIALS must be stored so they cannot contaminate FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES by:

(1) Separating the POISONOUS OR TOXIC MATERIALS by spacing or partitioning; and

(2) Locating the POISONOUS OR TOXIC MATERIALS in an area that is not above FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE or SINGLE-USE ARTICLES. This subsection does not apply to EQUIPMENT and UTENSIL cleaners and SANITIZERS that are stored in WAREWASHING areas for availability and convenience if the materials are stored to prevent contamination of FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES.

#### NEW SECTION

**WAC 246-215-07205 Presence and use—Restriction (2009 FDA Food Code 7-202.11).** (1) Only those POISONOUS OR TOXIC MATERIALS that are required for the operation and maintenance of a FOOD ESTABLISHMENT, such as for the cleaning and SANITIZING of EQUIPMENT and UTENSILS and the control of insects and rodents, may be allowed in a FOOD ESTABLISHMENT.

(2) Subsection (1) of this section does not apply to PACKAGED POISONOUS OR TOXIC MATERIALS that are for retail sale.

#### NEW SECTION

**WAC 246-215-07210 Presence and use—Conditions of use (2009 FDA Food Code 7-202.12).** POISONOUS OR TOXIC MATERIALS must be:

(1) Used according to:

(a) LAW and this chapter;

(b) Manufacturer's use directions included in labeling, and, for a pesticide, manufacturer's label instructions that state that use is allowed in a FOOD ESTABLISHMENT;

(c) The conditions of certification, if certification is required, for use of the pest control materials; and

(d) Additional conditions that may be established by the REGULATORY AUTHORITY; and

(2) Applied so that:

(a) A HAZARD to EMPLOYEES or other persons is not constituted; and

(b) Contamination including toxic residues due to drip, drain, fog, splash or spray on FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES is prevented, and for a RESTRICTED USE PESTICIDE, this is achieved by:

(i) Removing the items;

(ii) Covering the items with impermeable covers; or

(iii) Taking other appropriate preventative actions; and

(iv) Cleaning and SANITIZING EQUIPMENT and UTENSILS after the application.

(3) A RESTRICTED USE PESTICIDE must be applied only by an applicator certified as defined in 7 U.S.C. 136 Definitions, (e) Certified Applicator, of the Federal Insecticide, Fungicide and Rodenticide Act, or a PERSON under the direct supervision of a certified applicator.

#### NEW SECTION

**WAC 246-215-07215 Container prohibitions—Poisonous or toxic material containers (2009 FDA Food Code 7-203.11).** A container previously used to store POISONOUS OR TOXIC MATERIALS may not be used to store, transport, or dispense FOOD.

#### NEW SECTION

**WAC 246-215-07220 Chemicals—Sanitizers, criteria (2009 FDA Food Code 7-204.11).** Chemical SANITIZERS and other chemical antimicrobials applied to FOOD-CONTACT SURFACES must meet the requirements specified in 40 C.F.R. 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (FOOD CONTACT SURFACE SANITIZING solutions).

#### NEW SECTION

**WAC 246-215-07225 Chemicals—Chemicals for washing, treatment, storage, and processing fruits and vegetables, criteria (2009 FDA Food Code 7-204.12).** (1) Chemicals used to wash or peel raw, whole fruits and vegetables must meet the requirements specified in 21 C.F.R. 173.315 Chemicals used in washing or to assist in the peeling of fruits and vegetables.

(2) Ozone as an antimicrobial agent used in the treatment, storage, and processing of fruits and vegetables in a FOOD ESTABLISHMENT must meet the requirements specified in 21 C.F.R. 173.368 Ozone.

#### NEW SECTION

**WAC 246-215-07230 Chemicals—Boiler water additives, criteria (2009 FDA Food Code 7-204.13).** Chemicals used as boiler water additives must meet the requirements specified in 21 C.F.R. 173.310 Boiler Water Additives.

#### NEW SECTION

**WAC 246-215-07235 Chemicals—Drying agents, criteria (2009 FDA Food Code 7-204.14).** Drying agents used in conjunction with SANITIZATION must:

(1) Contain only components that are listed as one of the following:

(a) Generally recognized as safe for use in FOOD as specified in 21 C.F.R. 182 - Substances Generally Recognized as Safe, or 21 C.F.R. 184 - Direct Food Substances Affirmed as Generally Recognized as Safe;

(b) Generally recognized as safe for the intended use as specified in 21 C.F.R. 186 - Indirect Food Substances Affirmed as Generally Recognized as Safe;

(c) APPROVED for use as a drying agent under a prior sanction specified in 21 C.F.R. 181 - Prior Sanctioned Food Ingredients;

(d) Specifically regulated as an indirect FOOD ADDITIVE for use as a drying agent as specified in 21 C.F.R. Parts 175-178; or

(e) APPROVED for use as a drying agent under the threshold of regulation process established by 21 C.F.R. 170.39 Threshold of Regulation For Substances Used In Food-Contact Articles; and

(2) When SANITIZATION is with chemicals, the approval required under subsection (1)(c) or (e) of this section or the regulation as an indirect FOOD ADDITIVE required under subsection (1)(d) of this section, must be specifically for use with chemical SANITIZING solutions.

#### NEW SECTION

**WAC 246-215-07240 Lubricants—Incidental food contact, criteria (2009 FDA Food Code 7-205.11).** Lubricants must meet the requirements specified in 21 C.F.R. 178.3570 Lubricants with Incidental Food Contact, if they are used on FOOD-CONTACT SURFACES, on bearings and gears located on or within FOOD-CONTACT SURFACES, or on bearings and gears that are located so that lubricants may leak, drip, or be forced into FOOD or onto FOOD-CONTACT SURFACES.

#### NEW SECTION

**WAC 246-215-07245 Pesticides—Restricted use pesticides, criteria (2009 FDA Food Code 7-206.11).** RESTRICTED USE PESTICIDES specified under WAC 246-215-07210(3) must meet the requirements specified in 40 C.F.R. 152 Subpart I - Classification of Pesticides.

NEW SECTION

**WAC 246-215-07250 Pesticides—Rodent bait stations (2009 FDA Food Code 7-206.12).** Rodent bait must be contained in a covered, tamper-resistant bait station.

NEW SECTION

**WAC 246-215-07255 Pesticides—Tracking powders, pest control and monitoring (2009 FDA Food Code 7-206.13).** (1) Except as specified in subsection (2) of this section, a tracking powder pesticide may not be used in a FOOD ESTABLISHMENT.

(2) If used, a nontoxic tracking powder such as talcum or flour may not contaminate FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES.

NEW SECTION

**WAC 246-215-07260 Medicines—Restriction and storage (2009 FDA Food Code 7-207.11).** (1) Except for medicines that are stored or displayed for retail sale, only those medicines that are necessary for the health of EMPLOYEES may be allowed in a FOOD ESTABLISHMENT.

(2) Medicines that are in a FOOD ESTABLISHMENT for the EMPLOYEES' use must be labeled as specified under WAC 246-215-07100 and located to prevent the contamination of FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES.

NEW SECTION

**WAC 246-215-07265 Medicines—Refrigerated medicines, storage (2009 FDA Food Code 7-207.12).** Medicines belonging to EMPLOYEES or to children in a day care center that require refrigeration and are stored in a FOOD refrigerator must be:

(1) Stored in a package or container and kept inside a covered, leakproof container that is identified as a container for the storage of medicines; and

(2) Located so they are inaccessible to children.

NEW SECTION

**WAC 246-215-07270 First-aid supplies—Storage (2009 FDA Food Code 7-208.11).** First-aid supplies that are in a FOOD ESTABLISHMENT for the EMPLOYEES' use must be:

(1) Labeled as specified under WAC 246-215-07100; and

(2) Stored in a kit or a container that is located to prevent the contamination of FOOD, EQUIPMENT, UTENSILS, and LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES.

NEW SECTION

**WAC 246-215-07275 Other personal care items—Storage (2009 FDA Food Code 7-209.11).** Except as specified under WAC 246-215-07265 and 246-215-07270, EMPLOYEES shall store their PERSONAL CARE ITEMS in facilities as specified under WAC 246-215-06350(2).

**Subpart C - Stock and Retail Sale**NEW SECTION

**WAC 246-215-07300 Storage and display—Separation (2009 FDA Food Code 7-301.11).** POISONOUS OR TOXIC MATERIALS must be stored and displayed for retail sale so they cannot contaminate FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES by:

(1) Separating the POISONOUS OR TOXIC MATERIALS by spacing or partitioning; and

(2) Locating the POISONOUS OR TOXIC MATERIALS in an area that is not above FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE or SINGLE-USE ARTICLES.

**PART 8: COMPLIANCE AND ENFORCEMENT****Subpart A - Applicability**NEW SECTION

**WAC 246-215-08100 Use for intended purpose—Public health protection (2009 FDA Food Code 8-101.10).**

(1) The REGULATORY AUTHORITY shall apply this chapter to promote its underlying purpose, as specified under WAC 246-215-01105, of safeguarding public health and ensuring that FOOD is safe, unADULTERATED, and honestly presented when offered to the CONSUMER.

(2) In enforcing the provision of this chapter, the REGULATORY AUTHORITY shall assess existing facilities or EQUIPMENT that were in use before the effective date of this chapter based on the following considerations:

(a) Whether the facilities or EQUIPMENT are in good repair and capable of being maintained in a sanitary condition;

(b) Whether FOOD-CONTACT SURFACES comply with Part 4, Subpart A;

(c) Whether the capacities of cooling, heating, and holding EQUIPMENT are sufficient to comply with WAC 246-215-04300; and

(d) The existence of a documented agreement with the PERMIT HOLDER that the facilities or EQUIPMENT will be replaced as specified under WAC 246-215-08350(7).

NEW SECTION

**WAC 246-215-08105 Additional requirements—Preventing health hazards, provision for conditions not addressed (2009 FDA Food Code 8-102.10).** (1) If necessary to protect against public health hazards or nuisances, the REGULATORY AUTHORITY may impose specific requirements in addition to the requirements contained in this chapter that are authorized by LAW.

(2) The REGULATORY AUTHORITY shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. The documentation must be provided to the PERMIT applicant or PERMIT HOLDER and a copy must be maintained in the REGULATORY AUTHORITY'S file for the FOOD ESTABLISHMENT.

NEW SECTION

**WAC 246-215-08110 Variances—Modifications and waivers (2009 FDA Food Code 8-103.10).** The REGULATORY AUTHORITY may grant a VARIANCE by modifying or waiving the requirements of this chapter if in the opinion of the REGULATORY AUTHORITY a health HAZARD or nuisance will not result from the VARIANCE. If a VARIANCE is granted, the REGULATORY AUTHORITY shall retain the information specified under WAC 246-215-08115 in its records for the FOOD ESTABLISHMENT.

NEW SECTION

**WAC 246-215-08115 Variances—Documentation of proposed VARIANCE and justification (2009 FDA Food Code 8-103.11).** Before a VARIANCE from a requirement of this chapter is APPROVED, the information that must be provided by the PERSON requesting the VARIANCE and retained in the REGULATORY AUTHORITY'S file on the FOOD ESTABLISHMENT includes:

- (1) A statement of the proposed VARIANCE of this chapter requirement citing the relevant section;
- (2) An analysis of the rationale for how the potential public health hazards and nuisances addressed by the relevant section will be alternatively addressed by the proposal; and
- (3) A HACCP PLAN if required as specified under WAC 246-215-08210(1) that includes the information specified under WAC 246-215-08215 as it is relevant to the VARIANCE requested.

NEW SECTION

**WAC 246-215-08120 Variances—Conformance with approved procedures (2009 FDA Food Code 8-103.12).** If the REGULATORY AUTHORITY grants a VARIANCE as specified under WAC 246-215-08110, or a HACCP PLAN is otherwise required as specified under WAC 246-215-08210, the PERMIT HOLDER shall:

- (1) Comply with the HACCP PLANS and procedures that are submitted as specified under WAC 246-215-08215 and APPROVED as a basis for the modification or waiver; and
- (2) Maintain and provide to the REGULATORY AUTHORITY, upon request, records specified under WAC 246-215-08215 (4) and (5) that demonstrate that the following are routinely employed:
  - (a) Procedures for monitoring CRITICAL CONTROL POINTS;
  - (b) Monitoring of the CRITICAL CONTROL POINTS;
  - (c) Verification of the effectiveness of the operation or process; and
  - (d) Necessary corrective actions if there is a failure at a CRITICAL CONTROL POINT.

**Subpart B - Plan Submission and Approval**NEW SECTION

**WAC 246-215-08200 Facility and operating plans—When plans are required (2009 FDA Food Code 8-201.11).** A PERMIT applicant or PERMIT HOLDER shall submit

to the REGULATORY AUTHORITY properly prepared plans and specifications for review and approval before:

- (1) The construction of a FOOD ESTABLISHMENT;
- (2) The conversion of an existing structure for use as a FOOD ESTABLISHMENT; or
- (3) The remodeling of a FOOD ESTABLISHMENT, a change of type of FOOD ESTABLISHMENT, or significant changes to the methods of FOOD preparation or style of service as specified under WAC 246-215-08325(3) if the REGULATORY AUTHORITY determines that plans and specifications are necessary to ensure compliance with this chapter.

NEW SECTION

**WAC 246-215-08205 Facility and operating plans—Contents of the plans and specifications (2009 FDA Food Code 8-201.12).** The plans and specifications for a FOOD ESTABLISHMENT, including a FOOD ESTABLISHMENT specified under WAC 246-215-08210, must include, as required by the REGULATORY AUTHORITY based on the type of operation, type of FOOD preparation, and FOODS prepared, the following information to demonstrate conformance with chapter provisions:

- (1) Intended menu;
- (2) Anticipated volume of FOOD to be stored, prepared, and sold or served;
- (3) Proposed layout, mechanical schematics, construction materials, and finish schedules;
- (4) Proposed EQUIPMENT types, manufacturers, model numbers, locations, dimensions, performance capacities, and installation specifications;
- (5) Evidence that standard procedures that ensure compliance with the requirements of this chapter are developed or are being developed; and
- (6) Other information that may be required by the REGULATORY AUTHORITY for the proper review of the proposed construction, conversion or modification, and procedures for operating a FOOD ESTABLISHMENT.

NEW SECTION

**WAC 246-215-08210 Facility and operating plans—When a HACCP plan is required (2009 FDA Food Code 8-201.13).** (1) Before engaging in an activity that requires a HACCP PLAN, a PERMIT applicant or PERMIT HOLDER shall submit to the REGULATORY AUTHORITY for approval a properly prepared HACCP PLAN as specified under WAC 246-215-08215 and the relevant provisions of this chapter if:

- (a) Submission of a HACCP PLAN is required according to LAW;
- (b) A VARIANCE is required as specified under WAC 246-215-03400 (4)(d), 246-215-03535, and 246-215-04244(2);
- (c) The REGULATORY AUTHORITY determines that a FOOD preparation or processing method requires a VARIANCE based on a plan submittal specified under WAC 246-215-08205, an inspectional finding, or a VARIANCE request.

(2) A PERMIT applicant or PERMIT HOLDER shall have a properly prepared HACCP PLAN as specified under WAC 246-215-03540.

NEW SECTION

**WAC 246-215-08215 Facility and operating plans—Contents of a HACCP plan (2009 FDA Food Code 8-201.14).** For a FOOD ESTABLISHMENT that is required under WAC 246-215-08210 to have a HACCP PLAN, the plan and specifications must indicate:

(1) A categorization of the types of POTENTIALLY HAZARDOUS FOODS that are specified in the menu such as soups and sauces, salads, and bulk, solid FOODS such as MEAT roasts, or of other FOODS that are specified by the REGULATORY AUTHORITY;

(2) A flow diagram by specific FOOD or category type identifying CRITICAL CONTROL POINTS and providing information on the following:

(a) Ingredients, materials, and EQUIPMENT used in the preparation of that FOOD; and

(b) Formulations or recipes that delineate methods and procedural control measures that address the FOOD safety concerns involved;

(3) FOOD EMPLOYEE and supervisory training plan that addresses the FOOD safety issues of concern;

(4) A statement of standard operating procedures for the plan under consideration including clearly identifying:

(a) Each CRITICAL CONTROL POINT;

(b) The CRITICAL LIMITS for each CRITICAL CONTROL POINT;

(c) The method and frequency for monitoring and controlling each CRITICAL CONTROL POINT by the FOOD EMPLOYEE designated by the PERSON IN CHARGE;

(d) The method and frequency for the PERSON IN CHARGE to routinely verify that the FOOD EMPLOYEE is following standard operating procedures and monitoring CRITICAL CONTROL POINTS;

(e) Action to be taken by the PERSON IN CHARGE if the CRITICAL LIMITS for each CRITICAL CONTROL POINT are not met; and

(f) Records to be maintained by the PERSON IN CHARGE to demonstrate that the HACCP PLAN is properly operated and managed; and

(5) Additional scientific data or other information, as required by the REGULATORY AUTHORITY, supporting the determination that FOOD safety is not compromised by the proposal.

NEW SECTION

**WAC 246-215-08220 Trade secrets (2009 FDA Food Code 8-202.10).** The REGULATORY AUTHORITY shall treat as confidential in accordance with LAW, information that meets the requirements specified in LAW for a trade secret and is contained on inspection report forms and in the plans and specifications submitted as specified under WAC 246-215-08205 and 246-215-08215.

NEW SECTION

**WAC 246-215-08225 Construction inspection and approval—Preoperational inspections (2009 FDA Food Code 8-203.10).** The REGULATORY AUTHORITY shall conduct one or more preoperational inspections to verify that the

FOOD ESTABLISHMENT is constructed and equipped in accordance with the APPROVED plans and APPROVED modifications of those plans, has established standard operating procedures as specified under WAC 246-215-08205(5), and is in compliance with the LAW and this chapter.

**Subpart C - Permit to Operate**NEW SECTION

**WAC 246-215-08300 Requirement—Prerequisite for operation (2009 FDA Food Code 8-301.11).** A PERSON may not operate a FOOD ESTABLISHMENT without a valid PERMIT to operate issued by the REGULATORY AUTHORITY.

NEW SECTION

**WAC 246-215-08305 Exempt from permit (2009 FDA Food Code 8-301.12).** (1) The REGULATORY AUTHORITY may exempt a PERSON from the provisions of WAC 246-215-08600(1) and 246-215-08300 of this chapter in order to operate without a FOOD ESTABLISHMENT PERMIT, if the PERSON meets the other provisions of this chapter, including not using any FOOD prepared in a residential kitchen or other non-APPROVED facility, and the types of FOOD served are limited to those specified in subsection (4) of this section.

(2) The PERSON requesting a PERMIT exemption under subsection (1) of this section shall submit a written application for an exemption on a form provided by the REGULATORY AUTHORITY at least 14 calendar days before providing FOOD service, or as otherwise required by the REGULATORY AUTHORITY.

(3) The PERSON requesting a PERMIT exemption under subsection (1) of this section shall submit properly prepared plans and specifications of the FOOD service facilities and EQUIPMENT if the REGULATORY AUTHORITY requires it, based on a review of the application for an exemption submitted under subsection (2) of this section.

(4) The PERSON requesting a PERMIT exemption under subsection (1) of this section shall limit FOOD handling to one or more of the following FOODS:

(a) Popcorn and flavored popcorn prepared from commercially PACKAGED nonPOTENTIALLY HAZARDOUS FOOD ingredients;

(b) Cotton candy;

(c) Dried herbs and spices processed in an APPROVED facility;

(d) Crushed ice drinks containing only nonPOTENTIALLY HAZARDOUS FOOD ingredients and dispensed from a self-contained machine that makes its own ice. Drinks with POTENTIALLY HAZARDOUS FOOD, snow cones, and shaved ice are not included;

(e) Corn on the cob prepared for IMMEDIATE SERVICE;

(f) Whole peppers roasted for IMMEDIATE SERVICE;

(g) Roasted nuts, roasted peanuts, and roasted candy-coated nuts;

(h) Chocolate-dipped ice cream bars prepared from pre-PACKAGED ice cream bars produced in a FOOD PROCESSING PLANT;

(i) Chocolate-dipped bananas prepared from bananas peeled and frozen in an APPROVED facility; and

(j) Individual samples of nonPOTENTIALLY HAZARDOUS sliced fruits and vegetables.

#### NEW SECTION

**WAC 246-215-08310 Application procedure—Submission thirty calendar days before proposed opening (2009 FDA Food Code 8-302.11).** An applicant shall submit an application for a PERMIT at least thirty calendar days before the date planned for opening a FOOD ESTABLISHMENT or the expiration of the current PERMIT for an existing facility.

#### NEW SECTION

**WAC 246-215-08315 Application procedure—Form of submission (2009 FDA Food Code 8-302.12).** A PERSON desiring to operate a FOOD ESTABLISHMENT shall submit to the REGULATORY AUTHORITY a written application for a PERMIT on a form provided by the REGULATORY AUTHORITY.

#### NEW SECTION

**WAC 246-215-08320 Application procedure—Qualifications and responsibilities of applicants (2009 FDA Food Code 8-302.13).** To qualify for a PERMIT, an applicant shall:

- (1) Be an owner of the FOOD ESTABLISHMENT or an officer of the legal ownership;
- (2) Comply with the requirements of this chapter;
- (3) As specified under WAC 246-215-08415, agree to allow access to the FOOD ESTABLISHMENT and to provide required information; and
- (4) Pay the applicable PERMIT fees at the time the application is submitted.

#### NEW SECTION

**WAC 246-215-08325 Application procedure—Contents of the application (2009 FDA Food Code 8-302.14).** The application must include:

- (1) The name, birth date, mailing address, telephone number, and signature of the PERSON applying for the PERMIT and the name, mailing address, and location of the FOOD ESTABLISHMENT;
- (2) Information specifying whether the FOOD ESTABLISHMENT is owned by an association, corporation, individual, partnership, or other legal entity;
- (3) A statement specifying whether the FOOD ESTABLISHMENT:
  - (a) Is mobile or stationary and temporary or permanent; and
  - (b) Is an operation that includes one or more of the following:
    - (i) Prepares, offers for sale, or serves POTENTIALLY HAZARDOUS FOOD:
      - (A) Only to order upon a CONSUMER'S request;
      - (B) In advance quantities based on projected CONSUMER demand and discards FOOD that is not sold or served at an APPROVED frequency; or
      - (C) Using time as a public health control under WAC 246-215-03530;

(ii) Prepares POTENTIALLY HAZARDOUS FOOD in advance using a FOOD preparation method that involves two or more steps which may include combining POTENTIALLY HAZARDOUS FOOD ingredients; cooking; cooling; reheating; hot or cold holding; freezing; or thawing;

(iii) Prepares FOOD as specified under (b)(ii) of this subsection for delivery to and consumption at a location off the PREMISES of the FOOD ESTABLISHMENT where it is prepared;

(iv) Prepares FOOD as specified under (b)(ii) of this subsection for service to a HIGHLY SUSCEPTIBLE POPULATION;

(v) Prepares only FOOD that is not POTENTIALLY HAZARDOUS FOOD; or

(vi) Does not prepare, but offers for sale only prePACKAGED FOOD that is not POTENTIALLY HAZARDOUS FOOD.

(4) The name, title, address, and telephone number of the PERSON directly responsible for the FOOD ESTABLISHMENT;

(5) The name, title, address, and telephone number of the PERSON who functions as the immediate supervisor of the PERSON specified under subsection (4) of this section such as the zone, district, or regional supervisor;

(6) The names, titles, and addresses of:

(a) The persons comprising the legal ownership as specified under subsection (2) of this section including the owners and officers; and

(b) The local resident agent if one is required based on the type of legal ownership.

(7) A statement signed by the applicant that:

(a) Attests to the accuracy of the information provided in the application; and

(b) Affirms that the applicant will:

(i) Comply with this chapter; and

(ii) Allow the REGULATORY AUTHORITY access to the establishment as specified under WAC 246-215-08415 and to the records specified under WAC 246-215-03290, 246-215-05280 and 246-215-08215 (4)(f); and

(8) Other information required by the REGULATORY AUTHORITY.

#### NEW SECTION

**WAC 246-215-08330 Issuance—New, converted, or remodeled establishments (2009 FDA Food Code 8-303.10).** For FOOD ESTABLISHMENTS that are required to submit plans as specified under WAC 246-215-08200 the REGULATORY AUTHORITY shall issue a PERMIT to the applicant after:

(1) A properly completed application is submitted;

(2) The required fee is submitted;

(3) The required plans, specifications, and information are reviewed and APPROVED; and

(4) A preoperational inspection as specified under WAC 246-215-08225 shows that the establishment is built or remodeled in accordance with the APPROVED plans and specifications and that the establishment is in compliance with this chapter.

#### NEW SECTION

**WAC 246-215-08335 Issuance—Existing establishments, permit renewal, and change of ownership (2009 FDA Food Code 8-303.20).** The REGULATORY AUTHORITY

may renew a PERMIT for an existing FOOD ESTABLISHMENT or may issue a PERMIT to a new owner of an existing establishment after a properly completed application is submitted, reviewed and APPROVED, the fees are paid, and an inspection shows that the establishment is in compliance with this chapter.

#### NEW SECTION

**WAC 246-215-08340 Issuance—Denial of application for permit, notice (2009 FDA Food Code 8-303.30).** If an application for a PERMIT to operate is denied, the REGULATORY AUTHORITY shall provide the applicant with a notice that includes:

- (1) The specific reasons and chapter citations for the PERMIT denial;
- (2) The actions, if any, that the applicant must take to qualify for a PERMIT; and
- (3) Advisement of the applicant's right of appeal and the process and time frames for appeal that are provided in LAW.

#### NEW SECTION

**WAC 246-215-08345 Conditions of retention—Responsibilities of the regulatory authority (2009 FDA Food Code 8-304.10).** (1) At the time a PERMIT is first issued, the REGULATORY AUTHORITY shall provide to the PERMIT HOLDER a copy of this chapter so that the PERMIT HOLDER is notified of the compliance requirements and the conditions of retention, as specified under WAC 246-215-08350, that are applicable to the PERMIT.

(2) Failure to provide the information specified in subsection (1) of this section does not prevent the REGULATORY AUTHORITY from taking authorized action or seeking remedies if the PERMIT HOLDER fails to comply with this chapter or an order, warning, or directive of the REGULATORY AUTHORITY.

#### NEW SECTION

**WAC 246-215-08350 Conditions of retention—Responsibilities of the permit holder (2009 FDA Food Code 8-304.11).** Upon acceptance of the PERMIT issued by the REGULATORY AUTHORITY, the PERMIT HOLDER in order to retain the PERMIT shall:

- (1) Post the PERMIT in a location in the FOOD ESTABLISHMENT that is conspicuous to CONSUMERS;
- (2) Comply with the provisions of this chapter including the conditions of a granted VARIANCE as specified under WAC 246-215-08120, and APPROVED plans as specified under WAC 246-215-08205;
- (3) If a FOOD ESTABLISHMENT is required under WAC 246-215-08210 to operate under a HACCP PLAN, comply with the plan as specified under WAC 246-215-08120;
- (4) Immediately contact the REGULATORY AUTHORITY to report an illness of a FOOD EMPLOYEE or CONDITIONAL EMPLOYEE as specified under WAC 246-215-02215;
- (5) Immediately discontinue operations and notify the REGULATORY AUTHORITY if an IMMINENT HEALTH HAZARD might exist as specified under WAC 246-215-08455;

(6) Allow representatives of the REGULATORY AUTHORITY access to the FOOD ESTABLISHMENT as specified under WAC 246-215-08415;

(7) Replace existing facilities and EQUIPMENT specified under WAC 246-215-08100 with facilities and EQUIPMENT that comply with this chapter if:

(a) The REGULATORY AUTHORITY directs the replacement because the facilities and EQUIPMENT constitute a public health HAZARD or nuisance or no longer comply with the requirements upon which the facilities and EQUIPMENT were accepted; or

(b) The facilities and EQUIPMENT are replaced in the normal course of operation.

(8) Comply with directives of the REGULATORY AUTHORITY including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the REGULATORY AUTHORITY in regard to the PERMIT HOLDER'S FOOD ESTABLISHMENT or in response to community emergencies;

(9) Accept notices issued and served by the REGULATORY AUTHORITY according to LAW; and

(10) Be subject to the administrative, civil, injunctive, and criminal remedies authorized in LAW for failure to comply with this chapter or a directive of the REGULATORY AUTHORITY, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives.

#### NEW SECTION

**WAC 246-215-08355 Conditions of retention—Permits not transferable (2009 FDA Food Code 8-304.20).** A PERMIT may not be transferred from one PERSON to another PERSON, from one FOOD ESTABLISHMENT to another, or from one type of operation to another if the FOOD operation changes from the type of operation specified in the application as specified under WAC 246-215-08325(3) and the change in operation is not APPROVED.

### Subpart D - Inspection and Correction of Violations

#### NEW SECTION

**WAC 246-215-08400 Frequency—Establishing inspection interval (2009 FDA Food Code 8-401.10).** (1) Except as specified in subsections (2) and (3) of this section, the REGULATORY AUTHORITY shall inspect a FOOD ESTABLISHMENT at least once every six months.

(2) The REGULATORY AUTHORITY may increase the interval between inspections beyond six months if:

(a) The FOOD ESTABLISHMENT is fully operating under an APPROVED and validated HACCP PLAN as specified under WAC 246-215-08215 and 246-215-08120 (1) and (2);

(b) The FOOD ESTABLISHMENT is assigned a less frequent inspection frequency based on a written RISK-based inspection schedule developed by the REGULATORY AUTHORITY, or set by state or federal LAW, and uniformly applied throughout the jurisdiction; or

(c) The establishment's operation involves only coffee service and other UNPACKAGED or PREPACKAGED FOOD that is not POTENTIALLY HAZARDOUS FOOD such as carbonated BEV-

ERAGES and snack FOOD such as chips, nuts, popcorn and pretzels.

(3) The REGULATORY AUTHORITY shall inspect a TEMPORARY FOOD ESTABLISHMENT during its PERMIT period, unless the REGULATORY AUTHORITY develops a written RISK-based plan for exempting certain categories of TEMPORARY FOOD ESTABLISHMENTS from inspection that is uniformly applied throughout the jurisdiction.

#### NEW SECTION

**WAC 246-215-08405 Frequency—Performance- and risk-based (2009 FDA Food Code 8-401.20).** Within the parameters specified under WAC 246-215-08400, the REGULATORY AUTHORITY shall prioritize, and conduct more frequent inspections based upon its assessment of a FOOD ESTABLISHMENT'S history of compliance with this chapter and the establishment's potential as a vector of foodborne illness by evaluating:

- (1) Past performance, for nonconformance with this chapter or HACCP PLAN requirements;
- (2) Past performance, for numerous repeat violations of this chapter or HACCP PLAN requirements;
- (3) Past performance, for complaints investigated and found to be valid;
- (4) The hazards associated with the particular FOODS that are prepared, stored or served;
- (5) The type of operation including the methods and extent of FOOD storage, preparation, and service;
- (6) The number of people served;
- (7) Whether the population served is a HIGHLY SUSCEPTIBLE POPULATION; and
- (8) Whether the establishment is properly implementing an APPROVED self-inspection program.

#### NEW SECTION

**WAC 246-215-08410 Frequency—Competency of inspectors (2009 FDA Food Code 8-402.10).** An authorized representative of the REGULATORY AUTHORITY who inspects a FOOD ESTABLISHMENT or conducts plan review for compliance with this chapter shall have the knowledge, skills, and ability to adequately perform the required duties.

#### NEW SECTION

**WAC 246-215-08415 Access—Allowed at reasonable times after due notice (2009 FDA Food Code 8-402.11).** After the REGULATORY AUTHORITY presents official credentials and provides notice of the purpose of, and intent to conduct, an inspection, the PERSON IN CHARGE shall allow the REGULATORY AUTHORITY to determine if the FOOD ESTABLISHMENT is in compliance with this chapter by allowing access to the establishment, allowing inspection, and providing information and records specified in this chapter and to which the REGULATORY AUTHORITY is entitled according to LAW, during the FOOD ESTABLISHMENT'S hours of operation and other reasonable times.

#### NEW SECTION

**WAC 246-215-08420 Access—Refusal, notification of right to access, and final request for access (2009 FDA Food Code 8-402.20).** If a PERSON denies access to the REGULATORY AUTHORITY, the REGULATORY AUTHORITY shall:

- (1) Inform the PERSON that:
  - (a) The PERMIT HOLDER is required to allow access to the REGULATORY AUTHORITY as specified under WAC 246-215-08415 of this chapter; and
  - (b) Access is a condition of the acceptance and retention of a FOOD ESTABLISHMENT PERMIT to operate as specified under WAC 246-215-08350(6).
- (2) Make a final request for access.

#### NEW SECTION

**WAC 246-215-08425 Access—Refusal, reporting (2009 FDA Food Code 8-402.30).** If after the REGULATORY AUTHORITY presents credentials and provides notice as specified under WAC 246-215-08415, explains the authority upon which access is requested, and makes a final request for access as specified under WAC 246-215-08420, the PERSON IN CHARGE continues to REFUSE access, the REGULATORY AUTHORITY shall provide details of the denial of access on an inspection report form.

#### NEW SECTION

**WAC 246-215-08430 Report of findings—Documenting information and observations (2009 FDA Food Code 8-403.10).** The REGULATORY AUTHORITY shall document on an inspection report form APPROVED by the Washington state department of health:

- (1) Administrative information about the FOOD ESTABLISHMENT'S legal identity, street and mailing addresses, type of establishment and operation as specified under WAC 246-215-08325(3), inspection date, and other information such as type of water supply and SEWAGE disposal, status of the PERMIT, and personnel certificates that may be required; and
- (2) Specific factual observations of violative conditions or other deviations from this chapter that require correction by the PERMIT HOLDER including:
  - (a) Failure of the PERSON IN CHARGE to demonstrate the knowledge of foodborne illness prevention, application of HACCP principles, and the requirements of this chapter specified under WAC 246-215-02105;
  - (b) Failure of FOOD EMPLOYEES, CONDITIONAL EMPLOYEES, and the PERSON IN CHARGE to demonstrate knowledge of their responsibility to report a disease or medical condition;
  - (c) Nonconformance with this chapter;
  - (d) Failure of the appropriate FOOD EMPLOYEES to demonstrate their knowledge of, and ability to perform in accordance with, the procedural, monitoring, verification, and corrective action practices required by the REGULATORY AUTHORITY as specified under WAC 246-215-08120;
  - (e) Failure of the PERSON IN CHARGE to provide records required by the REGULATORY AUTHORITY for determining conformance with a HACCP PLAN as specified under WAC 246-215-08215 (4)(f); and

(f) Nonconformance with CRITICAL LIMITS of a HACCP PLAN.

#### NEW SECTION

**WAC 246-215-08435 Report of findings—Specifying time frame for corrections (2009 FDA Food Code 8-403.20).** The REGULATORY AUTHORITY shall specify on the inspection report form the time frame for correction of any violations.

#### NEW SECTION

**WAC 246-215-08440 Report of findings—Issuing report and obtaining acknowledgment of receipt (2009 FDA Food Code 8-403.30).** At the conclusion of the inspection and according to LAW, the REGULATORY AUTHORITY shall provide a copy of the completed inspection report and the notice to correct violations to the PERMIT HOLDER or to the PERSON IN CHARGE, and request a signed acknowledgment of receipt.

#### NEW SECTION

**WAC 246-215-08445 Report of findings—Refusal to sign acknowledgment (2009 FDA Food Code 8-403.40).** The REGULATORY AUTHORITY shall:

(1) Inform the PERSON who declines to sign an acknowledgment of receipt of inspectional findings as specified under WAC 246-215-08440 that:

(a) An acknowledgment of receipt is not an agreement with the findings;

(b) Refusal to sign an acknowledgment of receipt does not affect the PERMIT HOLDER'S obligation to correct the violations noted in the inspection report within the time frames specified; and

(c) A refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the REGULATORY AUTHORITY'S historical record for the FOOD ESTABLISHMENT; and

(2) Make a final request that the PERSON IN CHARGE sign an acknowledgment receipt of inspectional findings.

#### NEW SECTION

**WAC 246-215-08450 Report of findings—Public information (2009 FDA Food Code 8-403.50).** Except as specified under WAC 246-215-08220, the REGULATORY AUTHORITY shall treat the inspection report as a public document and shall make it available for DISCLOSURE to a PERSON who requests it as provided in LAW.

#### NEW SECTION

**WAC 246-215-08455 Imminent health hazard—Ceasing operations and reporting (2009 FDA Food Code 8-404.11).** (1) Except as specified in subsection (2) of this section, a PERMIT HOLDER shall immediately discontinue operations and notify the REGULATORY AUTHORITY if an IMMINENT HEALTH HAZARD might exist.

(2) A PERMIT HOLDER need not discontinue operations in an area of an establishment that is unaffected by the IMMINENT HEALTH HAZARD.

#### NEW SECTION

**WAC 246-215-08460 Imminent health hazard—Resumption of operations (2009 FDA Food Code 8-404.12).** If operations are discontinued as specified under WAC 246-215-08455 or otherwise according to LAW, the PERMIT HOLDER shall obtain approval from the REGULATORY AUTHORITY before resuming operations.

#### **Subpart E - Prevention of Foodborne Disease Transmission by Employees**

#### NEW SECTION

**WAC 246-215-08500 Investigation and control—Obtaining information—Personal history of illness, medical examination, and specimen analysis (2009 FDA Food Code 8-501.10).** The REGULATORY AUTHORITY shall act when it has reasonable cause to believe that a FOOD EMPLOYEE or CONDITIONAL EMPLOYEE has possibly transmitted disease; might be infected with a disease in a communicable form that is transmissible through FOOD; might be a carrier of infectious agents that cause a disease that is transmissible through FOOD; or is affected with a boil, an infected wound, or acute respiratory infection, by:

(1) Securing a confidential medical history of the FOOD EMPLOYEE or CONDITIONAL EMPLOYEE suspected of transmitting disease or making other investigations as deemed appropriate; and

(2) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected FOOD EMPLOYEE or CONDITIONAL EMPLOYEE.

#### NEW SECTION

**WAC 246-215-08505 Investigation and control—Restriction or exclusion of food employee, or summary suspension of permit (2009 FDA Food Code 8-501.20).** Based on the findings of an investigation related to a FOOD EMPLOYEE or CONDITIONAL EMPLOYEE who is suspected of being infected or diseased, the REGULATORY AUTHORITY may issue an order to the suspected FOOD EMPLOYEE, CONDITIONAL EMPLOYEE, or PERMIT HOLDER instituting one or more of the following control measures:

(1) RESTRICTING the FOOD EMPLOYEE or CONDITIONAL EMPLOYEE;

(2) EXCLUDING the FOOD EMPLOYEE or CONDITIONAL EMPLOYEE; or

(3) Closing the FOOD ESTABLISHMENT by summarily suspending a PERMIT to operate in accordance with LAW.

#### NEW SECTION

**WAC 246-215-08510 Investigation and control—Restriction or exclusion order: Warning or hearing not required, information required in order (2009 FDA Food Code 8-501.30).** Based on the findings of the investigation as

specified under WAC 246-215-08500 and to control disease transmission, the REGULATORY AUTHORITY may issue an order of RESTRICTION or EXCLUSION to a suspected FOOD EMPLOYEE or the PERMIT HOLDER without prior warning, notice of a hearing, or a hearing if the order:

(1) States the reasons for the RESTRICTION or EXCLUSION that is ordered;

(2) States the evidence that the FOOD EMPLOYEE or PERMIT HOLDER shall provide in order to demonstrate that the reasons for the RESTRICTION or EXCLUSIONS are eliminated;

(3) States that the suspected FOOD EMPLOYEE or PERMIT HOLDER may request an appeal hearing by submitting a timely request as provided in LAW; and

(4) Provides the name and address of the REGULATORY AUTHORITY representative to whom a request for an appeal hearing can be made.

#### NEW SECTION

**WAC 246-215-08515 Investigation and control—Removal of exclusion or restriction (2009 FDA Food Code 8-501.40).** The REGULATORY AUTHORITY or PERSON IN CHARGE shall release a FOOD EMPLOYEE or CONDITIONAL EMPLOYEE from RESTRICTION or EXCLUSION according to LAW and the conditions specified under WAC 246-215-02245, 246-215-02250, and 246-215-02255.

#### NEW SECTION

**WAC 246-215-08520 Investigation and control—Procedure when disease transmission is suspected.** (1) When a possible foodborne illness incident is reported to any FOOD EMPLOYEE, the PERSON IN CHARGE of the FOOD ESTABLISHMENT shall:

(a) Immediately report the incident to the REGULATORY AUTHORITY; and

(b) Remove from sale and refrigerate any suspect FOODS until released by the REGULATORY AUTHORITY.

(2) When the REGULATORY AUTHORITY suspects that a FOOD ESTABLISHMENT, or its EMPLOYEES, might be the source of a foodborne illness, the REGULATORY AUTHORITY shall take appropriate action to control the transmission of disease. This action may include any or all of the following:

(a) Secure records that might enable identification of persons potentially exposed to the disease, or require additional assistance in locating such persons;

(b) Secure the illness history of each suspected EMPLOYEE;

(c) EXCLUDE any suspected EMPLOYEE from working in the FOOD ESTABLISHMENT until, in the opinion of the REGULATORY AUTHORITY, there is no further RISK of disease transmission;

(d) Suspend the PERMIT of the FOOD ESTABLISHMENT until, in the opinion of the REGULATORY AUTHORITY, there is no further RISK of disease transmission;

(e) RESTRICT the work activities of any suspected EMPLOYEE;

(f) Require medical and laboratory examinations of any FOOD EMPLOYEE and of his/her body discharges;

(g) Obtain any suspect FOOD for laboratory examination;

(h) Require the destruction of, or placement of a hold order on, all suspected FOOD; and

(i) Limit, substitute, or restrict menu items or FOOD handling practices that might be associated with causing illness.

(3) The provisions of chapter 246-100 WAC, Communicable and Certain Other Diseases, apply.

### **Subpart F - Enforcement**

#### NEW SECTION

**WAC 246-215-08600 Permits required, suspension, revocation, enforcement.** (1) Any PERSON operating a FOOD ESTABLISHMENT without a valid PERMIT issued by the REGULATORY AUTHORITY may be guilty of a misdemeanor under RCW 70.05.120 and local regulations.

(2) The REGULATORY AUTHORITY may suspend any PERMIT to operate a FOOD ESTABLISHMENT if:

(a) Continued operation of the FOOD ESTABLISHMENT constitutes an imminent or actual health hazard;

(b) Operations, facilities, or EQUIPMENT in the FOOD ESTABLISHMENT fail to comply with these regulations;

(c) The PERMIT HOLDER does not comply with these regulations; or

(d) Interference with the REGULATORY AUTHORITY in the performance of its duties has occurred.

(3) When the REGULATORY AUTHORITY has suspended a FOOD ESTABLISHMENT PERMIT, the PERMIT HOLDER or PERSON IN CHARGE:

(a) Shall be notified in writing by the REGULATORY AUTHORITY that the FOOD ESTABLISHMENT PERMIT is immediately suspended upon service of the notice;

(b) Shall immediately cease all FOOD service operations until a hearing with the REGULATORY AUTHORITY finds the operation to be in compliance with the requirements and regulations;

(c) May request a hearing by filing a written request for a hearing with the REGULATORY AUTHORITY within ten days of receipt of the notice of suspension; and

(d) Shall be notified, if a written request for a hearing is not filed within ten days, that the suspension is sustained.

(4) Any PERSON whose FOOD ESTABLISHMENT PERMIT has been suspended may at any time make written application for a reinspection for the purpose of reinstatement of the PERMIT. The application must include a signed statement explaining how the conditions causing the suspension of the PERMIT have been corrected.

(5) Within two working days following receipt of a written request for reinspection, the REGULATORY AUTHORITY shall make a reinspection, and reinstate the PERMIT if the PERSON is in compliance with these regulations.

(6) The REGULATORY AUTHORITY may adopt and use a PERMIT suspension process different than specified under subsection (2), (3), (4), or (5) of this section.

(7) The REGULATORY AUTHORITY may revoke a FOOD ESTABLISHMENT PERMIT after providing the PERMIT HOLDER an opportunity for hearing if:

(a) Serious and repeated violation(s) of any requirements of these regulations have occurred; or

(b) Repeated interference with, or assault upon a representative of the REGULATORY AUTHORITY in the performance of his/her duty, has occurred.

(8) Before revocation, the REGULATORY AUTHORITY shall notify, in writing, the PERMIT HOLDER of the specific reason(s) why the PERMIT is to be revoked. The notice must state:

(a) That the PERMIT will be revoked at the end of the ten days following the notice unless a written request for a hearing is filed with the REGULATORY AUTHORITY by the PERMIT HOLDER within such ten-day period; and

(b) If a request for a hearing is not filed by the PERMIT HOLDER within the ten-day period, the revocation of the PERMIT becomes final.

(9) Any PERSON whose FOOD ESTABLISHMENT PERMIT has been revoked by the REGULATORY AUTHORITY, after a period of six months, may:

(a) Make written application for a new PERMIT; and

(b) Request a hearing with the REGULATORY AUTHORITY to determine whether a new PERMIT will be issued.

(10) The REGULATORY AUTHORITY may use a PERMIT revocation process different than specified under subsections (7), (8), and (9) of this section.

(11) The REGULATORY AUTHORITY may initiate any one, or a combination of, compliance methods that include, but are not limited to:

(a) Holding an administrative conference with the FOOD ESTABLISHMENT PERMIT HOLDER or PERSON IN CHARGE;

(b) Placing the FOOD ESTABLISHMENT on probation;

(c) Setting conditions for continued operation of the FOOD ESTABLISHMENT, by the PERMIT HOLDER, during the probation period;

(d) Requiring additional education or training of EMPLOYEES, management, and owners of the FOOD ESTABLISHMENT; and

(e) Completing a HAZARD evaluation and requiring monitoring procedures be implemented for CRITICAL CONTROL POINTS identified.

#### NEW SECTION

**WAC 246-215-08605 Service of notice.** (1) A notice provided for in these regulations is properly served when it is:

(a) Delivered to the PERMIT HOLDER;

(b) Delivered to the PERSON IN CHARGE of the FOOD ESTABLISHMENT; or

(c) Sent by registered or certified mail, return receipt requested, to the last known address of the PERMIT HOLDER.

(2) A copy of the notice must be filed in the records of the REGULATORY AUTHORITY.

#### NEW SECTION

**WAC 246-215-08610 Hearings.** (1) The hearings provided for in Part 8 must be:

(a) Conducted by the REGULATORY AUTHORITY or its designee, and

(b) Conducted at a time and place designated by the REGULATORY AUTHORITY.

(2) The REGULATORY AUTHORITY or designee shall:

(a) Make a final finding based upon the complete hearing record;

(b) Sustain, modify, or rescind any notice or order considered in the hearing; and

(c) Furnish a written report of the hearing decision to the PERMIT HOLDER.

(3) The REGULATORY AUTHORITY may adopt and use an alternate hearing process.

### **PART 9: ALTERNATIVE FOOD FACILITIES**

#### **Subpart A - Mobile Food Units**

#### NEW SECTION

**WAC 246-215-09100 Requirements and restrictions—Requirements.** (1) The PERMIT HOLDER and PERSON IN CHARGE of a MOBILE FOOD UNIT shall comply with the requirements of this chapter, except as otherwise provided in this section.

(2) The PERMIT HOLDER shall obtain approval from other applicable regulating agencies prior to operating a MOBILE FOOD UNIT, including the Washington state department of labor and industries.

(3) The PERSON IN CHARGE of a MOBILE FOOD UNIT shall operate the MOBILE FOOD UNIT from an APPROVED COMMISSARY or SERVICING AREA and shall return to such location for supplies, thorough cleaning, and other servicing activities, as APPROVED in a plan of operation. When not in operation, a MOBILE FOOD UNIT must be stored at an APPROVED SERVICING AREA or other APPROVED location.

#### NEW SECTION

**WAC 246-215-09105 Requirements and restrictions—Restrictions.** The REGULATORY AUTHORITY may impose additional requirements to protect against health hazards related to the operation of a MOBILE FOOD UNIT and may:

(1) Limit the FOOD preparation steps;

(2) Prohibit some menu items; and

(3) Restrict the mode of operation when facilities or EQUIPMENT are inadequate to protect public health.

#### NEW SECTION

**WAC 246-215-09110 Plan approval—Plan review.** The owner of a MOBILE FOOD UNIT shall submit a properly prepared plan of operation with specifications of the MOBILE FOOD UNIT, COMMISSARY, and SERVICING AREA to the REGULATORY AUTHORITY for approval before:

(1) Construction or remodeling begins;

(2) The menu of the MOBILE FOOD UNIT is changed;

(3) The method of FOOD preparation is changed;

(4) The vehicle is changed; or

(5) The COMMISSARY is changed.

#### NEW SECTION

**WAC 246-215-09115 Plan approval—Plan contents.** The owner of a MOBILE FOOD UNIT shall include in the plan required by WAC 246-215-09110:

- (1) Menu and FOOD preparation steps;
- (2) Floor plan;
- (3) EQUIPMENT specifications and location;
- (4) Finish schedule;
- (5) Proposed itinerary or sites to be served;
- (6) Source of water and specifications of the on-board plumbing;
- (7) Site used for SEWAGE disposal;
- (8) Availability of restrooms for EMPLOYEES;
- (9) Operating procedures; and
- (10) Cleaning schedule.

#### NEW SECTION

**WAC 246-215-09120 Additional requirements—Standard operating procedures.** The PERSON IN CHARGE of a MOBILE FOOD UNIT shall ensure:

- (1) Only EMPLOYEES and other persons authorized by the REGULATORY AUTHORITY are present in the MOBILE FOOD UNIT;
- (2) All EMPLOYEES are in compliance with the provisions of chapter 69.06 RCW and chapter 246-217 WAC for obtaining and renewing valid FOOD WORKER CARDS, unless all FOODS are prePACKAGED and are nonPOTENTIALLY HAZARDOUS FOOD;
- (3) All FOODS, including ice, are from an APPROVED source or COMMISSARY;
- (4) POTENTIALLY HAZARDOUS FOODS prepared on the MOBILE FOOD UNIT are served the same day they are prepared;
- (5) PrePACKAGED FOODS are properly labeled;
- (6) Only SINGLE-SERVICE ARTICLES are provided for use by the customer; and
- (7) Condiments not in individual packages are provided in dispenser bottles or in other containers protected from contamination.

#### NEW SECTION

**WAC 246-215-09125 Potentially hazardous foods—Temperature control.** The PERSON IN CHARGE of a MOBILE FOOD UNIT shall ensure that POTENTIALLY HAZARDOUS FOODS are:

- (1) Not cooled on the MOBILE FOOD UNIT;
- (2) Properly temperature-controlled during transport to the place of service;
- (3) Temperature-monitored by use of a stem-type thermometer or thermocouple capable of measuring all proper FOOD temperatures;
- (4) Reheated, for hot holding, from 41°F (5°C) to 165°F (74°C) or above within one hour on the MOBILE FOOD UNIT when the FOODS were cooked and cooled in an APPROVED food establishment that is not a MOBILE FOOD UNIT;
- (5) Reheated, for hot holding, from 41°F (5°C) to 135°F (74°C) or above within one hour on the MOBILE FOOD UNIT when the FOODS were produced in a FOOD PROCESSING PLANT;
- (6) Reheated no more than one time; and

- (7) Held in preheated mechanical hot holding EQUIPMENT or prechilled mechanical cold holding EQUIPMENT, or otherwise temperature controlled by an APPROVED method.

#### NEW SECTION

**WAC 246-215-09130 Cooking thickness—Cooking raw meats.** The PERSON IN CHARGE shall ensure that raw MEATS greater than one inch in thickness are not cooked on the MOBILE FOOD UNIT, unless otherwise APPROVED.

#### NEW SECTION

**WAC 246-215-09135 Water and wastewater—Water system.** The PERSON IN CHARGE shall ensure that the water system on the MOBILE FOOD UNIT:

- (1) Is supplied from an APPROVED source of water;
- (2) Is designed and constructed in an APPROVED manner;
- (3) Is filled from the APPROVED water source through a FOOD-grade hose;
- (4) Is refilled as frequently as necessary to furnish enough hot and cold water for handwashing, FOOD preparation, UTENSIL cleaning, SANITIZING, and facility cleaning, on the MOBILE FOOD UNIT;
- (5) Has a water supply tank with a minimum capacity of five gallons for handwashing;
- (6) Stores liquid waste in a wastewater retention tank with at least fifteen percent more capacity than the water supply tank; and
- (7) Retains wastewater on the MOBILE FOOD UNIT until disposed of by an APPROVED method.

#### NEW SECTION

**WAC 246-215-09140 Handwashing—Handwashing facilities.** The PERSON IN CHARGE of a MOBILE FOOD UNIT shall ensure that a separate HANDWASHING SINK for EMPLOYEES is accessible at all times of operation; allows convenient use by EMPLOYEES; is located within 25 feet of FOOD preparation, FOOD dispensing, and WAREWASHING areas; is installed as specified under WAC 246-215-05210; and includes soap and paper towels.

#### NEW SECTION

**WAC 246-215-09145 Handwashing—Handwashing waiver.** When only prePACKAGED FOOD items are served, the REGULATORY AUTHORITY may waive or modify requirements for handwashing on the MOBILE FOOD UNIT.

#### NEW SECTION

**WAC 246-215-09150 Employee restrooms—Toilet facilities.** The PERMIT HOLDER shall ensure APPROVED toilet facilities are available for employees:

- (1) Readily accessible within 200 feet of the MOBILE FOOD UNIT during times of operation, if at any one location for more than one hour; and
- (2) Provided with handwashing facilities that meet the requirements specified under WAC 246-215-05210.

NEW SECTION

**WAC 246-215-09155 Sink compartment requirements—Warewashing facilities.** The PERMIT HOLDER shall ensure:

(1) A three-compartment sink is available on the MOBILE FOOD UNIT with potable hot and cold running water to wash, rinse, and SANITIZE UTENSILS when UTENSILS are reused on the MOBILE FOOD UNIT; except

(2) This requirement may be waived or modified by the REGULATORY AUTHORITY when:

(a) Limited FOOD preparation occurs; or

(b) Additional clean UTENSILS are available and UTENSIL washing takes place at an APPROVED COMMISSARY or SERVICING AREA.

NEW SECTION

**WAC 246-215-09160 Required postings—Business name.** The PERMIT HOLDER shall provide the REGULATORY AUTHORITY a designated business name and ensure that name is posted on the MOBILE FOOD UNIT in a manner easily visible to customers during operation.

NEW SECTION

**WAC 246-215-09165 Required postings—Permit.** The PERMIT HOLDER shall ensure the original or a copy of the currently valid FOOD ESTABLISHMENT PERMIT is posted on the MOBILE FOOD UNIT in a manner easily visible to customers during operation.

NEW SECTION

**WAC 246-215-09170 Food and equipment protection—Overhead protection.** The PERMIT HOLDER and PERSON IN CHARGE shall ensure overhead protection is provided at the site of operation of the MOBILE FOOD UNIT for all FOOD handling activities.

NEW SECTION

**WAC 246-215-09175 Food and equipment protection—Food and food service supplies.** The PERMIT HOLDER and PERSON IN CHARGE shall ensure that all FOOD, EQUIPMENT, UTENSILS, and other FOOD service supplies are contained on the MOBILE FOOD UNIT, at the APPROVED COMMISSARY, at the APPROVED SERVICING AREA, or as otherwise APPROVED in the plan of operation.

NEW SECTION

**WAC 246-215-09180 Movable buildings—Lack of permanent plumbing.** The REGULATORY AUTHORITY may allow a PERSON to operate a FOOD ESTABLISHMENT with a limited menu in a movable building without permanent plumbing under applicable provisions of this subpart.

**Subpart B - Temporary Food Establishments**NEW SECTION**WAC 246-215-09200 Requirements and restrictions.**

(1) The PERMIT HOLDER and PERSON IN CHARGE of a TEMPORARY FOOD ESTABLISHMENT shall comply with the requirements of this chapter, except as otherwise provided in this subpart.

(2) The REGULATORY AUTHORITY may impose additional requirements to protect against health hazards related to the operation of the TEMPORARY FOOD ESTABLISHMENT and may:

(a) Limit the FOOD preparation steps;

(b) Prohibit some menu items; and

(c) Restrict the mode of operation when facilities or EQUIPMENT are inadequate to protect public health.

(3) The owner of a TEMPORARY FOOD ESTABLISHMENT shall:

(a) Apply to the REGULATORY AUTHORITY for a PERMIT to operate the TEMPORARY FOOD ESTABLISHMENT at least fourteen calendar days before intending to provide FOOD service, or as otherwise required by the REGULATORY AUTHORITY;

(b) Allow only EMPLOYEES and other persons authorized by the REGULATORY AUTHORITY to be present in the TEMPORARY FOOD ESTABLISHMENT; and

(c) Require the PERSON IN CHARGE of the TEMPORARY FOOD ESTABLISHMENT to obtain a valid FOOD WORKER CARD before beginning work.

NEW SECTION

**WAC 246-215-09205 Food and equipment protection—Standard operating procedures.** The PERSON IN CHARGE of a TEMPORARY FOOD ESTABLISHMENT shall ensure:

(1) Adequate facilities are provided at the TEMPORARY FOOD ESTABLISHMENTS for all necessary FOOD preparation steps;

(2) All FOODS, including ice, are from an APPROVED source;

(3) All off-site FOOD preparation is done in an APPROVED FOOD ESTABLISHMENT;

(4) All storage of FOOD and EQUIPMENT is done at APPROVED locations;

(5) FOOD is transported and stored in properly designed FOOD-grade containers;

(6) FOOD is protected from potential contamination during transport;

(7) Only SINGLE-SERVICE ARTICLES are provided for use by CONSUMERS, unless otherwise APPROVED by the REGULATORY AUTHORITY; and

(8) Condiments not in individual packages are provided in dispenser bottles or in other containers protected from contamination.

NEW SECTION

**WAC 246-215-09210 Potentially hazardous food—Temperature control.** The PERSON IN CHARGE of a TEMPO-

RARY FOOD ESTABLISHMENT shall ensure that POTENTIALLY HAZARDOUS FOODS are:

- (1) Not cooled in a TEMPORARY FOOD ESTABLISHMENT;
- (2) Properly temperature-controlled during transport to the temporary event location;
- (3) Temperature-monitored by use of a stem-type thermometer or thermocouple capable of measuring all proper FOOD temperatures;
- (4) Reheated, for hot holding, from 41°F (5°C) to 165°F (74°C) or above within one hour when cooked and cooled in an APPROVED FOOD ESTABLISHMENT;
- (5) Reheated, for hot holding, from 41°F (5°C) to 135°F (60°C) or above within one hour when produced in a FOOD PROCESSING PLANT;
- (6) Reheated no more than one time; and
- (7) Held in preheated mechanical hot holding EQUIPMENT or prechilled mechanical cold holding EQUIPMENT, or otherwise temperature controlled by an APPROVED method.

#### NEW SECTION

**WAC 246-215-09215 Thawing thickness—Thawing potentially hazardous foods.** The PERSON IN CHARGE of a TEMPORARY FOOD ESTABLISHMENT shall ensure POTENTIALLY HAZARDOUS FOODS that are thawed as part of a continuous cooking process are not greater than four inches thick.

#### NEW SECTION

**WAC 246-215-09220 Public access—Separation barrier.** The PERSON IN CHARGE of a TEMPORARY FOOD ESTABLISHMENT shall ensure a separation barrier or other effective method is used to protect FOOD preparation area and cooking areas from public access.

#### NEW SECTION

**WAC 246-215-09225 Handwashing and wastewater—Facilities.** The PERMIT HOLDER of a TEMPORARY FOOD ESTABLISHMENT shall ensure APPROVED handwashing facilities allow convenient use by EMPLOYEES; are located within 25 feet of FOOD preparation, FOOD dispensing, and WAREWASHING areas; and include:

- (1) Potable, warm, running water;
- (2) Soap and paper towels;
- (3) A five-gallon or larger insulated container kept supplied with warm water for handwashing delivered through a continuous-flow spigot, if permanent plumbing is not available; and
- (4) A wastewater retention tank sufficient in size to hold all wastewater generated by the TEMPORARY FOOD ESTABLISHMENT until emptied in an APPROVED manner, if a public SEWAGE system hookup is not available.

#### NEW SECTION

**WAC 246-215-09230 Employee restrooms—Toilet facilities.** The PERMIT HOLDER of a TEMPORARY FOOD

ESTABLISHMENT shall ensure APPROVED toilet facilities are available for EMPLOYEES and are:

- (1) Readily accessible during all times of operation; and
- (2) Provided with handwashing facilities with potable, warm, running water.

#### NEW SECTION

**WAC 246-215-09235 Sink compartment requirements—Warewashing facilities.** The PERMIT HOLDER of a TEMPORARY FOOD ESTABLISHMENT shall ensure access within 200 feet to a three-compartment sink with APPROVED drain boards and an adequate supply of hot and cold running water to wash, rinse, and SANITIZE UTENSILS when:

- (1) EQUIPMENT or UTENSILS are reused on-site; or
- (2) The TEMPORARY FOOD ESTABLISHMENT operates for two or more consecutive days; except
- (3) The REGULATORY AUTHORITY may approve an alternative UTENSIL cleaning method when three-compartment sinks with drain boards are not available and a health HAZARD cannot result.

#### NEW SECTION

**WAC 246-215-09240 Sink compartment requirements—Food preparation sink.** The PERMIT HOLDER and PERSON IN CHARGE shall ensure a separate FOOD preparation sink is available at the TEMPORARY FOOD ESTABLISHMENT that is supplied with potable running water, drained to an APPROVED wastewater system through an indirect connection, if produce needs to be washed on-site. Alternative produce washing facilities may be used if APPROVED.

### **Subpart C - Bed and Breakfast Operations**

#### NEW SECTION

**WAC 246-215-09300 Residential kitchen—Requirements and restrictions.** (1) The PERMIT HOLDER and PERSON IN CHARGE of a BED AND BREAKFAST OPERATION shall comply with the requirements of this chapter, except as otherwise provided in this subpart.

(2) The REGULATORY AUTHORITY may impose additional requirements to protect against health hazards related to the FOOD service portion of a BED AND BREAKFAST OPERATION.

(3) FOOD may be handled in the residential kitchen of a BED AND BREAKFAST OPERATION without meeting the provisions of WAC 246-215-02315, 246-215-04212, 246-215-04214, 246-215-04216, 246-215-04224, 246-215-04228, 246-215-04236, 246-215-04250, 246-215-04254, 246-215-04260, 246-215-04264, 246-215-04315, 246-215-04340, 246-215-04345, 246-215-04405, 246-215-04410, 246-215-04500(1), 246-215-04510, 246-215-04525, 246-215-04545, 246-215-04555, 246-215-04560, 246-215-04575, 246-215-04610, 246-215-04710, 246-215-04940, and 246-215-05240, Part 4, Subpart H; Part 5, Subpart E; Part 6 and Part 7, if:

- (a) The number of guest bedrooms does not exceed eight;
- (b) FOOD service is limited to overnight guests;

(c) Breakfast is the only meal prepared; however, baked goods that are not POTENTIALLY HAZARDOUS FOOD may be prepared and served at any time of day;

(d) POTENTIALLY HAZARDOUS FOODS are prepared for IMMEDIATE SERVICE only; and

(e) POTENTIALLY HAZARDOUS FOODS are not cooled for later reheating.

(4) If FOOD service is provided in a BED AND BREAKFAST OPERATION other than under the conditions of subsection (3) of this section, all FOODS must be prepared in an APPROVED nonresidential kitchen meeting the requirements of this chapter.

#### NEW SECTION

**WAC 246-215-09305 Food protection—Standard operating procedures.** The PERSON IN CHARGE of a BED AND BREAKFAST OPERATION shall ensure:

(1) FOOD supplies for personal use are separated from FOOD supplies intended for guest use;

(2) FOOD-CONTACT SURFACES are thoroughly cleaned before each use;

(3) A HANDWASHING SINK is available for use by EMPLOYEES during all times FOOD is prepared for BED AND BREAKFAST OPERATION guests and is located within 25 feet of FOOD preparation, FOOD dispensing, and WAREWASHING areas;

(4) Each HANDWASHING SINK is provided with a supply of hand soap and SINGLE-USE towels or other APPROVED hand-drying device;

(5) REFUSE, recyclables, and returnables are stored in a manner that does not create a public health HAZARD or nuisance;

(6) The PREMISES are maintained to control insects, rodents, and other pests;

(7) Children under age ten and animals are kept out of FOOD preparation areas during all times FOOD is prepared for bed and breakfast guests; and

(8) Toxic chemicals are stored in accurately labeled containers away from all FOODS and FOOD service supplies.

#### NEW SECTION

**WAC 246-215-09310 Sinks—Sink compartment requirements.** The kitchen of a BED AND BREAKFAST OPERATION must have at least the following facilities for cleaning and SANITIZING FOOD contact UTENSILS and EQUIPMENT and to allow handwashing in a separate sink basin from one used for FOOD preparation:

(1) A three-compartment sink; or

(2) Two-sink basins plus a home-style dishwasher with a SANITIZING cycle providing 155°F (68°C) or hotter water.

#### **Subpart D - Donated Food Distributing Organizations**

#### NEW SECTION

**WAC 246-215-09400 Requirements and exemptions.**

(1) The PERSON IN CHARGE of a DONATED FOOD DISTRIBUTING ORGANIZATION shall comply with the requirements of this chapter, except as otherwise provided in this section.

(2) A DONATED FOOD DISTRIBUTING ORGANIZATION is exempt from the provisions of WAC 246-215-08600 and Part 8, Subpart C of this chapter, regarding operating with a valid FOOD ESTABLISHMENT PERMIT.

(3) The PERSON IN CHARGE of a DONATED FOOD DISTRIBUTING ORGANIZATION shall notify the REGULATORY AUTHORITY in writing or by another APPROVED manner:

(a) Annually of the nature of its FOOD service activities, including types of FOOD served or distributed; and

(b) Whenever there is a significant change in its FOOD service activities.

(4) A DONATED FOOD DISTRIBUTING ORGANIZATION is exempt from meeting the provisions of WAC 246-215-02315, 246-215-03610, 246-215-04212, 246-215-04214, 246-215-04216, 246-215-04224, 246-215-04228, 246-215-04236, 246-215-04250, 246-215-04254, 246-215-04260, 246-215-04264, 246-215-04315, 246-215-04340, 246-215-04345, 246-215-04405, 246-215-04410, 246-215-04500(1), 246-215-04510, 246-215-04525, 246-215-04545, 246-215-04555, 246-215-04560, 246-215-04575, 246-215-04610, 246-215-04710, 246-215-04940, and 246-215-05240, Part 4, Subpart H; Part 5, Subpart E; and Part 6, if:

(a) All FOODS are donated to needy persons under the provisions of chapter 69.80 RCW;

(b) POTENTIALLY HAZARDOUS FOOD items prepared on-site or at a DONOR KITCHEN are served within eight hours of preparation; and

(c) POTENTIALLY HAZARDOUS FOOD items are not cooled and reheated on-site.

#### NEW SECTION

**WAC 246-215-09405 Standard operating procedures—Food protection.** The PERSON IN CHARGE of a DONATED FOOD DISTRIBUTING ORGANIZATION shall ensure:

(1) EQUIPMENT for cold holding, heating, and hot holding FOODS are sufficient in number and capacity to provide FOOD temperatures specified in Part 3 of this chapter;

(2) FOOD-CONTACT SURFACES are thoroughly cleaned before each use;

(3) A HANDWASHING SINK is accessible for use by EMPLOYEES during all times of FOOD preparation and service of unwrapped FOODS and is located within 25 feet of FOOD preparation, FOOD dispensing, and WAREWASHING areas;

(4) Each sink used for handwashing is provided with a supply of hand soap and SINGLE-USE towels or other APPROVED hand-drying device;

(5) REFUSE, recyclables, and returnables are stored in a manner that does not create a public health HAZARD or nuisance;

(6) The PREMISES are maintained to control insects, rodents, and other pests;

(7) Children under age ten and animals are kept out of FOOD preparation areas during the preparation of FOODS; and

(8) Toxic chemicals are stored in accurately labeled containers away from all FOODS and FOOD service supplies.

#### NEW SECTION

**WAC 246-215-09410 Sinks—Sink compartment requirements.** The PERSON IN CHARGE of a DONATED FOOD

DISTRIBUTING ORGANIZATION shall have at least the following facilities available for handwashing and cleaning of FOOD-contact UTENSILS and EQUIPMENT:

- (1) A three-compartment sink;
- (2) Two-sink basins plus a home-style dishwasher with a SANITIZING cycle providing 155°F (68°C) or hotter water; or
- (3) As otherwise APPROVED.

#### NEW SECTION

##### **WAC 246-215-09415 Food sources—Donated foods.**

The PERSON IN CHARGE of a DONATED FOOD DISTRIBUTING ORGANIZATION may receive FOODS for charitable purposes that include:

- (1) Surplus FOODS from a FOOD ESTABLISHMENT;
- (2) Muscle MEAT of a wild GAME ANIMAL:
  - (a) Received from a LAW enforcement officer certified by a jurisdiction in the state of Washington or from a hunter licensed by the Washington state department of fish and wildlife;
  - (b) Processed by an APPROVED MEAT cutter; and
  - (c) Labeled "*Uninspected wild game meat, thoroughly cook to 165°F (74°C) internal temperature*";
- (3) Muscle MEAT of a domesticated livestock animal, POULTRY, or rabbit;
  - (a) Donated live to the distributing organization;
  - (b) Raised by a member of an APPROVED youth club, such as 4H;
  - (c) Processed by an APPROVED MEAT cutter; and
  - (d) Labeled "*Uninspected wild game meat, thoroughly cook to 165°F (74°C) internal temperature*";
- (4) FOODS properly handled, stored, or prepared in a DONOR KITCHEN;
- (5) NonPOTENTIALLY HAZARDOUS, nonREADY-TO-EAT FOODS handled, stored, or prepared in a residential kitchen in a private home.
- (6) Baked goods that are not POTENTIALLY HAZARDOUS FOOD handled, stored, or prepared in a residential kitchen in a private home;
- (7) NonPOTENTIALLY HAZARDOUS, READY-TO-EAT FOODS in an intact commercial package stored in a residential kitchen in a private home; and
- (8) Commercially PACKAGED frozen FOOD.

#### NEW SECTION

**WAC 246-215-09420 Receiving food—Food condition.** The PERSON IN CHARGE of a DONATED FOOD DISTRIBUTING ORGANIZATION shall ensure that FOODS are inspected upon receipt and information is obtained from DONORS in order to determine that:

- (1) FOODS are safe and UNADULTERATED;
- (2) Surplus FOODS have not been previously served to a person;
- (3) POTENTIALLY HAZARDOUS FOOD meets the temperature specifications in WAC 246-215-03235;
- (4) FOODS have been protected from contamination during handling and storage by intact original commercial packaging or sanitary FOOD-grade containers; and

(5) FOODS have been handled and transported in separate containers as needed to prevent potential cross contamination between READY-TO-EAT and nonREADY-TO-EAT FOODS.

#### NEW SECTION

##### **WAC 246-215-09425 Prohibited food—Restrictions.**

The PERSON IN CHARGE of a DONATED FOOD DISTRIBUTING ORGANIZATION may not serve or distribute:

- (1) Home-canned FOODS;
- (2) Canned FOODS in containers that are rusty or severely damaged;
- (3) Distressed FOODS (such as from a fire, flood, or prolonged storage) unless the FOODS have been evaluated and APPROVED for charitable distribution; or
- (4) Infant formula that is past the original expiration date set by the processor.

#### NEW SECTION

##### **WAC 246-215-09430 Food labels—Alternative labeling.**

The PERSON IN CHARGE of a DONATED FOOD DISTRIBUTING ORGANIZATION may distribute PACKAGED FOODS without complete label information on each individual container, provided that:

- (1) Each container is labeled with the common name of the FOOD; and
- (2) The label information, according to the provisions of chapter 69.04 RCW, is on the master carton or is posted in plain view on a card, sign, or other method of notice at the point of distribution to the CONSUMER.

#### NEW SECTION

##### **WAC 246-215-09435 Record keeping—Receiving record.**

The PERSON IN CHARGE of a DONATED FOOD DISTRIBUTING ORGANIZATION receiving POTENTIALLY HAZARDOUS FOODS or nonPOTENTIALLY HAZARDOUS, READY-TO-EAT FOODS not prePACKAGED in a FOOD PROCESSING PLANT shall keep records for 30 days documenting the source, quantity, type, and receiving date of the FOODS.

#### **Subpart E - Preschools**

#### NEW SECTION

##### **WAC 246-215-09500 Requirements and exemptions.**

(1) The PERMIT HOLDER and PERSON IN CHARGE of a PRESCHOOL shall comply with the requirements of this chapter, except as otherwise provided in this section. If the PERMIT HOLDER does not meet the requirements under subsection (2) of this section, the PERMIT HOLDER shall comply with all requirements of this chapter.

(2) A PRESCHOOL is exempt from meeting the provisions of WAC 246-215-02315, 246-215-03610, 246-215-04212, 246-215-04214, 246-215-04216, 246-215-04224, 246-215-04228, 246-215-04250, 246-215-04254, 246-215-04260, 246-215-04264, 246-215-04410, 246-215-04500(1), 246-215-04525, 246-215-04545, 246-215-04555, 246-215-04560, 246-215-04610(2), 246-215-04710, 246-215-05240,

246-215-06100, 246-215-06200, 246-215-06290, and 246-215-06355 if:

(a) FOOD service is limited to enrolled children, staff, and volunteers at the PRESCHOOL;

(b) POTENTIALLY HAZARDOUS FOODS are prepared for IMMEDIATE SERVICE; and

(c) Cooked, reheated, or hot held POTENTIALLY HAZARDOUS FOODS are not cooled for future service. They must be either served hot or discarded each day.

(3) The REGULATORY AUTHORITY may impose additional requirements to protect against health hazards related to the operation of the PRESCHOOL and may:

(a) Limit the FOOD preparation steps;

(b) Prohibit some menu items; and

(c) Restrict the mode of operations when the facilities or EQUIPMENT are inadequate to protect public health.

NEW SECTION

**WAC 246-215-09505 Standard operating procedures.** The PERSON IN CHARGE of the PRESCHOOL shall ensure:

(1) EQUIPMENT for cold holding, heating and hot holding FOODS are sufficient in number and capacity to provide FOOD temperatures specified in Part 3 of this chapter. Residential models of such EQUIPMENT may be used if they are EASILY CLEANABLE and in good repair;

(2) FOOD-CONTACT SURFACES are thoroughly cleaned and SANITIZED before each use;

(3) A HANDWASHING SINK is accessible for use by EMPLOYEES during all times of FOOD preparation and service of unwrapped FOODS and is located within 25 feet of FOOD preparation, FOOD dispensing, and WAREWASHING areas;

(4) Each HANDWASHING SINK is provided with a supply of hand soap and SINGLE-USE towels or other APPROVED hand-drying device;

(5) REFUSE and recyclables are stored in a manner that does not create a public health HAZARD or nuisance;

(6) The PREMISES must be maintained free of infestations of insects, rodents, and other pests such that there is not a breeding population of pests in the facility; and

(7) Toxic chemicals are stored in accurately labeled containers away from all FOODS and FOOD service supplies.

NEW SECTION

**WAC 246-215-09510 Sink compartment requirements.** (1) At a minimum, a PRESCHOOL must have manual WAREWASHING sinks as specified under WAC 246-215-04305.

(2) One of the WAREWASHING sinks may also be used as a HANDWASHING SINK, provided FOOD preparation and WAREWASHING occur at separate times.

NEW SECTION

**WAC 246-215-09515 Food preparation sink.** If produce is washed on-site, the PRESCHOOL must either have:

(1) A separate FOOD preparation sink as specified under WAC 246-215-04325; or

(2) A preAPPROVED alternate produce washing procedure (e.g., the use of a colander) that ensures produce is not directly placed in WAREWASHING or HANDWASHING SINKS.

**PART 10: SEVERABILITY**

NEW SECTION

**WAC 246-215-10000 Severability.** If any provision of this chapter or its application to any PERSON or circumstance is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances is not affected.

REPEALER

The following sections of the Washington Administrative Code are repealed:

|                 |  |
|-----------------|--|
| WAC 246-215-001 | Purpose and authority.   |
| WAC 246-215-005 | Minimum performance standards.                                   |
| WAC 246-215-011 | Definitions.   |
| WAC 246-215-021 | Management and personnel.  |
| WAC 246-215-031 | Employee hygiene.  |
| WAC 246-215-041 | Food supplies.   |
| WAC 246-215-051 | Public health labeling.  |
| WAC 246-215-061 | Food handling.   |
| WAC 246-215-071 | Equipment and utensils.  |
| WAC 246-215-081 | Water, plumbing, and waste.                                      |
| WAC 246-215-091 | Physical facilities.   |
| WAC 246-215-121 | Mobile food units.   |
| WAC 246-215-131 | Temporary food establishments.                                   |
| WAC 246-215-141 | Bed and breakfast operations.                                    |
| WAC 246-215-151 | Donated food distributing organizations.                         |
| WAC 246-215-181 | Compliance and enforcement.                                      |
| WAC 246-215-191 | Exempt from permit.  |
| WAC 246-215-200 | Permits required, suspension, revocation, enforcement.           |
| WAC 246-215-210 | Service of notices.  |
| WAC 246-215-220 | Hearings.  |
| WAC 246-215-240 | Examination, hold orders, condemnation, and destruction of food. |
| WAC 246-215-251 | Employee health.   |

|                 |   |
|-----------------|---|
| WAC 246-215-260 | Procedure when disease transmission is suspected. |
| WAC 246-215-280 | Interpretation.                                   |
| WAC 246-215-290 | Separability clause.                              |
| WAC 246-215-300 | Penalty clause.                                   |
| WAC 246-215-311 | Effective date.                                   |

**WSR 13-03-110****PERMANENT RULES****STATE BOARD OF HEALTH**

[Filed January 17, 2013, 5:05 p.m., effective February 17, 2013]

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

Purpose: WAC 246-100-207 (1)(a), human immunodeficiency virus (HIV) testing. The rule shortens the term "informed consent" to "consent" in order to emphasize that, for purposes of this rule, consent for HIV testing may be obtained verbally or in writing. The rule is not intended to affect a health practitioner's duty regarding patient consent, but to help protect public health by reducing barriers to testing.

Citation of Existing Rules Affected by this Order: Amending WAC 246-100-207 (1)(a).

Statutory Authority for Adoption: RCW 70.24.380.

Adopted under notice filed as WSR 12-20-083 on October 3, 2012.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: November 14, 2012.

Michelle A. Davis  
Executive Director

**AMENDATORY SECTION** (Amending WSR 10-01-082, filed 12/15/09, effective 1/15/10)

**WAC 246-100-207 Human immunodeficiency virus (HIV) testing—Ordering—Laboratory screening—Interpretation—Reporting.** (1) Except for persons conducting seroprevalent studies under chapter 70.24 RCW, or ordering or prescribing an HIV test for another individual under subsections (4) and (5) of this section or under WAC 246-100-

208(1), any person ordering or prescribing an HIV test for another individual, shall:

(a) Obtain the ((informed)) consent of the individual, separately or as part of the consent for a battery of other routine tests provided that the individual is specifically informed verbally or in writing that a test for HIV is included; and

(b) Offer the individual an opportunity to ask questions and decline testing; and

(c) If the HIV test is positive for or suggestive of HIV infection, provide the name of the individual and locating information to the local health officer for follow-up to provide post-test counseling as required by WAC 246-100-209.

(2) The local and state health officer or authorized representative shall periodically make efforts to inform providers in their respective jurisdiction about the September 2006 Centers for Disease Control and Prevention "*Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Healthcare Settings.*"

(3) Health care providers may obtain a sample brochure about the September 2006 Centers for Disease Control and Prevention "*Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Healthcare Settings*" by contacting the department's HIV prevention program at P.O. Box 47840, Olympia, WA 98504.

(4) Any person authorized to order or prescribe an HIV test for another individual may offer anonymous HIV testing without restriction.

(5) Blood banks, tissue banks, and others collecting or processing blood, sperm, tissues, or organs for transfusion/transplanting shall:

(a) Obtain or ensure informed specific consent of the individual prior to ordering or prescribing an HIV test, unless excepted under provisions in chapter 70.24 RCW;

(b) Explain that the reason for HIV testing is to prevent contamination of the blood supply, tissue, or organ bank donations;

(c) At the time of notification regarding a positive HIV test, provide or ensure at least one individual counseling session; and

(d) Inform the individual that the name of the individual testing positive for HIV infection will be confidentially reported to the state or local health officer.

(6) Persons subject to regulation under Title 48 RCW and requesting an insured, subscriber, or potential insured or subscriber to furnish the results of an HIV test for underwriting purposes, as a condition for obtaining or renewing coverage under an insurance contract, health care service contract, or health maintenance organization agreement shall:

(a) Before obtaining a specimen to perform an HIV test, provide written information to the individual tested explaining:

(i) What an HIV test is;

(ii) Behaviors placing a person at risk for HIV infection;

(iii) The purpose of HIV testing in this setting is to determine eligibility for coverage;

(iv) The potential risks of HIV testing; and

(v) Where to obtain HIV pretest counseling.

(b) Obtain informed specific written consent for an HIV test. The written informed consent shall include:

(i) An explanation of confidential treatment of test result reports limited to persons involved in handling or determining applications for coverage or claims for the applicant or claimant; and

(ii) That the name of the individual testing positive for HIV infection will be confidentially reported to the state or local health officer; and

(iii) At the time of notification regarding a positive HIV test, provide or ensure at least one individual counseling session.

(c) Establish procedures to inform an applicant of the following:

(i) Post-test counseling specified under WAC 246-100-209 is required if an HIV test is positive or indeterminate;

(ii) Post-test counseling is done at the time any positive or indeterminate HIV test result is given to the tested individual;

(iii) The applicant is required to designate a health care provider or health care agency to whom positive or indeterminate HIV test results are to be provided for interpretation and post-test counseling; and

(iv) When an individual applicant does not identify a designated health care provider or health care agency and the applicant's HIV test results are positive or indeterminate, the insurer, health care service contractor, or health maintenance organization shall provide the test results to the state or local health department for interpretation and post-test counseling.

(7) Laboratories and other places where HIV testing is performed must demonstrate compliance with all of the requirements in the Medical test site rules, chapter 246-338 WAC.

(8) The department laboratory quality assurance section shall accept substitutions for enzyme immunoassay (EIA) screening only as approved by the United States Food and Drug Administration (FDA) and a published list or other written FDA communication.

(9) Persons informing a tested individual of positive laboratory test results indicating HIV infection shall do so only when:

(a) The test or sequence of tests has been approved by the FDA or the Federal Centers for Disease Control and Prevention as a confirmed positive test result; and

(b) Such information consists of relevant facts communicated in such a way that it will be readily understood by the recipient.

(10) Persons may inform a tested individual of the unconfirmed reactive results of an FDA-approved rapid HIV test provided the test result is interpreted as preliminarily positive for HIV antibodies, and the tested individual is informed that:

(a) Further testing is necessary to confirm the reactive screening test result;

(b) The meaning of reactive screening test result is explained in simple terms, avoiding technical jargon;

(c) The importance of confirmatory testing is emphasized and a return visit for confirmatory test results is scheduled; and

(d) The importance of taking precautions to prevent transmitting infection to others while awaiting results of confirmatory testing is stressed.

**WSR 13-03-127**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed January 22, 2013, 11:29 a.m., effective March 1, 2013]

Effective Date of Rule: March 1, 2013.

Purpose: The apprenticeship program is proceeding with rule making in response to chapter 308, Laws of 2011 (SB 5584) and chapter 21, Laws of 2011 (E2SHB 1371).

Citation of Existing Rules Affected by this Order: Amending WAC 296-05-001, 296-05-005, 296-05-007, 296-05-100, 296-05-107, and 296-05-209.

Statutory Authority for Adoption: Chapter 49.04 RCW, chapter 308, Laws of 2011 (SB 5584), and chapter 21, Laws of 2011 (E2SHB 1371).

Adopted under notice filed as WSR 12-21-104 on October 23, 2012.

A final cost-benefit analysis is available by contacting Sally Elliott, P.O. Box 44400, Olympia, WA 98504-4400, phone (360) 902-6411, fax (360) 902-5292, e-mail sally.elliott@lni.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 6, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 6, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 6, Repealed 0.

Date Adopted: January 22, 2013.

Joel Sacks  
Director

AMENDATORY SECTION (Amending WSR 11-11-002, filed 5/4/11, effective 7/25/11)

**WAC 296-05-001 Purpose, scope, and authority.** (1) The Washington State Apprenticeship and Training Act (chapter 49.04 RCW) establishes the Washington state apprenticeship and training council (WSATC) as regulatory and designates as its administrative arm the apprenticeship section of the department of labor and industries. The WSATC, acting in compliance with chapter 49.04 RCW and in harmony with 29 C.F.R. Part 29 and 29 C.F.R. Part 30, has adopted these rules to:

(a) Establish operating procedures for the WSATC;

(b) Establish standards for apprenticeship programs;

(c) Implement the intent and purpose of the Washington State Apprenticeship and Training Act;

(d) Perform other duties directed by the statute;

(e) Promote labor standards and the registration of approved programs to protect the welfare of the apprentice; and

(f) Encourage the establishment of apprenticeship programs and ~~((committees))~~ agreements.

(2) These rules are necessary to:

(a) Strengthen apprenticeship and training in the state of Washington;

(b) Facilitate approval and registration of apprenticeship and training programs;

(c) Explain factors related to apprenticeship and training in Washington state and federal laws;

(d) Establish procedures for presenting matters to the WSATC;

(e) Govern the WSATC's operation and ability to carry out its statutory obligations;

(f) Establish a specific procedure to resolve an impasse if a tie vote occurs on the WSATC; and

(g) Regulate registered apprenticeship and training programs.

AMENDATORY SECTION (Amending WSR 11-11-002, filed 5/4/11, effective 7/25/11)

**WAC 296-05-005 Rule development.** (1) In developing and adopting rules, the ~~((WSATC))~~ director of labor and industries:

(a) Seeks the cooperation and assistance of all interested persons, organizations, and agencies affected by its rules.

(b) Promotes the operation of apprenticeship programs to satisfy the needs of employers and employees for high quality training.

(c) Recognizes that rapid economic and technological changes require that workers must be trained to meet the demands of a changing marketplace.

(d) Recognizes employers will benefit if graduates of state approved apprenticeship programs are skilled workers trained to industry wide standards rather than the exclusive standards of an individual employer or group of employers.

(e) Acknowledges that approved apprenticeship programs should be organized and administered to assure the maximum protection of apprentices' rights.

(f) Recognizes that the number of apprentices in an occupation or group of occupations in any geographic area must be sufficient to meet the needs of all employers.

(g) Promotes comprehensive training and a variety of work experiences relevant to the occupations and seeks to assure that during the approval process all apprenticeship standards are open to employers on an equal and nondiscriminatory basis.

(h) Recognizes that quality training, equal treatment of apprentices, and efficient delivery of apprenticeship training are best provided by registered apprenticeship programs.

(2) All amendments to this chapter must be developed and adopted according to the provisions of chapter 49.04 RCW, Apprenticeship Act; chapter 34.05 RCW, Administrative Procedure Act; and Executive Order 97-02. All proposed amendments to these rules must be approved by a two-thirds majority vote of regular WSATC members before they are published for public hearing. All WSATC members, the

apprenticeship supervisor, committees and any other interested parties must be promptly notified, in writing, of any proposed rule amendments, public hearings on proposed rule amendments and new rule adoptions.

(3) The specific procedure(s) and form(s) for petitions requesting the making, amendment, or repeal of a rule are in chapter 34.05 RCW, as are the specific procedure and form for requesting declaratory rulings.

(4) Such petitions and requests must be addressed to:

The Washington State Apprenticeship and Training Council

Attention: Supervisor of Apprenticeship and Training  
Department of Labor and Industries

Post Office Box 44530

Olympia, Washington 98504-4530

Or e-mail address: [apprentice@LNI.wa.gov](mailto:apprentice@LNI.wa.gov)

AMENDATORY SECTION (Amending WSR 11-11-002, filed 5/4/11, effective 7/25/11)

**WAC 296-05-007 Rules of procedure.** All hearings and adjudication, under chapter 49.04 RCW and these rules, shall be conducted according to chapter 34.05 RCW, the Administrative Procedure Act and chapter 10-08 WAC, Model Rules of Procedure. 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 has been 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 quarterly meeting unless:

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

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

The WSATC, upon review of the initial order shall enter the final order. The WSATC may appoint a person to review the initial order and prepare and enter the final WSATC order.

(3) Final WSATC orders or decisions affecting registration and oversight of apprenticeship programs and agreements for federal purposes may be appealed within thirty 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 thirty 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) 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.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-100 WSATC composition.** (1) The director of the department appoints three voting representatives each from employer and employee organizations, respectively. Each member shall be appointed for a three-year term.

(2) The ~~((governor shall appoint, subject to confirmation by the senate, a voting))~~ director of labor and industries shall also appoint a public member to the apprenticeship council for a three-year term.

(3) The WSATC may also include ex officio members. These members have the right to participate in the discussion of any matter before the council but they may not vote.

(4) An appointed member shall remain on the council until replaced by a qualified successor. When a vacancy does occur, it shall be filled for the remaining portion of the vacated term.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-107 Additional duties for the supervisor-administrator of WSATC.** (1) In addition to being the council secretary, the apprenticeship supervisor (supervisor) is the WSATC administrator. As WSATC administrator, the supervisor must:

(a) Perform the duties listed in RCW 49.04.030;

(b) Register all apprenticeship agreements that comply with the rules in this chapter;

(c) Review apprenticeship programs and recommend cancellation of any committee program, or plant program previously registered which is not operated in conformity with its apprenticeship standards; and

(d) Receive all documents concerning apprenticeship or training agreements (including revisions to) or any other matters affecting apprenticeship or training.

All written correspondence to the supervisor should be addressed to:

Supervisor of Apprenticeship and Training  
Department of Labor and Industries  
Apprenticeship Section  
P.O. Box 44530  
Olympia, Washington 98504-4530

(2) The supervisor and the supervisor's staff:

(a) May be consulted on any matters concerning apprenticeship and training and will provide on request, any infor-

mation concerning apprenticeship and training available to them.

(b) Will conduct systematic reviews of the operation of all programs and investigate any discrepancies between the actual and required operations of any program. The supervisor will notify the noncompliant ~~((committee))~~ program sponsor of any violation.

(c) May recommend sanctions including cancellation of a program not in compliance with its approved program standards.

(d) Assists in the resolution of any complaints against committees or other organizations administering apprenticeship agreements, ~~((which have been))~~ filed with the WSATC by apprentice(s) who have completed his/her initial probationary period.

(e) Must investigate any discrepancies of all complaints as specified in WAC 296-05-009.

(f) Conducts compliance reviews as specified in WAC 296-05-011.

AMENDATORY SECTION (Amending WSR 11-11-002, filed 5/4/11, effective 7/25/11)

**WAC 296-05-209 Voting.** (1) A quorum is two-thirds of the WSATC members entitled to vote.

(2) All council members appointed by ~~((either))~~ the director ~~((or the governor))~~ are voting members of the council. Ex officio members may not vote on any issue.

(3) To resolve tie votes, the chair shall establish a standing tie-breaker committee. The committee shall be comprised of an employer representative, an employee representative, and the public member on the WSATC. 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 thirty calendar days. The supervisor or a designee of the supervisor shall act as secretary to the committee and furnish all information necessary for a decision.

## WSR 13-03-128

### PERMANENT RULES

### DEPARTMENT OF

### LABOR AND INDUSTRIES

[Filed January 22, 2013, 11:35 a.m., effective March 1, 2013]

Effective Date of Rule: March 1, 2013.

Purpose: The department reviewed the electrical rules for additions and revisions to ensure the rules are consistent with the national consensus standards and industry practice. This rule making will:

- Adopt the 2014 national electrical consensus standards - such as the National Electrical Code and current versions of the National Electrical Safety Code, national telecommunications standards and formalize policy changes that are supported by the industry - so that Washington is current with other states.
- Adopt proposals evaluated by the department on the rule-making moratorium's exemption requirements

and determined to be required by legislation and beneficial to or requested and supported by the regulated entities or small businesses they affect.

Citation of Existing Rules Affected by this Order: Amending WAC 296-46B-010 General. Adopted standards, 296-46B-100 General definitions, 296-46B-110 General—Requirements for electrical installations, 296-46B-210 Wiring and protection—Branch circuits, 296-46B-215 Wiring and protection—Feeders, 296-46B-220 Wiring and protection—Branch circuit, feeder, and service calculations, 296-46B-225 Wiring and protection—Outside branch circuits and feeders, 296-46B-230 Wiring and protection—Services, 296-46B-240 Overcurrent protection, 296-46B-250 Wiring and protection—Grounding and bonding, 296-46B-300 Wiring methods and materials—Wiring methods, 296-46B-410 Equipment for general use—Luminaires, 296-46B-445 Wind driven generator equipment, 296-46B-450 Equipment for general use—Transformers and transformer vaults, 296-46B-513 Special occupancies—Aircraft hangers, 296-46B-550 Special occupancies—Mobile homes, manufactured homes and mobile home parks, 296-46B-555 Special occupancies—Marinas and boatyards, 296-46B-600 Special equipment—Electric signs and outline lighting, 296-46B-680 Special equipment—Swimming pools, fountains and similar installations, 296-46B-690 Solar photovoltaic systems, 296-46B-800 Communications systems—Communications circuits, 296-46B-900 Electrical plan review. Classification or definition of occupancies, 296-46B-901 General—Electrical work permits and fees, 296-46B-903 Equipment standards, 296-46B-906 Inspection fees, 296-46B-907 Provisional permits, 296-46B-908 Class B permits, 296-46B-909 Electrical/telecommunications contractor's license, administrator certificate and examination, master electrician certificate and examination, electrician certificate and examination, copy, and miscellaneous fees, 296-46B-915 Civil penalty schedule, 296-46B-920 Electrical/telecommunications license/certificate types and scope of work, 296-46B-925 Electrical/telecommunications contractor's license. General, 296-46B-930 Assignment—Administrator or master electrician, 296-46B-935 Administrator certificate. General, 296-46B-940 Electrician/training/certificate of competency or permit required, 296-46B-945 Qualifying for master, journeyman, specialty electrician examinations, 296-46B-960 Administrator and electrician certificate of competency examinations. General, 296-46B-970 Continuing education and classroom education requirements, 296-46B-971 Training schools, 296-46B-985 Penalties for false statements or material misrepresentations, 296-46B-990 Failure to comply with the electrical contractor licensing, administrator certification, or electrician certification laws. General, 296-46B-995 Electrical board—Appeal rights and hearings. General, 296-46B-997 Engineer approval, and 296-46B-999 Electrical testing laboratory requirements. General; and new sections WAC 296-46B-336 Power and control tray cable—Type TC, 296-46B-406 Receptacles, cord connectors, and attachment plugs, 296-46B-424 Fixed electrical space heating equipment, and 296-46B-942 Training certificate required; and repealing WAC 296-46B-520 Special occupancies—Theaters, motion picture and television studios, performance areas and similar areas and 296-46B-965 Training certificate required.

Statutory Authority for Adoption: Chapter 19.28 RCW.

Adopted under notice filed as WSR 12-21-103 on October 23, 2012.

Changes Other than Editing from Proposed to Adopted Version: Based upon comments during the public hearing process, the department withdrew the proposed definition for "telecommunications."

A final cost-benefit analysis is available by contacting Sally Elliott, P.O. Box 44400, Olympia, WA 98504-4400, phone (360) 902-6411, fax (360) 902-5292, e-mail sally.elliott@lni.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 4, Amended 43, Repealed 2.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 43, Repealed 2.

Date Adopted: January 22, 2013.

Joel Sacks  
Director

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

**WAC 296-46B-010 General. Adopted standards.**

(1) The 2008 edition of the National Electrical Code (NFPA 70 - 2008) including Annex A, B, and C; (~~the 2007 edition of standard for the Installation of Stationary Pumps for Fire Protection (NFPA 20 - 2007); the 2005 edition of standard for Emergency and Standby Power Systems (NFPA 110 - 2005);~~) Commercial Building Telecommunications Cabling Standard (~~((ANSI/TIA/EIA 568-B.1 - June 2002 including Annex 1 through 5)) ANSI/TIA-568-C series, February 2009~~); Commercial Building Standard for Telecommunications Pathway and Spaces (~~((ANSI/TIA/EIA 569-A-7 December 2001 including Annex 1 through 4)) TIA-569-B, October 2004~~); Commercial Building Grounding and Bonding Requirements for Telecommunications (~~((ANSI/TIA/EIA 607-A - 2002)) ANSI-TIA-607-B, August 2011~~); Residential Telecommunications Cable Standard (ANSI/TIA/EIA 570-B-2004); (~~(American Railroad Engineering and Maintenance of Way Association - 2005 Communications and Signal Manual~~);) and the National Electrical Safety Code (NESC C2-2007 excluding Appendixes A and B) are hereby adopted by reference as part of this chapter. (~~Other codes, manuals, and reference works referred to in this chapter are available for inspection and review in the Olympia office of the electrical section of the department during business hours.~~

~~The requirements of)~~ On July 1, 2014, the 2014 edition of the National Electrical Code (NFPA 70-2014) including Annex A, B, and C is hereby adopted by reference as part of this chapter and replaces the 2008 edition.

This chapter will be ~~((observed))~~ followed where there is any conflict between this chapter and the ~~((National Electrical Code (NFPA 70), Centrifugal Fire Pumps (NFPA 20), the Emergency and Standby Power Systems (NFPA 110), ANSI/TIA/EIA 568-B, ANSI/TIA/EIA 569-A, ANSI/TIA/EIA 607, ANSI/TIA/EIA 570, or the NESC C2-2007))~~ above adopted standards.

The National Electrical Code will be followed where there is any conflict between ~~((standard for Installation of Stationary Pumps for Fire Protection (NFPA 20), standard for Emergency and Standby Power Systems (NFPA 110)))~~ the National Electrical Code and, ANSI/TIA/EIA 568-((B))C, ANSI/TIA/EIA 569-((A))B, ANSI/TIA/EIA 607-B, ANSI/TIA/EIA 570-B, or the NESC C2 ((and the National Electrical Code (NFPA 70))).

### Inspections - General.

(2) Electrical inspectors will give information as to the interpretation or application of the standards in this chapter, but will not lay out work or act as consultants for contractors, owners, or users.

(3) A variance from the electrical installation requirements of chapter 19.28 RCW or this chapter may be granted by the department or the city that has electrical inspection jurisdiction when it is assured that equivalent objectives can be achieved by establishing and maintaining effective safety.

(a) Any electrical permit holder may request a variance.

(b) The permit holder must make the request in writing, using a form provided by the department, to the chief electrical inspector or to the city that has electrical inspection jurisdiction. The request must include:

(i) A description of the installation as installed or proposed;

(ii) A detailed list of the applicable code violations;

(iii) A detailed list of safety violations;

(iv) A description of the proposal for meeting equivalent objectives for code and/or safety violations; and

(v) Appropriate variance application fee as listed in chapter 296-46B WAC, Part C.

(4) Electrical wiring or equipment subject to this chapter must be sufficiently accessible, at the time of inspection, to allow the inspector to visually inspect the installation to verify conformance with the NEC and any other electrical requirements of this chapter.

~~(5) ((Cables or raceways, fished according to the NEC, do not require visual inspection.~~

~~((6)))~~ All required equipment grounding conductors installed in concealed cable or flexible conduit systems must be completely installed and made up at the time of the rough-in cover inspection.

~~((7)))~~ (6) The installation of all structural elements and mechanical systems (e.g., framing, plumbing, ducting, etc.) must be complete in the area(s) where electrical inspection is requested. Prior to completion of an exterior wall cover inspection, either:

(a) The exterior shear panel/sheathing nail inspection must be completed by the building code inspector; or

(b) All wiring and device boxes must be a minimum of 63 mm (2 1/2") from the exterior surface of the framing member; or

(c) All wiring and device boxes must be protected by a steel plate a minimum of 1.6 mm (1/16") thick and of appropriate width and height installed to cover the area of the wiring or box.

~~((8)))~~ (7) In order to meet the minimum electrical safety standards for installations, all materials, devices, appliances, and equipment, not exempted in chapter 19.28 RCW, must conform to applicable electrical product standards recognized by the department, be listed, or field evaluated. For any equipment that requires an amusement operating permit under chapter 67.42 RCW, the operating permit is prima facie evidence of an appropriate standard. Other than as authorized by the chief electrical inspector or a city authorized to do electrical inspection, equipment must not be energized until such standards are met.

~~((9)))~~ (8) The state department of transportation is recognized as the inspection authority for telecommunications systems installations within the rights of way of state highways provided the department of transportation maintains and enforces an equal, higher or better standard of construction, and of materials, devices, appliances, and equipment than is required for telecommunications systems installations by chapter 19.28 RCW and this chapter.

### Inspection move on buildings and structures.

~~((10)))~~ (9) All buildings or structures relocated into or within the state:

(a) Other than residential, wired inside the United States (U.S.) must be inspected to ensure compliance with current requirements of chapter 19.28 RCW and the rules developed by the department.

(b) Wired outside the U.S. or Canada must be inspected to ensure compliance with all current requirements of chapter 19.28 RCW and the rules developed by the department.

~~((11)))~~ (10) Residential buildings or structures wired in the U.S., to NEC requirements, and moved into or within a county, city, or town must be inspected to ensure compliance with the NEC requirements in effect at the time and place the original wiring was made. The building or structure must be inspected to ensure compliance with all current requirements of chapter 19.28 RCW and the rules developed by the department if:

(a) The original occupancy classification of the building or structure is changed as a result of the move; or

(b) The building or structure has been substantially remodeled or rehabilitated as a result of the move.

~~((12)))~~ (11) Residential buildings or structures wired in Canada to Canadian Electrical Code (CEC) standards and moved into or within a county, city, or town, must be inspected to ensure compliance with the following minimum safety requirements:

(a) Service, service grounding, and service bonding must comply with the current chapter 19.28 RCW and rules adopted by the department.

(b) Canadian Standards Association (CSA) listed Type NMD cable is allowed with the following qualifications:

(i) CSA listed Type NMD cable, American Wire Gauge #10 and smaller installed after 1964 utilizing an equipment

grounding conductor smaller than the phase conductors, must be:

(A) Replaced with a cable utilizing a full-size equipment grounding conductor; or

(B) Protected by a ground fault circuit interrupter protection device.

(ii) CSA listed Type NMD cable, #8 AWG and larger, must:

(A) Utilize an equipment grounding conductor sized according to the requirements of the NEC in effect at the time of the installation;

(B) Be protected by a ground fault circuit interrupter protection device; or

(C) Be replaced.

(c) Other types of wiring and cable must be:

(i) Replaced with wiring listed or field evaluated in accordance with U.S. standards by a laboratory approved by the department; or

(ii) Protected by a ground fault circuit interrupter protection device and arc fault circuit protection device.

(d) Equipment, other than wiring or panelboards, manufactured and installed prior to 1997 must be listed and identified by laboratory labels approved by the department or CSA labels.

(e) All panelboards must be listed and identified by testing laboratory labels approved by the department with the following qualifications:

(i) CSA listed panelboards labeled "suitable for use as service equipment" will be considered to be approved as "suitable for use only as service equipment."

(ii) CSA listed panelboards used as panelboards as described in the NEC, must meet all current requirements of the NEC and this chapter.

(f) Any wiring or panelboards replaced or changed as a result of the move must meet current requirements of chapter 19.28 RCW and this chapter.

(g) The location, type, and ground fault circuit interrupter protection of receptacles and equipment in a bathroom, kitchen, basement, garage, or outdoor area must meet the Washington requirements in effect at the time the wiring was installed.

(h) 4, 15-ampere, kitchen small appliance circuits will be accepted in lieu of 2, 20-ampere, kitchen small appliance circuits. Receptacles will not be required to be added on kitchen peninsular or island counters.

(i) Spacing requirements for all other receptacles must meet the Washington requirements in effect at the time the wiring was installed.

(j) Receptacles installed above baseboard or fixed wall space heaters must be removed and the outlet box covered with a blank cover. The receptacle is required to be relocated as closely as possible to the existing location.

(k) Lighting outlet and switch locations must meet the Washington requirements in effect at the time the wiring was installed.

(l) Dedicated 20-ampere small appliance circuits are not required in dining rooms.

(m) Electric water heater branch circuits must be adequate for the load.

(n) The location, type, and circuit protection of feeders must meet the Washington requirements in effect at the time the wiring was installed.

**Wiring methods for designated building occupancies.**

~~((13)) (12)~~ Wiring methods ~~(, equipment, and devices for health or personal care,))~~ in places of assembly located within educational ~~(and)~~ or institutional facilities as defined or classified in this chapter ~~((and for places of assembly for one hundred or more persons))~~ must ~~((comply with Tables 010-1 and 010-2 of this chapter and the notes thereto. The local building authority will determine the occupant load of places of assembly))~~ be wired in metallic or nonmetallic raceways, MI, MC, or AC cable. Assisted living facility generator systems may be wired and installed per NEC 517.

(13) Lawfully installed existing electrical installations that do not comply with the provisions of this chapter and remain in compliance with the code at the time of the installation, will be permitted to be continued without change (i.e., without circuitry or occupancy change). Additions, alterations, modifications, or repairs to the electrical system must conform to the current requirements of this chapter.

(14) Listed tamper-resistant receptacles are required in all licensed day care centers, all licensed children group care facilities, and psychiatric patient care facilities where accessible to children five years of age and under. Listed tamper-resistant receptacles are required in psychiatric patient care facilities where accessible to psychiatric patients over five years of age and the public access areas in medical facilities.

| <b><del>((Notes to Tables 010-1 and 010-2.</del></b> |   |
|--|---|
| 1.   | <del>Wiring methods in accordance with the NEC unless otherwise noted.</del>  |
| 2.   | <del>Metallie or nonmetallie raceways, MI, MC, or AC cable, except that in places of assembly located within educational or institutional facilities, wiring methods must conform to NEC 518.4(A). Places of assembly located within educational or institutional facilities may not be wired according to NEC 518.4(B) or (C).</del> |
| 3.   | <del>Limited energy systems may use wiring methods in accordance with the NEC.</del>  |
| 4.   | <del>Generator systems may be installed and wired per NEC 517.</del>  |

**Table 010-1 Health or Personal Care Facilities**

| <b>Health or Personal Care Facility Type<sup>(4)</sup></b> |  |
|--|--|
| Hospital   |  |
| Nursing home unit or long-term care unit                   |  |
| Boarding home  |  |
| Assisted living facility <sup>(4)</sup>                    |  |
| Private alcoholism hospital                                |  |
| Alcoholism treatment facility                              |  |
| Private psychiatric hospital                               |  |
| Maternity home   |  |
| Birth center or childbirth center                          |  |
| Ambulatory surgery facility                                |  |

**Table 010-1 Health or Personal Care Facilities**

| Health or Personal Care Facility Type <sup>(4)</sup>                           |  |
|--|--|
| Hospice care center  |  |
| Renal hemodialysis clinic  |  |
| Medical, dental, and chiropractic clinic                                       |  |
| Residential treatment facility for psychiatrically impaired children and youth |  |
| Adult residential rehabilitation center  |  |
| Group care facility  |  |

**Table 010-2 Educational and Institutional Facilities, Places of Assembly or Other Facilities**

| Educational, Institutional or Other Facility Types  |  |
|---|--|
| Educational <sup>(2)(3)</sup>   |  |
| Institutional <sup>(2)(3)</sup>   |  |
| Places of Assembly for 100 or more persons <sup>(4)</sup>                                     |  |
| Child day care center <sup>(4)</sup>  |  |
| School age child care center <sup>(4)</sup>   |  |
| Family child day care home, family child care home, or child day care facility <sup>(4)</sup> |  |

**Traffic management systems.**

(15) The department or city authorized to do electrical inspections will perform the electrical inspection and acceptance of traffic management systems within its jurisdiction. A traffic management system includes:

- (a) Traffic illumination systems;
- (b) Traffic signal systems;
- (c) Traffic monitoring systems;
- (d) The electrical service cabinet and all related components and equipment installed on the load side of the service cabinet supplying electrical power to the traffic management system; and
- (e) Signalization system(s) necessary for the operation of a light rail system.

A traffic management system can provide signalization for controlling vehicular traffic, pedestrian traffic, or rolling stock.

(16) The department or city authorized to do electrical inspections recognizes that traffic signal conductors, pole and bracket cables, signal displays, traffic signal controllers/cabinets and associated components used in traffic management systems are acceptable for the purpose of meeting the requirements of chapter 19.28 RCW provided they conform with the following standards or are listed on the Washington state department of transportation (WSDOT) qualified products list.

- (a) WSDOT/APWA standard specifications and plans;
- (b) WSDOT *Design Manual*;
- (c) International Municipal Signal Association (IMSA);
- (d) National Electrical Manufacturer's Association (NEMA);
- (e) Federal Standards 170/Controller Cabinets;
- (f) Manual for *Uniform Road, Bridge, and Municipal Construction*;

- (g) Institute of Transportation Engineers (ITE); or
- (h) Manual of *Uniform Traffic Control Devices (MUTCD)*.

(17) Associated induction detection loop or similar circuits will be accepted by the department or city authorized to do electrical inspections without inspection.

(18) For the licensing requirements of chapter 19.28 RCW, jurisdictions will be considered owners of traffic management systems when doing electrical work for another jurisdiction(s) under a valid interlocal agreement, as permitted by chapter 39.34 RCW. Interlocal agreements for traffic management systems must be filed with the department or city authorized to do electrical inspections prior to work being performed for this provision to apply.

(19) Jurisdictions, with an established electrical inspection authority, and WSDOT may perform electrical inspection on their rights of way for each other by interlocal agreement. They may not perform electrical inspection on other rights of way except as allowed in chapter 19.28 or 39.34 RCW.

(20) Underground installations.

(a) In other than open trenching, raceways will be considered "fished" according to the NEC and do not require visual inspection.

(b) The department or city authorized to do electrical inspections will conduct inspections in open trenching within its jurisdiction. The electrical work permit purchaser must coordinate the electrical inspection. A written request (e.g., letter, e-mail, fax, etc.) for inspection, made to the department or city authorized to do electrical inspections office having the responsibility to perform the inspection, must be made a minimum of two working days prior to the day inspection is needed (e.g., two working days 10:00 a.m. Tuesday request for a 10:00 a.m. Thursday inspection, excluding holidays and weekends).

If, after proper written request, the department or city authorized to do electrical inspections fails to make an electrical inspection at the time requested, underground conduit may be covered after inspection by the local government jurisdiction's project inspector/designee. Written documentation of a local government jurisdiction inspection must be provided to the department or city authorized to do electrical inspections when requested. Written documentation will include:

- (i) Date and time of inspection;
- (ii) Location;
- (iii) Installing firm;
- (iv) Owner;
- (v) Type of conduit;
- (vi) Size of conduit;
- (vii) Depth of conduit; and
- (viii) Project inspector/designee name and contact information.

(21) Identification of traffic management system components. Local government jurisdictions or WSDOT may act as the certifying authority for the safety evaluation of all components.

(a) An electrical service cabinet must contain only listed components. The electrical service cabinet enclosure is not

required to be listed but will conform to the standards in subsection (22) of this section.

(b) The local government jurisdiction must identify, as acceptable, the controller cabinet or system component(s) with an identification plate. The identification plate must be located inside the cabinet and may be attached with adhesive.

(22) Conductors of different circuits in same cable, enclosure, or raceway. All traffic management system circuits will be permitted to occupy the same cable, enclosure, or raceway without regard to voltage characteristics, provided all conductors are insulated for the maximum voltage of any conductor in the cable, enclosure, or raceway.

AMENDATORY SECTION (Amending WSR 09-20-032, filed 9/29/09, effective 10/31/09)

**WAC 296-46B-100 General definitions.** ((+)) All definitions listed in the National Electrical Code and chapter 19.28 RCW are recognized in this chapter unless other specific definitions are given in this chapter and chapter 19.28 RCW. The definitions in this section apply to all parts of this chapter. Some sections may have definitions specific to that section.

((2)) "Accreditation" is a determination by the department that a laboratory meets the requirements of this chapter and is therefore authorized to evaluate electrical products that are for sale in the state of Washington.

((3)) "Administrative law judge" means an administrative law judge (ALJ) appointed pursuant to chapter 34.12 RCW and serving in board proceedings pursuant to chapter 19.28 RCW and this chapter.

((4)) "ANSI" means American National Standards Institute. Copies of ANSI standards are available from the National Conference of States on Building Codes and Standards, Inc.

((5)) "Appeal" is a request for review of a department action by the board as authorized by chapter 19.28 RCW.

((6)) "Appellant" means any person, firm, partnership, corporation, or other entity that has filed an appeal or request for board review.

((7)) "Appliance" means household appliance.

((8)) "ASTM" means the American Society for Testing and Materials. Copies of ASTM documents are available from ASTM International.

((9)) "AWG" means American Wire Gauge.

((10)) "Basement" means that portion of a building that is partly or completely below grade plane. A basement ~~((shall))~~ will be considered as a story above grade plane and not a basement where the finished surface of the floor above the basement is:

(a) More than 1829 mm (six feet) above grade plane;

(b) More than 1829 mm (six feet) above the finished ground level for more than 50% of the total building perimeter; or

(c) More than 3658 mm (twelve feet) above the finished ground level at any point. Also see "mezzanine" and "story."

((11)) "Board" means the electrical board established and authorized under chapter 19.28 RCW.

((12)) "Chapter" means chapter 296-46B WAC unless expressly used for separate reference.

~~((13))~~ "Category list" is a list of manufacturing safety standards or product types determined by the department.

~~((14))~~ A "certified electrical product" is an electrical product to which a laboratory, accredited by the state of Washington, has the laboratory's certification mark attached.

~~((15))~~ A "certification mark" is a specified laboratory label, symbol, or other identifying mark that indicates the manufacturer produced the product in compliance with appropriate standards or that the product has been tested for specific end uses.

~~((16))~~ "Certificate of competency" includes the certificates of competency for master journeyman electrician, master specialty electrician, journeyman, and specialty electrician.

~~((17))~~ A laboratory "certification program" is a specified set of testing, inspection, and quality assurance procedures, including appropriate implementing authority, regulating the evaluation of electrical products for certification marking by an electrical products certification laboratory.

~~((18))~~ A "complete application" includes the submission of all appropriate fees, documentation, and forms.

~~((19))~~ "Construction," for the purposes of chapter 19.28 RCW, means electrical construction.

~~((20))~~ "Coordination (selective)" as defined in NEC 100 ~~((shall))~~ must be determined and documented by a professional engineer registered under chapter 18.43 RCW.

~~((21))~~ "Department" means the department of labor and industries of the state of Washington.

~~((22))~~ "Director" means the director of the department, or the director's designee.

~~((23))~~ "Egress - Unobstructed (as applied to NEC 110.26 (C)(2)(a))" means an egress path that allows a worker to travel to the exit from any other area in the room containing the equipment described in NEC 110.26 (C)(2) without having to pass through that equipment's required working space.

~~((24))~~ "Electrical equipment" includes electrical conductors, conduit, raceway, apparatus, materials, components, and other electrical equipment not exempted by RCW 19.28.-006(9). Any conduit/raceway of a type listed for electrical use is considered to be electrical equipment even if no wiring is installed in the conduit/raceway at the time of the conduit/raceway installation.

~~((25))~~ An "electrical products certification laboratory" is a laboratory or firm accredited by the state of Washington to perform certification of electrical products.

~~((26))~~ An "electrical products evaluation laboratory" is a laboratory or firm accredited by the state of Washington to perform on-site field evaluation of electrical products for safety.

~~((27))~~ "Field evaluated" means an electrical product to which a field evaluation mark is attached. Field evaluation must include job site inspection unless waived by the department, and may include component sampling and/or laboratory testing.

~~((28))~~ "Field evaluation mark" is a specified laboratory label, symbol, or other identifying mark indicating the manufacturer produced the product in essential compliance with appropriate standards or that the product has been evaluated for specific end uses.

~~((29))~~ A "field evaluation program" is a specified set of testing, inspection, and quality assurance procedures, including appropriate implementing authority regulating the testing and evaluation of electrical products for field evaluation marking.

~~((30))~~ The "filing" is the date the document is actually received in the office of the chief electrical inspector.

~~((31))~~ "Final judgment" means any money that is owed to the department under this chapter, including fees and penalties, or any money that is owed to the department as a result of an individual's or contractor's unsuccessful appeal of a citation.

~~((32))~~ "Fished wiring" is when cable or conduit is installed within the finished surfaces of an existing building or building structure (e.g., wall, floor or ceiling cavity).

~~((33))~~ "Household appliance" means utilization equipment installed in a dwelling unit that is built in standardized sizes or types and is installed or connected as a unit to perform one or more functions such as cooking and other equipment installed in a kitchen, clothes drying, clothes washing, portable room air conditioning units and portable heaters, etc. Fixed electric space-heating equipment covered in NEC 424 (furnaces, baseboard and wall heaters, electric heat cable, etc.) and fixed air-conditioning/heat pump equipment (NEC 440) are not household appliances. Household appliance does not mean any utilization equipment that:

(a) Supplies electrical power, other than Class 2, to other utilization equipment; or

(b) Receives electrical power, other than Class 2, through other utilization equipment.

~~((34))~~ HVAC/refrigeration specific definitions:

(a) "HVAC/refrigeration" means heating, ventilation, air conditioning, and refrigeration.

(b) "HVAC/refrigeration component" means electrical power and limited energy components within the "HVAC/refrigeration system," including, but not limited to: Pumps, compressors, motors, heating coils, controls, switches, thermostats, humidistats, low-voltage damper controls, outdoor sensing controls, outside air dampers, stand-alone duct smoke detectors, air monitoring devices, zone control valves and equipment for monitoring of HVAC/refrigeration control panels and low-voltage connections. This definition excludes equipment and components of non-"HVAC/refrigeration control systems."

(c) "HVAC/refrigeration control panel" means an enclosed, manufactured assembly of electrical components designed specifically for the control of a HVAC/refrigeration system. Line voltage equipment that has low voltage, NEC Class 2 control or monitoring components incidental to the designed purpose of the equipment is not an HVAC/refrigeration control panel (e.g., combination starters).

(d) "HVAC/refrigeration control system" means a network system regulating and/or monitoring a HVAC/refrigeration system. Equipment of a HVAC/refrigeration control system includes, but is not limited to: Control panels, data centers, relays, contactors, sensors, and cables related to the monitoring and control of a HVAC/refrigeration system(s).

(e) "HVAC/refrigeration equipment" means the central unit primary to the function of the "HVAC/refrigeration system." HVAC/refrigeration includes, but is not limited to:

Heat pumps, swamp coolers, furnaces, compressor packages, and boilers.

(f) "HVAC/refrigeration system" means a system of HVAC/refrigeration: Wiring, equipment, and components integrated to generate, deliver, or control heated, cooled, filtered, refrigerated, or conditioned air. This definition excludes non-HVAC/refrigeration control systems (e.g., fire alarm systems, intercom systems, building energy management systems, and similar non-HVAC/refrigeration systems) ~~((see Figure 920-1 and Figure 920-2))~~.

~~((35))~~ "IBC" means the International Building Code. Copies of the IBC are available from the International Code Council.

~~((36))~~ An "individual" or "party" or "person" means an individual, firm, partnership, corporation, association, government subdivision or unit thereof, or other entity.

~~((37))~~ An "installation" includes the act of installing, connecting, repairing, modifying, or otherwise performing work on an electrical system, component, equipment, or wire except as exempted by WAC 296-46B-925. An installation is not the passive testing or operational programming of an electrical system, component, equipment, or wire. See "passive testing."

~~((38))~~ An "identification plate" is suitable for the environment and is a printed or etched adhesive label approved by the department or a phenolic or metallic plate or other similar material engraved in block letters at least 1/4" (6 mm) high unless specifically required to be larger by this chapter, suitable for the environment and application. The letters and the background must be in contrasting colors. Screws, rivets, permanent adhesive, or methods specifically described in this chapter must be used to affix an identification plate to the equipment or enclosure.

~~((39))~~ "Job site" means a specific worksite having a single address or specific physical location (e.g., a single family residence, a building, a structure, a marina, and individual apartment building with a specific address, etc.).

"License" means a license required under chapter 19.28 RCW.

~~((40))~~ "Labeled" means an electrical product that bears a certification mark issued by a laboratory accredited by the state of Washington.

~~((41))~~ A "laboratory" may be either an electrical product(s) certification laboratory or an electrical product(s) evaluation laboratory.

~~((42))~~ A "laboratory operations control manual" is a document to establish laboratory operation procedures and may include a laboratory quality control manual.

~~((43))~~ "Like-in-kind" means having the same overcurrent protection requirements and similar characteristics such as voltage requirement, current draw, ~~((circuit overcurrent and))~~ short circuit characteristics, and function within the system and being in the same location. Like-in-kind also includes any equipment component authorized by the manufacturer as a suitable component replacement part.

~~((44))~~ For the purpose of WAC 296-46B-940~~((6))~~, a "lineman" is a person employed by a serving electrical utility or employed by a licensed general electrical contractor who carries, on their person, evidence that they:

(a) Have graduated from a department-approved lineman's apprenticeship course; or

(b) Are currently registered in a department-approved lineman's apprenticeship course and are working under the direct one hundred percent supervision of a journeyman electrician or a graduate of a lineman's apprenticeship course approved by the department. The training received in the lineman's apprenticeship program must include training in applicable articles of the currently adopted National Electrical Code.

~~((45))~~ "Listed" means equipment has been listed and identified by a laboratory approved by the state of Washington for the appropriate equipment standard per this chapter.

~~((46))~~ "Low voltage" means:

(a) NEC, Class 1 power limited circuits at 30 volts maximum.

(b) NEC, Class 2 circuits powered by a Class 2 power supply as defined in NEC 725.121(A).

(c) NEC, Class 3 circuits powered by a Class 3 power supply as defined in NEC 725.121(A).

(d) Circuits of telecommunications systems as defined in chapter 19.28 RCW.

~~((47))~~ "Member of the firm" means the member(s) on file with the department of licensing for sole proprietorships/partnerships or with the secretary of state for corporations.

"Mezzanine" is the intermediate level or levels between the floor and ceiling of any story with an aggregate floor area of not more than one-third of the area of the room or space in which the level or levels are located. Also see "basement" and "story."

~~((48))~~ "NEC" means National Electrical Code. Copies of the NEC are available from the National Fire Protection Association.

~~((49))~~ "NEMA" means National Electrical Manufacturer's Association. Copies of NEMA standards are available from the National Electrical Manufacturer's Association.

~~((50))~~ "NESC" means National Electrical Safety Code. Copies of the NESC are available from the Institute of Electrical and Electronics Engineers, Inc.

~~((51))~~ "NETA" means International Electrical Testing Association, Inc. Copies of the NETA standards and information are available from the International Electrical Testing Association, Inc.

~~((52))~~ "NFPA" means the National Fire Protection Association. Copies of NFPA documents are available from the National Fire Protection Association.

~~((53))~~ "NRTL" means Nationally Recognized Testing Laboratory accredited by the federal Occupational Safety and Health Administration (OSHA) after meeting the requirements of 29 C.F.R. 1910.7.

~~((54))~~ "Passive testing" (e.g., pressing of test buttons, use of testing equipment like voltage testers, clamp-on meters, removal of a device head where the wiring is terminated on a separate base plate, etc.) means testing that does not require any:

(a) Physical modification to the electrical system wiring;  
or

(b) Wiring to be disconnected or terminated, except as necessary for an approved electrical testing laboratory or approved engineer performing an equipment evaluation.

"Point of contact" or "point of connection" means the service point.

~~((55))~~ "Proceeding" means any matter regarding an appeal before the board including hearings before an administrative law judge.

~~((56))~~ "Public area or square" is an area where the public has general, clear, and unrestricted access.

~~((57))~~ A "quality control manual" is a document to maintain the quality control of the laboratory's method of operation. It consists of specified procedures and information for each test method responding to the requirements of the product standard. Specific information must be provided for portions of individual test methods when needed to comply with the standard's criteria or otherwise support the laboratory's operation.

~~((58))~~ "RCW" means the Revised Code of Washington. Copies of electrical RCWs are available from the department and the office of the code reviser.

~~((59))~~ "Readily accessible" means the definition as defined in NEC 100. In addition, it means that, except for keys, no tools or other devices are necessary to gain access (e.g., covers secured with screws, etc.).

~~((60))~~ Service specific definitions replacing those found in NEC Article 100:

(a) "Service drop" means the overhead service conductors from the service point to the connection to the service-entrance conductors at the building or other structure.

(b) "Service-entrance conductors, overhead system" means the service conductors between the terminals of the service equipment and a point usually outside the building, clear of building walls, where joined by tap or splice to the service drop or service point.

(c) "Service-entrance conductors, underground system" means the service conductors between the terminals of the service equipment and the point of connection to the service lateral or service point. Where the service equipment is located outside the building walls, there may be no service-entrance conductors or they may be entirely outside the building.

(d) "Service lateral" means the underground service conductors from the service point to the point of connection to the service-entrance conductors in a terminal box, meter, or other enclosure. Where there is not a terminal box, meter, or other enclosure, the point of connection is the point of entrance of the service conductors into the building.

~~((61))~~ A "stand-alone amplified sound or public address system" is a system that has distinct wiring and equipment for audio signal generation, recording, processing, amplification, and reproduction. This definition does not apply to telecommunications installations.

~~((62))~~ "Service" or "served" means that as defined in RCW 34.05.010(19) when used in relation to department actions or proceedings.

~~((63))~~ A "sign," when required by the NEC, for use as an identification method (e.g., legibly marked, legible warning notice, marked, field marked, permanent plaque/directory, etc.) means "identification plate."

~~((64))~~ "Story" is that portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. Next above means vertically and not necessarily directly above. Also see "basement" and "mezzanine."

~~((65))~~ "Structure," for the purposes of this chapter and in addition to the definition in the NEC, means something constructed either in the field or factory that is used or intended for supporting or sheltering any use or occupancy as defined by the IBC.

~~((66))~~ "Supervision" for the purpose of supervising electrical trainees, means that the appropriately certified supervising electrician is on the same job site as the trainee being supervised. The trainee is not considered to be on the same job site if the supervising electrician and the trainee are working:

(a) In separate buildings at a single address (e.g., a campus, multibuilding industrial complex, multibuilding apartment complex, etc.) except for a single-family residence; or

(b) On an outdoor project (e.g., irrigation system, farm, street lighting, traffic signalization, etc.) where the trainee is more than one thousand feet from the supervising electrician or where the trainee is more than two hundred feet from the supervising electrician and out of sight.

"System design review" means a set of design documents that include the manufacturer's installation information, a legible one-line diagram of the system design, and calculations used to determine voltage and current within the system. The one-line diagram must show the system equipment, devices, overcurrent protection, conductor sizing, grounding, ground fault protection if required, and any system interconnection points. The review must be available to the inspector during all inspections.

A "telecommunications local service provider" is a regulated or unregulated (e.g., by the Federal Communications Commission or the utilities and transportation commission as a telephone or telecommunications provider) firm providing telecommunications service ahead of the telecommunications network demarcation point to an end-user's facilities.

~~((67))~~ "TIA/EIA" means the Telecommunications Industries Association/Electronic Industries Association which publishes the TIA/EIA Telecommunications Building Wiring Standards. Standards and publications are adopted by TIA/EIA in accordance with the American National Standards Institute (ANSI) patent policy.

~~((68))~~ A "training school" is a public community or technical college or not-for-profit nationally accredited technical or trade school licensed by the work force training and education coordinating board under chapter 28C.10 RCW.

~~((69))~~ "Under the control of a utility" for the purposes of RCW 19.28.091 and 19.28.101 is when electrical equipment is not owned by a utility and:

(a) Is located in a vault, room, closet, or similar enclosure that is secured by a lock or seal so that access is restricted to the utility's personnel; or

(b) The utility is obligated by contract to maintain the equipment and the contract provides that access to the equipment is restricted to the utility's personnel or other qualified personnel.

~~((70))~~ "UL" means Underwriters Laboratory.

~~((71))~~ "Utility" means an electrical utility.

~~((72))~~ "Utility system" means electrical equipment owned by or under the control of a serving utility that is used for the transmission or distribution of electricity from the source of supply to the point of contact and is defined in section 90.2 (b)(5) of the National Electrical Code, 1981 edition (see RCW 19.28.010(1)).

~~((73))~~ "Utilization voltage" means the voltage level employed by the utility's customer for connection to lighting fixtures, motors, heaters, or other electrically operated equipment other than power transformers.

~~((74))~~ "Variance" is a modification of the electrical requirements as adopted in chapter 19.28 RCW or any other requirements of this chapter that may be approved by the chief electrical inspector if assured that equivalent objectives can be achieved by establishing and maintaining effective safety.

~~((75))~~ "WAC" means the Washington Administrative Code. Copies of this chapter of the WAC~~(s)~~ are available from the department and the office of the code reviser.

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

**WAC 296-46B-110 General—Requirements for electrical installations.**

**003 Examination, identification, installation, and use of equipment.**

(1) Listed electrical conduit can only be installed and used in accordance with its listing (i.e., as an electrical raceway for electrical conductors). If used as a sleeve for electrical conductors or other listed electrical conduits, the installation of a listed electrical conduit will be assumed to be for use as an electrical raceway and must be installed as allowed by chapter 19.28 RCW and this chapter (e.g., owner exemption, electrical contractor, etc.).

**011 Deteriorating agents.**

(2) Electrical equipment and wiring that has been submerged or exposed to water must comply with the following:

(a) All breakers, fuses, controllers, receptacles, lighting switches/dimmers, electric heaters, and any sealed device/equipment (e.g., relays, contactors, etc.) must be replaced.

(b) All other electrical equipment (e.g., wiring, breaker panelboards, disconnect switches, switchgear, motor control centers, boiler controls, HVAC/R equipment, electric motors, transformers, appliances, water heaters, and similar appliances) must be replaced or reconditioned by the original manufacturer or by its approved representative.

**016 Flash protection.**

(3) The flash protection marking required by NEC 110.16 must be an identification plate ~~((or label approved by the electrical inspector and may be installed either in the field or in the factory. The plate or label may be mounted using adhesive))~~.

**022 Identification of disconnecting means.**

(4) For the purposes of legibly marking a disconnecting means, as required in NEC 110.22, an identification plate is required unless the disconnect is a circuit breaker/fused switch installed within a panelboard and the circuit breaker/fused switch is identified by a panelboard schedule. In other

than dwelling units, the identification plate must include the identification designation of the circuit source panelboard that supplies the ~~((disconnect))~~ disconnecting means.

**030 Over 600 volts - general.**

(5) Each cable operating at over 600 volts and installed on customer-owned systems must be legibly marked in a permanent manner at each termination point and at each point the cable is accessible. The required marking must use phase designation, operating voltage, and circuit number if applicable.

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

**WAC 296-46B-210 Wiring and protection—Branch circuits. 008(A) Dwelling units GFCI requirements.**

(1) In a garage or unfinished basement, a red receptacle, with a red cover plate, supplying a fire alarm system is not required to have ground-fault circuit-interrupter protection. The receptacle must be identified for use only with the fire alarm system by an identification plate or engraved cover with letters at least 1/4" high.

**008(B) Other than dwelling units - GFCI requirements.**

(2) GFCI requirements.

(a) For the purposes of NEC 210.8(B), kitchen means any area where utensils, dishes, etc., are cleaned or where food or beverages are prepared or cooked.

(b) All 125-volt, 15- and 20-ampere receptacles installed in wet locations must have Class A ground-fault circuit interrupter protection for personnel.

**011 Branch circuits.**

(3) A raceway system or one dedicated 15-ampere minimum, 120 volt circuit must be taken to all unfinished space areas adaptable to future dwelling unit living areas that are not readily accessible to the service or branch circuit panelboard. One circuit or raceway is required for each 480 square feet or less of unfinished space area. If the total adjacent unfinished space area is less than 480 square feet, the circuit can be an extension of an existing circuit. The circuits must terminate in a suitable box(es). The box must contain an identification of the intended purpose of the circuit(s). The branch circuit panelboard must have adequate space and capacity for the intended load(s).

**012 Arc-fault circuit-interrupter protection.**

(4) NEC 210.12(B) is amended to require AFCI protection only for dwelling unit bedroom spaces.

(a) Dwelling unit bedroom spaces include spaces that:

(i) Are used as the bedroom;

(ii) Are accessed only through the bedroom;

(iii) Are ancillary to the bedroom's function (e.g., closets, sitting areas, etc.);

(iv) Contain branch circuits that supply 125-volt, 15- and 20-ampere, outlets; and

(v) Are not bathrooms.

(b) If a new circuit(s) is added in an existing dwelling unit bedroom, an existing outlet(s) that is not connected to the new circuit(s) does not require arc-fault circuit interrupter protection if the outlet(s) was installed before December 1, 2005.

(c) If an existing circuit, installed before December 1, 2005, is extended, arc-fault circuit interrupter protection is not required.

(d) Arc-fault circuit interrupter protection is not required to be used for smoke or fire alarm outlets.

**025 Common area branch circuits.**

(5) For the purpose of NEC 210.25, loads for septic or water well systems that are shared by no more than two dwelling units may be supplied from either of the two dwelling units if approved by the local building official and local health department.

**052(A)(2) Dwelling unit receptacle outlets.**

(6) For the purpose of NEC 210.52 (A)(2)(1), "similar openings" include the following configurations that are a permanent part of the dwelling configuration or finish:

(a) Window seating; and

(b) Bookcases or cabinets that extend from the floor to a level at least 1.7 meters (five (5) feet six (6) inches) above the floor.

Any outlets eliminated by such window seating, bookcases, or cabinets must be installed elsewhere within the room.

**052(E)(3) Outdoor outlets.**

(7) For the purposes of NEC 210.52 (E)(3), the exception will read: Balconies, decks, or porches with an area of less than 1.86 m<sup>2</sup> (20 ft<sup>2</sup>) are not required to have a receptacle installed.

**052(B) Receptacle outlet locations.**

(8) Receptacle outlets installed in appliance garages may be counted as a required countertop outlet.

**052(C) Countertops.**

~~(9) ((A receptacle(s) is not required to be installed in the area directly behind a sink or range as shown in NEC 210.52, Figure 210.52 (C)(1). Outlets must be installed within 24" on either side of a sink or range as shown in Figure 210.52 (C)(1).))~~

~~(10))~~ If it is impracticable to install the outlet(s) required in NEC 210.52 (C)(3), a receptacle is not required on any peninsular counter surface as required by NEC 210.52 (C)(3) so long as the peninsular counter area extends no farther than 6' from the face of the adjoining countertop. Any outlet(s) eliminated using this subsection must be installed in the wall space at the point where the peninsula connects to the wall countertop in addition to the outlets required by NEC 210.52 (C)(1).

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

**WAC 296-46B-215 Wiring and protection—Feeders.**

**005 Diagrams of feeders.**

(1) Other than plan review projects, the installer must provide a one-line diagram showing the service and feeder details for the project before the initial inspection can be approved for all nondwelling services or feeders:

(a) Larger than 400 amperes; or

(b) Over 600 volts.

The diagram must be signed and dated by the project owner if the owner is doing the work, ~~((or))~~ the assigned administrator or master electrician if an electrical contractor is doing the work, or stamped with an engineer's mark and signature who is registered under chapter 18.43 RCW. The diagram must show:

(c) All services including: Wire size(s), wire type(s), service size(s) (e.g., voltage, phase, ampacity), overcurrent protection, available symmetrical fault current at the service point, equipment short-circuit rating, total load before and after demand factors have been applied including any demand factors used, and a panel schedule where multiple disconnecting devices are present; and

(d) All feeders including: Wire size(s), wire type(s), feeder size(s) (e.g., voltage, phase, ampacity), overcurrent protection, total calculated load before and after demand factors have been applied including any demand factors used, and a panel schedule(s) where multiple disconnecting devices are present.

If the installer deviates, in any way, from the service/feeder design shown on the diagram, a supplemental diagram must be supplied to the inspector showing the most recent design before inspection can proceed. Load reductions and moving branch circuit locations within a panelboard do not require a supplemental diagram. Written documentation must also be provided to the inspector that the supplemental diagram was provided to the project owner at the time of submission to the inspector.

The diagram must be available on the job site during the inspection process.

#### **010 Ground fault protection testing.**

(2) Equipment ground fault protection systems required by the NEC must be tested prior to being placed into service to verify proper installation and operation of the system as determined by the manufacturer's published instructions. This test or a subsequent test must include all system feeders unless the installer can demonstrate, in a manner acceptable to the inspector, that there are no grounded conductor connections to the feeder(s). A firm having qualified personnel and proper equipment must perform the tests required. A copy of the manufacturer's performance testing instructions and a written performance acceptance test record signed by the person performing the test must be provided for the inspector's records at the time of inspection. The performance acceptance test record must include test details including, but not limited to, all trip settings and measurements taken during the test.

AMENDATORY SECTION (Amending WSR 05-10-024, filed 4/26/05, effective 6/30/05)

#### **WAC 296-46B-220 Wiring and protection—Branch circuit, feeder, and service calculations.**

~~((003 Branch circuit calculations.~~

~~Occupancy lighting loads.)) **012 Lighting load calculations.**~~

In determining feeder and service entrance conductor sizes and equipment ratings, the currently adopted Washington state energy code unit lighting power allowance table and footnotes may be used in lieu of NEC 220.12.

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

#### **WAC 296-46B-225 Wiring and protection—Outside branch circuits and feeders.**

##### **030 Number of supplies.**

(1) For the purposes of NEC 225.30(A) and this section, ~~((if a property has only))~~ a ~~((single))~~ building/structure that is supplied from a remote service, ~~((the building))~~ may be supplied by no more than ~~((two))~~ six feeders originating from the service equipment and with each feeder terminating in a single disconnecting means at the building/structure. The service equipment must contain overcurrent protection appropriate to each feeder. The building disconnecting means required by NEC 225.32 must be ~~((located))~~ grouped, within sight, and all be within ~~((5))~~ 10' of each other.

##### **032 Location of outside feeder disconnecting means.**

(2) The ~~((building))~~ disconnecting means required by NEC 225.32 must be provided to disconnect all ungrounded conductors that supply or pass through a building ~~((or))~~/structure ~~((per))~~ in accordance with the requirements of NEC 225.32 ~~((except for Exceptions 1, 2, 3, or 4) in accordance with (a) or (b) of this subsection))~~ with the following exceptions.

(a) Outside location: ~~((Except for an outdoor generator set described in a NEC 700, 701, or 702 system, where the))~~ A feeder disconnecting means, including that required by NEC 700, 701, or 702 for a generator, is considered in the building if installed on the outside ((or)) of the building ((or))/structure(, it must be on the building or structure)) or within sight and within fifteen feet of the building ~~((or))~~/structure ~~((supplied))~~. The building disconnecting means may supply only one building/structure unless the secondary building(s)/structure(s) has a separate building disconnecting means meeting the requirements of the NEC and this subsection. The disconnecting means must have an identification plate with at least one-half-inch high letters identifying:

- (i) The building/structure served; and
- (ii) Its function as the building/structure main disconnect(s).

(b) Inside location: The feeder disconnecting means may be installed anywhere inside a building or structure when there is a feeder disconnecting means, located elsewhere on the premises, with overcurrent protection sized for the feeder conductors.

(3) A generator disconnecting means installed per subsection (2)(a) or (b) of this section, is not required to be suitable for use as service equipment.

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

#### **WAC 296-46B-230 Wiring and protection—Services.**

##### **001 General service requirements.**

(1) The owner, the owner's agent, or the electrical contractor making the installation must consult the serving utility regarding the utility's service entrance requirements for equipment location and meter equipment requirements before installing the service and equipment. Provisions for a meter and related equipment, an attachment of a service drop,

or an underground service lateral must be made at a location acceptable to the serving utility. The point of contact for a service drop must permit the clearances required by the NEC.

(2) A firewall must have a minimum two-hour rating as defined by the local building official to be considered a building separation in accordance with Article 100 NEC.

(3) The height of the center of the service meter must be as required by the serving utility. Secondary instrument transformer metering conductor(s) are not permitted in the service raceway.

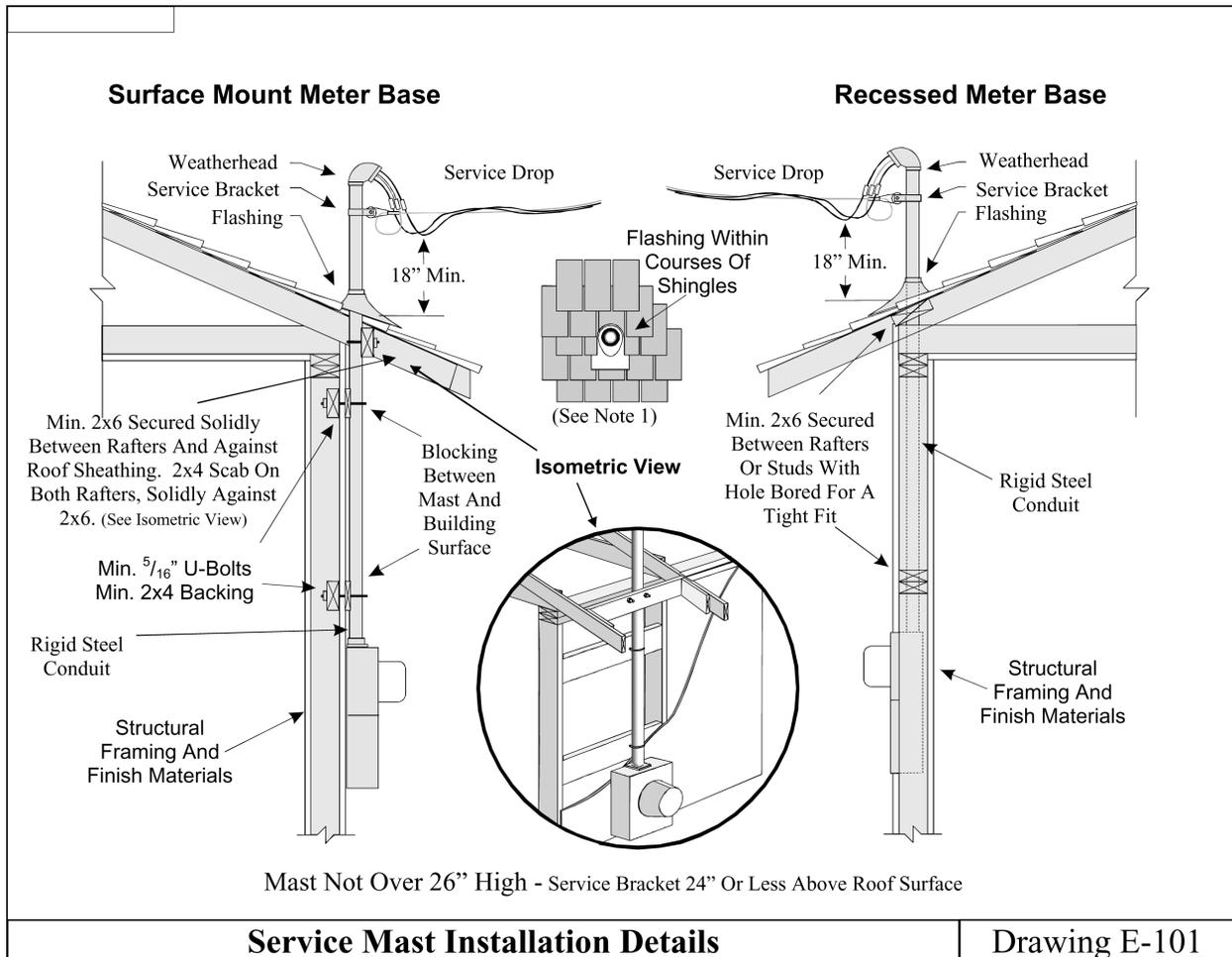
**028 Service or other masts.**

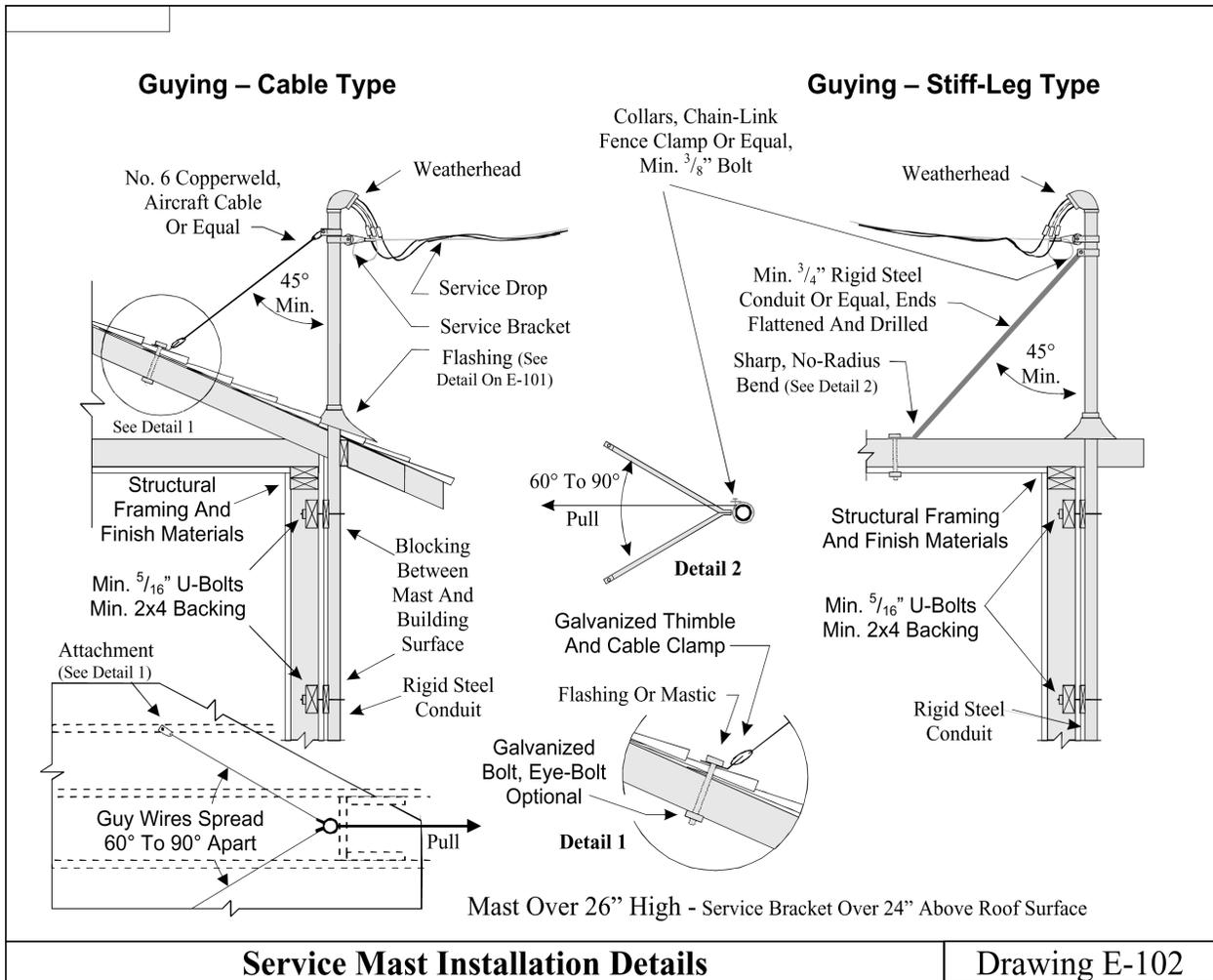
(4) Conduit extended through the roof to provide means of attaching:

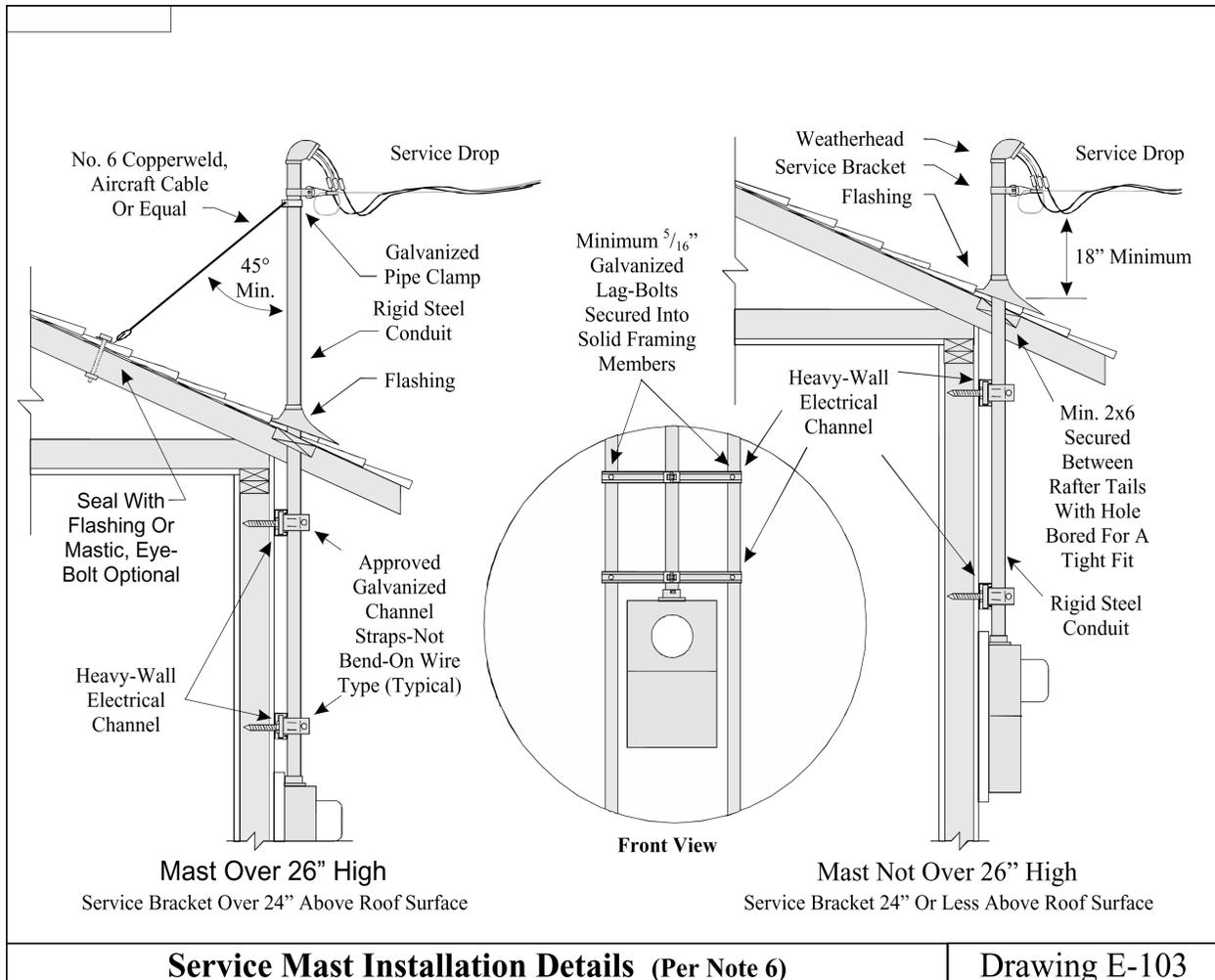
(a) All overhead drops for service, feeder, or branch circuits exceeding #1 AWG aluminum or #3 AWG copper must be rigid steel galvanized conduit no smaller than two inches.

(b) All overhead drops for service, feeder or branch circuits not exceeding #1 AWG aluminum or #3 AWG copper must be rigid steel galvanized conduit no smaller than one and one-quarter inch. The installation must comply with drawings E-101 and/or E-102, or must provide equivalent strength by other approved means. Masts for altered or relocated installations will be permitted to comply with drawing E-103.

(c) For the purposes of NEC 225.19 and 230.24, a residential patio cover, that is not over one story and not over twelve feet in height and is used only for recreation or outdoor living purposes and not as a carport, garage, storage room or habitable room as described in Appendix Chapter 1 in the IBC and Appendix Chapter H in the IRC, is not considered a roof. Overhead conductor spans must maintain a minimum 900 mm (36") clearance above these covers.







**Notes to drawings E-101, E-102, and E-103**

- (1) An approved roof flashing must be installed on each mast where it passes through a roof. Plastic, nonhardening mastic must be placed between lead-type flashings and the conduit. Neoprene type flashings will also be permitted to be used.
- (2) Masts must be braced, secured, and supported in such a manner that no pressure from the attached conductors will be exerted on a roof flashing, meter base, or other enclosures.
- (3) Utilization of couplings for a mast is permitted only below the point the mast is braced, secured, or supported. There must be a minimum of two means of support above any couplings used. A properly installed cable or stiff leg type support qualifies as one of the two required means of support.
- (4) Except as otherwise required by the serving utility, service mast support guys must be installed if the service drop attaches to the mast more than twenty-four inches above the roof line or if the service drop is greater than one hundred feet in length from the pole or support. Masts for support of other than service drops must comply with this requirement as well.

- (5) Intermediate support masts must be installed in an approved manner with methods identical or equal to those required for service masts.
- (6) For altered services, where it is impractical to install U bolt mast supports due to interior walls remaining closed, it will be permissible to use other alternate mast support methods such as heavy gauge, galvanized, electrical channel material that is secured to two or more wooden studs with five-sixteenths inch diameter or larger galvanized lag bolts.
- (7) Conductors must extend at least eighteen inches from all mastheads to permit connection to the connecting overhead wiring.

**040 Service conductors - Two-family and multiple-occupancy buildings.**

(5) Two-family and multiple-occupancy buildings. A second or additional service drop or lateral to a building having more than one occupancy will be permitted to be installed at a location separate from other service drops or laterals to the building provided that all the following conditions are complied with:

- (a) Each service drop or lateral must be sized in accordance with the NEC for the calculated load to be served by the conductors;

(b) Each service drop or lateral must terminate in listed metering/service equipment;

(c) Each occupant must have access to the occupant's service disconnecting means;

(d) No more than six service disconnects may be supplied from a single transformer;

(e) All service drops or laterals supplying a building must originate at the same transformer or power supply;

(f) A permanent identification plate must be placed at each service disconnect location that identifies all other service disconnect locations in or on the building, the area or units served by each, the total number of service disconnecting means on the building/structure and the area or units served. If a structure consists of multiple buildings (i.e., by virtue of fire separation), all service disconnects in or on the entire structure must be labeled to identify all service disconnects in or on the structure; and

(g) A permanent identification plate must be placed at each feeder disconnecting means identifying the area or units served if the feeder disconnecting means is remote from the area or unit served.

#### **042 Service conductor - Size and rating.**

(6) If the service conductors have a lesser ampacity than the overcurrent protection, permitted by NEC 230.90 or NEC 310.15, or the equipment rating that they terminate in or on, an identification plate showing the ampacity of the conductors must be installed on the service equipment.

#### **043 Wiring methods for 600 volts, nominal or less.**

(7) The installation of service conductors not exceeding 600 volts, nominal, within a building or structure is limited to the following methods: Galvanized or aluminum rigid metal conduit; galvanized intermediate metal conduit; wireways; busways; auxiliary gutters; minimum schedule 40 rigid polyvinyl chloride conduit; cablebus; or mineral-insulated, metal-sheathed cable (type MI).

(8) Electrical metallic tubing must not be installed as the wiring method for service entrance conductors inside a building. Existing electrical metallic tubing, installed prior to October 1984, which is properly grounded and used for service entrance conductors may be permitted to remain if the conduit is installed in a nonaccessible location and is the proper size for the installed conductors.

(9) In addition to methods allowed in the NEC, the grounded service conductor is permitted to be identified with a yellow jacket or with one or more yellow stripes.

#### **070 Service equipment - Disconnecting means.**

(10) In addition to the requirements of NEC 230.70(A), service equipment, subpanels, and similar electrical equipment must be installed so that they are readily accessible and may not be installed in clothes closets, toilet rooms, or shower rooms. All indoor service equipment and subpanel equipment must have adequate working space and be adequately illuminated.

(11) The service disconnecting means must be installed at a readily accessible location in accordance with (a) or (b) of this subsection.

(a) Outside location: Service disconnecting means will be permitted on the building or structure or within sight and within fifteen feet of the building or structure served. The building disconnecting means may supply only one build-

ing/structure. The service disconnecting means must have an identification plate with one-half-inch high letters identifying:

(i) The building/structure served; and

(ii) Its function as the building/structure main service disconnect(s).

(b) Inside location: When the service disconnecting means is installed inside the building or structure, it must be located so that the service raceway extends no more than fifteen feet inside the building/structure.

#### **095 Ground-fault protection of equipment.**

(12) Equipment ground-fault protection systems required by the NEC must be tested prior to being placed into service to verify proper installation and operation of the system as determined by the manufacturer's published instructions. This test or a subsequent test must include all service voltage feeders unless the installer can demonstrate, in a manner acceptable to the department, that there are no grounded conductor connections to the feeder(s). A firm having qualified personnel and proper equipment must perform the tests required. A copy of the manufacturer's performance testing instructions and a written performance acceptance test record signed by the person performing the test must be provided for the inspector's records at the time of inspection. The performance acceptance test record must include test details including, but not limited to, all trip settings and measurements taken during the test.

#### **200 Wiring methods exceeding 600 volts.**

(13) The installation of service conductors exceeding 600 volts, nominal, within a building or structure must be limited to the following methods: Galvanized rigid metal conduit, galvanized intermediate metal conduit, schedule 80 polyvinyl chloride conduit, metal-clad cable that is exposed for its entire length, cablebus, or busways.

(14) In addition to methods allowed in the NEC, the grounded service conductor is permitted to be identified with a yellow jacket or with one or more yellow stripes.

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

#### **WAC 296-46B-240 Overcurrent protection.**

##### **024(F) Not located over steps.**

If the overcurrent device is a part of a panelboard that is being repaired or replaced in an existing location, the installation is allowed to be made above the ((stairs)) steps.

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

#### **WAC 296-46B-250 Wiring and protection—Grounding and bonding.**

##### **028 (D)(3) Separately derived system with more than one enclosure.**

(1) NEC 250.28 (D)(3) is amended to read: Where a separately derived system supplies more than a single enclosure, the system bonding jumper for each enclosure shall be sized in accordance with 250.28 (D)(1) based on the largest ungrounded feeder/tap conductor serving that enclosure, or a single system bonding jumper shall be installed at the source and sized in accordance with 250.28 (D)(1) based on the

equivalent size of the largest supply conductor determined by the largest sum of the areas of the corresponding conductors of each set.

#### **052 Grounding electrodes.**

(2) ~~((If a concrete encased))~~ Except for mobile/manufactured homes, a concrete encased grounding electrode must be installed and used at each new building or structure that is built upon a permanent concrete foundation. If the concrete encased grounding electrode is not available for connections, a ground ring must be installed per NEC 250. The electrode must comply with NEC 250.52 (A)(3). Inspection of the electrode ((is installed)), ((inspection)) may be accomplished by the following methods:

(a) At the time of inspection of other work on the project, providing the concrete encased electrode is accessible for a visual inspection;

(b) At the time of the service inspection providing the installer has provided a method so the inspector can verify the continuity of the electrode conductor along its entire length (e.g., attaching a length of copper wire to one end of the electrode that reaches the location of the grounding electrode conductor that will enable the inspector to measure the resistance with a standard resistance tester). The concrete encased electrode does not have to be accessible for a visual inspection; or

(c) Other method when prior approval, on a job site basis, is given by the inspector.

If a special inspection trip is required to inspect a grounding electrode conductor, a trip fee will be charged for that inspection in addition to the normal permit fee.

#### **056 Resistance of rod, pipe, and plate electrodes.**

(3) For rod, pipe and plate electrodes, if a ground resistance test is not performed to ensure a resistance to ground of twenty-five ohms or less, two or more electrodes as specified in NEC 250.52 must be installed a minimum of six feet apart. A temporary construction service is not required to have more than one made electrode.

(4) For services only, when multiple buildings or structures are located adjacent, but structurally separate from each other, any installed rod, pipe, or plate electrodes used for those services must be installed so that each building's or structure's electrodes are not less than 1.8 m (6 ft) apart from the adjacent building's or structure's electrodes.

#### **068 Accessibility.**

(5) The termination point of a grounding electrode conductor tap to the grounding electrode conductor must be accessible unless the connection is made using an exothermic or irreversible compression connection.

#### **090 Bonding.**

(6) Metallic stubs or valves used in nonmetallic plumbing systems are not required to be bonded to the electrical system unless required by an electrical equipment manufacturer's instructions.

(7) Hot and cold water plumbing lines are not required to be bonded together if, at the time of inspection, the inspector can determine the lines are mechanically and electrically joined by one or more metallic mixing valves.

#### **094 Bonding for other systems.**

(8) NEC 250.94 is not adopted.

(9) An accessible means external to enclosures for connecting intersystem bonding and grounding electrode conductors must be provided at the service equipment and at the disconnecting means for any additional buildings or structures by at least one of the following means:

(a) Exposed nonflexible metallic raceways;

(b) Exposed grounding electrode conductor or electrode;

(c) Approved means for the external connection of a copper or other corrosion-resistant bonding or grounding conductor to the grounded raceway or equipment.

#### **104(B) Bonding - Other metal piping.**

(10) For flexible metal gas piping, installed new or extended from an existing rigid metal piping system, either:

(a) Provide a copy of the manufacturer's bonding instructions to the inspector at the time of inspection and follow those instructions; or

(b) The bonding conductor for the gas system must:

(i) Be a minimum 6 AWG copper; and

(ii) Terminate at:

(A) An accessible location at the gas meter end of the gas piping system on either a solid iron gas pipe or a cast flexible gas piping fitting using a listed grounding connector; and

(B) Either the service equipment enclosure, service grounding electrode conductor or electrode, or neutral conductor bus in the service enclosure.

#### **184 Solidly grounded neutral systems over 1 kV.**

(11) In addition to the requirements of NEC 250.184(A), the following applies for:

(a) Existing installations.

(i) The use of a concentric shield will be allowed for use as a neutral conductor for extension, replacement, or repair, if all of the following are complied with:

(A) The existing system uses the concentric shield as a neutral conductor;

(B) Each individual conductor contains a separate concentric shield sized to no less than thirty-three and one-half percent of the ampacity of the phase conductor for three-phase systems or one hundred percent of the ampacity of the phase conductor for single-phase systems;

(C) The new or replacement cable's concentric shield is enclosed inside an outer insulating jacket; and

(D) Existing cable (i.e., existing cable installed directly in the circuit between the work and the circuit's overcurrent device) successfully passes the following tests:

- A cable maintenance high potential dielectric test. The test must be performed in accordance with the cable manufacturer's instruction or the ~~((2004))~~ 2011 NETA maintenance test specifications; and

- A resistance test of the cable shield. Resistance must be based on the type, size, and length of the conductor used as the cable shield using the conductor properties described in NEC Table 8 Conductor Properties.

An electrical engineer must provide a specific certification to the electrical plan review supervisor in writing that the test results of the maintenance high potential dielectric test and the resistance test have been reviewed by the electrical engineer and that the cable shield is appropriate for the installation. The electrical engineer must stamp the certification document with the engineer's stamp and signature. The document may be in the form of a letter or electrical plans.

Testing results are valid for a period of seven years from the date of testing. Cable will not be required to be tested at a shorter interval.

(ii) A concentric shield used as a neutral conductor in a multigrounded system fulfills the requirements of an equipment grounding conductor.

(b) New installations.

(i) New installations do not include extensions of existing circuits.

(ii) The use of the concentric shield will not be allowed for use as a neutral conductor for new installations. A listed separate neutral conductor meeting the requirements of NEC 250.184(A) must be installed.

**AMENDATORY SECTION** (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

**WAC 296-46B-300 Wiring methods and materials—Wiring methods.**

~~((001 Wiring methods.))~~

(1) Cables and raceways for ~~((telecommunications.))~~ power limited, NEC Class 2 and Class 3 conductors must be installed in compliance with Chapter 3 NEC unless other methods are specifically ~~((allowed or))~~ required elsewhere in the NEC, chapter 19.28 RCW, or this chapter.

**005 Underground installations.**

(2) Induction loops.

See WAC 296-46B-010(17) for induction detection loops that are made in a public roadway and regulated by a governmental agency.

Other induction loops must comply with the following requirements:

(a) General:

(i) A preformed direct burial induction loop is designed to be installed within the road surface base (e.g., concrete or asphalt) or below the road surface of a road with an unpaved surface (e.g., gravel or brick pavers);

(ii) A saw-cut induction detection loop is designed to be installed into a groove saw-cut into an existing paved road surface (e.g., concrete or asphalt);

(iii) The loop system includes the loop and the lead-in conductor;

(iv) The loop system must be:

(A) Tested to assure that at 500 volts DC, the resistance between the conductor and ground equals or exceeds 50 megohms; and

(B) Without splice; or

(C) If spliced, the splice must be soldered and appropriately insulated;

(v) The lead-in conductor must comply with the following:

(A) Must be stranded and have a lay (i.e., twist) of two turns per foot; and

(B) If installed in an electrical raceway;

• Are not required to be listed or suitable for wet locations; and

• Must have a burial cover of at least 6"; or

(C) If direct buried;

• Must be listed for the use; and

• Must have a burial cover of at least 18".

(b) Preformed direct burial induction detection loops must conform with the following:

(i) The loop conductor must be rated for direct burial and be a minimum of No. 16 AWG;

(ii) The loop design must not allow movement of the loop conductor within the outer jacket. The outer jacket containing the loop conductor is not required to be listed;

(iii) The loop yoke casing (i.e., the location where the lead-in conductor is connected to the loop):

(A) Includes any device used to house the "loop to lead-in splice" or to otherwise couple the loop with the lead-in electrical raceway;

(B) Is not required to be listed; and

(C) Must have a coupler that will create a waterproof bond with the electrical raceway, containing the lead-in conductor, or a direct buried lead-in conductor.

(c) Saw-cut induction detection loops:

(i) The loop conductor must be cross-linked polyethylene or EPR Type USE insulation and be a minimum of No. 18 AWG stranded;

(ii) The saw-cut groove must not cut into rebar installed within the roadway.

**011 Support of raceways, cables, or boxes in suspended ceilings.**

(3) NEC power limited, Class 2, and Class 3 cables must be secured in compliance with NEC 334.30 and must be secured to boxes in compliance with NEC 314.17.

(4) Telecommunications cables must be secured in a manner that will not cause damage to the cables and at intervals not exceeding five feet. Cables are considered adequately supported when run through holes in building structural elements or other supporting elements. Telecommunications cables may be fished into inaccessible hollow spaces of finished buildings. Clamps or fittings are not required where telecommunications cables enter boxes.

(5) Optical fiber cables must be secured in a manner that will not cause damage to the cables and at intervals not exceeding five feet. Cables are considered adequately supported when run through holes in building structural elements or other supporting elements. Optical fiber cables may be fished into inaccessible hollow spaces of finished buildings. Supports must allow a bending radius that will not cause damage to the cables.

(6) Where not restricted by the building code official or Article 300 NEC, the wires required in NEC 300.11(A) may support raceways, cables, or boxes under the following conditions:

(a) Raceways and/or cables are not larger than three-quarter-inch trade size;

(b) No more than two raceways or cables are supported by a support wire. The two-cable limitation does not apply to telecommunications cables, Class 2 cables, or Class 3 cables on support wires installed exclusively for such cables. The support wire must be adequate to carry the cable(s) weight and all attached cables must be secured with approved fittings; or

(c) Raceways and cables are secured to the support wires by fittings designed and manufactured for the purpose.

In addition to (a), (b), and (c) of this subsection, the following conditions must be complied with:

(d) The support wires are minimum #12 AWG and are securely fastened to the structural ceiling and to the ceiling grid system; and

(e) The raceways or cables serve equipment that is located within the ceiling cavity or is mounted on or supported by the ceiling grid system. Telecommunications cables, Class 2 cables, or Class 3 cables supported as required by this section, may pass through ceiling cavities without serving equipment mounted on or supported by the ceiling grid system.

**017 Conductors in raceway.**

(7) Cables will be permitted in all raceway systems if:

(a) The cable is appropriate for the environment; and

(b) The percentage fill does not exceed that allowed in NEC Chapter 9, Table 1.

NEW SECTION

**WAC 296-46B-336 Power and control tray cable—Type TC.**

**010 Uses permitted.**

In addition to the uses allowed in NEC 336.10, Type TC cable may be used in any location allowed for nonmetallic-sheathed cable in NEC 334 if all the installation requirements in NEC 336 and 334 and WAC 296-46B-334 are met.

NEW SECTION

**WAC 296-46B-406 Receptacles, cord connectors, and attachment plugs.**

**011 Tamper resistant receptacles in dwelling units.**

NEC 406.11 is amended to read: In all areas specified in 210.52, all nonlocking-type 125-volt, 15- and 20-ampere receptacles must be listed tamper-resistant receptacles.

**Exception:** Receptacles in the following locations will not be required to be tamper-resistant.

(1) Receptacles located more than five and one-half feet above the finished floor;

(2) Receptacles that are a part of a luminaire or appliance;

(3) A single receptacle or a duplex receptacle for two appliances located within dedicated space for each appliance that, in normal use, is not easily moved from one place to another and that is cord and plug connected in accordance with 400.7(A)(6), (A)(7), or (A)(8);

(4) Nongrounding receptacles used for replacements as permitted in 406.3(d)(2)(a); or

(5) Receptacles located above a countertop where required by NEC 210.52(C).

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

**WAC 296-46B-410 Equipment for general use—Luminaires.**

**010 Luminaires.**

(1) All luminaires within an enclosed shower area or within five feet of the waterline of a bathtub must be enclosed, unless specifically listed for such use; these lumi-

naires, with exposed metal parts that are grounded, must be ground fault circuit interrupter protected.

~~((030))~~ **062 Flexible cord connection of electric discharge luminaires.**

(2) A ground-type attachment plug cap and receptacle connection at the source junction box is not required when the flexible cord complies with NEC ~~((410.30))~~ 410.62 and the following:

(a) Connection to a source junction box must utilize an approved cable connector or clamp;

(b) The maximum length of the cord for a suspended pendant drop from a permanently installed junction box to a suitable tension take-up device above the pendant luminaire must not exceed six feet;

(c) The flexible cord must be supported at each end with an approved cord grip or strain relief connector fitting/device that will eliminate all stress on the conductor connections;

(d) The flexible cord must be a minimum #14 AWG copper;

(e) The flexible cord ampacity must be determined in NEC Table 400.5(A) column A;

(f) The flexible cord must be hard or extra hard usage; and

(g) A vertical flexible cord supplying electric discharge luminaires must be secured to the luminaire support as per NEC 334.30(A).

**042 Exposed luminaire (fixture) parts.**

(3) Replacement luminaires that are directly wired or attached to boxes supplied by wiring methods that do not provide a ready means for grounding and that have exposed conductive parts will be permitted only where the luminaires are provided with ground-fault circuit-interrupter protection and marked "no equipment ground."

NEW SECTION

**WAC 296-46B-424 Fixed electric space heating equipment.**

**019 Disconnecting means.**

In one- and two-family dwelling units, a disconnecting means is required for the indoor unit(s) of a split system HVAC/R system, unless the outside unit's disconnecting means is lockable, disconnects the indoor unit and an indoor disconnecting means is not required by the manufacturer.

AMENDATORY SECTION (Amending WSR 09-20-032, filed 9/29/09, effective 10/31/09)

**WAC 296-46B-445 Wind driven generator equipment.** This equipment includes alternators or generators that produce electrical current through the conversion of wind energy into electrical energy. Wind driven generation equipment must demonstrate conformance to applicable safety standards recognized by the department.

**Installation.**

(1) A wind driven generator system design review must be ~~((submitted))~~ provided at the time of the first inspection. ~~((The design review must be available to the inspector on the job site. Permit holders must submit a copy of the wind driven generator equipment manufacturer's installation information and a legible one-line diagram of the wind driven gen-~~

erator design and calculations used to determine voltage and current within the generation system to the electrical inspector. This diagram must show the wind driven generator equipment, devices, overcurrent protection, conductor sizing, grounding, ground fault protection if required, and any system interconnection points.))

(2) For utility interactive systems, any person making interconnections between the generator system and the utility distribution network must consult the serving utility and is required to meet all additional utility standards.

(3) All wind driven generator equipment and disconnecting means must be permanently identified as to their purpose, maximum voltages and type of current within the system with an identification plate.

AMENDATORY SECTION (Amending WSR 03-09-111, filed 4/22/03, effective 5/23/03)

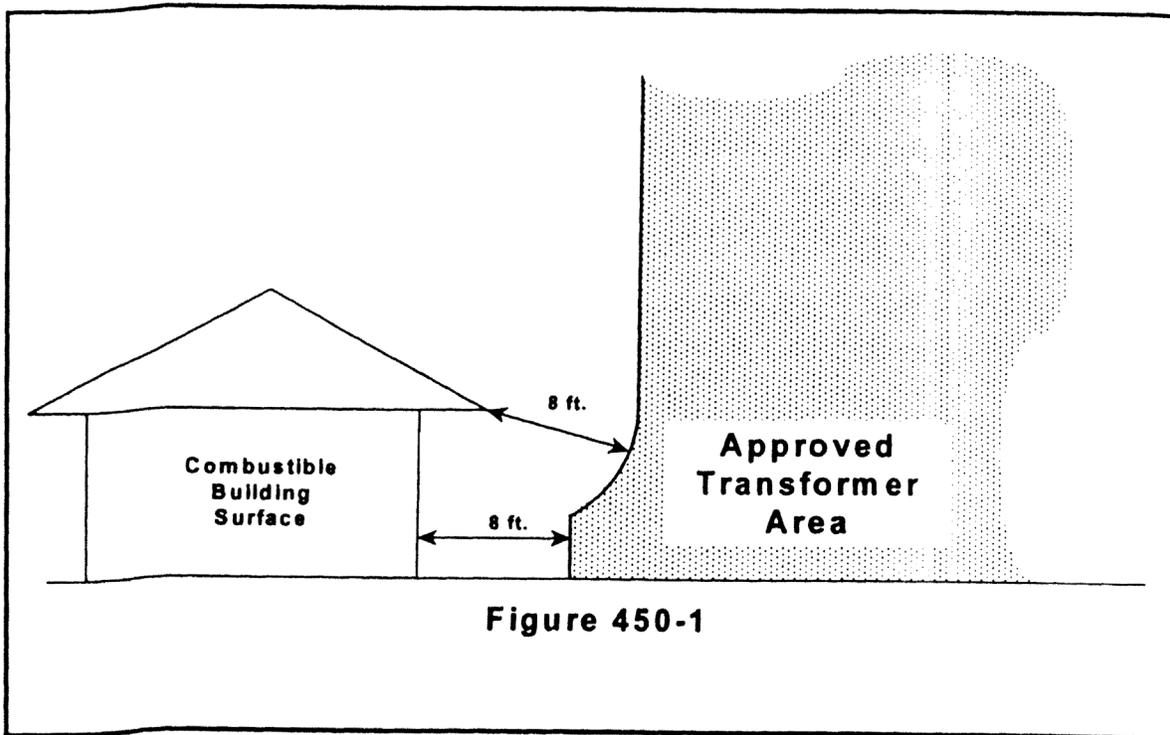
**WAC 296-46B-450 Equipment for general use— Transformers and transformer vaults.**

**027 Flammable-liquid or oil-filled transformers installed outdoors.**

(1) Flammable-liquid or oil-filled transformers installed outdoors must meet the following requirements:

(a) A transformer installed adjacent to a building/structure with any combustible surface may be located only in the shaded "Approved Transformer Area" shown in Figure 450-1;

"Approved Transformer Area" shown in Figure 450-1;



**Figure 450-1**

(b) A transformer installed adjacent to a building/structure with no combustible surface(s) may be located only in the shaded "Approved Transformer Area" shown in Figure 450-2;

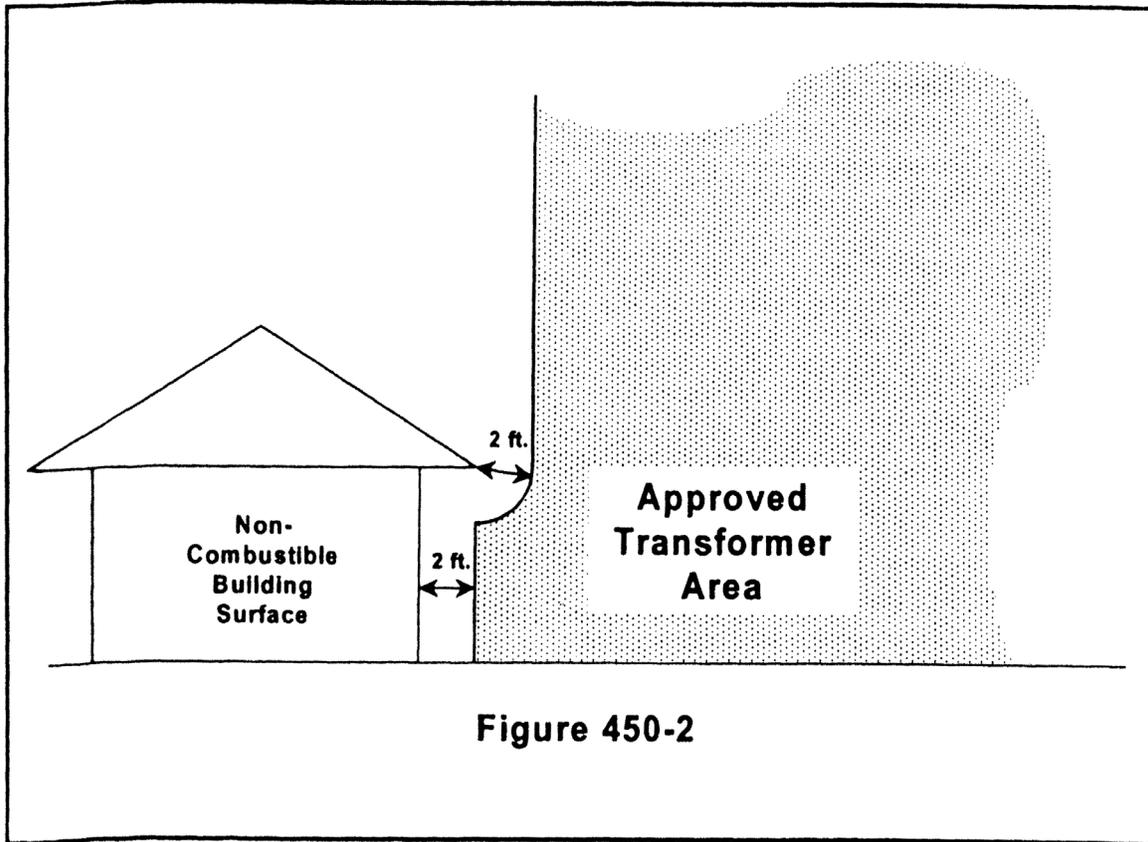


Figure 450-2

(c) In an area in which a transformer is to be installed next to a ~~((noninhabited))~~ nonhabitable structure, the transformer may be no closer than two feet to the building/structure and must be outside a line extended vertically from the ends of the eaves or rooflines;

(d) A building/structure may have no doors, windows, stairways, or other openings closer than eight feet to the transformer;

(e) The finished grade at the location of the transformer must be such that any oil leaking from the transformer will flow away from the building/structure and will not pool; and

(f) If transformers are installed in areas subject to traffic other than pedestrian traffic, they must be provided with adequate guarding.

(2) Enclosures for total underground flammable-liquid or oil-filled transformers must not be located within eight feet of a doorway, operable window, stairways or fire escape. Adequate space must be maintained above the enclosure so that a boom may be used to lift the transformer from the enclosure.

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

**WAC 296-46B-513 Special occupancies—Aircraft ~~((hangers))~~ hangars.**

**001 Scope.**

The scope for NEC 513 applies only when the property containing the building is classified or zoned as an aircraft ~~((hanger))~~ hangar by the authority having jurisdiction.

AMENDATORY SECTION (Amending WSR 03-09-111, filed 4/22/03, effective 5/23/03)

**WAC 296-46B-550 Special occupancies—Mobile homes, manufactured homes and mobile home parks.**

**001 Mobile/manufactured homes - Inspection.**

(1) All alterations to the mobile/manufactured home electrical system must be permitted and inspected ~~((by the factory assembled structures section of the department. Electrical wiring in structures that are attached to the mobile/manufactured home and for which the source of power is from the mobile/manufactured home is inspected by the factory assembled structures section of the department))~~.

(a) Any circuit or feeder that is fed from the pedestal or panel from an outbuilding feeding the mobile/manufactured home requires a permit from the electrical section.

(b) Any circuit or feeder that originates from the mobile/manufactured home's (i.e., red factory assembled structures label) panel and feeds an addition or equipment that is attached (e.g., garage, heat pump, or air conditioning unit) requires an FAS alteration permit.

(c) Any circuit or feeder that originates in the mobile/manufactured home panel and feeds an unattached structure or equipment (e.g., detached garage, hot tub, pool, well, sep-

tic system, yard lighting, or generation equipment, etc.) requires two inspections. An FAS permit is required for the circuit or feeder from the panel and must terminate in a J-box located under the home's exterior wall near the rim joist. A second permit is required from the electrical section for electrical work from the J-box to the equipment or structure.

**032 Mobile/manufactured homes - Service.**

(2) If an electrical service is installed on the mobile/manufactured home:

(a) It must be installed only by the manufacturer, at the manufacturing plant. The manufacturer must complete the service except for service connections, meter, and grounding electrode conductor; and

(b) The owner or an electrical contractor must complete the service at the site.

**033 Mobile/manufactured homes - Feeder.**

(3) When the mobile or manufactured home is supplied with power using a permanent wiring method, the equipment grounding conductor will be permitted to be bare. Bare conductors used underground must be copper. For the purposes of this section, portable cord is not considered a permanent wiring method.

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

**WAC 296-46B-555 Special occupancies—Marinas and boatyards.** (1) For the purposes of NEC 555.1, the scope of work includes private, noncommercial docking facilities.

(2) For the purposes of NEC 555.5, transformer terminations must be located a minimum of twelve inches above the deck of a dock (datum plane requirements do not apply for this section).

(3) For the purposes of NEC 555.7, adjacent means within sight.

(4) For the purposes of NEC 555.9, all electrical connections must be installed a minimum of twelve inches above the deck of a pier unless the connections are approved for wet locations (datum plane requirements do not apply for this section).

(5) For the purposes of NEC 555.10, all enclosures must be corrosion resistant. All gasketed enclosures must be arranged with a weep hole to discharge condensation.

(6) For the purposes of NEC 555.11, gasketed enclosures are only required for wet locations.

(7) For the purposes of NEC 555.13, the following wiring methods are allowed:

(a) All wiring installed in a damp or wet location must be suitable for wet locations.

(b) Extra-hard usage portable power cables rated not less than 75°C, 600 volts, listed for wet locations and sunlight resistance and having an outer jacket rated for the environment are permitted. Portable power cables are permitted as a permanent wiring method under or within docks and piers or where provided with physical protection. The requirements of NEC 555.13 (B)(4)(b) do not apply.

(c) Overhead wiring must be installed at the perimeter of areas where boats are moored, stored, moved, or serviced to avoid possible contact with masts and other parts of boats.

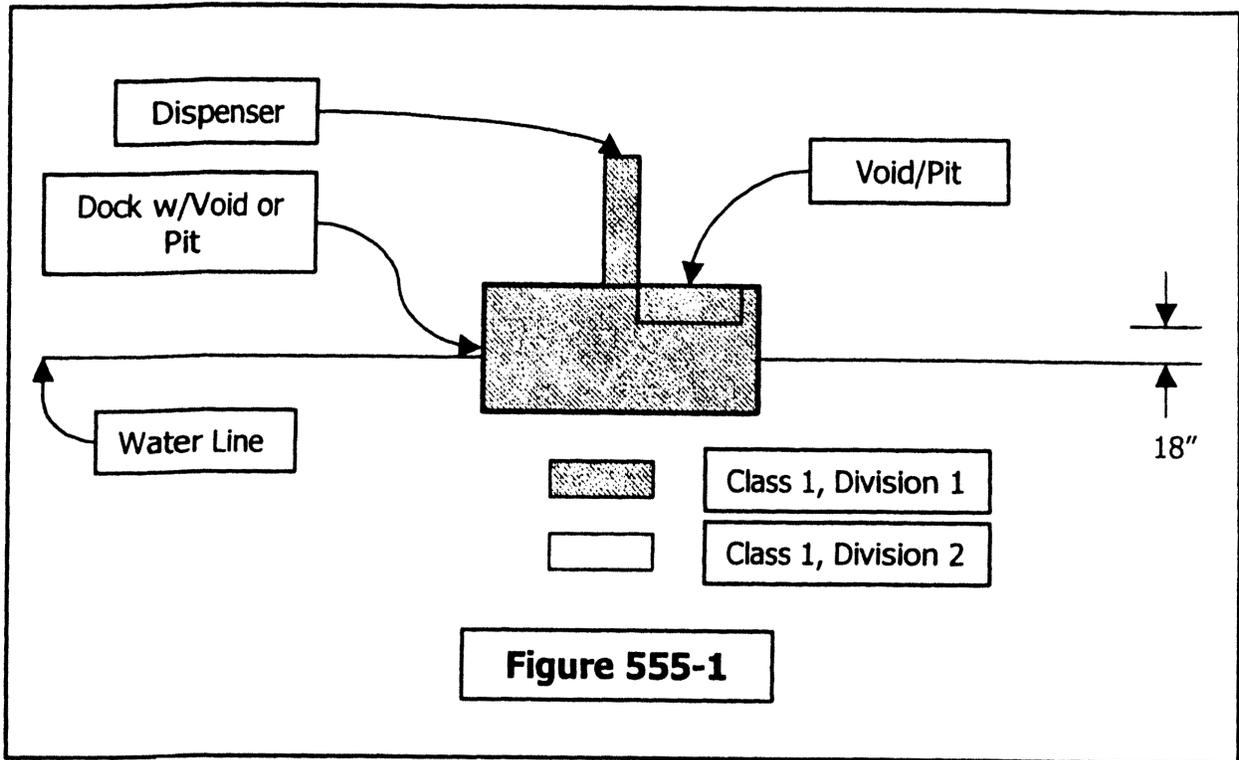
(d) For the purposes of NEC 555.13 (B)(5), the wiring methods of Chapter 3 NEC will be permitted.

(8) For the purposes of NEC 555.19, receptacles must be mounted not less than twelve inches above the deck surface of the pier or dock (datum plane requirements do not apply for this section). Shore power receptacles that provide shore power for boats must be rated not less than 20 amperes and must be single outlet type and must be of the locking and grounding type or pin and sleeve type.

(9) For the purposes of NEC 555.21 (B)(1), delete exception No. 1 and No. 2 and replace with:

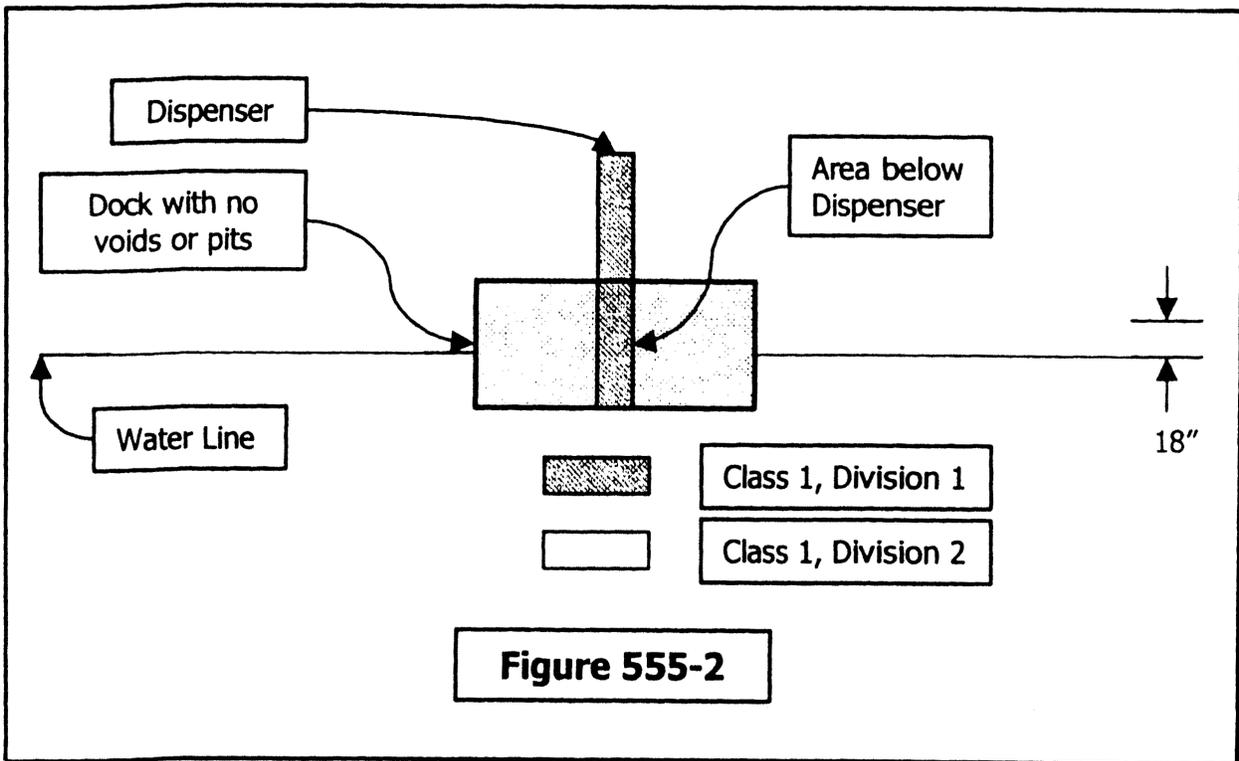
Dock, pier, or wharf sections that do not support fuel dispensers and may abut a section(s) that supports a fuel dispenser(s) are permitted to be unclassified where documented air space between the sections is provided and where flammable liquids or vapors cannot travel to these sections. See NEC 500.4(A) for documentation requirements.

~~((STRICKEN GRAPHIC))~~



~~STRICKEN GRAPHIC))~~

~~((STRICKEN GRAPHIC))~~



~~STRICKEN GRAPHIC))~~

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

**WAC 296-46B-600 Special equipment—Electric signs and outline lighting.**

**001 Electrical signs - General.**

(1) All electrical signs within the scope of UL Standard 48, the electrical sign standard, must be listed. All electrical signs outside the scope of UL Standard 48 will be inspected for compliance with the NEC.

(2) Luminaires in outdoor awnings must be suitable for wet locations and be connected by a wiring method suitable for wet locations.

(3) Fluorescent luminaires must be located at least six inches from the awning fabric. Incandescent lamps or luminaires must be located at least eighteen inches from the awning fabric. A disconnecting means must be installed per Article 600 NEC.

(4) Listed awning signs must be installed in compliance with the manufacturer's instructions and the NEC.

**004 Markings.**

(5) When neon channel signs are retrofitted from neon to an LED light source, a licensed electrical contractor may make the retrofit with the channel(s) in place so long as all the retrofit components are listed and the manufacturer's instructions for making the retrofit are available for the inspector's use at the time of the inspection and physical access is provided to allow the inspector access to all components of the retrofit. A new listing mark must be applied to the sign by the electrical contractor or a field evaluation label must be applied by an approved electrical testing laboratory.

**007 Grounding and bonding.**

(6) Remote metal parts of a section sign or outline lighting system only supplied by a remote Class 2 power supply that is listed or is a recognized component in a listed section sign or outline lighting is not required to be bonded to an equipment grounding conductor.

**010 Portable or mobile outdoor electrical signs.**

~~((5))~~ (7) A weatherproof receptacle outlet that is weatherproof with the supply cord connected must be installed within six feet of each electrical sign.

~~((6))~~ (8) Extension cords are not permitted to supply portable outdoor signs.

~~((7))~~ (9) All portable outdoor electrical signs must be listed or field evaluated by a laboratory accredited by the department.

**030 Neon tubing.**

~~((8))~~ (10) NEC 600, Part II, Field-Installed Skeleton Tubing, will apply to all neon tubing and neon circuit conductors.

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

**WAC 296-46B-680 Special equipment—Swimming pools, fountains and similar installations.**

**001 General.**

(1) Package spa or hot tubs. Electrical heating, pumping, filtering, and/or control equipment installed within five feet of a spa or hot tub must be listed or field evaluated as a package with the spa or hot tub.

(2) A factory assembled skid pack of electrical heating, pumping, filtering, and/or control equipment (~~((skid pack))~~) must be installed more than five feet from a spa or hot tub and (~~((shall))~~) must be listed as a package unit.

(3) The maintenance disconnect and field installed, listed electrical equipment for a hot tub, spa, or swim spa must be located at least five feet from the hot tub, spa or swim spa. Field installed listed equipment must meet the following additional requirements:

(a) The heater is listed as a "spa heater or swimming pool heater";

(b) The pump is listed as a "spa pump" or "swimming pool/spa pump" (the pump may be combined with a filter assembly); and

(c) Other listed equipment such as panelboards, conduit, and wire are suitable for the environment and comply with the applicable codes.

(4) Field installed, listed electrical equipment for a swimming pool must be located at least five feet from the swimming pool. Field installed listed equipment must meet the following additional requirements:

(a) The heater must be listed as a "swimming pool heater or a spa heater";

(b) The pump must be listed as a "swimming pool pump" or "spa pump" or "swimming pool/spa pump"; and

(c) Other equipment such as panelboards, conduit, and wire must be suitable for the environment and comply with the applicable codes.

The five-foot separation may be reduced by the installation of a permanent barrier, such as a solid wall, fixed glass windows or doors, etc. The five-foot separation will be determined by the shortest path or route that a cord can travel from the spa, hot tub, swim spa, or swimming pool to an object.

(5) The field assembly or installation of "recognized components" will not be permitted.

(6) Hydromassage bathtubs must be listed as a unit and bear a listing mark which reads "hydromassage bathtub."

(7) Manufacturers' instructions must be followed as part of the listing requirements.

(8) Electrical components which have failed and require replacement must be replaced with identical products unless the replacement part is no longer available; in which case, a like-in-kind product may be substituted provided the mechanical and grounding integrity of the equipment is maintained.

(9) Cut-away-type display models may not be sold for other than display purposes and are not expected to bear a listing mark.

**025 Feeders.**

(10) NEC 680.25(A) is amended to read: A feeder between the service equipment and the remote panelboard is permitted to run in flexible metal conduit, an approved cable assembly that includes an equipment grounding conductor within its outer sheath (the equipment grounding conductor must comply with NEC 250.24 (A)(5)), rigid metal conduit, intermediate metal conduit, liquidtight flexible nonmetallic conduit, rigid polyvinyl chloride conduit, reinforced thermosetting resin conduit, electrical metallic tubing (when installed on or within a building or crawl space), and electri-

cal nonmetallic tubing (when installed within a building or crawl space). Aluminum conduit is not permitted.

#### **040 Spas and hot tubs.**

(11) NEC 680.42(C) will apply for interior and exterior wiring to outdoor installations of spas and hot tubs.

#### **070 Hydromassage bathtubs.**

(12) For hydromassage bathtubs, the ground fault circuit interrupter device must be identified as to use and not located in a building or tub cavity, crawlspace, or attic.

(13) For hydromassage bathtubs, all electrical equipment installed to support the bathtub (e.g., disconnecting means, motor, etc.) must be accessible at the same grade level as the tub or from a landing on the exterior of the building without the use of a ladder or other access device.

AMENDATORY SECTION (Amending WSR 09-20-032, filed 9/29/09, effective 10/31/09)

### **WAC 296-46B-690 Solar photovoltaic systems.**

#### **002 Definitions.**

(1) ~~((Photovoltaic system. The photovoltaic system may conduct alternating current, direct current, or both and will comprise all interconnected circuits to the point of connection with the building distribution circuits or utility service conductors.))~~ Building integrated means: Photovoltaic cells, modules, panels, or arrays that are integrated into the outer surface or structure of a building and serve as the outer protective surface of that building, such as the roof, skylights, windows, or facades.

#### **004 Installation.**

(2) Support structure~~((s))~~ or foundation~~((, and tracker))~~. For the purposes of this section, those portions of the ~~((array or tracker))~~ structure support or foundation that are exclusively mechanical and are ~~((built specifically for the purpose of physically supporting the modules or panels))~~ not part of a bonding or grounding path will not be considered part of the photovoltaic system as defined by this ~~((article))~~ section. Such structural support or foundation may be done by the owner, registered general contractor, or licensed electrical contractor without electrical permit or inspection.

#### **~~((004 Installation.))~~**

(3) A photovoltaic system design review must be ~~((submitted))~~ provided at the time of the first inspection. ~~((The design review must be available to the inspector on the job site. Permit holders must submit, to the electrical authority having jurisdiction, copies of the photovoltaic equipment manufacturer's installation information, accompanied by a legible one-line diagram of the photovoltaic design and calculations used to determine voltage and current within the photovoltaic system. This diagram must show the photovoltaic equipment, devices, overcurrent protection, conductor sizing, grounding, ground fault protection if required, and any system interconnection points.))~~

(4) For utility interactive systems, persons making interconnections between solar photovoltaic system and the utility distribution network must consult the serving utility and are required to meet all additional utility standards.

(5) The entity placing a building integrated cell, module, panel, or array is not subject to the requirements for electrical inspection, licensing, or certification so long as the work is

limited to the placement and securing of the device and an electrical work permit has been previously obtained for the electrical work related to the equipment by an entity authorized to do that electrical work.

(6) All electrical work, including wiring installation, terminations, etc., necessary to complete the electrical installations must be completed by the entity authorized to do the electrical work (i.e., owner or appropriate electrical contractor).

#### **007 Maximum voltage.**

~~((5))~~ (7) The open-circuit voltage temperature coefficients supplied in the instructions of listed photovoltaic modules will be used to determine the maximum direct current photovoltaic system voltage. Otherwise the voltage will be calculated using Table 690.7 of the NEC. For the purposes of this calculation, a temperature correction factor of 1.25 will be used unless another factor can be justified and is approved by the authority having jurisdiction.

#### **053 Direct-current photovoltaic power source.**

~~((6))~~ (8) All photovoltaic equipment and disconnecting means must be permanently identified as to their purpose, maximum voltages, and type of current within the system with an identification plate. All photovoltaic circuits must be identified at each overcurrent protection device(s) and panel directory(ies).

~~((7))~~ (9) Required "WARNING" labels as specified by NEC 690 are required to be an identification plate on or immediately adjacent to the pertinent equipment.

AMENDATORY SECTION (Amending WSR 06-24-041, filed 11/30/06, effective 12/31/06)

### **WAC 296-46B-800 Communications systems—Communications circuits.**

#### **General.**

Chapters 1 through 7, NEC, supplement and modify the requirements of chapter 8, NEC. If there are specific requirements or exceptions described in chapter 8, NEC, that are different from those in chapters 1 through 7, NEC, chapter 8 will prevail.

#### **001 Installation.**

(1) All telecommunications installations on an end-user's property, beyond the end-user's telecommunications network demarcation point, made by a telecommunications service provider, both inside and outside of a building or structure, must conform to all licensing, certification, installation, permitting, and inspection requirements described in chapter 19.28 RCW and this chapter.

(2) Telecommunications service providers including its subcontractors and agents must install and maintain points of demarcation in conformance with Code of Federal Regulations (C.F.R.), Title 47, Chapter 1, Part 68, Subpart B, Sec. 68.105 and may not place a point of demarcation further than twelve inches within an end-user's occupied space.

(3) The telecommunications service provider must identify the telecommunications network demarcation point(s) with an identification plate or label having:

- (a) The provider's name;
- (b) Customer/end-user's name; and
- (c) If a CWSTP is used, the option type used.

(4) The C.F.R. prescribes that telecommunications service providers must choose either a MPOE (minimum point of entry) or CWSTP (cable wire service termination policy) which regulates where demarcations are placed within a multi-tenant environment.

(5) A telecommunications service provider, including its subcontractors and agents provisioning service for a second provider who is not the end-user of the service, must place the point of demarcation no further than twelve inches from the nearest POP (point of presence), of the serving provider, to the eventual end-user.

(6) Telecommunications service providers must designate each building that they provide services to with labeling at the terminating point(s) of their facilities indicating:

- (a) Whether the building is under a MPOE policy; or
- (b) Which option of a CWSTP is in effect.

(7) The CWSTP options for demarcation placement are as follows:

(a) All telecommunications service provider facilities will terminate at one location, mutually agreed upon by the provider and the building owner or designee, upon entry into the building, normally at the lowest common serving point. All demarcations will be placed no more than twelve inches from this point. The building owner and/or tenants will provide, manage and maintain building wire and cable placed beyond this demarcation point location.

(b) The telecommunications service provider's facilities will terminate at common locations, mutually agreed upon by the provider and the building owner or designee, throughout the building (terminal rooms, utility closets, etc.). The telecommunications service provider will provide, manage and maintain the building cable and registration jacks that denote the demarcation points. The demarcation points will be placed at these locations and will be accessible to end-users at these locations. This (b) is not an option for single tenant buildings.

(c) The telecommunications service provider will terminate facilities and place demarcations at locations, mutually agreed upon by the provider and the building owner or designee, within the individually occupied units, within twelve inches or a similarly reasonable distance of cable/wire entry. The provider will provide, manage and maintain the building cable, network terminating wire and registration jacks that denote the demarcation point. This (c) is not an option for single tenant buildings.

(d) All telecommunications service provider facilities and demarcations will terminate at one location on the property, mutually agreed upon by the provider and the building owner or designee. The building owner and/or tenants will provide, manage and maintain building wire and cable placed beyond the demarcation point location.

(8) The telecommunications installer must confer with the telecommunications provider when determining the point of demarcation.

#### **002 Definitions.**

(9) "**CWSTP (cable, wire and service termination policy)**" is the policy of the Federal Communications Commission (FCC) and the Washington utilities and transportation commission (WUTC) prescribed by tariff that governs negotiations between building owners and telecommunica-

tions service providers regarding the configuration of POP(s) and demarcation point(s) in multitenant buildings when a MPOE policy is not elected by the telecommunications service provider.

(10) "**MPOE (minimum point of entry)**" is a building wiring policy of the FCC and WUTC for multitenant environment locations that can be elected by telecommunications service providers. It prescribes that the telecommunications service provider will provide a single POP for access to its network and is located either at the closest practicable point to where a telecommunications service provider's facilities (fiber, coax, or copper) cross a property line or at the closest practicable point to where the wiring enters a multiunit building or buildings. All demarcations provided for customers and end-users by the provider will be placed within twelve inches of that POP.

(11) "**POP (point-of-presence)**," also called a "**POT (point-of-termination)**," is a designated point at or near a customer premise at which a telecommunications service provider's facilities for the provision of access service ends. This can be a fiber, coax, or copper connection point. Depending on the telecommunications service provider's CWSTP with the individual building owner, demarcations may be established at the POP or at other designated locations. When the customer of a telecommunications service provider is another carrier, the demarcation will be at the closest POP to the end-user. A telecommunications service provider may have multiple POPs within a multiple tenant environment.

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

#### **WAC 296-46B-900 Electrical plan review. Classification or definition of occupancies.**

##### Classification or definition of occupancies.

(1) Occupancies are classified and defined as follows:

(a) Educational facility refers to a building or portion of a building used primarily for educational purposes by six or more persons at one time for twelve hours per week or four hours in any one day. Educational occupancy includes: Schools (preschool through grade twelve), colleges, academies, universities, and trade schools.

(b) Institutional facility refers to a building or portion of a building used primarily for detention or correctional occupancies where some degree of restraint or security is required for a time period of twenty-four or more hours. Such occupancies include, but are not restricted to: Penal institutions, reformatories, jails, detention centers, correctional centers, and residential-restrained care.

(c) Health or personal care facility. Health or personal care facility refers to buildings or parts of buildings that contain, but are not limited to, facilities that are required to be licensed by the department of social and health services or the department of health (e.g., hospitals, nursing homes, private alcoholism hospitals, private psychiatric hospitals, boarding homes, alcoholism treatment facilities, maternity homes, birth centers or childbirth centers, residential treatment facilities for psychiatrically impaired children and youths, and renal hemodialysis clinics) and medical, dental, or chiroprac-

tic offices or clinics, outpatient or ambulatory surgical clinics, and such other health care occupancies where patients who may be unable to provide for their own needs and safety without the assistance of another person are treated.

(i) "Hospital" means any institution, place, building, or agency providing accommodations, facilities, and services over a continuous period of twenty-four hours or more, for observation, diagnosis, or care of two or more individuals not related to the operator who are suffering from illness, injury, deformity, abnormality, or from any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis.

(ii) "Nursing home," "nursing home unit" or "long-term care unit" means a group of beds for the accommodation of patients who, because of chronic illness or physical infirmities, require skilled nursing care and related medical services but are not acutely ill and not in need of the highly technical or specialized services ordinarily a part of hospital care.

(iii) "Boarding home" means any home or other institution, however named, which is advertised, announced, or maintained for the express or implied purpose of providing board and domiciliary care to seven or more aged persons not related by blood or marriage to the operator. It must not include any home, institution, or section thereof which is otherwise licensed and regulated under the provisions of state law providing specifically for the licensing and regulation of such home, institution, or section thereof.

(iv) "Private alcoholism hospital" means an institution, facility, building, or equivalent designed, organized, maintained, or operated to provide diagnosis, treatment, and care of individuals demonstrating signs or symptoms of alcoholism, including the complications of associated substance use and other medical diseases that can be appropriately treated and cared for in the facility and providing accommodations, medical services, or other necessary services over a continuous period of twenty-four hours or more for two or more individuals unrelated to the operator, provided that this chapter will not apply to any facility, agency, or other entity which is owned and operated by a public or governmental body.

(v) (~~"Alcoholism treatment facility" means a private place or establishment, other than a licensed hospital, operated primarily for the treatment of alcoholism.~~)

(~~vi~~) "Private psychiatric hospital" means a privately owned and operated establishment or institution which: Provides accommodations and services over a continuous period of twenty-four hours or more, and is expressly and exclusively for observing, diagnosing, or caring for two or more individuals with signs or symptoms of mental illness who are not related to the licensee.

(~~vii~~) (vi) "Maternity home" means any home, place, hospital, or institution in which facilities are maintained for the care of four or more women, not related by blood or marriage to the operator, during pregnancy or during or within ten days after delivery: Provided, however, that this definition will not apply to any hospital approved by the American College of Surgeons, American Osteopathic Association, or its successor.

(~~viii~~) (vii) "Birth center" or "childbirth center" means a type of maternity home which is a house, building, or equivalent organized to provide facilities and staff to support

a birth service provided that the birth service is limited to low-risk maternal clients during the intrapartum period.

(~~ix~~) (viii) "Ambulatory surgical facility" means a facility, not a part of a hospital, providing surgical treatment to patients not requiring inpatient care in a hospital. (~~This term does not include a facility in the offices of private physicians or dentists, whether for individual or group practice, if the privilege of using such facility is not extended to physicians or dentists outside the individual or group practice. (NEC: Ambulatory Health Care Center.)~~)

(~~x~~) (ix) "Hospice care center" means any building, facility, place, or equivalent, organized, maintained, or operated specifically to provide beds, accommodations, facilities, or services over a continuous period of twenty-four hours or more for palliative care of two or more individuals, not related to the operator, who are diagnosed as being in the latter stages of an advanced disease which is expected to lead to death.

(~~xii~~) (x) "Renal hemodialysis clinic" means a facility in a building or part of a building which is approved to furnish the full spectrum of diagnostic, therapeutic, or rehabilitative services required for the care of renal dialysis patients (including inpatient dialysis furnished directly or under arrangement). (NEC: Ambulatory Health Care Center.)

(~~xiii~~) (xi) "Medical, dental, and chiropractic clinic" means any clinic or physicians' office where patients are not regularly kept as bed patients for twenty-four hours or more. Electrical plan review is not required.

(~~xiii~~) (xii) "Residential treatment facility" (~~for psychiatrically impaired children and youth" means a residence, place, or facility designed or organized to provide twenty-four-hour residential care or long-term individualized, active treatment for clients who have been diagnosed or evaluated as psychiatrically impaired.~~)

(~~xiv~~) "Adult residential rehabilitation center" means a residence, place, or facility designed or organized primarily to provide twenty-four-hour residential care, crisis and short-term care or long-term individualized active treatment and rehabilitation for clients diagnosed or evaluated as psychiatrically impaired or chronically mentally ill as defined herein or in chapter 71.24 RCW) means a facility licensed and operated twenty-four hours per day to provide health care to persons receiving services for a mental disorder or substance abuse.

(~~xv~~) (xiii) "Group care facility" means a facility other than a foster-family home maintained or operated for the care of a group of children on a twenty-four-hour basis.

(~~d~~) ~~Licensed day care centers.~~

(i) ~~"Child day care center" means a facility providing regularly scheduled care for a group of children one month of age through twelve years of age for periods less than twenty-four hours.~~

(ii) ~~"School-age child care center" means a program operating in a facility other than a private residence accountable for school-age children when school is not in session. The facility must meet department of licensing requirements and provide adult supervised care and a variety of developmentally appropriate activities.~~

(iii) ~~"Family child day care home" means the same as "family child care home" and "a child day care facility"~~

licensed by the state, located in the family abode of the person or persons under whose direct care and supervision the child is placed, for the care of twelve or fewer children, including children who reside at the home. Electrical plan review is not required.)

**Plan review for educational, institutional or health care facilities/buildings.**

(2) Plan review is a part of the electrical inspection process; its primary purpose is to determine:

- (a) That service/feeder conductors are calculated and sized according to the proper NEC or WAC article or section;
- (b) The classification of hazardous locations; and
- (c) The proper design of emergency and standby systems.

(3) Electrical plan review.

(a) Electrical plan review is not required for:

- (i) Lighting specific projects that result in an electrical load reduction on each feeder involved in the project;
- (ii) Low voltage systems;
- (iii) Modifications to existing electrical installations where all of the following conditions are met:

- Service or distribution equipment involved is rated not more than 400 amperes and does not exceed 250 volts or for lighting circuits not exceeding 277 volts to ground;

- Does not involve emergency systems other than listed unit equipment per NEC 700.12(F);

- Does not involve branch circuits or feeders of an essential electrical system as defined in NEC 517.2; and

- Service and feeder load calculations are increased by 5% or less.

(iv) Stand-alone utility fed services that do not exceed 250 volts, 400 amperes where the project's distribution system does not include:

- Emergency systems other than listed unit equipment per NEC 700.12(F);

- Critical branch circuits or feeders as defined in NEC 517.2; or

- A required fire pump system.

(v) Heating and cooling specific retrofit projects that result in an electrical load reduction on each existing feeder involved in the project, provided there is not a corresponding increase in the available fault current in any feeder. Existing and new load calculations must be provided to the inspector at the time of the inspection.

(b) Electrical plan review is required for all other new or altered electrical projects in educational, institutional, or health care occupancies classified or defined in this chapter.

(c) If a review is required, the electrical plan must be submitted for review and approval before the electrical work is begun.

(d) Electrical plans.

(i) The plan must be submitted for plan review prior to beginning any electrical inspection. If a plan is rejected during the plan review process, no electrical inspection(s) may proceed until the plan is resubmitted and a conditional acceptance is granted.

(ii) The submitted plan will receive a preliminary review within seven business days after receipt by the department or city authorized to do electrical inspections.

(iii) If the submitted plan:

- Is rejected at the preliminary review, no inspection(s) will be made on the project.

- Receives conditional acceptance, the permit holder may request a preliminary inspection(s) in writing to the department or city authorized to do electrical inspections. The request must note that the preliminary inspection(s) is conditional and subject to any alterations required from the final plan review process.

(iv) Once the submitted plan has preliminary plan review approval, a copy of the submitted plan must be available on the job site for use by the electrical inspector.

(v) The final approved plan must be available on the job site, for use by the electrical inspector, after it is approved, but no later than prior to the final electrical inspection.

(vi) If the final approved plan requires changes from the conditionally accepted plan, alterations to the project may be required to make the project comply with the approved plan.

(vii) If the installer deviates from the service/feeder design shown on the final approved plan, a supplemental plan must be submitted for review before inspection can proceed. Load reductions or moving branch circuit locations within a panelboard do not require resubmission.

(e) All electrical plans for educational facilities, hospitals, and nursing homes must be prepared by, or under the direction of, a consulting engineer registered under chapter 18.43 RCW, and chapters 246-320, 180-29, and 388-97 WAC and stamped with the engineer's mark and signature.

(f) Refer plans for review to the Electrical Section, Department of Labor and Industries, P.O. Box 44460, Olympia, Washington 98504-4460 or the city authorized to do electrical inspections.

(g) Plans for projects within cities that perform electrical inspections must be submitted to that city for review.

(h) Plans to be reviewed must be legible, identify the name and classification of the facility, clearly indicate the scope and nature of the installation and the person or firm responsible for the electrical plans. The plans must clearly show the electrical installation or alteration in floor plan view, include all switchboard and panelboard schedules and when a service or feeder is to be installed or altered, must include a riser diagram, load calculation, fault current calculation, and interrupting rating of equipment. Where existing electrical systems are to supply additional loads, the plans must include documentation that proves adequate capacity and ratings. The plans must be submitted with a plan review submittal form available from the department or city authorized to do electrical inspections. ~~((Plan review fees are not required to be paid until the review is completed. Plans will not be returned until all fees are paid.))~~ Fees ~~((will))~~ **must** be calculated based on the date the plans are received by the department or city authorized to do electrical inspections.

(i) The department may perform the plan review for new or altered electrical installations of other types of construction when the owner or electrical contractor makes a voluntary request for review. A city authorized to do electrical inspections may require a plan review of any electrical system.

(j) For existing structures where additions or alterations to feeders and services are proposed, NEC 220.87(1) may be used. If NEC 220.87(1) is used, the following is required:

- (i) The date of the measurements.
- (ii) A statement attesting to the validity of the demand data, signed by a professional electrical engineer or the electrical administrator of the electrical contractor performing the work.
- (iii) A diagram of the electrical system identifying the point(s) of measurement.
- (iv) Building demand measured continuously on the highest-loaded phase of the feeder or service over a thirty-day period, with the demand peak clearly identified. Demand peak is defined as the maximum average demand over a fifteen-minute interval.

**Notes to Tables 900-1 and 900-2.**  
 1. A city authorized to do electrical inspections may require plan review on facility types not reviewed by the department.

**Table 900-1  
 Health or Personal Care Facilities**

| Health or Personal Care Facility Type   | Plan Review Required |
|---|----------------------|
| Hospital  | Yes                  |
| Nursing home unit or long-term care unit  | Yes                  |
| Boarding home   | Yes                  |
| Assisted living facility  | Yes                  |
| Private alcoholism hospital   | Yes                  |
| <del>((Alcoholism treatment facility</del>  | <del>Yes))</del>     |
| Private psychiatric hospital  | Yes                  |
| Maternity home  | Yes                  |
| Ambulatory surgery facility   | Yes                  |
| Renal hemodialysis clinic   | Yes                  |
| Residential treatment facility <del>((for psychiatrically impaired children and youth))</del> | Yes                  |
| Adult residential rehabilitation center   | Yes                  |

**Table 900-2  
 Educational and Institutional Facilities, Places of Assembly, or Other Facilities**

| Educational, Institutional, or Other Facility Types | Plan Review Required |
|---|----------------------|
| Educational   | Yes                  |
| Institutional                                       | Yes                  |

AMENDATORY SECTION (Amending WSR 09-20-032, filed 9/29/09, effective 10/31/09)

**WAC 296-46B-901 General—Electrical work permits and fees. General.**

(1) When an electrical work permit is required by chapter 19.28 RCW or this chapter, inspections may not be made, equipment must not be energized, or services connected unless:

- (a) A valid electrical work permit is ~~((completely and legibly filled out and readily available))~~ obtained and posted per subsection (5) of this section;
- (b) The classification or type of facility to be inspected and the exact scope and location of the electrical work to be performed are clearly shown on the electrical work permit;
- (c) The address where the inspection is to be made is clearly identifiable from the street, road or highway that serves the premises; and
- (d) Driving directions are provided for the inspectors' use.

(2) Except as allowed for annual permits, an electrical work permit is valid for only one specific job site address.

~~((3) Except as provided in subsection (8) of this section, a valid electrical work permit must be posted on the job site at a readily accessible and conspicuous location prior to beginning electrical work and at all times until the electrical inspection process is completed.))~~

**Permit - Responsibility for.**

~~((4))~~ (3) Each person, firm, partnership, corporation, or other entity must furnish a valid electrical work permit for the installation, alteration, or other electrical work performed or to be performed solely by that entity. When the ~~((permitted work is performed solely or in part by another entity, the electrical work permit purchaser must))~~ original purchaser is replaced, another entity may request, in writing, written approval from the chief electrical inspector ((or the city that is authorized to do electrical inspections)) to take responsibility for the work of the original installing entity under the original permit. If permission is not granted the entity must obtain a new permit for the remaining work.

Two or more entities may never work under the same permit. Each electrical work permit application must be signed by the electrical contractor's administrator (or designee) or the person, or authorized representative of the firm, partnership, corporation, or other entity that is performing the electrical installation or alteration. Permits purchased electronically do not require a handwritten signature. An entity designated to sign electrical permits must provide written authorization of the purchaser's designation when requested by the department or city that is authorized to do electrical inspections.

~~((5))~~ (4) Permits to be obtained by customers. Whenever a serving electrical utility performs work for a customer under one of the exemptions in WAC 296-46B-925 and the work is subject to inspection, the customer is responsible for obtaining all required permits.

~~((6) Posting of permits.))~~ (5) Except as allowed for Class B permits, where an electrical work permit is required, the work permit must be obtained and posted at the job site or the electrical work permit number must be conspicuously posted and identified as the electrical work permit number on or adjacent to the electrical service or feeder panel supplying power to the work prior to beginning any electrical work and at all times until the electrical inspection process is completed. Exceptions:

- (a) For an owner, an electrical work permit for emergency repairs to an existing electrical system(s) must be obtained ~~((and posted at the job site))~~ no later than the next business day after the work is begun.

(b) For an electrical contractor, in a city's jurisdiction where the city is authorized to do electrical inspections and does not have a provisional (~~and a Class B~~) permit system, an electrical work permit for emergency repairs to an existing electrical system(s) must be obtained and posted, per the city's requirements at the job site no later than the next business day after the work is begun.

~~((7))~~ (6) Fees must be paid in accordance with the inspection fee schedule in Part C of this chapter. The amount of the fee due is calculated based on the fee effective at the date payment is made. If the project is required to have an electrical plan review, the plan review fees will be based on the fees effective at the date the plans are received by the department for review. In a city where the department is doing inspections as the city's contractor, a supplemental fee may apply.

**Permit - Requirements for.**

~~((8))~~ (7) As required by chapter 19.28 RCW or this chapter, an electrical work permit is required for the installation, alteration, or maintenance of all electrical systems or equipment except for:

(a) Travel trailers;

(b) Class A basic electrical work which includes:

(i) The like-in-kind replacement of ~~((a:))~~ lamps; a single set of fuses; a single battery smaller than 150 amp hour; contactors, relays, timers, starters, circuit boards, or similar control components; one household appliance; circuit breakers; ~~((fuse:))~~ single-family residential luminaires; ~~((lamp:))~~ up to five snap ~~((switch:))~~ switches, dimmers~~((:))~~, receptacle outlets~~((:))~~, thermostats~~((:))~~, heating elements~~((:))~~, luminaire ballasts with an exact same ballast; component(s) of electric signs, outline lighting, or skeleton neon tubing when replaced on-site by an appropriate electrical contractor and when the sign, outline lighting or skeleton neon tubing electrical system is not modified; one ten horsepower or smaller motor~~((:))~~.

For the purposes of this section, "circuit breaker" means a circuit breaker that is used to provide overcurrent protection only for a branch circuit, as defined in NEC 100.

(ii) Induction detection loops described in WAC 296-46B-300(2) and used to control gate access devices;

(iii) Heat cable repair; and

(iv) Embedding premanufactured heat mats in tile grout where the mat is listed by an approved testing laboratory and comes from the manufacturer with preconnected lead-in conductors. All listing marks and lead-in conductor labels must be left intact and visible for evaluation and inspection by the installing electrician and the electrical inspector.

Unless specifically noted, the exemptions listed do not include: The replacement of an equipment unit, assembly, or enclosure that contains an exempted component or combination of components (e.g., an electrical furnace/heat pump, industrial milling machine, etc.) or any appliance/equipment described in this section for Class B permits.

In the department's jurisdiction, a provisional electrical work permit label may be posted in lieu of an electrical work permit. If a provisional electrical work permit label is used, an electrical work permit must be obtained within two working days after posting the provisional electrical work permit

label. See WAC 296-46B-907(2) for provisional label requirements.

~~((9))~~ (c) The following types of systems and circuits are considered exempt from the requirements for licensing and permitting described in chapter 19.28 RCW. The electrical failure of these systems does not inherently or functionally compromise safety to life or property.

(i) Low-voltage thermocouple derived circuits;

(ii) Low-voltage circuits for built-in residential vacuum systems;

(iii) Low-voltage circuits for underground landscape sprinkler systems;

(iv) Low-voltage circuits for underground landscape lighting; and

(v) Low-voltage circuits for residential garage doors.

For these types of systems and circuits to be considered exempt, the following conditions must be met:

(A) The power supplying the installation must be derived from a listed Class 2 power supply;

(B) The installation and termination of line voltage equipment and conductors supplying these systems is performed by appropriately licensed and certified electrical contractors and electricians;

(C) The conductors of these systems do not pass through fire-rated walls, fire-rated ceilings or fire-rated floors in other than residential units; and

(D) Conductors or luminaires are not installed in installations covered by the scope of Article 680 NEC (swimming pools, fountains, and similar installations).

(8) An electrical work permit is required for all installations of telecommunications systems on the customer side of the network demarcation point for projects greater than ten telecommunications outlets. All backbone installations regardless of size and all telecommunications cable or equipment installations involving penetrations of fire barriers or passing through hazardous locations require permits and inspections. For the purposes of determining the inspection threshold for telecommunications projects greater than ten outlets, the following will apply:

(a) An outlet is the combination of jacks and mounting hardware for those jacks, along with the associated cable and telecommunications closet terminations, that serve one workstation. In counting outlets to determine the inspection threshold, one outlet must not be associated with more than six standard four-pair cables or more than one twenty-five-pair cable. Therefore, installations of greater than sixty standard four-pair cables or ten standard twenty-five-pair cables require permits and inspections. (It is not the intent of the statute to allow large masses of cables to be run to workstations or spaces serving telecommunications equipment without inspection. Proper cable support and proper loading of building structural elements are safety concerns. When considering total associated cables, the telecommunications availability at one workstation may count as more than one outlet.)

(b) The installation of greater than ten outlets and the associated cables along any horizontal pathway from a telecommunications closet to work areas during any continuous ninety-day period requires a permit and inspection.

(c) All telecommunications installations within the residential dwelling units of single-family, duplex, and multi-family dwellings do not require permits or inspections. In residential multifamily dwellings, permits and inspections are required for all backbone installations, all fire barrier penetrations, and installations of greater than ten outlets in common areas.

(d) No permits or inspections are required for installation or replacement of cord and plug connected telecommunications equipment or for patch cord and jumper cross-connected equipment.

(e) Definitions of telecommunications technical terms will come from chapter 19.28 RCW, this chapter, TIA/EIA standards, and NEC.

**~~((Permit--))~~ Inspection and approval.**

~~((10))~~ (9) Requests for inspections.

(a) Requests for inspections must be made no later than three business days after completion of the electrical/telecommunications installation or one business day after any part of the installation has been energized, whichever occurs first.

(b) Requests for after hours or weekend inspections must be made by contacting the local electrical inspection supervisor at least three working days prior to the requested date of inspection. The portal-to-portal inspection fees required for after hours or weekend inspections are in addition to the cost of the original electrical work permit.

~~(c) ((Emergency requests to inspect repairs necessary to preserve life and equipment safety may be requested at any time.~~

~~(d))~~ Inspections for annual electrical maintenance permits and annual telecommunications permits may be done on a regular schedule arranged by the permit holder with the department.

~~((11) Final)~~ (10) Inspections ~~((approval))~~ will not be made until all ~~((inspection))~~ permit fees are paid in full.

**Permit - Duration/refunds.**

~~((12))~~ (11) Electrical work permits will expire one year after the date of purchase unless ~~((electrical work is actively and consistently in progress and inspections requested))~~ permission is granted by the chief electrical inspector or when the permit is closed or completed by the inspector. Refunds are not available for:

(a) Expired electrical work permits;

(b) Electrical work permit~~((s))~~ fee items, within the department's jurisdiction, where the electrical installation has begun or an inspection requested for that work; or

~~(c) ((Any electrical work permit where an electrical inspection or electrical inspection request has been made.))~~ The first twenty-five dollars of each permit purchase - Application fee.

All refund requests must be made using the Request for Refund application form.

**Permit - Annual telecommunications.**

~~((13))~~ (12) The chief electrical inspector or city that is authorized to do electrical inspections can allow annual permits for the inspection of telecommunications installations to be purchased by a building owner or licensed electrical/telecommunications contractor. The owner's full-time telecommunications maintenance staff, or a licensed electrical/tele-

communications contractor(s) can perform the work done under this annual permit. The permit holder is responsible for correcting all installation deficiencies. The permit holder must make available, to the electrical inspector, all records of all the telecommunications work performed and the valid electrical or telecommunications contractor's license numbers for all contractors working under the permit. Upon request, the chief electrical inspector may allow the annual permit to be used for multiple worksites or addresses.

**Permit - Annual electrical.**

~~((14))~~ (13) The chief electrical inspector or city that is authorized to do electrical inspections can allow annual permits for the inspection of electrical installations to be purchased by a building owner or licensed electrical contractor. This type of permit is available for commercial/industrial locations employing a full-time electrical maintenance staff or having a yearly maintenance contract with a licensed electrical contractor. Upon request, the chief electrical inspector may allow the annual permit to be used for multiple worksites or addresses.

The permit holder is responsible for correcting all installation deficiencies. The permit holder must make available, to the electrical inspector, all records of all electrical work performed.

This type of electrical permit may be used for retrofit, replacement, maintenance, repair, upgrade, and alterations to electrical systems at a ~~((single))~~ plant or building location. This type of permit does not include new or increased service or new square footage.

**Permit - Temporary construction project installations.**

~~((15))~~ (14) For temporary electrical installations, the department will consider a permit applicant to be the owner per RCW 19.28.261 under the conditions below:

Any person, firm, partnership, corporation, or other entity registered as a general contractor under chapter 18.27 RCW will be permitted to install a single electrical service per address for the purposes of temporary power during the construction phase of a project, when all of the following conditions are met:

(a) The installation is limited to the mounting and bracing of a preassembled pole or pedestal mounted service, the installation of a ground rod or ground plate, and the connection of the grounding electrode conductor to the ground rod or plate;

(b) The total service size does not exceed 200 amperes, 250 volts nominal;

(c) The service supplies no feeders;

(d) Branch circuits not exceeding 50 amperes each are permitted, provided such branch circuits supply only receptacles that are either part of the service equipment or are mounted on the same pole;

(e) The general contractor owns the electrical equipment;

(f) The general contractor has been hired by the property owner as the general contractor for the project;

(g) The general contractor must purchase an electrical work permit for the temporary service, request inspection, and obtain approval prior to energizing the service.

**Posting of corrections.**

(15) Electrical installations found to be not in compliance with approved standards must be corrected within fifteen calendar days of notification by the department as required in RCW 19.28.101(3). The notifications will be posted electronically on the electrical permit inspection results. A printed copy of the correction notification will be posted by the inspector at the job site for permits not purchased electronically.

**AMENDATORY SECTION** (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

**WAC 296-46B-903 Equipment standards.****General.**

(1) The standard(s) used, as the basis of electrical product certification, field evaluation, or department approval must be determined by the department to provide an adequate level of safety or define an adequate level of safety performance. Except for the reference of construction requirements to ensure the product can be installed in accordance with the National Electrical Code, field evaluations, by an approved laboratory, ~~((shall))~~ must not use the National Electrical Code as standard for product evaluation.

(2) Generally, standards will be:

(a) Developed by a standards developing organization under a method providing for input and consideration of views of industry groups, experts, users, consumers, governmental authorities, and others having broad experience in the electrical products safety field. A standard is used to control the quality and safety of a product;

(b) Compatible with and be maintained current with periodic revisions of applicable national codes and installation standards; and

(c) Approved by the department. The department will evaluate the proposed standard to determine that it provides an adequate level of safety.

(3) All ANSI safety designated electrical product standards may be deemed acceptable for their intended use without further qualification.

(4) If the product safety standard is not ANSI, the standard must be reviewed and approved by the department as an appropriate electrical product safety standard as a part of the field evaluation or department inspection process.

**Industrial control panel and industrial utilization equipment inspection.**

(5) Specific definitions for this section:

(a) "Department evaluation" means a review in accordance with subsection (6)(b) of this section.

(b) "Engineering evaluation" means a review in accordance with subsection (6)(c) of this section.

(c) "Food processing plants" include buildings or facilities used in a manufacturing process, but do not include:

- (i) Municipal or other government facilities;
- (ii) Educational facilities or portions thereof;
- (iii) Institutional facilities or portions thereof;
- (iv) Restaurants;
- (v) Farming, ranching, or dairy farming operations;
- (vi) Residential uses; or

(vii) Other installations not used for direct manufacturing purposes.

(d) In RCW 19.28.901, "industrial control panel" means a factory or user wired assembly of industrial control equipment such as motor controllers, switches, relays, power supplies, computers, cathode ray tubes, transducers, and auxiliary devices used in the manufacturing process to control industrial utilization equipment. The panel may include disconnecting means and motor branch circuit protective devices. Industrial control panels include only those used in a manufacturing process in a food processing or industrial plant.

(e) "Industrial plants" include buildings or facilities used in a manufacturing process or a manufacturing training facility (e.g., educational shop area in an educational or institutional facility), but do not include:

- (i) Municipal or other government facilities;
- (ii) Other educational facilities or portions thereof;
- (iii) Other institutional facilities or portions thereof;
- (iv) Restaurants;
- (v) Farming, ranching, or dairy farming operations;
- (vi) Residential uses; or
- (vii) Other installations not used for direct manufacturing purposes.

(f) "Industrial utilization equipment" means equipment directly used in a manufacturing process in a food processing or industrial plant, in particular the processing, treatment, moving, or packaging of a material. Industrial utilization equipment does not include: Cold storage, warehousing, or similar storage equipment.

(g) "Manufacturing process" means to make or process a raw material or part into a finished product for sale using industrial utilization equipment. A manufacturing process does not include the storage of a product for future distribution (e.g., cold storage, warehousing, and similar storage activity).

(h) "Normal department inspection" is a part of the department electrical inspection process included with the general wiring inspection of a building, structure, or other electrical installation. Normal department inspection will only be made for equipment solely using listed or field evaluated components and wired to the requirements of the NEC. Fees for the normal department inspections required under this chapter are included in the electrical work permit fee calculated for the installation and are not a separate inspection fee. However, inspection time associated with such equipment is subject to the progress inspection rates in Part C of this chapter.

(i) For the purposes of this section, "panel" means a single box or enclosure containing the components comprising an industrial control panel. A panel does not include any wiring methods connecting multiple panels or connecting a panel(s) and other electrical equipment.

(6) Industrial control panels and industrial utilization equipment will be determined to meet the minimum electrical safety standards for installations by:

(a) Listing or field evaluation of the entire panel or equipment;

(b) Normal department inspection for compliance with codes and rules adopted under this chapter; or

(c) An engineering evaluation review where an engineer, accredited by the department, shows the equipment to be in compliance with an appropriate industrial equipment standard(s).

(i) See WAC 296-46B-997 for the requirements to become an accredited engineer.

(ii) The engineer may review equipment upon request by the equipment owner or the equipment manufacturer.

~~(iii) ((The engineer must notify the department of the intent to evaluate and submit a final approval report, within 10 days after applying the approval label or disapproving the equipment, using forms provided by the department. See Part C of this chapter for fee information.~~

~~(iv))~~ The equipment may be reviewed for compliance with the standard(s) before the equipment is located in Washington.

~~((iv))~~ (iv) Appropriate standards are:

- (A) NEMA;
- (B) ANSI;
- (C) NFPA 79;
- (D) UL 508A;
- (E) International Electrotechnical Commission 60204;

or

(F) Their equivalent.

~~((v))~~ (v) In cases where equipment has been previously reviewed and approved by an accredited engineer or the department and found to meet an appropriate standard(s), the equipment information will be placed on a "reviewed and approved industrial utilization equipment list" established and maintained by the ~~((department))~~ reviewing engineer. The list may be used by a reviewing engineer to aid in evaluating other like equipment. Because standards change over time, equipment will be removed from the list three years after the last successful review. The list will contain the following information:

- (A) Equipment manufacturer name;
- (B) Model and serial numbers;
- (C) Voltage, full load current; phasing; and asymmetrical fault current rating of the equipment;
- (D) Accessory items approved for use with the equipment;
- (E) Standard(s) to which the equipment was built;
- (F) Application of use for the equipment;
- (G) Original reviewing engineer's name; and
- (H) Date of the original review approval.

~~((vii))~~ (vi) If the engineer uses the "reviewed and approved industrial utilization equipment list," the engineer will visually determine that the equipment being reviewed is the exact same model as equipment on the list.

~~((viii))~~ (vii) Before the engineer's approval label can be applied, the engineer must visually inspect the equipment on site to determine that the equipment is in factory original good condition, has not been modified electrically, and the equipment use is appropriate to the standard(s).

~~((ix))~~ (viii) When the review is completed and the equipment is eligible for approval, the engineer must personally affix a permanent label to the equipment showing:

- (A) Engineer's name;
- (B) Date of approval;
- (C) Equipment serial number;

(D) Equipment voltage, full load current, phasing, and fault interrupting rating; and

(E) The following statement: "This equipment meets appropriate standards for industrial utilization equipment."

(7) The department may authorize, on a case-by-case basis, use of the industrial control panel or equipment, for a period not to exceed six months or as approved by the chief electrical inspector after use is begun, before its final inspection, listing, field evaluation, or engineering evaluation is complete.

**AMENDATORY SECTION** (Amending WSR 12-11-108, filed 5/22/12, effective 6/30/12)

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

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

**(1) Residential.**

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

**Notes:**

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

|  |         |
|--|---------|
| (i) First 1300 sq. ft.   | \$90.30 |
| Each additional 500 sq. ft. or portion of  | \$28.90 |
| (ii) Each outbuilding or detached garage - inspected at the same time as a dwelling unit on the property | \$37.60 |
| (iii) Each outbuilding or detached garage - inspected separately   | \$59.50 |
| (iv) Each swimming pool - inspected with the service   | \$59.50 |
| (v) Each swimming pool - inspected separately  | \$90.30 |
| (vi) Each hot tub, spa, or sauna - inspected with the service  | \$37.60 |
| (vii) Each hot tub, spa, or sauna - inspected separately   | \$59.50 |
| (viii) Each septic pumping system - inspected with the service   | \$37.60 |
| (ix) Each septic pumping system - inspected separately   | \$59.50 |

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

| Each service and/or feeder |                |                   |
|----------------------------|----------------|-------------------|
| Ampacity                   | Service/Feeder | Additional Feeder |
| 0 to 200                   | \$97.40        | \$28.90           |
| 201 to 400                 | \$121.10       | \$59.50           |
| 401 to 600                 | \$166.40       | \$82.80           |
| 601 to 800                 | \$213.50       | \$113.70          |
| 801 and over               | \$304.50       | \$228.40          |

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

(i) Each altered service and/or altered feeder

| Ampacity     | Service/Feeder |
|--------------|----------------|
| 0 to 200     | \$82.80        |
| 201 to 600   | \$121.10       |
| 601 and over | \$182.60       |

(ii) Maintenance or repair of a meter or mast (no alterations to the service or feeder) \$44.80

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

**Note:**

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

- (i) 1 to 4 circuits (see note above) \$59.50
- (ii) Each additional circuit (see note above) \$6.40

(e) **Mobile homes, modular homes, mobile home parks, and RV parks.**

- (i) Mobile home or modular home service or feeder only \$59.50
- (ii) Mobile home service and feeder \$97.40

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

**Note:**

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

- (i) First site service or site feeder \$59.50
- (ii) Each additional site service; or additional site feeder inspected at the same time as the first service or feeder \$37.60

(2) **Commercial/industrial.**

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

**Note:**

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

| Ampacity      | Service/Feeder | Additional Feeder |
|---------------|----------------|-------------------|
| 0 to 100      | \$97.40        | \$59.50           |
| 101 to 200    | \$118.60       | \$75.80           |
| 201 to 400    | \$228.40       | \$90.30           |
| 401 to 600    | \$266.20       | \$106.30          |
| 601 to 800    | \$344.30       | \$144.80          |
| 801 to 1000   | \$420.30       | \$175.20          |
| 1001 and over | \$458.50       | \$244.50          |

(b) **Altered services/feeders (no circuits).**

(i) Service/feeder

| Ampacity      | Service/Feeder |
|---------------|----------------|
| 0 to 200      | \$97.40        |
| 201 to 600    | \$228.40       |
| 601 to 1000   | \$344.30       |
| 1001 and over | \$382.40       |

(ii) Maintenance or repair of a meter or mast (no alterations to the service or feeder) \$82.80

(c) **Circuits only.**

**Note:**

Altered/added circuit fees are calculated per panelboard. Total cost of the alterations in a panel (or panels) should not exceed the cost of a new feeder (or feeders) of the same rating, as shown in subsection (2) COMMERCIAL/INDUSTRIAL (2)(a)(table) above.

- (i) First 5 circuits per branch circuit panel \$75.80
- (ii) Each additional circuit per branch circuit panel \$6.40
- (d) **Over 600 volts surcharge per permit.** \$75.80

(3) **Temporary service(s).**

**Notes:**

- (1) See WAC 296-46B-590 for information about temporary installations.
- (2) Temporary stage or concert inspections requested outside of normal business hours will be subject to the portal-to-portal hourly fees in subsection (11) OTHER INSPECTIONS. The fee for such after hours inspections ((shall)) will be the greater of the fee from this subsection or the portal-to-portal fee.

**Temporary services, temporary stage or concert productions.**

| Ampacity     | Service/Feeder | Additional Feeder |
|--------------|----------------|-------------------|
| 0 to 60      | \$52.10        | \$26.70           |
| 61 to 100    | \$59.50        | \$28.90           |
| 101 to 200   | \$75.80        | \$37.60           |
| 201 to 400   | \$90.30        | \$44.90           |
| 401 to 600   | \$121.10       | \$59.50           |
| 601 and over | \$137.40       | \$68.40           |

(4) **Irrigation machines, pumps, and equipment.**

**Irrigation machines.**

- (a) Each tower - when inspected at the same time as a service and feeder from (2) COMMERCIAL/INDUSTRIAL \$6.40
- (b) Towers - when not inspected at the same time as a service and feeder - 1 to 6 towers \$90.30
- (c) Each additional tower \$6.40

(5) **Miscellaneous - commercial/industrial and residential.**

(a) **A Class 2 low-voltage thermostat** and its associated cable controlling a single piece of utilization equipment or a single furnace and air conditioner combination.

- (i) First thermostat \$44.90
- (ii) Each additional thermostat inspected at the same time as the first \$13.90

(b) **Class 2 or 3 low-voltage systems and telecommunications systems.** Includes all telecommunications installations, fire alarm, nurse call, energy management control systems, industrial and automation control systems, lighting control systems, and similar Class 2 or 3 low-energy circuits and equipment not included in WAC 296-46B-908 for Class B work.

- (i) First 2500 sq. ft. or less \$52.10
- (ii) Each additional 2500 sq. ft. or portion thereof \$13.90

(c) **Signs and outline lighting.**

- (i) First sign (no service included) \$44.90
- (ii) Each additional sign inspected at the same time on the same building or structure \$21.20

(d) **Berth at a marina or dock.**

**Note:**

Five berths or more ((shall)) will be permitted to have the inspection fees based on appropriate service and feeder fees from section (2) COMMERCIAL/INDUSTRIAL above.

- (i) Berth at a marina or dock \$59.50
- (ii) Each additional berth inspected at the same time \$37.60

(e) **Yard pole, pedestal, or other meter loops only.**

- (i) Yard pole, pedestal, or other meter loops only \$59.50

(ii) Meters installed remote from the service equipment and inspected at the same time as a service, temporary service or other installations \$13.90

**(f) Emergency inspections requested outside of normal working hours.**

Regular fee plus surcharge of: \$113.70

**(g) Generators.**

**Note:**

Permanently installed generators: Refer to the appropriate residential or commercial new/altered service or feeder section.

Portable generators: Permanently installed transfer equipment for portable generators \$82.80

**(h) Electrical - annual permit fee.**

**Note:**

See WAC 296-46B-901((14)) (13).

For commercial/industrial location employing full-time electrical maintenance staff or having a yearly maintenance contract with a licensed electrical contractor. Note, all yearly maintenance contracts must detail the number of contractor electricians necessary to complete the work required under the contract. This number will be used as a basis for calculating the appropriate fee. Each inspection is based on a 2-hour maximum.

|                                 | Inspections | Fee         |
|---------------------------------|-------------|-------------|
| 1 to 3 plant electricians       | 12          | \$2,189.70  |
| 4 to 6 plant electricians       | 24          | \$4,381.80  |
| 7 to 12 plant electricians      | 36          | \$6,572.30  |
| 13 to 25 plant electricians     | 52          | \$8,764.40  |
| More than 25 plant electricians | 52          | \$10,956.50 |

**(i) Telecommunications - annual permit fee.**

**Notes:**

(1) See WAC 296-46B-901((13)) (12).

(2) Annual inspection time required may be estimated by the purchaser at the rate for "OTHER INSPECTIONS" in this section, charged portal-to-portal per hour.

For commercial/industrial location employing full-time telecommunications maintenance staff or having a yearly maintenance contract with a licensed electrical/telecommunications contractor.

2-hour minimum \$181.00

Each additional hour, or portion thereof, of portal-to-portal inspection time \$90.30

**(j) Permit requiring ditch cover inspection only.**

Each 1/2 hour, or portion thereof \$44.90

**(k) Cover inspection for elevator/conveyance installation. This item is only available to a licensed/registered elevator contractor.** \$75.80

**(6) Carnival inspections.**

**(a) First carnival field inspection each calendar year.**

(i) Each ride and generator truck \$21.20

(ii) Each remote distribution equipment, concession, or gaming show \$6.40

(iii) If the calculated fee for first carnival field inspection above is less than \$100.50, the minimum inspection fee ~~will~~ will be: \$113.70

**(b) Subsequent carnival inspections.**

(i) First ten rides, concessions, generators, remote distribution equipment, or gaming show \$113.70

(ii) Each additional ride, concession, generator, remote distribution equipment, or gaming show \$6.40

**(c) Concession(s) or ride(s) not part of a carnival.**

(i) First field inspection each year of a single concession or ride, not part of a carnival \$90.30

(ii) Subsequent inspection of a single concession or ride, not part of a carnival \$59.50

**(7) Trip fees.**

(a) Requests by property owners to inspect existing installations. (This fee includes a maximum of one hour of inspection time. All inspection time exceeding one hour will be charged at the rate for progressive inspections.) \$90.30

(b) Submitter notifies the department that work is ready for inspection when it is not ready. \$44.90

(c) Additional inspection required because submitter has provided the wrong address or incomplete, improper or illegible directions for the site of the inspection. \$44.90

(d) More than one additional inspection required to inspect corrections; or for repeated neglect, carelessness, or improperly installed electrical work. \$44.90

(e) Each trip necessary to remove a noncompliance notice. \$44.90

(f) Corrections that have not been made in the prescribed time, unless an exception has been requested and granted. \$44.90

(g) Installations that are covered or concealed before inspection. \$44.90

**(8) Progress inspections.**

**Note:**

The fees calculated in subsections (1) through (6) of this section will apply to all electrical work. This section will be applied to a permit where the permit holder has requested additional inspections beyond the number supported by the permit fee calculated at the rate in subsections (1) through (6) of this section.

**On partial or progress inspections, each 1/2 hour.** \$44.90

**(9) Plan review.**

~~(a) Plan review fee is (thirty-five percent) 35% of the electrical work permit fee as determined by WAC 296-46B-906(-plus-a).~~ ~~(\$75.80)~~ 35%

~~(b) Plan review submission ((and shipping/handling)) fee ((€)).~~ \$75.80

~~((a)) (c) Supplemental submissions of plans per hour or fraction of an hour of review time.~~ \$90.30

~~((b)) (d) Plan review shipping and handling fee.~~ \$21.20

**(10) Out-of-state inspections.**

(a) Permit fees will be charged according to the fees listed in this section.

(b) Travel expenses:

All travel expenses and per diem for out-of-state inspections are billed following completion of each inspection(s). These expenses can include, but are not limited to: Inspector's travel time, travel cost and per diem at the state rate. Travel time is hourly based on the rate in subsection (11) of this section.

**(11) Other inspections.**

Inspections not covered by above inspection fees must be charged portal-to-portal per hour: \$90.30

**(12) Variance request processing fee.**

Variance request processing fee. This fee is nonrefundable once the transaction has been validated. \$90.30

**(13) Marking of industrial utilization equipment.**

(a) Standard(s) letter review (per hour of review time). \$90.30

(b) Equipment marking - charged portal-to-portal per hour: \$90.30

(c) All travel expenses and per diem for in/out-of-state review and/or equipment marking are billed following completion of each inspection(s). These expenses can include, but are not limited to: Inspector's travel time, travel cost and per diem at the state rate. Travel time is hourly based on the rate in (b) of this subsection.

- (14) **Class B basic electrical work labels.**
- (a) Block of twenty Class B basic electrical work labels (not refundable). \$248.00
- (b) Reinspection of Class B basic electrical work to assure that corrections have been made (per 1/2 hour timed from leaving the previous inspection until the reinspection is completed). See WAC 296-46B-908(5). \$44.90
- (c) Reinspection of Class B basic electrical work because of a failed inspection of another Class B label (per 1/2 hour from previous inspection until the reinspection is completed). See WAC 296-46B-908(5). \$44.90
- (15) **Provisional electrical work permit labels.**
- Block of twenty provisional electrical work permit labels. \$248.00

AMENDATORY SECTION (Amending WSR 09-20-032, filed 9/29/09, effective 10/31/09)

**WAC 296-46B-907 Provisional permits.**

**Provisional electrical work permit - Use/duration/refunds.**

- (1) Only licensed electrical or telecommunications contractors can use provisional electrical work permits.
- (2) If a provisional electrical work permit label is used, the following requirements must be met:
  - (a) Prior to beginning the work, the certified electrician or telecommunications worker performing the installation must affix the provisional electrical work permit label to the building, structure or on the cover of the panelboard, overcurrent device, or telecommunications equipment supplying the circuit or equipment.
  - (b) The job site and contractor portion of the label must ~~((include the following:~~
    - ~~(i) Date the work is begun;~~
    - ~~(ii) Contractor's name;~~
    - ~~(iii) Contractor's license number; and~~
    - ~~(iv) Short description of the work.~~
  - (c) ~~The contractor portion of the label must include the following:~~
    - ~~(i) Date the work is begun;~~
    - ~~(ii) Contractor's license number;~~
    - ~~(iii) Job site address;~~
    - ~~(iv) Owner's name; and~~
    - ~~(v) Short description of the work.)~~ be completely filled out.

~~((d))~~ (c) The label must be filled in using sunlight and weather resistant ink.

~~((e))~~ (d) The contractor must return the contractor's portion of the label to the department of labor and industries, electrical section office having jurisdiction for the inspection, within two working days after the job site portion of the label is affixed. Either receipt by department of labor and industries or postmark to a valid department of labor and industries electrical address is acceptable for meeting this requirement.

~~((f))~~ The contractor must return the contractor's portion of the label to the department of labor and industries, chief electrical inspector, within five working days after destroying or voiding any label.

(g) The contractor is responsible for safekeeping of all purchased labels.)

(3) Refunds are not available for provisional electrical work permit labels.

(4) Provisional electrical work permit labels will be sold in blocks of twenty.

(5) Any contractor purchasing a provisional electrical work permit label may be audited for compliance with the provisions for purchasing, inspection, reporting of installations, and any other requirement of usage.

(6) An electrical work permit must be obtained within two working days after posting the provisional work permit label. See WAC 296-46B-907 (2)((e)) (d).

AMENDATORY SECTION (Amending WSR 09-20-032, filed 9/29/09, effective 10/31/09)

**WAC 296-46B-908 Class B permits. Class B electrical work permit - Use.**

~~(1) ((The electrical contractor must return the contractor's portion of the Class B label to the department of labor and industries, chief electrical inspector, within five working days after destroying or voiding any label.~~

~~(2) The electrical contractor is responsible for safekeeping of all purchased Class B labels.~~

~~(3) Only))~~ The Class B basic electrical random inspection process (Class B process) may only be used by:

(a) Licensed electrical/telecommunication contractors ((can use the Class B basic electrical inspection random inspection process); or

(b) Health care, ((large)) commercial, or industrial facilities using an employee(s) who is ((a)) an appropriately certified electrician(s) ((can use the Class B random electrical inspection process)) after requesting, in writing, and receiving permission from the chief electrical inspector.

~~((4))~~ If the Class B random electrical inspection process is used, the following requirements must be met:

(a) The certified electrician/telecommunications worker performing the installation must affix a Class B installation label on the cover of the panelboard or overcurrent device supplying power to the circuit or equipment prior to beginning the work.

(b) The job site portion of the label must include the following:

- (i) Date of the work;
- (ii) Electrical/telecommunication contractor's name;
- (iii) Electrical/telecommunication contractor's license number;

(iv) Installing electrician's certificate number, except for telecommunication work. For thermostat installations described in WAC 296-46B-965(15), the installing trainee may enter their training certificate number; and

(v) Short description of the work.

(c) The contractor portion of the label must include the following:

- (i) Date of the work;
- (ii) Electrical/telecommunication contractor's license number;
- (iii) Installing electrician's certificate number, except for telecommunication work;
- (iv) Job site address;

(v) Contact telephone number for the job site's owner (to be used to arrange inspection); and

(vi) Short description of the work.

(d) The label must be filled in using sunlight and weather resistant ink.

(e) ~~The electrical/telecommunication contractor must return the contractor's portion of the label to the Department of Labor and Industries, Electrical Section, Chief Electrical Inspector, P.O. Box 44460, Olympia, WA 98504-4460 within fifteen working days after the job site portion of the Class B installation label is affixed.~~

~~(5)) Each entity doing work must use a separate label.~~

~~(2) Before beginning the work:~~

~~(a) For Class B labels obtained after February 28, 2013:~~

~~(i) Immediately upon posting the Class B label/number, the purchaser must use the department's on-line Class B system to enter the job site information for an unused Class B label obtained by the purchaser. If the posting occurs on a weekend or a federal/state holiday, the purchaser must use the on-line system to enter the information no later than the first business day after posting the label/number;~~

~~(ii) The person identified as the installer on the Class B label must post the Class B label or label number, in a conspicuous permanent manner, at the:~~

~~(A) Main service/feeder location supplying the structure or system; or~~

~~(B) Purchaser's equipment, or on the equipment conductors if the equipment is not in place.~~

~~(iii) The Class B label is valid immediately upon the purchaser completing the job site information in the department's on-line Class B system.~~

~~(b) For Class B labels obtained before March 1, 2013:~~

~~(i) The purchaser must fully enter the job site information on the job site and contractor portions of the Class B label.~~

~~(ii) The person identified as the installer on the Class B label must post the completed job site copy, in a conspicuous permanent manner, at the:~~

~~(A) Main service/feeder location supplying the structure or system;~~

~~(B) Purchaser's equipment, or on the conductors if the equipment is not available.~~

~~(iii) The purchaser must return the contractor copy to the Department of Labor and Industries, Electrical Section, Chief Electrical Inspector, P.O. Box 44460, Olympia, WA 98504-4460 within fifteen working days after the job site portion of the Class B installation label is affixed.~~

~~(iv) The Class B label is valid immediately upon posting on the job site.~~

~~(3) Class B ((basic installation)) labels will be sold in blocks and are nonrefundable and nontransferable.~~

~~((Installations where a)) (4) Class B ((basic installation)) label ((is used)) installations will be inspected on a random basis as determined by the department.~~

~~((a) If any such random inspection fails, a subsequent label in the block must be inspected.~~

~~(b) If any such subsequent installation fails inspection, another label in the block must be inspected until a label is approved without a correction(s).~~

~~(e)) (5) A progress inspection fee is required for any inspection required when a correction(s) is issued as a result of the inspection of ((any)) a Class B label ((or if an inspection is required because of (a) or (b) of this subsection. See Part C of this chapter for fees)).~~

~~(6) Any ((electrical/telecommunication contractor or other)) entity using the Class B ((basic electrical inspection random inspection)) process may be audited for compliance with the provisions for purchasing, inspection, reporting of installations, and any other requirement of usage.~~

~~(7) ((Class B basic electrical work means work other than Class A basic electrical work. See WAC 296-46B-901(8) for Class A definition.~~

~~((a)) A separate label is required for each line item listed below in subsection (10) of this section. For example, if the work includes an item under subsection (10)(a) and (b)(i) of this section, two labels are required.~~

~~(8) An entity using a Class B basic inspection label is restricted to using no more than two labels per week per job site.~~

~~(9) All Class B work must be completed within fifteen days after the label is validated. If the work is not completed, another Class B may be posted.~~

~~Except that, in a one- or two-family residential structure, a label is valid for ninety days after the label is validated, so long as all work described on the label is performed by the purchaser.~~

~~(10) Class B ((basic electrical)) work includes the following:~~

~~((H)) (a) Extension of not more than one branch electrical circuit limited to 120 volts and 20 amps each where:~~

~~((A)) (i) No cover inspection is necessary. For the purposes of this section, cover inspection does not include work covered by any surface that may be removed for inspection without damaging the surface; and~~

~~((B)) (ii) The extension does not supply more than two outlets as defined by the NEC.~~

~~((H)) (b) Single like-in-kind replacement of:~~

~~((A) A single luminaire not exceeding 277 volts and 20 amps; or~~

~~((B)) (i) A motor larger than 10 horsepower; or~~

~~((C)) (ii) The internal wiring of a furnace, air conditioner, refrigeration unit or household appliance; or~~

~~((D)) (iii) An electric/gas/oil furnace not exceeding 240 volts and 100 amps when the furnace is connected to an existing branch circuit. For the purposes of this section, a boiler is not a furnace; or~~

~~((E)) (iv) An individually controlled electric room heater (e.g., baseboard, wall, fan forced air, etc.), air conditioning unit, heat pump unit, or refrigeration unit not exceeding 240 volts, ((30)) 40 minimum circuit amps when the unit is connected to an existing branch circuit; or~~

~~((F)) (v) Circuit modification required to install not more than five residential load control devices in a residence where installed as part of an energy conservation program sponsored by an electrical utility and where the circuit does not exceed 240 volts and ((30)) 40 amps.~~

~~((H)) (c) The following low voltage systems:~~

~~((A))~~ (i) Repair and replacement of devices not exceeding 100 volt-amperes in Class 2, Class 3, or power limited low voltage systems in one- and two-family dwellings; or

~~((B))~~ (ii) Repair and replacement of devices not exceeding 100 volt-amperes in Class 2, Class 3, or power limited low voltage systems in other buildings, provided the equipment is not for fire alarm or nurse call systems and is not located in an area classified as hazardous by the NEC; or

~~((C))~~ (iii) The installation of Class 2 or 3 device(s) or wiring for thermostat, audio, security, burglar alarm, intercom, amplified sound, public address, or access control systems where the installation does not exceed twenty devices or five thousand square feet. This does not include fire alarm, nurse call, lighting control, industrial automation/control or energy management systems; or

~~((D))~~ (iv) Telecommunications cabling and equipment requiring inspection in RCW 19.28.470 where the installation does not exceed twenty devices or five thousand square feet;

~~((iv))~~ (d) The replacement of not more than ten standard receptacles with GFCI receptacles;

~~((v))~~ (e) The conversion of not more than ten snap switches to dimmers for the use of controlling a luminaire(s) conversion;

(f) The like-in-kind replacement of up to twenty: Paddle fans, luminaires not exceeding 277 volts and 20 amperes; snap switches, dimmers, receptacle outlets, line voltage thermostats, heating elements, luminaire ballasts, circuit breakers, contractors, relays, timers, starters, circuit boards, fuses, or similar control components;

(g) The replacement of not more than two luminaires with paddle fans if a listed fan box has been previously installed to support the luminaires;

(h) The replacement of not more than four batteries rated not larger than 150 amp hours each that supply power to a single unit of equipment (e.g., uninterruptable power supply, photovoltaic storage system, control panel, etc.);

(i) The installation or repair of equipment powered by a stand-alone solar photovoltaic source where the:

(i) Electrical equipment requires no field assembly except for the attachment and electrical connection of the solar photovoltaic source to the equipment, the installation and attachment to a grounding electrode, and the placement of the equipment on a pad, pole, or other structure;

(ii) Solar photovoltaic source and the equipment operates at less than 15 volts DC;

(iii) Solar photovoltaic source is the only source of external power; and

(iv) Equipment and the solar photovoltaic source are appropriately labeled as a single unit. The label must be by an approved electrical testing laboratory or for equipment used for traffic control labeled according to WAC 296-46B-010(21).

~~((b))~~ (11) Class B basic electrical work does not include any work in:

~~((i))~~ (a) Areas classified as Class I, Class II, Class III, or Zone locations per NEC 500; or

~~((ii))~~ (b) Areas regulated by NEC 517 or 680; or

~~((iii))~~ (c) Any work where electrical plan review is required; or

~~((iv))~~ (d) Fire alarm, nurse call, lighting control, industrial automation/control or energy management systems.

~~((8) An entity using a Class B basic inspection label is restricted to using no more than two labels per week per job site.)~~

AMENDATORY SECTION (Amending WSR 12-11-108, filed 5/22/12, effective 6/30/12)

**WAC 296-46B-909 Electrical/telecommunications contractor's license, administrator certificate and examination, master electrician certificate and examination, electrician certificate and examination, copy, and miscellaneous fees.**

- Notes:**
- (1) The department will deny renewal of a license, certificate, or permit if an individual owes money as a result of an outstanding final judgment(s) to the department or is in revoked status. The department will deny application of a license, certificate, or permit if an individual is in suspended status or owes money as a result of an outstanding final judgment(s) to the electrical program.
  - (2) Certificates may be prorated for shorter renewal periods in one-year increments. Each year or part of a year will be calculated to be one year.
  - (3) The amount of the fee due is calculated based on the fee effective at the date payment is made.

|   |          |
|---|----------|
| <b>(1) General or specialty contractor's license per twenty-four month period. (Nonrefundable after license has been issued.)</b>   |          |
| (a) Initial application or renewal made in person, by mail, or by fax   | \$266.20 |
| (b) Renewal fully completed using the on-line web process   | \$230.20 |
| (c) Reinstatement of a general or specialty contractor's license after a suspension   | \$53.90  |
| <b>(2) Master electrician/administrator/electrician/trainee certificate.</b>  |          |
| <b>(a) Examination application (nonrefundable)</b>  |          |
| Administrator certificate examination application. (Required only for department administered examinations.) (Not required when testing with the department's contractor.)  | \$33.30  |
| <b>(b) Examination fees (nonrefundable)</b>   |          |
| <b>Note:</b>  |          |
| Normal examination administration is performed by a state authorized contractor. The fees for such examinations are set by contract with the department. For written examinations administered by the department, use the following fee schedule. |          |
| (i) Master electrician or administrator first-time examination fee (when administered by the department)  | \$80.40  |
| (ii) Master electrician or administrator retest examination fee (when administered by the department)   | \$94.20  |
| (iii) Journeyman or specialty electrician examination fee (first test or retest when administered by the department)  | \$60.50  |
| (iv) Certification examination review fee   | \$124.60 |
| <b>(c) Original certificates (nonrefundable after certificate has been issued)</b>  |          |
| (i) Electrical administrator original certificate (except 09 telecommunication)   | \$120.40 |
| (ii) Telecommunications administrator original certificate (for 09 telecommunications)  | \$80.10  |
| (iii) Master electrician exam application (includes original certificate and application processing fee) <b>(\$33.30 is nonrefundable after application is submitted)</b>   | \$154.00 |

|   |          |   |                    |
|---|----------|---|--------------------|
| (iv) Journeyman or specialty electrician application (includes original certificate and application processing fee) ( <b>\$33.30 is nonrefundable after application is submitted</b> )              | \$86.30  | (i) Reinstatement of a suspended master electrician or administrator's certificate (in addition to normal renewal fee)  | \$53.90            |
| (v) Training certificate  |          | (ii) Reinstatement of suspended journeyman, or specialty electrician certificate (in addition to normal renewal fee)  | \$25.40            |
| (A) Initial application made in person, by mail, or by fax  | \$42.30  | (f) <b>Assignment/unassignment of master electrician/administrator designation (nonrefundable)</b>  | \$39.90            |
| (B) Initial application fully completed on-line using the on-line web process   | \$36.40  | (3) <b>Certificate/license.</b>   |                    |
| (C) 0% supervision modified training certificate. Includes trainee update of hours (i.e., submission of affidavit of experience) ( <b>\$51.20 is nonrefundable after application is submitted</b> ) | \$77.00  | (a) Replacement for lost or damaged certificate/license. (Nonrefundable.)   | \$17.50            |
| (D) 75% supervision modified training certificate.  | \$51.20  | (b) Optional display quality General Master Electrician certificate.  | \$28.40            |
| (E) Unsupervised training certificate as allowed by RCW 19.28.161 (4)(b).   | \$25.40  | (4) <b>Continuing education courses or instructors. (Nonrefundable.)</b>  |                    |
| (d) <b>Certificate renewal (nonrefundable)</b>  |          | (a) If the course or instructor review is performed by the electrical board or the department   |                    |
| (i) Master electrician or administrator certificate renewal   |          | The course or instructor review   | \$51.30            |
| (A) Renewal made in person, by mail, or by fax  | \$152.20 | (b) If the course or instructor review is contracted out by the electrical board or the department  |                    |
| (B) Renewal fully completed using the on-line web process   | \$132.20 | (i) Continuing education course or instructor submittal and approval (per course or instructor)   | As set in contract |
| (ii) Telecommunications (09) administrator certificate renewal  |          | (ii) Applicant's request for review, by the chief electrical inspector, of the contractor's denial  | \$124.90           |
| (A) Renewal made in person, by mail, or by fax  | \$101.40 | (5) <b>Copy fees. (Nonrefundable.)</b>  |                    |
| (B) Renewal fully completed using the on-line web process   | \$87.50  | (a) <b>Certified copy of each document (maximum charge per file):</b>   | \$56.70            |
| (iii) Late renewal of master electrician or administrator certificate   |          | (i) First page:   | \$25.40            |
| (A) Renewal made in person, by mail, or by fax  | \$304.40 | (ii) Each additional page:  | \$2.10             |
| (B) Renewal fully completed using the on-line web process   | \$264.50 | (b) ((Replacement)) RCW((#)) or WAC printed document:   | \$5.60             |
| (iv) Late renewal of telecommunications (09) administrator certificate  |          | (6) <b>Training school program review fees. Initial training school program review fee. (Nonrefundable.)</b>  |                    |
| (A) Renewal made in person, by mail, or by fax  | \$202.90 | (a) Initial training school program review fee submitted for approval. Valid for three years or until significant changes in program content or course length are implemented (see WAC 296-46B-971(4)). | \$589.90           |
| (B) Renewal fully completed using the on-line web process   | \$175.00 | (b) Renewal of training school program review fee submitted for renewal. Valid for 3 years or until significant changes in program content or course length are implemented (see WAC 296-46B-971(4)).   | \$294.90           |
| (v) Journeyman or specialty electrician certificate renewal   |          |   |                    |
| (A) Renewal made in person, by mail, or by fax  | \$80.10  |   |                    |
| (B) Renewal fully completed using the on-line web process   | \$69.70  |   |                    |
| (vi) Late renewal of journeyman or specialty electrician certificate  |          |   |                    |
| (A) Renewal made in person, by mail, or by fax  | \$160.30 |   |                    |
| (B) Renewal fully completed using the on-line web process   | \$139.50 |   |                    |
| (vii) Trainee update of hours outside of renewal period (i.e., submission of affidavit of experience outside of the timeline in WAC ((296-46B-965 (7)(d))) 296-46B-942 (8)(d))                      | \$51.20  |   |                    |
| (viii) Trainee certificate renewal  |          |   |                    |
| (A) Renewal made in person, by mail, or by fax  | \$51.20  |   |                    |
| (B) Renewal fully completed using the on-line web process when the affidavit of experience is submitted per WAC ((296-46B-965 (7)(d))) 296-46B-942 (8)(d)   | \$44.70  |   |                    |
| (ix) Late trainee certificate renewal   |          |   |                    |
| (A) Renewal made in person, by mail, or by fax  | \$71.80  |   |                    |
| (B) Renewal fully completed using the on-line web process   | \$62.50  |   |                    |
| (e) <b>Certificate - reinstatement (nonrefundable)</b>  |          |   |                    |

AMENDATORY SECTION (Amending WSR 09-20-032, filed 9/29/09, effective 10/31/09)

**WAC 296-46B-915 Civil penalty schedule.**

**Notes:** Each day that a violation occurs ((with)) on a job site may be a separate offense.

Once a violation of chapter 19.28 RCW or chapter 296-46B WAC becomes a final judgment, any additional violation within three years becomes a "second" or "additional" offense subject to an increased penalty as set forth in the following tables.

In case of ((continued, repeated or gross)) a serious violation of the provisions of chapter 19.28 RCW or ((this chapter, or if property damage or bodily injury occurs as a result of the failure of a person, firm, partnership, corporation, or other entity to comply with chapter 19.28 RCW or this chapter)) as described in WAC 296-46B-990, the department may double the penalty amount((s)), up to ten thousand dollars shown in subsections (1) through (13) of this section.

((Continued or repeated violation may occur if the person, firm, partnership, corporation or other entity who violates a provision of chapter 19.28 RCW, chapter 296-46B WAC has

received one or more written warnings or citations of a similar violation within a one-year period.)

A person, firm, partnership, corporation or other entity who violates a provision of chapter 19.28 RCW or chapter 296-46B WAC is liable for a civil penalty based upon the following schedule.

**(1) Offering to perform, submitting a bid for, advertising, installing or maintaining cables, conductors or equipment:**

(a) That convey or utilize electrical current without having a valid electrical contractor's license.

(b) Used for information generation, processing, or transporting of signals optically or electronically in telecommunications systems without having a valid telecommunications contractor's license.

|                          |         |
|--------------------------|---------|
| First offense:           | \$500   |
| Second offense:          | \$1,500 |
| Third offense:           | \$3,000 |
| Each offense thereafter: | \$6,000 |

**(2) Employing an individual for the purposes of chapter 19.28 RCW who does not possess a valid certificate of competency or training certificate to do electrical work.**

|                          |       |
|--------------------------|-------|
| First offense:           | \$250 |
| Each offense thereafter: | \$500 |

**(3) Performing electrical work without having a valid certificate of competency or electrical training certificate.**

|                          |       |
|--------------------------|-------|
| First offense:           | \$250 |
| Each offense thereafter: | \$500 |

**(4) Employing electricians and electrical trainees for the purposes of chapter 19.28 RCW in an improper ratio. Contractors found to have violated this section three times in a three-year period must be the subject of an electrical audit in accordance with WAC 296-46B-975.**

|                          |       |
|--------------------------|-------|
| First offense:           | \$250 |
| Each offense thereafter: | \$500 |

**(5) Failing to provide proper supervision to an electrical trainee as required by chapter 19.28 RCW. Contractors found to have violated this section three times in a three-year period must be the subject of an electrical audit in accordance with WAC 296-46B-975.**

|                          |       |
|--------------------------|-------|
| First offense:           | \$250 |
| Each offense thereafter: | \$500 |

**(6) Working as an electrical trainee without proper supervision as required by chapter 19.28 RCW.**

|                          |       |
|--------------------------|-------|
| First offense:           | \$50  |
| Second offense:          | \$250 |
| Each offense thereafter: | \$500 |

**(7) Offering, bidding, advertising, or performing electrical or telecommunications installations, alterations or maintenance outside the scope of the firm's specialty electrical or telecommunications contractors license.**

|                          |         |
|--------------------------|---------|
| First offense:           | \$500   |
| Second offense:          | \$1,500 |
| Third offense:           | \$3,000 |
| Each offense thereafter: | \$6,000 |

**(8) Selling or exchanging electrical equipment associated with spas, hot tubs, swimming pools or hydromassage bathtubs which are not listed by an approved laboratory.**

|                          |         |
|--------------------------|---------|
| First offense:           | \$500   |
| Second offense:          | \$1,000 |
| Each offense thereafter: | \$2,000 |

**Definition:**

The sale or exchange of electrical equipment associated with hot tubs, spas, swimming pools or hydromassage bathtubs includes to: "Sell, offer for sale, advertise, display for sale, dispose of by way of gift, loan, rental, lease, premium, barter or exchange."

**(9) Covering or concealing installations prior to inspection.**

|                          |         |
|--------------------------|---------|
| First offense:           | \$250   |
| Second offense:          | \$1,000 |
| Each offense thereafter: | \$2,000 |

**(10) Failing to make corrections within fifteen days of notification by the department.**

**Exception:**

In cases of emergency repairs, for owners, to existing electrical/telecommunications systems, this penalty applies to corrections not completed within the extended time period.

|                          |         |
|--------------------------|---------|
| First offense:           | \$250   |
| Second offense:          | \$1,000 |
| Each offense thereafter: | \$2,000 |

**(11) Failing to get an inspection or obtain ((or post)) an electrical/telecommunications work permit or post a provisional electrical work permit label prior to beginning the electrical/telecommunications installation or alteration.**

**Exception:**

In cases of emergency repairs, for owners, to existing electrical/telecommunications systems, this penalty will not be charged if the permit is obtained and posted no later than the business day following beginning work on the emergency repair.

Standard/provisional permit offenses:

|                                 |         |
|---------------------------------|---------|
| <u>First offense:</u>           | \$250   |
| <u>Second offense:</u>          | \$1,000 |
| <u>Each offense thereafter:</u> | \$2,000 |

Class B offenses:

Failure to post a Class B label or number for Class B eligible work:

|                          |                   |
|--------------------------|-------------------|
| First offense:           | \$((250)) 100     |
| Second offense:          | \$((1,000)) 250   |
| Each offense thereafter: | \$((2,000)) 1,000 |

For other Class B offenses:

|                                 |         |
|---------------------------------|---------|
| <u>First offense:</u>           | \$100   |
| <u>Second offense:</u>          | \$250   |
| <u>Each offense thereafter:</u> | \$1,000 |

**(12) Violating chapter 19.28 RCW duties of the electrical/telecommunications administrator or master electrician.**

(a) Failing to be a member of the firm or a supervisory employee and ((shall)) must be available during working hours to carry out the duties of an administrator or master electrician.

|                          |         |
|--------------------------|---------|
| First offense:           | \$1,000 |
| Second offense:          | \$1,500 |
| Each offense thereafter: | \$3,000 |

(b) Failing to ensure that all electrical work complies with the electrical installation laws and rules of the state.

|                          |         |
|--------------------------|---------|
| First offense:           | \$100   |
| Second offense:          | \$250   |
| Third offense:           | \$1,000 |
| Each offense thereafter: | \$3,000 |

(c) Failing to ensure that the proper electrical safety procedures are used.

|                          |         |
|--------------------------|---------|
| First offense:           | \$500   |
| Second offense:          | \$1,500 |
| Each offense thereafter: | \$3,000 |

(d) Failing to ensure that inspections are obtained and that all electrical labels, permits, and certificates required to perform electrical work are used.

|                          |       |
|--------------------------|-------|
| First offense:           | \$250 |
| Each offense thereafter: | \$500 |

Failure to obtain a Class B label or number for Class B eligible work:

|                       |       |
|-----------------------|-------|
| <u>First offense:</u> | \$100 |
|-----------------------|-------|

|  |         |
|--|---------|
| <u>Second offense:</u>   | \$250   |
| <u>Each offense thereafter</u>   | \$1,000 |
| (e) Failing to ensure that all electrical licenses, required to perform electrical work are used (i.e., work performed must be in the allowed scope of work for the contractor). |         |
| First offense:   | \$500   |
| Second offense:  | \$1,500 |
| Third offense:   | \$3,000 |
| Each offense thereafter:   | \$6,000 |
| (f) Failing to see that corrective notices issued by an inspecting authority are complied with within fifteen days.  |         |
| Exception: Where an extension has been requested and granted, this penalty applies to corrections not completed within the extended time period.                                 |         |
| First offense:   | \$250   |
| Second offense:  | \$1,000 |
| Each offense thereafter:   | \$2,000 |
| (g) Failing to notify the department in writing within ten days if the master electrician or administrator terminates the relationship with the electrical contractor.           |         |
| First offense:   | \$500   |
| Second offense:  | \$1,000 |
| Each offense thereafter:   | \$3,000 |
| <b>(13) Violating any of the provisions of chapter 19.28 RCW or chapter 296-46B WAC which are not identified in subsections (1) through (12) of this section.</b>                |         |
| RCW 19.28.161 through 19.28.271 and the rules developed pursuant to them.  |         |
| First offense:   | \$250   |
| Each offense thereafter:   | \$500   |
| All other chapter 19.28 RCW provisions and the rules developed pursuant to them.   |         |
| First offense:   | \$250   |
| Second offense:  | \$750   |
| Each offense thereafter:   | \$2,000 |

**AMENDATORY SECTION** (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

**WAC 296-46B-920 Electrical/telecommunications license/certificate types and scope of work. (1) General electrical (01):** A general electrical license and/or certificate encompasses all phases and all types of electrical and telecommunications installations and minor plumbing under RCW 18.106.150. For the purposes of RCW 18.106.150, the like-in-kind replacement includes the appliance or any component part of the appliance (e.g., such as, but not limited to, the thermostat in a water heater).

Specialties.

(2) All specialties listed in this subsection may perform the electrical work described within their specific specialty as allowed by the occupancy and location described within the specialty's scope of work. Except for residential (02), the scope of work for these specialties does not include plumbing work regulated under chapter 18.106 RCW. See RCW 18.106.150 for plumbing exceptions for the residential (02) specialty. For the purposes of RCW 18.106.150, the like-in-kind replacement includes the appliance or any component part of the appliance (e.g., such as, but not limited to, the thermostat in a water heater). **Specialty** (limited) electrical licenses and/or certificates are as follows:

(a) **Residential (02):** Limited to the telecommunications, low voltage, and line voltage wiring of one- and two-family dwellings, or multifamily dwellings not exceeding three stories above grade. All wiring is limited to nonmetallic sheathed cable, except for services and/or feeders, exposed installations where physical protection is required, and for wiring buried below grade.

(i) This specialty also includes the wiring for ancillary structures such as, but not limited to: Appliances, equipment, swimming pools, septic pumping systems, domestic water systems, limited energy systems (e.g., doorbells, intercoms, fire alarm, burglar alarm, energy control, HVAC/refrigeration, etc.), multifamily complex offices/garages, site lighting when supplied from the residence or ancillary structure, and other structures directly associated with the functionality of the residential units.

(ii) This specialty does not include wiring occupancies defined in WAC 296-46B-900(1), or commercial occupancies such as: Motels, hotels, offices, assisted living facilities, or stores.

(iii) See RCW 18.106.150 for plumbing exceptions for the residential (02) specialty.

(b) **Pump and irrigation (03):** Limited to the electrical connection of circuits, feeders, controls, low voltage, related telecommunications, and services to supply: Domestic water systems and public water systems include but are not limited to pumps, pressurization, filtration, treatment, or other equipment and controls, and irrigation water pumps, circular irrigating system's pumps and pump houses.

This specialty may also perform the work defined in (c) of this subsection.

Also see RCW 18.106.010 (10)(c).

(c) **Domestic pump (03A):** Limited to the extension of a branch circuit, which is supplied and installed by others, to signaling circuits, motor control circuits, motor control devices, and pumps which do not exceed 7 1/2 horsepower at 250 volts AC single phase input power, regardless of motor controller output or motor voltage/phase, used in residential potable water or residential sewage disposal systems. Domestic water systems and public water systems include but are not limited to pumps, pressurization, filtration, treatment, or other equipment and controls.

Also see RCW 18.106.010 (10)(c).

(d) **Signs (04):** Limited to placement and connection of signs and outline lighting, the electrical supply, related telecommunications, controls and associated circuit extensions thereto; and the installation of a maximum 60 ampere, 120/240 volt single phase service to supply power to a remote sign only. This specialty may service, maintain, or repair exterior luminaires that are mounted on a pole or other structure with like-in-kind components.

(i) Electrical licensing/certification is not required to:

(A) Clean the nonelectrical parts of an electric sign;

(B) ((~~T~~)) Form or pour a concrete pole base used to support a sign;

(C) ((~~T~~)) Operate machinery used to assist an electrician in mounting an electric sign or sign supporting pole; or

(D) ((~~T~~)) Assemble the structural parts of a billboard.

(ii) Electrical licensing/certification is required to: Install, modify, or maintain a sign, sign supporting pole, sign

face, sign ballast, lamp socket, lamp holder, disconnect switch, or any other part of a listed electric sign.

(e) **Limited energy system (06):** Limited to the installation of signaling and power limited circuits and related equipment. This specialty is restricted to low-voltage circuits. This specialty includes the installation of telecommunications, HVAC/refrigeration low-voltage wiring, fire protection signaling systems, intrusion alarms, energy management and control systems, industrial and automation control systems, lighting control systems, commercial and residential amplified sound, public address systems, and such similar low-energy circuits and equipment in all occupancies and locations.

(i) For the purposes of this section, when a line voltage connection is removed and reconnected to a replacement component located inside the control cabinet, the replacement must be like-in-kind or replaced using the equipment manufacturer's authorized replacement component. The line voltage circuit is limited to 120 volts 20 amps maximum and must have a means of disconnect.

(ii) The limited energy systems (06) specialty may repair or replace line voltage connections terminated inside the cabinet to power supplies internal to the low voltage equipment provided there are no modifications to the characteristics of the branch circuit/feeder load being supplied by the circuit.

(iii) The limited energy systems (06) specialty may not replace or modify the line voltage circuit or cabling or alter the means of connection of the line voltage circuit to the power supply or to the control cabinet.

Limited energy electrical contractors may perform all telecommunications work under their specialty (06) electrical license and administrator's certificate.

**(f) HVAC/refrigeration systems:**

(i) See WAC 296-46B-100 for specific HVAC/refrigeration definitions.

(ii) For the purposes of this section when a component is replaced, the replacement must be like-in-kind or made using the equipment manufacturer's authorized replacement component.

(iii) The HVAC/refrigeration specialties described in (f)(v) and (vi) of this subsection may:

(A) Install HVAC/refrigeration: Telecommunications, Class 2 low-voltage control circuit wiring/components in all residential occupancies;

(B) Install, repair, replace, and maintain line voltage components within HVAC/refrigeration equipment. Such line voltage components include product illumination luminaires installed within and powered from the HVAC/refrigeration system (e.g., reach-in beverage coolers, frozen food cases, produce cases, etc.) and new or replaced factory authorized accessories such as internally mounted outlets;

(C) Repair, replace, or maintain the internal components of the HVAC/refrigeration equipment disconnecting means or controller so long as the disconnecting means or controller is not located within a motor control center or panelboard ((see Figure 920-1 and Figure 920-2));

(D) Install, repair, replace, and maintain short sections of raceway to provide physical protection for low-voltage cables. For the purposes of this section a short section cannot

mechanically interconnect two devices, junction boxes, or other equipment or components; and

(E) Repair, replace, or maintain line voltage flexible supply whips not over six feet in length, provided there are no modifications to the characteristics of the branch circuit/feeder load being supplied by the whip. There is no limitation on the whip raceway method (e.g., metallic replaced by nonmetallic).

(iv) The HVAC/refrigeration specialties described in (f)(v) and (vi) of this subsection may not:

(A) Install line voltage controllers or disconnect switches external to HVAC/refrigeration equipment;

(B) Install, repair, replace, or maintain:

- Integrated building control systems, other than HVAC/refrigeration systems;

- Single stand-alone line voltage equipment or components (e.g., heat cable, wall heaters, radiant panel heaters, baseboard heaters, contactors, motor starters, and similar equipment) unless the equipment or component:

Is exclusively controlled by the HVAC/refrigeration system and requires the additional external connection to a mechanical system(s) (e.g., connection to water piping, gas piping, refrigerant system, ducting for the HVAC/refrigeration system, gas fireplace flume, ventilating systems, etc. (i.e., as in the ducting connection to a bathroom fan)). The external connection of the equipment/component to the mechanical system must be required as an integral component allowing the operation of the HVAC/refrigeration system; or

Contains a HVAC/refrigeration mechanical system(s) (e.g., water piping, gas piping, refrigerant system, etc.) within the equipment (e.g., "through-the-wall" air conditioning units, self-contained refrigeration equipment, etc.);

- Luminaires that serve as a building or structure lighting source, even if mechanically connected to a HVAC/refrigeration system (e.g., troffer luminaire used as a return air device, lighting within a walk-in cooler/freezer used for personnel illumination);

- Raceway/conduit systems;

- Line voltage: Service, feeder, or branch circuit conductors. However, if a structure's feeder/branch circuit supplies HVAC/refrigeration equipment containing a supplementary overcurrent protection device(s), this specialty may install the conductors from the supplementary overcurrent device(s) to the supplemental HVAC/refrigeration equipment if the supplementary overcurrent device and the HVAC/refrigeration equipment being supplied are located within sight of each other ((see Figure 920-2)); or

- Panelboards, switchboards, or motor control centers external to HVAC/refrigeration system.

(v) **HVAC/refrigeration (06A):**

(A) This specialty is not limited by voltage, phase, or amperage.

(B) No unsupervised electrical trainee can install, repair, replace, or maintain any part of a HVAC/refrigeration system that contains any circuit rated over 600 volts whether the circuit is energized or deenergized.

(C) This specialty may:

- Install HVAC/refrigeration: Telecommunications, Class 2 low-voltage control circuit wiring/components in other than residential occupancies:

That have no more than three stories on/above grade; or  
 Regardless of the number of stories above grade if the installation:

- Does not pass between stories;
- Is made in a previously occupied and wired space; and
- Is restricted to the HVAC/refrigeration system;
- Repair, replace, and maintain HVAC/refrigeration:

Telecommunications, Class 2 low-voltage control circuit wiring/components in all occupancies regardless of the number of stories on/above grade.

- Install a bonding conductor for metal gas piping to an existing accessible grounding electrode conductor or grounding electrode only when terminations can be made external to electrical panelboards, switchboards, or other distribution equipment.

(D) This specialty may not install, repair, replace, or maintain: Any electrical wiring governed under article(s)

500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations) located outside the HVAC/refrigeration equipment.

(vi) HVAC/refrigeration - restricted **(06B):**

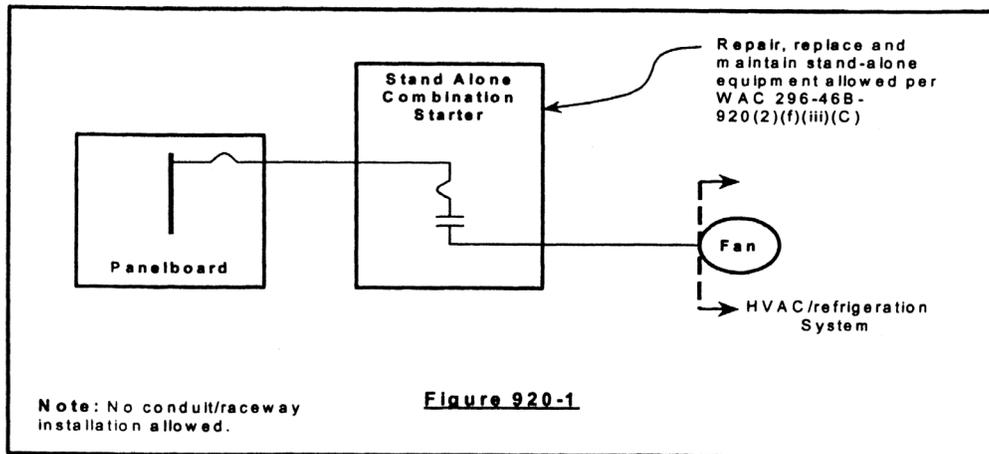
(A) This specialty may not perform any electrical work where the primary electrical power connection to the HVAC/refrigeration system exceeds: 250 volts, single phase, or 120 amps.

(B) This specialty may install, repair, replace, or maintain HVAC/refrigeration: Telecommunications, Class 2 low-voltage control circuit wiring/components in other than residential occupancies that have no more than three stories on/above grade.

(C) This specialty may not install, repair, replace, or maintain:

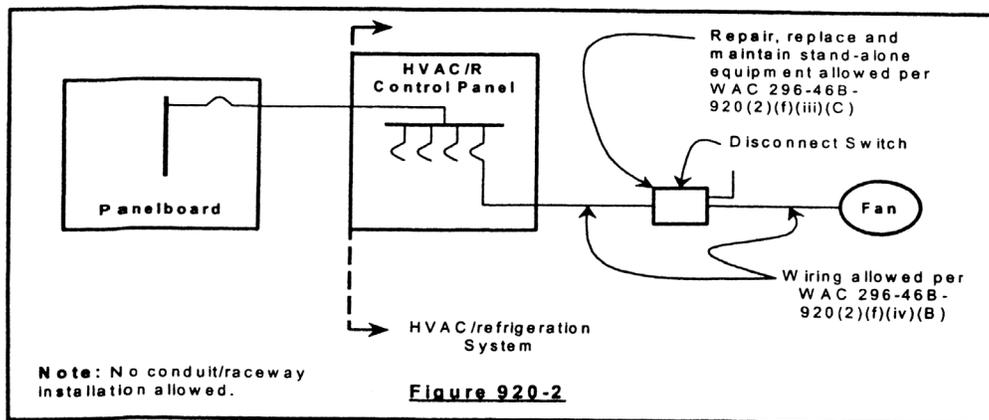
- The allowed telecommunications/low-voltage HVAC/refrigeration wiring in a conduit/raceway system; or
- Any electrical work governed under article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations).

~~((STRICKEN GRAPHIC~~



~~STRICKEN GRAPHIC))~~

~~((STRICKEN GRAPHIC~~



~~STRICKEN GRAPHIC))~~

(g) **Nonresidential maintenance (07):** Limited to maintenance, repair and replacement of like-in-kind existing electrical equipment and conductors. This specialty does not include maintenance activities in residential dwellings defined in (a) of this subsection for the purposes of accumulating training experience toward qualification for the residential (02) specialty electrician examination.

This specialty may perform the work defined in (h), (i), (j), (k), and (l) of this subsection.

(h) **Nonresidential lighting maintenance and lighting retrofit (07A):** Limited to working within the housing of existing nonresidential luminaires for work related to repair, service, maintenance of luminaires and installation of energy efficiency lighting retrofit upgrades. This specialty includes replacement of lamps, ballasts, sockets and the installation of listed lighting retrofit reflectors and kits. All work is limited to the luminaire body, except remote located ballasts may be replaced or retrofitted with approved products. This specialty does not include installing new luminaires or branch circuits; moving or relocating existing luminaires; or altering existing branch circuits.

(i) **Residential maintenance (07B):** This specialty is limited to residential dwellings as defined in WAC 296-46B-920 (2)(a), multistory dwelling structures with no commercial facilities, and the interior of dwelling units in multistory structures with commercial facilities. This specialty may maintain, repair, or replace (like-in-kind) existing electrical utilization equipment, and all permit exempted work as defined in WAC 296-46B-901.

This specialty is limited to equipment and circuits to a maximum of 250 volts, 60 amperes, and single phase maximum.

This specialty may disconnect and reconnect low-voltage control and line voltage supply whips not over six feet in length provided there are no modifications to the characteristics of the branch circuit or whip.

For the purpose of this specialty, "electrical equipment" does not include electrical conductors, raceway or conduit systems external to the equipment or whip. This specialty cannot perform any plumbing work regulated under chapter 18.106 RCW.

(j) **Restricted nonresidential maintenance (07C):** This specialty may maintain, repair, or replace (like-in-kind) existing electrical utilization equipment, and all permit exempted work as defined in WAC 296-46B-901 except for the replacement or repair of circuit breakers.

This specialty is limited to equipment and circuits to a maximum of 277 volts and 20 amperes for lighting branch circuits only and/or maximum 250 volts and 60 amperes for other circuits.

The replacement of luminaires is limited to in-place replacement required by failure of the luminaire to operate. Luminaires installed in suspended lay-in tile ceilings may be relocated providing: The original field installed luminaire supply whip is not extended or relocated to a new supply point; or if a manufactured wiring assembly supplies luminaire power, a luminaire may be relocated no more than eight feet providing the manufactured wiring assembly circuiting is not changed.

(C) Any plumbing work regulated under chapter 18.106

This specialty may disconnect and reconnect low-voltage control and line voltage supply whips not over six feet in length provided there are no modifications to the characteristics of the branch circuit. For the purpose of this specialty, "electrical equipment" does not include electrical conductors, raceway or conduit systems external to the equipment or whip.

This specialty may perform the work defined in (h) and (i) of this subsection.

This specialty cannot perform any work governed under Article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations). This specialty cannot perform any plumbing work regulated under chapter 18.106 RCW.

(k) **Appliance repair (07D):** Servicing, maintaining, repairing, or replacing household appliances, small commercial/industrial appliances, and other small electrical utilization equipment.

(i) For the purposes of this subsection:

(A) The appliance or electrical utilization equipment must be self-contained and built to standardized sizes or types. The appliance/equipment must be connected as a single unit to a single source of electrical power limited to a maximum of 250 volts, 60 amperes, single phase.

(B) Appliances and electrical utilization equipment include, but are not limited to: Ovens, office equipment, vehicle repair equipment, commercial kitchen equipment, self-contained hot tubs and spas, grinders, and scales.

(C) Appliances and utilization equipment do not include systems and equipment such as: Alarm/energy management/similar systems, luminaires, furnaces/heaters/air conditioners/heat pumps, sewage disposal equipment, door/gate/similar equipment, or individual components installed so as to create a system (e.g., pumps, switches, controllers, etc.).

(ii) This specialty includes:

(A) The in-place like-in-kind replacement of the appliance or equipment if the same unmodified electrical circuit is used to supply the equipment being replaced. This specialty also includes the like-in-kind replacement of electrical components within the appliance or equipment;

(B) The disconnection and reconnection of low-voltage control and line voltage supply whips not over six feet in length provided there are no modifications to the characteristics of the branch circuit; and

(C) The installation of an outlet box and outlet at an existing appliance or equipment location when converting the appliance from a permanent electrical connection to a plug and cord connection. Other than the installation of the outlet box and outlet, there can be no modification to the existing branch circuit supplying the appliance or equipment.

(iii) This specialty does not include:

(A) The installation, repair, or modification of branch circuits conductors, services, feeders, panelboards, disconnect switches, or raceway/conductor systems interconnecting multiple appliances, equipment, or other electrical components.

(B) Any work governed under Article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations).

RCW.

(l) **Equipment repair (07E):** Servicing, maintaining, repairing, or replacing utilization equipment.

See RCW 19.28.095 for the equipment repair scope of work and definitions. This specialty cannot perform any plumbing work regulated under chapter 18.106 RCW.

(m) **Telecommunications (09):** Limited to the installation, maintenance, and testing of telecommunications systems, equipment, and associated hardware, pathway systems, and cable management systems.

(i) This specialty includes:

(A) Installation of open wiring systems of telecommunications cables.

(B) Surface nonmetallic raceways designated and used exclusively for telecommunications.

(C) Optical fiber innerduct raceway.

(D) Underground raceways designated and used exclusively for telecommunications and installed for additions or extensions to existing telecommunications systems not to exceed fifty feet inside the building.

(E) Incidental short sections of circular or surface metal raceway, not to exceed ten feet, for access or protection of telecommunications cabling and installation of cable trays and ladder racks in telecommunications service entrance rooms, spaces, or closets.

(F) Audio or paging systems where the amplification is integrated into the telephone system equipment.

(G) Audio or paging systems where the amplification is provided by equipment listed as an accessory to the telephone system equipment and requires the telephone system for the audio or paging system to function.

(H) Closed circuit video monitoring systems if there is no integration of line or low-voltage controls for cameras and equipment. Remote controlled cameras and equipment are considered (intrusion) security systems and must be installed by appropriately licensed electrical contractors and certified electricians.

(I) Customer satellite and conventional antenna systems receiving a telecommunications service provider's signal. All receiving equipment is on the customer side of the telecommunications network demarcation point.

(ii) This specialty does not include horizontal cabling used for fire protection signaling systems, intrusion alarms, access control systems, patient monitoring systems, energy management control systems, industrial and automation control systems, HVAC/refrigeration control systems, lighting control systems, and stand-alone amplified sound or public address systems. Telecommunications systems may interface with other building signal systems including security, alarms, and energy management at cross-connection junctions within telecommunications closets or at extended points of demarcation. Telecommunications systems do not include the installation or termination of premises line voltage service, feeder, or branch circuit conductors or equipment. Horizontal cabling for a telecommunications outlet, necessary to interface with any of these systems outside of a telecommunications closet, is the work of the telecommunications contractor.

(n) **Door, gate, and similar systems (10):** This specialty may install, service, maintain, repair, or replace

door/gate/similar systems electrical operator wiring and equipment.

(i) For the purposes of this subsection, door/gate/similar systems electrical operator systems include electric gates, doors, windows, awnings, movable partitions, curtains and similar systems. These systems include, but are not limited to: Electric gate/door/similar systems operators, control push buttons, key switches, key pads, pull cords, air and electric treadle, air and electric sensing edges, coil cords, take-up reels, clocks, photo electric cells, loop detectors, motion detectors, remote radio and receivers, antenna, timers, lock-out switches, stand-alone release device with smoke detection, strobe light, annunciator, control panels, wiring and termination of conductors.

(ii) This specialty includes:

(A) Low-voltage, NEC Class 2, door/gate/similar systems electrical operator systems where the door/gate/similar systems electrical operator system is not connected to other systems.

(B) Branch circuits originating in a listed door/gate/similar systems electric operator control panel that supplies only door/gate/similar systems system components providing: The branch circuit does not exceed 600 volts, 20 amperes and the component is within sight of the listed door/gate/similar systems electric operator control panel.

(C) Reconnection of line voltage power to a listed door/gate/similar systems electric operator control panel is permitted provided:

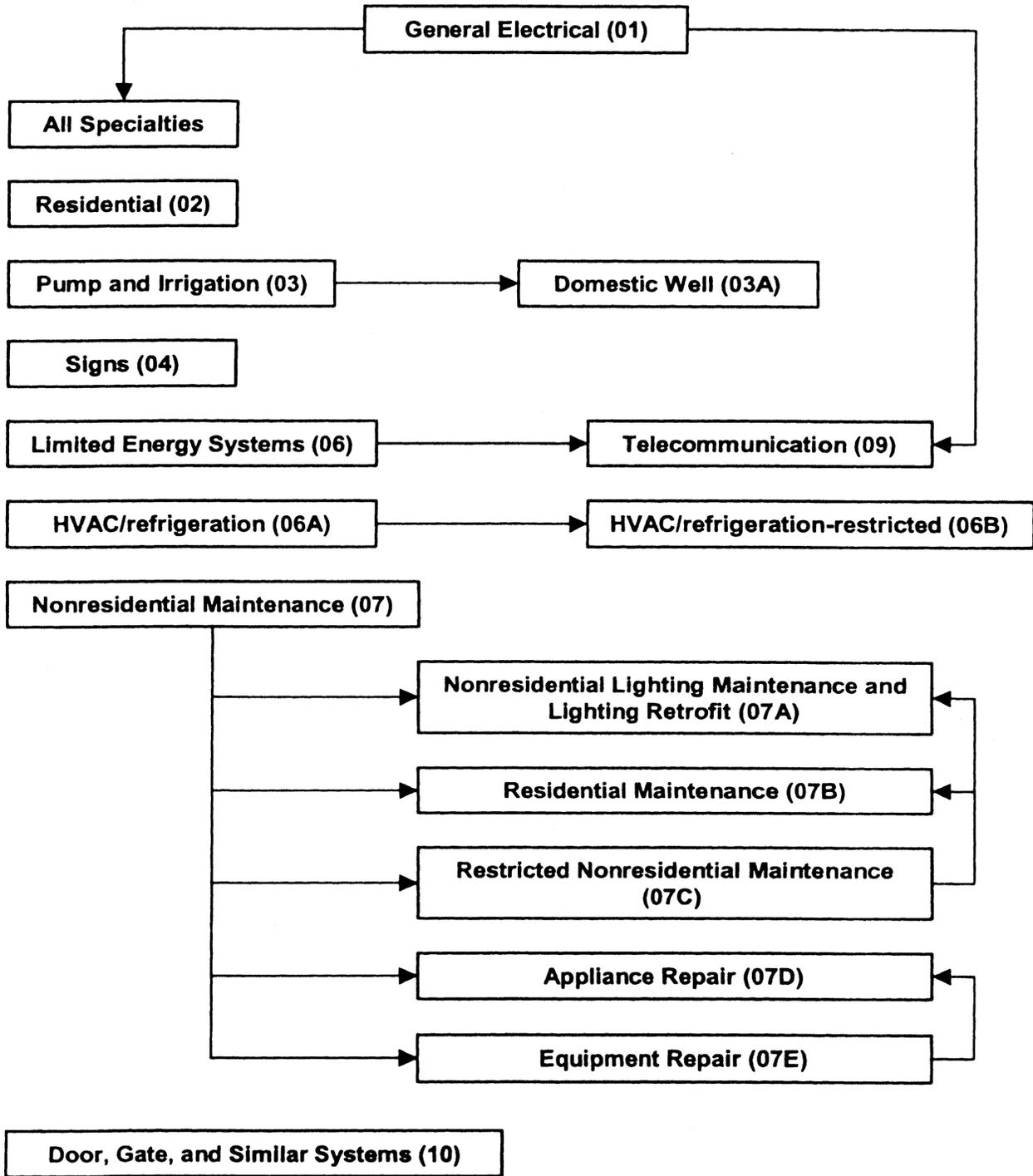
- There are no modifications to the characteristics of the branch circuit/feeder;
- The circuit/feeder does not exceed 600 volts, 20 amperes; and
- The conductor or conduit extending from the branch circuit/feeder disconnecting means or junction box does not exceed six feet in length.

(iii) This specialty does not include any work governed under Article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations). This specialty may not install, repair, or replace branch circuit (line voltage) conductors, services, feeders, panelboards, or disconnect switches supplying the door/gate/similar systems electric operator control panel.

(3) A specialty electrical contractor, other than the **(06)** limited energy specialty electrical contractor, may only perform telecommunications work within the equipment or occupancy limitations of their specialty electrical contractor's license. Any other telecommunications work requires a telecommunications contractor's license.

((Table 920-1 Allowed Scope of Work Crossover))

((STRICKEN GRAPHIC



STRICKEN GRAPHIC))

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

**WAC 296-46B-925 Electrical/telecommunications contractor's license. General.**

(1) The department will issue an electrical/telecommunications contractor's license that will expire twenty-four months following the date of issue to a person, firm, partnership, corporation or other entity that complies with requirements for such license in chapter 19.28 RCW. An electrical/telecommunications contractor's license will not be issued to or renewed for a person, firm, or partnership unless the Social Security number, date of birth, and legal address of ~~((the individual legal owner(s)))~~ each member(s) (see WAC 296-46B-100 definition for member), are submitted with the application. The department may issue an electrical/telecommunications contractor's license for a period greater or less than twenty-four months for the purpose of equalizing the number of electrical contractor's licenses that expire each month. The department may prorate the electrical/telecommunications contractor's license fee according to the license period.

The applicant, upon application and renewal, must provide the department with the Social Security number, date of birth, and legal address of each member(s).

(2) Combination specialty contractor's license. The department may issue a combination specialty contractor's license to a firm that qualifies for more than one specialty electrical contractor's license. The assigned administrator must be certified in all specialties applicable to the combination specialty contractor's license. The license will plainly indicate the specialty licenses' codes included in the combination license. An administrator assigned to a telecommunications contractor must be certified as a telecommunications administrator. A combination license will not be issued for telecommunications **(09)**.

(3) See RCW 19.28.041(~~((+)))~~ (7) for a contractor doing domestic pumping work as defined in RCW 18.106.010 (10)(c).

(4) The department may deny application ~~((or)),~~ renewal, or reinstatement of an electrical/telecommunications contractor's license if a firm, an owner, partner, member, or corporate officer owes money as a result of an outstanding final judgment(s) to the department.

**Electrical/telecommunications contractor bond, cash or securities deposit.**

(5) Bond, cash, or securities deposit.

(a) The electrical/telecommunications contractor may furnish the department with a cash or security deposit to meet the bond requirements in lieu of posting a bond. A cash or security deposit assigned to the department for bond requirements will be held in place for one year after the contractor's license is expired, revoked, or the owner notifies the department in writing that the company is no longer doing business in the state of Washington as an electrical/telecommunications contractor. Upon written request, the cash or security deposit will then be released by the department providing there is no pending legal action against the contractor under chapter 19.28 RCW of which the department has been notified.

(b) See RCW 19.28.041(7) for a contractor doing domestic pumping work as defined in RCW 18.106.010 (10)(c).

**Telecommunications contractor insurance.**

(6) To obtain a telecommunications contractor's license, the applicant must provide the department with an original certificate of insurance naming the department of labor and industries, electrical section as the certificate holder. Insurance coverage must be no less than twenty thousand dollars for injury or damages to property, fifty thousand dollars for injury or damage including death to any one person, and one hundred thousand dollars for injury or damage including death to more than one person. The insurance will be considered a continuing obligation unless canceled by the insurance company. The insurance company must notify the department in writing ten days prior to the effective date of said cancellation or failure to renew.

(7) The telecommunications contractor may furnish the department with an assigned account to meet the insurance requirements in lieu of a certificate of insurance. An account assigned to the department for insurance requirements will be held in place for three years after the contractor's license is expired, revoked, or the owner notifies the department in writing that the company is no longer doing business in the state of Washington as a telecommunications contractor. Upon written request, the account then will be released by the department providing there is no pending legal action against the contractor under chapter 19.28 RCW of which the department has been notified.

**Electrical/telecommunications contractor exemptions.**

(8) The following types of systems and circuits are considered exempt from the requirements for licensing and permitting described in chapter 19.28 RCW. The electrical failure of these systems does not inherently or functionally compromise safety to life or property.

Low-voltage thermocouple derived circuits and low-voltage circuits for:

- (a) Built-in residential vacuum systems;
- (b) Underground landscape sprinkler systems;
- (c) Underground landscape lighting; and
- (d) Residential garage doors.

For these types of systems and circuits to be considered exempt, the following conditions must be met:

(e) The power supplying the installation must be derived from a listed Class 2 power supply;

(f) The installation and termination of line voltage equipment and conductors supplying these systems is performed by appropriately licensed and certified electrical contractors and electricians;

(g) The conductors of these systems do not pass through fire-rated walls, fire-rated ceilings or fire-rated floors in other than residential units; and

(h) Conductors or luminaires are not installed in installations covered by the scope of Article 680 NEC (swimming pools, fountains, and similar installations).

(9) Firms who clean and/or replace lamps in luminaires are not included in the requirements for licensing in chapter 19.28 RCW. This exemption does not apply to electric signs as defined in the NEC.

(10) Firms who install listed plug and cord connected utilization equipment are not included in the requirements for licensing in chapter 19.28 RCW. The plug and cord must be a single listed unit consisting of a molded plug and cord and not exceeding 250 volt 60 ampere single phase. The plug and cord can be field installed per the manufacturer's instructions and the product listing requirements. The utilization equipment must be a single manufactured unit, including the plug and cord, that does not require any electrical field assembly except for the installation of the plug and cord and is allowed to be plug and cord connected by the NEC.

(11) Firms regulated by the Federal Communications Commission or the utilities and transportation commission, supplying telecommunications service to an end-user's property, are not required to be licensed as a telecommunications contractor under chapter 19.28 RCW for telecommunications installations made ahead of the telecommunications network demarcation point.

(12) Unregulated firms, supplying telecommunications service to an end-user's property, are not required to be licensed as a telecommunications contractor under chapter 19.28 RCW for telecommunications installations made ahead of the telecommunications network demarcation point.

(13) Leaseholders. For electrical installations, maintenance, or alterations to existing buildings only, any person, firm, partnership, corporation, or other entity holding a valid, signed lease from the property owner authorizing the leaseholder to perform electrical work, on the property the leaseholder occupies, will be allowed to purchase an electrical permit(s) and do electrical work on or within the property described in the lease. The lessee and/or his or her regularly employed employees must perform the electrical installation, maintenance and alteration.

The lessee who performs the electrical maintenance or installation work must be the sole occupant of the property or space. Property owners or leaseholders cannot perform electrical work on new buildings for rent, sale, or lease, without the proper electrical licensing and certification. Refer to RCW 19.28.261 for exemptions from licensing and certification.

(14) Assisting a householder. A friend, neighbor, relative, or other person (including a certified electrician) may assist a householder, at his/her residence in the performance of electrical work on the condition that the householder is present when the work is performed and the person assisting the householder does not accept money or other forms of compensation for the volunteer work. For the purposes of this subsection, a residence is a single-family residence.

(15) Volunteering to do electrical work. There are no exceptions from the electrical contractor's license or electrician certification requirements to allow persons to perform volunteer electrical work for anyone other than a householder or a nonprofit organization as allowed by RCW 19.28.091(7). For the purpose of this section, volunteer means that there is no remuneration or receiving of goods or services in return for electrical installations performed.

(16) Farms or place of business. See RCW 19.28.261 for licensing/certification exemptions allowed for the owner(s) of a farm or other place of business and for the employees of the owner.

### Exemptions - Electrical utility and electrical utility's contractor.

(17) Electrical utility exemptions.

(a) Utility system exemption - RCW 19.28.010(1) and 19.28.091(1).

(i) Neither a serving electrical utility nor a contractor or subcontractor employed by the serving electrical utility is required to have an electrical contractor's license for work on the "utility system" or on service connections or on meters or other apparatus used to measure the consumption of electricity.

(ii) Exemption from inspection. The work of a serving electrical utility and its contractor(s) on the work exempted by NEC 90.2 (b)(5), 1981 edition, is not subject to inspection.

(b) Street/area lighting exemption - RCW 19.28.091(2)(a)((~~A~~)).

(i) On:

(A) Publicly owned streets, parks, athletic/play fields, beaches, and similar areas where the public has general, clear, and unrestricted access; or

(B) Outside area lighting installed on a utility owned pole(s) that is used to support the utility's electric distribution wiring or equipment that supplies a private property owner's property, the serving electrical utility is considered to be an owner and is not required to have an electrical contractor's license or electrical permit to install or work on wiring or equipment, owned by the utility and used in the lighting of those streets/areas.

(ii) On other privately or publicly owned property (e.g., private streets, parking lots, businesses, schools, etc.), the serving utility is not required to have an electrical contractor's license or electrical permit to install or work on outside street/area lighting where the light(s) is supplied directly from the utility system and installed according to the NESC or NEC.

This work is considered to be utility type work.

An electric utility is not allowed to install or work on street/area lighting:

(A) When the area is privately or publicly owned and the public does not have general, clear, and otherwise unrestricted access such as: Industrial property, residential property, or other property where the public's access is restricted in any manner.

(B) Where the lighting is supplied from a source of power derived from a customer-owned electrical system.

(C) Where the lighting or wiring is attached to a building or other customer-owned structure.

(D) If the utility does not directly perform the installation or work, it may only contract the work to an appropriately licensed electrical contractor(s). See RCW 19.28.091(3).

(c) Customer-owned equipment exemption - RCW 19.28.091 (2)(b). A serving electrical utility is not required to have an electrical contractor's license to work on electrical equipment owned by a commercial, industrial, or public institution customer if:

(i) The utility has not solicited such work; and

(ii) Such equipment:

(A) Is located outside a building or structure; and

(B) The work performed is ahead of the secondary side of the customer's transformer(s) which supplies power at the customer's utilization voltage.

If the utility does not directly perform the installation or work, it may only contract the work to an appropriately licensed electrical contractor(s). See RCW 19.28.091(3).

This work is considered to be utility type work.

The owner will provide the electrical work permit and be responsible for requesting inspections and for ensuring the work is installed per chapter 19.28 RCW and this chapter.

**Exemptions - Electrical utility telecommunications transition equipment installations, maintenance and repair.**

(18) No license, inspection or other permit will be required by the department of any electric utility or, of any person, firm, partnership or corporation or other entity employed or retained by an electric utility or its contractor, because of work in connection with the installation, maintenance, or repair of telecommunications transition equipment located ahead of the utility's telecommunications network demarcation point on the outside of a building or other structure when the work is performed by a qualified person consistent with the requirements of the National Electric Code (NEC) except as provided in (a) and (b) of this subsection:

(a) The following exceptions to the NEC (~~shall~~) will be permitted:

(i) An additional service disconnect supplying power to the transition equipment can be connected on the supply side of the main service disconnect supplying general power to the building;

(ii) Service entrance disconnects may be separated when clearly labeled;

(iii) The service disconnect used for supplying power to the transition equipment must be connected to the grounding electrode system using:

(A) # 8 AWG copper or larger grounding electrode conductor if protected from physical damage; or

(B) # 6 AWG copper or larger grounding electrode conductor if not protected from physical damage;

(iv) Use of equipment or materials that have been listed/field evaluated by a recognized independent testing laboratory or the department;

(v) Low-voltage circuits do not require a separate disconnecting means and may be grounded to the transition equipment grounding system;

(vi) Any other variance to the NEC must be approved by the department.

(b) A variance recommended by a joint utility standards group composed of representatives of both public and private utilities or certified by a professional engineer will be approved by the department unless the recommendation is inconsistent with meeting equivalent objectives for public safety.

(c) For the purposes of this section, a qualified worker is employed by a utility or its contractor and is familiar with the construction or operation of such lines and/or equipment that concerns his/her position and who is proficient with respect to the safety hazards connected therewith, or, one who has passed a journey status examination for the particular branch of the electrical trades with which he/she may be connected

or is in a recognized training or apprenticeship course and is supervised by a journey level person.

(d) Although the utility is responsible for inspection and approval of the installation, including the selection of material and equipment, the department reserves the right to audit worker qualifications and inspect such installations semiannually for conformance with the requirements of (a), (b) and (c) of this subsection but (~~shall~~) will not collect a permit fee for such inspection or audit.

(e) If a utility fails to meet the requirements of this section, the department may require the utility to develop and submit a remedial action plan and schedule to attain compliance with this section which may be enforced by the department.

(f) This exemption (~~shall~~) will be in addition to any other exemption provided in chapter 19.28 RCW, this chapter or other applicable law.

**Exemptions - Independent electrical power production equipment exemption.**

(19) An independent electrical power production entity is not required to have an electrical contractor's license to work on electrical equipment used to produce or transmit electrical power if:

(a) The entity is:

(i) The owner or operator of the generating facility is regulated by the Federal Energy Regulatory Commission (FERC);

(ii) A municipal utility, or other form of governmental electric utility, or by an electrical cooperative or mutual corporation; or

(iii) The owner or operator of the generating facility is an independent electrical power producer and the facility generates electrical power only for sale to one or more:

(A) Electrical utilities regulated by FERC, municipal utility, or other form of governmental utility, or to an electric cooperative or mutual corporation; and

(B) The electrical power generated by the facility is not used for self-generation or any other on- or offsite function other than sale to one or more utilities regulated by FERC or by one or more state public utilities commissions, or to a PUD, municipal utility, or other form of governmental electric utility, or to an electric cooperative or mutual corporation.

(b) The entity must supply the chief electrical inspector a valid master business license issued by the department of licensing, state of Washington so that the entity's status as a revenue generating business can be confirmed.

(c) The entity has entered into an agreement to sell electricity to a utility or to a third party; and

(d) The electrical equipment is used to transmit electricity from the terminals of an electrical generating unit located on premises to the point of interconnection with a utility system.

(e) The electrical power production facility's generation capacity exceeds (~~115~~) 100 KVA.

(f) Notwithstanding that a generating facility may be granted an exemption pursuant to this section, the facility will be subject to all the requirements of chapter 19.28 RCW if the facility at any time in the future ceases to comply with the

requirements for exemption. All site facilities not exclusively and directly required to generate and/or distribute the electrical power generated on the site are subject to all the licensing and inspection requirements of chapter 19.28 RCW. All facility services, feeders, and circuits not exclusively and directly required to generate and/or distribute the electrical power (e.g., lights, outlets, etc.) must comply with all requirements of chapter 19.28 RCW for licensing and inspection. Facility circuits supplied to equipment required for the function of generation equipment (e.g., block heaters, power supplies, wind generator tower circuits, etc.) must comply with all requirements of chapter 19.28 RCW for licensing and inspection up to and including the equipment termination point.

(g) The generation equipment must not be mounted on or in any building or structure not required for generation of power (e.g., schools, offices, residences, apartment buildings, hospitals, etc.).

**Exemptions - Telegraph and telephone utility and telegraph and telephone utility's contractor.**

(20) Telegraph and telephone utility exempted equipment and installations. No person, firm, partnership, corporation, or other entity is required to have an electrical contractor's license for work on electrical equipment and installations thereof that are exempted by RCW 19.28.151. For the purposes of this exemption, "building or buildings used exclusively for that purpose" may mean any separate building or space of a building where the space is separated from the remainder of the building by a two-hour fire wall. The telecommunications or telegraph equipment within such a space must supply telephone or telegraph service to other customer's buildings (i.e., telecommunications or telegraph equipment cannot solely supply the building containing the telephone/telegraph space).

**Exemptions - Manufacturers of electrical/telecommunications products.**

(21) Manufacturers of electrical/telecommunications systems products will be allowed to utilize a manufacturer's authorized factory-trained technician to perform initial calibration, testing, adjustment, modification incidental to the startup and checkout of the equipment, or replacement of components within the confines of the specific product, without permit or required licensing:

(a) Provided the product:

(i) Has not been previously energized;

(ii) Has been recalled by the Consumer Product Safety Commission;

(iii) Is within the manufacturer's written warranty period; or

(iv) The manufacturer is working under the written request and supervision of an appropriately licensed electrical contractor.

(b) Except for the replacement of individual components, as allowed above, this exemption does not include the initial installation, removal, or replacement of the electrical product. Modifications to the equipment, as designated above, must not include any changes to the original intended configuration nor changes or contact with external or field-connected components or wiring.

(c) The manufacturer will be responsible for obtaining any required reapproval/recertification from the original listing or field evaluation laboratory.

(d) The manufacturer must notify the department if any modifications have been made or reapproval/recertification is required.

**Premanufactured electric power generation equipment assemblies and control gear.**

(22) Premanufactured electric power generation equipment assemblies and control gear.

(a) Manufacturers of premanufactured electric power generation equipment assemblies and control gear will be allowed to utilize a manufacturer's authorized factory-trained technician to perform initial calibration, testing, adjustment, modification incidental to the startup and checkout of the equipment, or replacement of components within the confines of the specific product, without permit or required licensing, provided:

(i) For transfer equipment, the product has not been previously energized or is within the manufacturer's written warranty period;

(ii) Modifications to the equipment, as designated above, must not include any changes to the original intended configuration nor changes or contact with external or field-connected components or wiring;

(iii) The manufacturer will be responsible for obtaining any required reapproval/recertification from the original listing or field evaluation laboratory; or

(iv) The manufacturer must notify the department if any modifications have been made or reapproval/recertification is required.

(b) Premanufactured electric power generation equipment assemblies are made up of reciprocating internal combustion engines and the associated control gear equipment. Control gear equipment includes control logic, metering, and annunciation for the operation and the quality of power being generated by the reciprocating internal combustion engine and does not have the function of distribution of power.

(c) Modifications of a transfer switch must not include changes to the original intended configuration or changes or contact with externally field-connected components.

(d) For the purposes of this subsection, the following work on premanufactured electric power generation equipment assemblies is not exempt from the requirements of chapter 19.28 RCW:

(i) Installation or connection of conduit or wiring between the power generation unit, transfer switch, control gear;

(ii) Installation of the transfer switch;

(iii) Connections between the power generation unit, transfer switch, control gear, and utility's transmission or distribution systems;

(iv) Connections between the power generation unit, transfer switch, control gear, and any building or structure; or

(v) Test connections with any part of:

(A) The utility's transmission or distribution system; or

(B) The building or structure.

(23) The installation, maintenance, or repair of a medical device deemed in compliance with chapter 19.28 RCW is

exempt from licensing requirements under RCW 19.28.091, certification requirements under RCW 19.28.161, and inspection and permitting requirements under RCW 19.28.101. This exemption does not include work providing electrical feeds into the power distribution unit or installation of conduits and raceways. This exemption covers only those factory engineers or third-party service companies with equivalent training who are qualified to perform such service.

(24) Coincidental electrical/plumbing work. See RCW 19.28.091(8) for the plumber exemption.

(25) Nothing in this section will alter or amend any other exemptions from or requirement for licensure or inspection, chapter 19.28 RCW or this chapter.

### **Photovoltaic equipment.**

(26) See WAC 296-46B-690 for specific exemptions related to photovoltaic installations.

**AMENDATORY SECTION** (Amending WSR 05-10-024, filed 4/26/05, effective 6/30/05)

**WAC 296-46B-930 Assignment—Administrator or master electrician.** An administrator or master electrician designated on the electrical/telecommunications contractor's license must be a member of the firm who fulfills the duties of an assigned master electrician/administrator as required in RCW 19.28.061(5), or be a full-time supervisory employee. ~~((In determining whether the individual is a member of the firm, the department will require that the individual is named on the electrical contractor application or at subsequent renewal and:~~

~~(1) Partners must be on file with the department of licensing; or~~

~~(2) Corporate officers or members of an LLC must be on file with the secretary of state.)) A member of the firm is defined in WAC 296-46B-100.~~

In determining whether an individual is a full-time supervisory employee, the department will consider whether the individual is on the electrical/telecommunications contractor's full-time payroll; receives a regular salary or wage similar to other employees; has supervisory responsibility for work performed by the electrical/telecommunications contractor, and carries out the duties shown in chapter 19.28 RCW.

**AMENDATORY SECTION** (Amending WSR 09-20-032, filed 9/29/09, effective 10/31/09)

**WAC 296-46B-935 Administrator certificate. General.**

(1) The department will deny application ~~((or)),~~ renewal, or reinstatement of a certificate if an individual owes money as a result of an outstanding final judgment(s) to the department.

(2) For special accommodation see WAC 296-46B-960.

(3) An applicant will not be issued a specialty administrator certificate that is a subspecialty of a certificate the applicant currently holds (i.e., the applicant is not eligible to take the domestic well administrator examination if the appli-

cant currently possesses a pump and irrigation administrator certificate).

### **Qualifying for examination.**

(4) There are no qualification requirements for taking an administrator certificate examination. Applicants should contact the testing agency directly.

### **Original - Administrator certificates.**

(5) The scope of work for electrical administrators is described in WAC 296-46B-920. The department will issue an original administrator certificate to a general administrator, or specialty administrator who:

(a) Successfully completes the appropriate administrator examination; and

(b) Submits the appropriate examination passing report from the testing agency with the applicant's: Date of birth, mailing address, and Social Security number; and

(c) Pays all appropriate fees as listed in WAC 296-46B-909.

For an examination report to be considered, all the above must be submitted within ninety days after the completion of the examination. After ninety days, the applicant will be required to successfully retake the complete examination. An individual's original administrator certificate will expire on their birth date at least one year, and not more than three years, from the date of original issue.

### **Combination - Specialty administrator certificate.**

(6) The department may issue a combination specialty administrator certificate to an individual who qualifies for more than one specialty administrators' certificate. The combination specialty administrators' certificate will plainly indicate the specialty administrator's certificate(s) the holder has qualified for. Telecommunications cannot be issued a combination because the renewal requirements are different from those required for electrical administrators.

### **Renewal - Administrator certificate.**

(7) An individual must apply for renewal of their administrator certificate on or before the expiration date of the certificate. The individual may not apply for renewal more than ninety days prior to the expiration date. Renewed certificates are valid for three years, with the exception of telecommunications administrators, who will be renewed for two years.

(8) An individual may renew their administrator certificate within ninety days after the expiration date without reexamination if the individual pays the late renewal fee listed in WAC 296-46B-909.

(9) All renewals received more than ninety days after the expiration date of the certificate will be denied. The administrator will be required to pass the appropriate administrator examination before being recertified.

(10) All applicants for certificate renewal must:

(a) Submit a complete renewal application;

(b) Pay all appropriate fees as listed in WAC 296-46B-909; and

(c) Provide accurate evidence on the renewal form that the individual has completed the continuing education requirements described in WAC 296-46B-970. If an individ-

ual files inaccurate or false evidence of continuing education information when renewing a certificate, the individual's certificate may be suspended or revoked.

Telecommunications administrators are not required to provide continuing education information.

Continuing education for pump and irrigation **(03)** and domestic pump **(03A)** administrators may be comprised of fifty percent electrical and fifty percent plumbing instruction.

(11) An individual who has not completed the required hours of continuing education can renew an administrator's certificate if the individual applies for renewal on or before the certificate expires and pays the appropriate renewal fee. However, the certificate will be placed in an inactive status.

When the certificate is placed in inactive status, an assigned administrator will be automatically unassigned from the electrical contractor. The electrical contractor will be notified of the unassignment and has ninety days to replace the administrator. An assignment fee will then be required per WAC 296-46B-909.

The inactive certificate will be returned to current status upon validation, by the department, of the required continuing education requirements. If the certificate renewal date occurs during the inactive period, the certificate must be renewed on or before the renewal date to allow the return to current status.

(12) An individual may renew a suspended administrator's certificate by submitting a complete renewal application including obtaining and submitting the continuing education required for renewal. However, the certificate will remain in a suspended status for the duration of the suspension period.

(13) An individual may not renew a revoked administrator's certificate.

AMENDATORY SECTION (Amending WSR 09-20-032, filed 9/29/09, effective 10/31/09)

**WAC 296-46B-940 Electrician/~~(training)~~ certificate of competency (~~or permit~~) required.**

~~(Electrician)~~ **General.**

(1) The department will deny application (~~(or)~~), renewal, or reinstatement of a certificate or permit if an individual owes money as a result of an outstanding final judgment(s) to the department.

~~(Electrician - Scope of work.)~~

(2) The scope of work for electricians (~~and trainees~~) is described in WAC 296-46B-920.

**Electrician - Certificate of competency required.**

(3) To work in the electrical construction trade, an individual must possess, wear, and visibly display on the front of the upper body, a current valid:

(a) Master journeyman electrician certificate of competency issued by the department;

(b) Journeyman electrician certificate of competency issued by the department;

(c) Master specialty electrician certificate of competency issued by the department;

(d) Specialty electrician certificate of competency issued by the department; or

(e) Electrical training certificate, learning the trade in the proper ratio, per RCW 19.28.161, under the supervision of a certified master journeyman electrician, journeyman electrician, master specialty electrician working in their specialty, or specialty electrician working in their specialty.

The certificate may be worn inside the outer layer of clothing when outer protective clothing (e.g., rain gear when outside in the rain, arc flash, welding gear, etc.) is required. The certificate must be worn inside the protective clothing so that when the protective clothing is removed, the certificate is visible. A cold weather jacket or similar apparel is not protective clothing.

The certificate may be worn inside the outer layer of clothing when working in an attic or crawl space or when operating equipment (e.g., drill motor, conduit threading machine, etc.) where wearing the certificate may pose an unsafe condition for the individual.

The certificate must be immediately available for examination at all times.

When working as a certified electrician, the electrician must not display a training certificate.

When supervising a trainee(s), the supervising electrician's certificate must be appropriate for the work being performed by the trainee(s).

Any person working as an electrician or trainee must also possess a government issued photo identification and immediately present that identification when requested by the inspector.

(4) The department issues master electrician and electrician certificates of competency in the following areas of electrical work:

(a) General journeyman **(01)**;

(b) Specialties:

(i) Residential **(02)**;

(ii) Pump and irrigation **(03)**;

(iii) Domestic pump **(03A)**;

(iv) Signs **(04)**;

(v) Limited energy system **(06)**;

(vi) HVAC/refrigeration **(06A)**;

(vii) HVAC/refrigeration - restricted **(06B)**;

(viii) Nonresidential maintenance **(07)**;

(ix) Nonresidential lighting maintenance and lighting retrofit **(07A)**;

(x) Residential maintenance **(07B)**;

(xi) Restricted nonresidential maintenance **(07C)**;

(xii) Appliance repair **(07D)**;

(xiii) Equipment repair **(07E)**; and

(xiv) Door, gate, and similar systems **(10)**.

**Original certificates of competency.**

(5) The department will issue an original certificate of competency to master, journeyman, or specialty electricians who meet the eligibility requirements listed in:

(a) RCW 19.28.191 (1)(a) or (b) and chapter 19.28 RCW; and

(i) Submit an application for an original master electrician certificate including: Date of birth, mailing address and Social Security number; and

(ii) Pay all appropriate fees, as listed in WAC 296-46B-909;

(b) RCW 19.28.191 (1)(d) and (e);

(i) Submit an original master electrician certification examination application including: Date of birth, mailing address and Social Security number; and

(ii) Pay all appropriate fees, as listed in WAC 296-46B-909; or

(c) RCW 19.28.191 (1)(f) through (g);

(i) Submit an original electrician certification examination application including: Date of birth, mailing address and Social Security number; and

(ii) Pay all appropriate fees, as listed in WAC 296-46B-909.

(6) An individual's original electrician certificate of competency will expire on their birth date at least two years, and not more than three years, from the date of original issue.

**Renewal - Master electrician, journeyman, and specialty electrician certificates of competency.**

(7) An individual must apply for renewal of their electrician certificate of competency on or before the expiration date of the certificate. The individual may not apply for renewal more than ninety days prior to the expiration date. Renewed certificates are valid for three years.

(8) An individual may renew their certificate of competency within ninety days after the expiration date without reexamination if the individual pays the late renewal fee listed in WAC 296-46B-909.

(9) All applications for renewal received more than ninety days after the expiration date of the certificate of competency require that the electrician pass the appropriate competency examination before being recertified.

(10) All applicants for certificate of competency renewal must:

(a) Submit a complete renewal application;

(b) Pay all appropriate fees; and

(c) Provide accurate evidence on the renewal form that the individual has completed the continuing education requirements described in WAC 296-46B-970. Continuing education classes are only valid when all the requirements of WAC 296-46B-970 are completed. If an individual files inaccurate or false evidence of continuing education information when renewing a certificate of competency, the individual's certificate of competency may be suspended or revoked.

Continuing education for pump and irrigation (03) and domestic pump (03A) electricians may be comprised of fifty percent electrical and fifty percent plumbing instruction.

(11) An individual who has not completed the required hours of continuing education can renew a certificate of competency if the individual applies for renewal before the certificate of competency expires and pays the appropriate renewal fee. However, the certificate of competency will be placed in an inactive status. The inactive certificate of competency will be returned to current status upon validation, by the department, of the required continuing education. If the certificate renewal date occurs during the inactive period, the certificate must be renewed on or before the renewal date to allow the return to current status.

(12) An individual may renew a suspended certificate of competency by submitting a complete renewal application including obtaining and submitting the continuing education

required for renewal. However, the certificate will remain in a suspended status for the duration of the suspension period.

(13) An individual may not renew a revoked certificate of competency.

**Exemptions - Linemen.**

~~((5))~~ (14) When performing the work described and allowed in WAC 296-46B-925 (17)(a) or (b)(i), when employed by the serving utility or its contractor or subcontractor(s), a lineman is exempt from the requirements of chapter 19.28 RCW.

~~((6))~~ (15) When performing the work described and allowed in WAC 296-46B-925 (17)(b)(ii) or (c), when employed by the serving utility or its licensed electrical contractor or subcontractor(s), a lineman must meet the requirements of RCW 19.28.261 (5)(b) or be an appropriately certified electrician. See the definition of a lineman in WAC 296-46B-100.

**Exemptions - Plumbers.**

~~((7))~~ (16) Coincidental electrical/plumbing work. See RCW 19.28.091(8) for the plumber exemption.

**~~((Original — Master electrician, journeyman, and specialty electrician certificates of competency.~~**

~~(8) The department will issue an original certificate of competency to master, journeyman, or specialty electricians who meet the eligibility requirements listed in:~~

~~(a) RCW 19.28.191 (1)(a) or (b); and~~

~~(i) Submit an application for an original master electrician certificate including: Date of birth, mailing address and Social Security number; and~~

~~(ii) Pay all appropriate fees, as listed in WAC 296-46B-909;~~

~~(b) RCW 19.28.191 (1)(d) through (e);~~

~~(i) Submit an original master electrician certification examination application including: Date of birth, mailing address and Social Security number; and~~

~~(ii) Pay all appropriate fees, as listed in WAC 296-46B-909; or~~

~~(c) RCW 19.28.191 (1)(f) through (g);~~

~~(i) Submit an original electrician certification examination application including: Date of birth, mailing address and Social Security number; and~~

~~(ii) Pay all appropriate fees, as listed in WAC 296-46B-909.~~

~~(9) An individual's original electrician certificate of competency will expire on their birth date at least two years, and not more than three years, from the date of original issue.~~

**~~Renewal — Master electrician, journeyman, and specialty electrician certificates of competency.~~**

~~(10) An individual must apply for renewal of their electrician certificate of competency on or before the expiration date of the certificate. The individual may not apply for renewal more than ninety days prior to the expiration date. Renewed certificates are valid for three years.~~

~~(11) An individual may renew their certificate of competency within ninety days after the expiration date without~~

reexamination if the individual pays the late renewal fee listed in WAC 296-46B-909.

(12) All applications for renewal received more than ninety days after the expiration date of the certificate of competency require that the electrician pass the appropriate competency examination before being recertified.

(13) All applicants for certificate of competency renewal must:

(a) Submit a complete renewal application;

(b) Pay all appropriate fees; and

(c) Provide accurate evidence on the renewal form that the individual has completed the continuing education requirements described in WAC 296-46B-970. Continuing education classes are only valid when all the requirements of WAC 296-46B-970 are completed. If an individual files inaccurate or false evidence of continuing education information when renewing a certificate of competency, the individual's certificate of competency may be suspended or revoked.

Continuing education for pump and irrigation ~~(03)~~ and domestic pump ~~(03A)~~ electricians may be comprised of fifty percent electrical and fifty percent plumbing instruction.

(14) An individual who has not completed the required hours of continuing education can renew a certificate of competency if the individual applies for renewal before the certificate of competency expires and pays the appropriate renewal fee. However, the certificate of competency will be placed in an inactive status. The inactive certificate of competency will be returned to current status upon validation, by the department, of the required continuing education. If the certificate renewal date occurs during the inactive period, the certificate must be renewed on or before the renewal date to allow the return to current status.

(15) An individual may renew a suspended certificate of competency by submitting a complete renewal application including obtaining and submitting the continuing education required for renewal. However, the certificate will remain in a suspended status for the duration of the suspension period.

(16) An individual may not renew a revoked certificate of competency.

#### **Military/shipyard experience.**

(17) An individual who has worked in the electrical construction trade performing work described in WAC 296-46B-920 while serving in the armed forces of the United States may be eligible to take the examination for the certificate of competency as a journeyman or specialty electrician. Credit may be allowed for hours worked or training received.

If an individual has military experience in a specialized electrical field (e.g., rating) that is similar to a specialty electrician category listed in WAC 296-46B-920, credit may be allowed toward the appropriate specialty certificate. Nuclear, marine, shipyard, shipboard, radar, weapons, aeronautical experience, or similar experience may be acceptable for no more than fifty percent of the minimum required work experience for qualifying for electrician examination.

The department will evaluate and determine whether the submitted experience is related specifically to the electrical construction/maintenance trade regulated by chapter 19.28 RCW.

#### **Experience in another country.**

(18) If an individual has a journeyman electrician certificate from a country outside the United States that requires that at least four years of electrical construction training and certification is obtained by examination, the individual may be eligible for four thousand hours of the specialty credit allowed towards the qualification to take the Washington journeyman electrician examination.

No more than two years of the required training to become a Washington journeyman electrician may be for work described for specialty electricians or technicians in WAC 296-46B-920. In addition to the maximum of four thousand hours credit that may be allowed by this subsection, an additional four thousand hours of new commercial/industrial experience must be obtained using a training certificate in the state while under the supervision of a master journeyman electrician or journeyman electrician.

Documentation substantiating the individual's out-of-country experience must be submitted in English.

(19) Out-of-country experience credit is not allowed toward a specialty electrician certificate.

#### **Training school credit.**

(20) No more than fifty percent of the minimum work experience needed to qualify for specialty electrician certification is allowed for any training school program (e.g., a specialty requiring two thousand hours of minimum required work experience may receive no more than one thousand hours credit from an electrical construction training program).

(21) See RCW 19.28.191 (1)(h) for training school credit allowed for journeyman applicants.

(22) See WAC 296-46B-971 for additional information on training schools.)

### NEW SECTION

#### **WAC 296-46B-942 Training certificate required.**

##### **General.**

(1) To work in the electrical construction trade as an electrical trainee, an individual must possess, wear, and visibly display a current valid electrical training certificate, learning the trade in the proper ratio, per RCW 19.28.161, under the supervision of a certified master journeyman electrician, journeyman electrician, master specialty electrician working in their specialty, or specialty electrician working in their specialty.

The trainee must meet all the requirements of WAC 296-46B-940 related to visibly displaying a current certificate and having a valid photo identification on his/her person.

(2) A training certificate is required for all individuals throughout the individual's enrollment and matriculation in an approved construction electrician training school program described in RCW 19.28.191. A training certificate is required to work in the electrical construction trade if an individual does not:

(a) Possess a current journeyman certificate of competency issued by the department;

(b) Possess a current specialty electrician certificate of competency issued by the department while working in that specialty's scope of work; or

(c) Is not working in exempt status as allowed by chapter 19.28 RCW.

(3) Trainees who have had their training certificates revoked or suspended (during the duration of the revocation or suspension) will not be issued a training certificate.

#### **Original training certificates.**

(4) The department will issue an original training certificate when the trainee applicant submits a complete training certificate application including:

(a) Date of birth, mailing address, Social Security number; and

(b) All appropriate fees as listed in WAC 296-46B-909.

All applicants for an electrical training certificate must be at least sixteen years of age. The original training certificate will be valid for two years.

(c) If an individual has previously held an electrical training certificate, then that individual is not eligible for a subsequent original training certificate.

#### **Specialty specific - Zero percent and seventy-five percent supervision modified training certificates.**

(5) For specialties as allowed in Table 945-1 (i.e., specialties with seven hundred twenty minimum hours of work experience required to be eligible for examination):

(a) The department will approve the trainee to take the appropriate specialty competency examination necessary to qualify for a zero percent supervision modified training certificate. To qualify, the trainee applicant must submit a complete zero percent supervision modified training certificate application including:

(i) Date of birth, mailing address, Social Security number;

(ii) Affidavit of experience fulfilling the minimum work experience hours required to qualify for the specialty examination described in Table 945-1; and

(iii) All appropriate fees as listed in WAC 296-46B-909.

Upon successful completion of the appropriate examination, the trainee will be issued a nonrenewable zero percent supervision modified training certificate for the appropriate specialty. The zero percent supervision modified training certificate will be restricted in duration to the time allowed in Table 945-1, note 2.

(b) Prior to the expiration of the zero percent supervision modified training certificate, the individual must submit a complete application for a seventy-five percent supervision modified training certificate for the appropriate specialty including:

(i) Seventy-five percent supervision training certificate application including: Date of birth, mailing address, Social Security number; and

(ii) All appropriate fees as listed in WAC 296-46B-909.

(c) A trainee may possess multiple (i.e., in different specialties) modified supervision training certificates for specialties where reduced supervision is allowed in Table 945-1. Combination training certificates will not be issued.

#### **Renewal of training certificates.**

(6) An individual must apply for renewal of their training certificate on or before the expiration date of the certificate. The individual may not apply for renewal more than ninety days prior to the expiration date. Renewed certificates are valid for two years.

(7) An individual may renew their training certificate after the expiration date if the individual pays the late renewal fee listed in WAC 296-46B-909.

(8) All applicants for training certificate renewal must:

(a) Submit a complete renewal application;

(b) Pay all appropriate fees; and

(c) Provide accurate evidence on the renewal form that the individual has completed the continuing education requirements described in WAC 296-46B-970. Basic trainee classes are only valid when all the requirements of WAC 296-46B-970 are completed. If an individual files inaccurate or false evidence of basic trainee class information when renewing a training certificate, the individual's training certificate may be suspended.

Basic trainee classes for trainees seeking pump and irrigation (03) and domestic pump (03A) experience credit may be comprised of fifty percent electrical and fifty percent plumbing instruction.

(d) Within thirty days after renewing an electrical training certificate, the individual, if not enrolled in a department approved apprenticeship program, must submit a completed, signed, and notarized affidavit(s) of experience for all hours of experience gained since the individual's last training certificate was effective.

Employers are required to provide the necessary documentation and signed affidavit of experience to the trainee within twenty days after the trainee requests the affidavit. See WAC 296-46B-942(12). See WAC 296-46B-985(4) for the penalty for providing a false or inaccurate affidavit of experience. If the individual is enrolled in a department approved apprenticeship program, the program may submit the required affidavit(s) of experience upon the individual's completion of the required experience hours without cost to the individual. The affidavit of experience must accurately attest to:

(i) The electrical installation work performed for each employer the individual worked for in the electrical trade during the previous period;

(ii) The correct electrical category the individual worked in; and

(iii) The actual number of hours worked in each category under the proper supervision of a Washington certified, master journeyman electrician, journeyman electrician or appropriate master specialty electrician or specialty electrician under that specific training certificate. If a trainee possesses multiple training certificates, an affidavit must be submitted for each training certificate for the hours worked under that specific training certificate.

If the individual is enrolled in a department approved apprenticeship program, the program may submit the required affidavit(s) of experience upon the individual's completion of the required experience hours without cost to the individual.

(9) An individual who has not completed the required hours of basic trainee class education can renew a training certificate if the individual applies for renewal before the training certificate expires and pays the appropriate renewal fee. However, the training certificate will be placed in an inactive status. The inactive training certificate will be returned to current status upon validation, by the department, of the required basic trainee class education.

(10) An individual may renew a suspended training certificate by submitting a complete renewal application including obtaining and submitting the basic trainee class education required for renewal. However, the certificate will remain in a suspended status for the duration of the suspension period.

(11) An individual will not be issued a renewed or reinstated training certificate if the individual owes the department money as a result of an outstanding final judgment.

(12) The individual should ask each employer and/or apprenticeship training director for an accurately completed, signed, and notarized affidavit of experience for the previous certification period. The employer(s) or apprenticeship training director(s) must provide the previous period's affidavit of experience to the individual within twenty days of the request. If an individual is enrolled in an approved electrical construction trade apprenticeship program under chapter 49.04 RCW when the individual renews an electrical training certificate, the individual and their apprenticeship training director and/or each employer must give the department an accurately completed, signed, and notarized affidavit of experience accurately attesting to:

(a) The electrical installation work the individual performed in the electrical trade during the previous certification period;

(b) The correct electrical category the individual worked in; and

(c) The actual number of hours worked in each category under the proper supervision of a Washington certified master journeyman electrician, journeyman electrician or appropriate master specialty or specialty electrician for each employer. For apprentices enrolled in a registered apprenticeship program, the applicant and the training director are the only authorized signatures the department will accept on affidavits of experience.

(13) The individual and their employer(s) and/or apprenticeship training director(s) must sign and have notarized the affidavit of experience attesting to the accuracy of all information contained in the affidavit.

(14) The trainee, supervising electrician, contractor, and assigned administrator or master electrician are responsible for ensuring compliance with subsection (13) of this section. See WAC 296-46B-985 and 296-46B-990 (3)(c) and (f) for information about failing to submit or submitting false/fraudulent documents. Falsifying documents may be considered perjury and might result in criminal prosecution, civil penalty, or certificate revocation or suspension.

#### **Trainees without supervision present on the job site.**

(15) When the supervising electrician is found to not be present on the job site, the trainee will be given a form by the inspector that must be fully completed and returned or post-marked within twenty-four hours to the inspector. The super-

vising electrician must sign the statement for the trainee if appropriate supervision was provided. If the supervising electrician fails or refuses to assist the trainee in completing the form, the trainee must return the form with a signed and dated statement stating the supervising electrician's name and saying that the supervising electrician refused to assist.

#### **Trainees seeking a journeyman electrician certificate - Working with no supervision.**

(16) Trainee seeking a general (01) journeyman electrician certificate of competency. After review by the department, a trainee may be issued a six-month, nonrenewable unsupervised electrical training certificate that will allow the individual to work without supervision if the trainee:

(a) Has submitted a complete application for an unsupervised electrical training certificate;

(b) Has worked over seven thousand hours properly supervised not to include more than four thousand of specialty experience;

(c) Has successfully completed or is currently enrolled in an approved apprenticeship program or an electrical construction trade program in a school approved by the board of community and technical colleges;

(d) Has paid all appropriate training certificate fees listed in WAC 296-46B-909; and

(e) Is currently working for and continues to work for a licensed electrical contractor that employs at least one certified journeyman or specialty electrician in the appropriate specialty.

#### **Trainees seeking certain specialty electrician certificates - Working with reduced or no supervision.**

(17) After review by the department, a trainee may be issued a nonrenewable zero percent supervision training certificate that will allow the individual to work without supervision if the trainee meets the requirements in subsection (4) of this section.

(18) Electrical trainees may work unsupervised when installing HVAC/R thermostat cable when the HVAC/R system consists of a single thermostat in one- and two-family dwelling units where line voltage power has not been connected to the dwelling's electrical system.

AMENDATORY SECTION (Amending WSR 09-20-032, filed 9/29/09, effective 10/31/09)

**WAC 296-46B-945 Qualifying for master, journeyman, specialty electrician examinations. (~~Qualifying for master, journeyman, specialty electrician examinations.~~)**

(1) General.

~~((+))~~ (a) All applicants must be at least sixteen years of age.

(b) All applicants, from in or out of state, must demonstrate the completion of basic trainee classes described in WAC 296-46B-970 (4)(c)(ii)(D).

(i) Twenty-four hours where two thousand or more; but less than four thousand hours of work experience is required.

(ii) Forty-eight hours where four thousand or more; but less than six thousand hours of work experience is required.

(iii) Seventy-two hours where six thousand or more; but less than eight thousand hours of work experience is required.

(iv) Ninety-six hours where eight thousand or more of work experience is required.

**Qualifying for the master electrician examination.**

(2) An individual may take the master electrician's certificate of competency examination if the individual meets the requirements described in RCW 19.28.191 (1)(d) or (e).

**Qualifying for the master electrician examination from out-of-state.**

(3) No credit may be applied from out-of-state toward qualifying for a master electrician certificate of competency examination.

**Qualifying for the journeyman electrician competency examination.**

(4) An individual may take the journeyman electrician's certificate of competency examination if the individual held a current electrical training certificate and has worked for an employer who employs at least one certified master electrician, journeyman, or specialty electrician on staff and the individual:

(a) Has been employed, in the electrical construction trade, under the direct supervision of a master electrician, journeyman electrician or specialty electrician working in the appropriate specialty in the proper ratio, per RCW 19.28.161, for four years (eight thousand hours). Of the eight thousand hours:

(i) At least two years (four thousand hours) must be in new industrial and/or new commercial electrical installation (excluding all work described for specialty electricians or technicians) under the direct supervision of a master journeyman electrician or journeyman electrician while working for a general electrical contractor; and

(ii) Not more than a total of two years (four thousand hours) may be for work described as an electrical specialty in WAC 296-46B-920(2).

(b) Has completed a four-year apprenticeship program in the electrical construction trade that is registered with the state apprenticeship council while working under the direct supervision of a master journeyman or journeyman electrician in the proper ratio, per RCW 19.28.161; or

(c) Has completed a two-year electrical construction training program as described in RCW 19.28.191 for journeyman electricians, and two years (four thousand hours) of work experience in new industrial and/or new commercial electrical installations (excluding work described for specialty electricians or electrical technicians) under the direct supervision of a journeyman electrician while working for a general electrical contractor in the proper ratio, per RCW 19.28.161. See WAC 296-46B-971 for additional training school information.

Electrical construction training hours gained in specialties requiring less than two years (i.e., four thousand hours) will not be credited towards qualification for journeyman electrician.

The trainee and their employer and/or apprenticeship training director must attest to the accuracy of all information contained on affidavits of experience and apprenticeship graduation certificates used to verify eligibility for the examination.

**Qualifying for a specialty electrician certificate of competency or examination.**

(5) After review and approval by the department, an individual may qualify for a specialty electrician's examination and certificate of competency if the individual held a current electrical training certificate, and has worked for an employer who employs at least one certified master journeyman electrician, journeyman electrician, appropriate master specialty electrician, or appropriate specialty electrician on staff and the individual:

(a) Has been employed, in the electrical construction trade, under the direct supervision of an appropriate electrician in the appropriate specialty as follows:

Table 945-1 Experience Hours

| <u>Specialty</u>   | <u>Minimum Hours of Work Experience Required to be Eligible for Examination<sup>(4)(5)</sup></u> | <u>Minimum Hours of Work Experience Required for Certification</u> |
|--|--|--|
| <u>Residential certificate (02)</u>  | <u>4,000<sup>(3)</sup></u>   | <u>4,000</u>   |
| <u>Pump and irrigation certificate (03)</u>  | <u>4,000<sup>(3)</sup></u>   | <u>4,000</u>   |
| <u>Domestic pump certificate (03A)</u>   | <u>720<sup>(1)(2)</sup></u>  | <u>2,000<sup>(6)</sup></u>   |
| <u>Signs certificate (04)</u>  | <u>4,000<sup>(3)</sup></u>   | <u>4,000</u>   |
| <u>Limited energy system certificate (06)</u>                                      | <u>4,000<sup>(3)</sup></u>   | <u>4,000</u>   |
| <u>HVAC/refrigeration system certificate (06A)</u>                                 | <u>4,000<sup>(3)</sup></u>   | <u>4,000<sup>(7)</sup></u>   |
| <u>HVAC/refrigeration – Restricted (06B)</u>                                       | <u>1,000<sup>(1)(2)</sup></u>  | <u>2,000<sup>(6)</sup></u>   |
| <u>Nonresidential maintenance certificate (07)</u>                                 | <u>4,000<sup>(3)</sup></u>   | <u>4,000</u>   |
| <u>Nonresidential lighting maintenance and lighting retrofit certificate (07A)</u> | <u>720<sup>(1)(2)</sup></u>  | <u>2,000<sup>(6)</sup></u>   |
| <u>Residential maintenance certificate (07B)</u>                                   | <u>720<sup>(1)(2)</sup></u>  | <u>2,000<sup>(6)</sup></u>   |
| <u>Restricted nonresidential maintenance certificate (07C)</u>                     | <u>1,000<sup>(1)(2)</sup></u>  | <u>2,000<sup>(6)</sup></u>   |
| <u>Appliance repair certificate (07D)</u>  | <u>720<sup>(1)(2)</sup></u>  | <u>2,000<sup>(6)</sup></u>   |

| <b>Specialty</b>  | <b>Minimum Hours of Work Experience Required to be Eligible for Examination<sup>(4)(5)</sup></b> | <b>Minimum Hours of Work Experience Required for Certification</b> |
|---|--|--|
| Equipment repair certificate <b>(07E)</b>               | 1,000 <sup>(1)(2)</sup>  | 2,000 <sup>(6)</sup>   |
| Door, gate, and similar systems certificate <b>(10)</b> | 720 <sup>(1)(2)</sup>  | 2,000 <sup>(6)</sup>   |

- Notes:
- <sup>(1)</sup>Until the examination is successfully completed, the trainee must work under one hundred percent supervision. Once the appropriate examination is successfully completed, the modified supervision trainee may work under zero percent supervision.
  - <sup>(2)</sup>The trainee may have only one zero percent supervision certificate in a specialty (valid for no more than two years). If the trainee has not gained the required work experience by the time the zero percent supervision certificate has expired, the trainee must get a seventy-five percent supervision certificate and work under supervision until all required work experience hours are gained and credited towards the minimum work experience requirement.
  - <sup>(3)</sup>This specialty is not eligible for unsupervised trainee status as allowed in chapter 19.28 RCW.
  - <sup>(4)</sup>The trainee and their employer and/or apprenticeship training director must attest to the accuracy of all information contained on affidavits of experience used to verify eligibility for the examination.
  - <sup>(5)</sup>Neither previous work experience credit nor training school credit is allowed as a substitute for the initial hours of minimum work experience required to be eligible for examination unless the trainee's work experience hours under direct supervision are provided as required in RCW 19.28.191 (1)(g)(ii).
  - <sup>(6)</sup>Electrical construction training hours gained in specialties requiring less than two years for certification may not be credited towards qualification for journeyman electrician.
  - <sup>(7)</sup>The two thousand minimum hours of work experience required for certification as an HVAC/refrigeration-restricted **(06B)** specialty electrician may be credited as two thousand hours towards the four thousand minimum hours of work experience required for certification as an HVAC/refrigeration **(06A)** specialty electrician. Hours of work experience credited from the HVAC/refrigeration-restricted **(06B)** specialty cannot be credited towards qualification for taking the general electrician **(01)** examination or minimum work experience requirements.
  - <sup>(8)</sup>Experience hours may be coincidentally credited towards qualifying for electrician and plumber certifications. See RCW 19.28.191 (1)(g)(iv).

(b) Or has completed an appropriate two-year apprenticeship program in the electrical construction trade that is registered with the state apprenticeship council while working under the direct supervision of an electrician in the appropriate specialty in the proper ratio, per RCW 19.28.161.

Qualifying for a certificate of competency when the Washington electrical work experience is exempt from certification requirements in RCW 19.28.261.

(6) After review and approval by the department, an individual may be granted work experience credit to take the journeyman/specialty electrician's competency examination when an original notarized letter of work experience accompanied by verifiable documentation - See subsection (7) of this section.

For the purposes of this section, exempt work does not include work performed on property owned, in whole or part, by the individual seeking credit.

See WAC 296-46B-971 for additional information on

All exempt individuals must have a valid electrical training certificate when working to gain electrical work experience.

Work experience requested by an individual for telecommunications work must be gained while working for (01) general electrical, (02) residential, or (06) limited energy system electrical contractors as allowed by those scopes of work. When the work was performed, the individual must have a valid training certificate, be under the supervision of an appropriately certified journeyman, residential or limited energy electrician, and be in compliance with RCW 19.28.191.

**General - Qualifying hours gained by applicants seeking work experience credit without a Washington electrician training certificate.**

(7) The type of on-the-job work experience must be similar to the credit being applied for and lawfully gained in the state or other entity where the work was performed. The individual must submit verifiable documentation (e.g., payroll, time sheets, permits, supervision, etc.) that the department may use to ascertain the type of work performed and the number of hours worked for each type (i.e., specialty) of work.

Training hours credited for specialties requiring less than two years (i.e., four thousand hours) may not be credited towards qualification for general journeyman electrician.

The documentation must include a complete description of the individual's usual duties with percentages attributed to each type (e.g., wiring, material handling, shop, low voltage, etc.)

The department may reduce the number of hours allowed if the:

(a) Individual did not have supervision during the training period;

(b) Training hours are not related to electrical construction;

(c) Training hours are not related to the specialty being applied for;

(d) Documentation submitted by the individual does not fully verify the requested work experience; or

(e) Work credit was not lawfully gained.

**Training school credit.**

(8) No more than fifty percent of the minimum work experience needed to qualify for specialty electrician certification is allowed for any training school program (e.g., a specialty requiring two thousand hours of minimum required work experience may receive no more than one thousand hours credit from an electrical construction training program).

See RCW 19.28.191 (1)(h) for training school credit allowed for journeyman applicants.

training schools.

**Qualifying for the journeyman/specialty electrician competency examination when work was performed in a state requiring electrician certification.**

~~((5))~~ (9) After review and approval by the department, an individual may be granted on-the-job work experience towards qualifying to take the journeyman/specialty electrician's competency examination for hours worked in the other state when the ((appropriate)) state ((having authority)) certifies to the department ((that)):

(a) The type and number of hours of work performed within the state. Credit will not be allowed for work not done within the certifying state.

(b) That the work was legally performed under the other state's licensing and certification requirements; and

~~((i))~~ For journeyman applicants who meet the minimum hour requirements described in WAC 296-46B-945(4).

~~((ii))~~ For specialty applicants who meet the minimum hour requirements described in WAC 296-46B-945(9).

~~((b))~~ (c) The other state's certificate of competency was obtained by examination.

~~((Electrical construction training hours gained in specialties requiring less than two years (i.e., four thousand hours) may not be credited towards qualification for journeyman electrician.))~~ If the experience is for other than a new commercial or industrial installation, the individual must identify the specialty credit desired and provide verifiable documentation identifying the other state's allowed scope of work for the specialty, see subsection (7) of this section.

**Qualifying for the journeyman/specialty electrician competency examination when work was performed in a state that does not require electrician certification.**

~~((6))~~ ~~If the other state requires electrical contractor licensing:~~ (10) After review and approval by the department, an individual may be granted work experience credit to take the journeyman/specialty electrician's competency examination when an original notarized letter of work experience accompanied by documentation, see subsection (7) of this section, that can be used to verify the individual has worked the hours being requested is provided by:

(a) An ((individual may take the journeyman/specialty electrician's competency examination when an appropriately licensed electrical contractor(s), registered apprenticeship training director, or nationally recognized contractor or labor organization files a notarized letter of experience with the department accompanied by payroll documentation which certifies and shows that:

(i) For journeyman applicants: The individual meets the minimum hour requirements described in WAC 296-46B-945(4).

(ii) For specialty applicants: The individual meets the minimum hour requirements described in WAC 296-46B-945(9).

(b) An individual may take the journeyman/specialty electrician's competency examination when an employer(s), acting under a property owner exemption, files a notarized letter of experience from the property owner with the department accompanied by payroll documentation which certifies and shows that:

(i) For journeyman applicants: The individual meets the minimum hour requirements described in WAC 296-46B-945(4).

(ii) For specialty applicants: The individual meets the minimum hour requirements described in WAC 296-46B-945(9).

(7) If the other state does not require electrical contractor licensing or registration: An individual may take the journeyman/specialty electrician's competency examination when the individual's employer(s), registered apprenticeship training director, or nationally recognized contractor or labor organization files a notarized letter(s) of experience with the department accompanied by payroll documentation which certifies and shows that:

(a) For journeyman applicants: The individual meets the minimum work requirements described in WAC 296-46B-945(4).

(b) For specialty applicants: The individual meets the minimum work requirements described in WAC 296-46B-945(9).

(8) The letter of experience described in subsections (6) and (7) of this section should include a complete list of the individual's usual duties with percentages attributed to each.

**Qualifying for a specialty electrician certificate of competency or examination.**

(9) An individual may qualify for a specialty electrician's examination and certificate of competency if the individual held a current electrical training certificate, and has worked for an employer who employs at least one certified master journeyman electrician, journeyman electrician, appropriate master specialty electrician, or appropriate specialty electrician on staff and the individual:

(a) Has been employed, in the electrical construction trade, under the direct supervision of an appropriate electrician in the appropriate specialty as follows:

**Table 945-1 Experience Hours**

| Specialty  | Minimum Hours of Work Experience Required to be Eligible for Examination <sup>(4)(5)</sup> | Minimum Hours of Work Experience Required for Certification |
|--|--|---|
| Residential certificate <del>(02)</del>                | 4,000 <sup>(2)</sup>   | 4,000   |
| Pump and irrigation certificate <del>(03)</del>        | 4,000 <sup>(3)</sup>   | 4,000   |
| Domestic pump certificate <del>(03A)</del>             | 720 <sup>(1)(2)</sup>  | 2,000 <sup>(6)</sup>  |
| Signs certificate <del>(04)</del>                      | 4,000 <sup>(2)</sup>   | 4,000   |
| Limited energy system certificate <del>(06)</del>      | 4,000 <sup>(2)</sup>   | 4,000   |
| HVAC/refrigeration system certificate <del>(06A)</del> | 4,000 <sup>(2)</sup>   | 4,000 <sup>(7)</sup>  |
| HVAC/refrigeration - restricted <del>(06B)</del>       | 1,000 <sup>(1)(2)</sup>  | 2,000 <sup>(6)</sup>  |
| Nonresidential maintenance certificate <del>(07)</del> | 4,000 <sup>(2)</sup>   | 4,000   |

**Table 945-1 Experience Hours**

| Specialty  | Minimum Hours of Work Experience Required to be Eligible for Examination <sup>(4)(5)</sup> | Minimum Hours of Work Experience Required for Certification |
|--|--|---|
| Nonresidential lighting maintenance and lighting retrofit certificate <b>(07A)</b> | 720 <sup>(1)(2)</sup>  | 2,000 <sup>(6)</sup>  |
| Residential maintenance certificate <b>(07B)</b>                                   | 720 <sup>(1)(2)</sup>  | 2,000 <sup>(6)</sup>  |
| Restricted nonresidential maintenance certificate <b>(07C)</b>                     | 1,000 <sup>(1)(2)</sup>  | 2,000 <sup>(6)</sup>  |
| Appliance repair certificate <b>(07D)</b>  | 720 <sup>(1)(2)</sup>  | 2,000 <sup>(6)</sup>  |
| Equipment repair certificate <b>(07E)</b>  | 1,000 <sup>(1)(2)</sup>  | 2,000 <sup>(6)</sup>  |
| Door, gate, and similar systems certificate <b>(10)</b>                            | 720 <sup>(1)(2)</sup>  | 2,000 <sup>(6)</sup>  |

- Notes:**
- <sup>(1)</sup>Until the examination is successfully completed, the trainee must work under one hundred percent supervision. Once the appropriate examination is successfully completed, the modified supervision trainee may work under zero percent supervision.
  - <sup>(2)</sup>The trainee may have only one zero percent supervision certificate in a specialty (valid for no more than two years). If the trainee has not gained the required work experience by the time the zero percent supervision certificate has expired, the trainee must get a seventy-five percent supervision certificate and work under supervision until all required work experience hours are gained and credited towards the minimum work experience requirement.
  - <sup>(3)</sup>This specialty is not eligible for unsupervised trainee status as allowed in chapter 19.28 RCW.
  - <sup>(4)</sup>The trainee and their employer and/or apprenticeship training director must attest to the accuracy of all information contained on affidavits of experience used to verify eligibility for the examination.
  - <sup>(5)</sup>Neither previous work experience credit nor training school credit is allowed as a substitute for the initial hours of minimum work experience required to be eligible for examination unless the trainee's work experience hours under direct supervision are provided as required in RCW 19.28.191 (1)(g)(ii).
  - <sup>(6)</sup>Electrical construction training hours gained in specialties requiring less than two years for certification may not be credited towards qualification for journeyman electrician.
  - <sup>(7)</sup>The 2,000 minimum hours of work experience required for certification as a HVAC/refrigeration restricted **(06B)** specialty electrician may be credited as 2,000 hours towards the 4,000 minimum hours of work experience required for certification as a HVAC/refrigeration **(06A)** specialty electrician. Hours of work experience credited from the HVAC/refrigeration restricted **(06B)** specialty cannot be credited towards qualification for taking the general electrician **(01)** examination or minimum work experience requirements.
  - <sup>(8)</sup>Experience hours may be coincidentally credited towards qualifying for electrician and plumber certifications. See RCW 19.28.191 (1)(g)(v).

(b) Or has completed an appropriate two-year apprenticeship program in the electrical construction trade that is registered with the state apprenticeship council while work-

ing under the direct supervision of an electrician in the appropriate specialty in the proper ratio, per RCW 19.28.161.

**Qualifying for a certificate of competency when the Washington electrical work experience is exempt from certification requirements in RCW 19.28.261.**

(10) To receive credit for electrical work experience that is exempted in RCW 19.28.261, an individual must provide the department with verification from the employer or owner according to WAC 296-46B-965 (i.e., affidavit(s) of experience). For the purposes of this section, exempt work does not include work performed on property owned by the individual seeking credit.

(11) All exempt individuals learning the electrical trade must obtain an electrical training certificate from the department and renew it biennially in order to receive credit for hours worked in the trade according to WAC 296-46B-965.

(12) The department may require verification of supervision in the proper ratio from the certified supervising electrician(s):

(13) Telecommunications work experience:

(a) Credit may be verified only by employers exempted by RCW 19.28.261, general electrical **(01)** contractors, and limited energy system **(06)** electrical contractors for limited energy experience for telecommunications work done:

- (i) Under the supervision of a certified journeyman or limited energy electrician; and
- (ii) In compliance with RCW 19.28.191.

(b) Individuals who want to obtain credit for hours of experience toward electrician certification for work experience doing telecommunications installations must:

- (i) Obtain an electrical training certificate;
- (ii) Renew the training certificate biennially in order to receive credit for hours worked in the trade according to WAC 296-46B-965.

(c) Telecommunications contractors may not verify telecommunications work experience toward electrician certification-) appropriately state licensed electrical contractor;

(b) Registered apprenticeship training director;

(c) Nationally recognized contractor/labor organization;

or

(d) The individual's lawful employer.

**Military/shipyard experience.**

(11) After review and approval by the department, an individual who has worked in the electrical construction trade performing work described in WAC 296-46B-920 while serving in the armed forces of the United States may be eligible to take the examination for the certificate of competency as a journeyman or specialty electrician. Credit may be allowed for hours worked or training received.

If an individual has military experience in a specialized electrical field (e.g., rating) that is similar to a specialty electrician category listed in WAC 296-46B-920, credit may be allowed toward the appropriate specialty certificate. Nuclear, marine, shipyard, shipboard, radar, weapons, aeronautical experience, or similar experience may be acceptable for no more than fifty percent of the minimum required work experience for qualifying for electrician examination.

The department will evaluate and determine whether the submitted experience is related specifically to the electrical construction/maintenance trade regulated by chapter 19.28 RCW.

**Experience in another country.**

(12) After review and approval by the department, and if an individual has a journeyman electrician certificate from a country outside the United States that requires that at least four years of electrical construction training and certification is obtained by examination, the individual may be eligible for four thousand hours of the specialty credit allowed towards the qualification to take the Washington journeyman electrician examination.

No more than two years of the required training to become a Washington journeyman electrician may be for work described for specialty electricians or technicians in WAC 296-46B-920. In addition to the maximum of four thousand hours credit that may be allowed by this subsection, an additional four thousand hours of new commercial/industrial experience must be obtained using a training certificate in the state while under the supervision of a master journeyman electrician or journeyman electrician.

Documentation substantiating the individual's out of country experience must be submitted in English.

(13) Out of country experience credit is not allowed toward a specialty electrician certificate.

**AMENDATORY SECTION** (Amending WSR 09-20-032, filed 9/29/09, effective 10/31/09)

**WAC 296-46B-960 Administrator and electrician certificate of competency examinations. General.**

(1) The minimum passing score on any examination or examination section is seventy percent. If examination is requested to be administered by the department, an application is required and the examination must be successfully completed within one year of application or the individual must submit a new application for exam including all appropriate fees.

(2) All examinations are open book.

(a) Candidates may use:

(i) Any original copyrighted material;

(ii) A silent, nonprinting, nonprogrammable calculator that is not designed for preprogrammed electrical calculations;

(iii) Copies of chapter 19.28 RCW and this chapter; or

(iv) A foreign language dictionary that does not contain definitions.

(b) Candidates may not use:

(i) Copies of copyrighted material;

(ii) Copies of internet publications, except for RCWs or WACs;

(iii) Personal notes; or

(iv) A personal computing device of any type other than the calculator in (a)(ii) of this subsection.

(3) Administrator, master electrician, and electrician examinations may consist of multiple sections. For all administrator examinations, all sections must be successfully completed within a one-year examination period after begin-

ning the examination. For all master electrician and electrician examinations, all sections must be successfully completed within a one-year examination period beginning with the date of the examination approval. Within the one-year examination period, the candidate does not have to retake any sections successfully completed within the examination period. If all sections are not successfully completed within the one-year period, the candidate must begin a new examination period and retake all sections.

**Special accommodations for examination.**

(4) An applicant for an examination who, due to a specific physical, mental, or sensory impairment, requires special accommodation in examination procedures, may submit a written request to the chief electrical inspector for the specific accommodation needed.

(a) The applicant must also submit to the department a signed and notarized release, authorizing the specifically identified physician or other specialist to discuss the matter with the department representative. The applicant must also submit an individualized written opinion from a physician or other appropriate specialist:

(i) Verifying the existence of a specific physical, mental, or sensory impairment;

(ii) Stating whether special accommodation is needed for a specific examination;

(iii) Stating what special accommodation is necessary; and

(iv) Stating if extra time for an examination is necessary and if so, how much time is required. The maximum allowance for extra time is double the normal time allowed.

(b) The written request for special accommodation and individualized written opinion must be submitted to the department at least six weeks in advance of the examination date and must be accompanied by a completed application and fees as described in WAC 296-46B-909.

(c) Only readers and interpreters provided from the administrative office of the courts and/or approved by the department may be used for reading or interpreting the examination. The applicant will be required to bear all costs associated with providing any reading or interpretive services used for an examination.

(d) Applicants who pass the examination with the assistance of a reader or interpreter will be issued a certificate with the following printed restriction: "Requires reading supervision for product usage." A competent reader or interpreter must be present on any job site where a person with this restriction is performing electrical work as described in chapter 19.28 RCW.

Applicants who pass the examination with the assistance of a mechanical device (e.g., magnifier, etc.) will be issued a certificate with the following printed restriction: "Requires mechanical reading assistance for product usage." Appropriate mechanical reading assistance must be present on any job site where a person with this restriction is performing electrical work as described in chapter 19.28 RCW.

If a candidate successfully retakes the examination without the assistance of a reader or translator, a new certificate will be issued without the restriction.

(5) Applicants who wish to use a foreign language dictionary during an examination must obtain approval at the examination site prior to the examination. Only dictionaries without definitions will be approved for use.

#### Failed examination appeal procedures.

(6) Any candidate who takes an examination and does not pass the examination may request a review of the examination.

(a) The department will not modify examination results unless the candidate presents clear and convincing evidence of error in the grading of the examination.

(b) The department will not consider any challenge to examination grading unless the total of the potentially revised score would result in a passing score.

(7) The procedure for requesting an informal review of examination results is as follows:

(a) The request must be made in writing to the chief electrical inspector and must be received within twenty days of the date of the examination and must request a rescore of the examination. The written request must include the appropriate fees for examination review described in WAC 296-46B-909.

(b) The following procedures apply to a review of the results of the examination:

(i) The candidate will be allowed one hour to review their examination.

(ii) The candidate must identify the challenged questions of the examination and must state the specific reason(s) why the results should be modified with multiple published reference material supporting the candidate's position.

(iii) Within fifteen days of the candidate's review, the department will review the examination and candidate's justification and notify the candidate in writing of the department's decision.

#### **~~((Subjects included in administrator certificate, or master electrician, journeyman, or specialty electrician competency examinations.~~**

~~(8) The following subjects are among those that may be included in the examination for an administrator certificate or electrician certificate of competency. The list is not exclusive. The examination may also contain subjects not on the list.~~

~~(a) For general administrators, master journeyman, and journeyman electricians:~~

~~AC—Generator; 3-phase; meters; characteristics of; power in AC circuits (power factor); mathematics of AC circuits.~~

~~Administration—Chapter 19.28 RCW and this chapter.~~

~~Air conditioning—Basic.~~

~~Blueprints—Surveys and plot plans; floor plans; service and feeders; electrical symbols; elevation views; plan views.~~

~~Building wire.~~

~~Cable trays.~~

~~Calculations.~~

~~Capacitive reactance.~~

~~Capacitor—Types; in series and parallel.~~

~~Circuits—Series; parallel; combination; basic; branch; outside branch circuits; calculations.~~

~~Conductor—Voltage drop (line loss); grounded.~~

~~Conduit—Wiring methods.~~

~~DC—Generator; motors; construction of motors; meters.~~

~~Definitions—Electrical.~~

~~Electrical units.~~

~~Electron theory.~~

~~Fastening devices.~~

~~Fire alarms—Introduction to; initiating circuits.~~

~~Fuses.~~

~~Generation—Electrical principles of.~~

~~Grounding.~~

~~Incandescent lights.~~

~~Inductance—Introduction to; reactance.~~

~~Insulation—Of wire.~~

~~Mathematics—Square root; vectors; figuring percentages.~~

~~Motors/controls—Motors vs. generators/CEMF; single phase; capacitor; repulsion; shaded pole; basic principles of AC motors.~~

~~Ohm's Law.~~

~~Power.~~

~~Power factor—AC circuits; correction of; problems.~~

~~Rectifiers.~~

~~Resistance—Of wire.~~

~~Rigging.~~

~~Safety—Electrical shock.~~

~~Services.~~

~~3-wire system.~~

~~Tools.~~

~~Transformers—Principles of; types; single phase; 3-phase connections.~~

~~Voltage polarity across a load.~~

~~Wiring methods—Conduit; general.~~

~~Wiring systems—Less than 600 volts; 480/277 volts; single and 3-phase delta or wye; distribution systems over 600 volts.~~

~~Note: The general administrator, master journeyman, and journeyman electrician examinations may also include the subjects listed below for specialty electrician examinations.~~

~~(b) For specialty administrators, master specialty and specialty electricians, the following subjects are among those that may be included in the examination. Examination subjects are restricted to those subjects related to the scope of work of the specialty described in WAC 296-46B-920. The list is not exclusive. The examination may also contain subjects not on the list.~~

~~AC—Meters.~~

~~Administration—Chapter 19.28 RCW and this chapter.~~

~~Appliance circuits or controls.~~

~~Blueprints—Floor plans; service and feeders.~~

~~Cables—Wiring methods.~~

~~Calculations.~~

~~Circuits—Series; parallel; combination; basic; outside branch.~~

~~Conductor—Voltage drop (line loss); grounded; aluminum or copper.~~

~~Conduit—Wiring methods.~~

~~Electrical signs, circuits, controls, or services.~~

~~Electrical units.~~

~~First aid.~~

~~Fuses.~~  
~~General lighting.~~  
~~Grounding of conductors.~~  
~~Insulation of wire.~~  
~~Limited energy circuits or systems.~~  
~~Maintenance of electrical systems.~~  
~~Mathematics – Figuring percentage.~~  
~~Motor circuits, controls, feeders, or services.~~  
~~Ohm's Law.~~  
~~Overcurrent protection.~~  
~~Resistance of wire.~~  
~~Safety – Electrical shock.~~  
~~Services.~~  
~~Sizes of building wire.~~  
~~3-wire system.~~  
~~Tools.~~  
~~Transformer – Ratios; single phase/3-phase connections:))~~

### Failing an administrator certificate exam or electrician certificate of competency examination.

~~((9))~~ (8) Anyone failing an administrator or electrician competency examination may retake the examination by making arrangements with the testing agency and paying the retesting fee.

~~((10))~~ (9) If the individual makes a failing score, the individual must wait two weeks before being eligible to retest.

~~((11))~~ (10) If the individual fails an electrician examination or a part of an administrator or master electrician examination three times within a one-year period, the individual must wait three months to retake the failed portion of the examination.

~~((12))~~ (11) Anyone failing an electrician competency examination may continue to work in the electrical trade if they have a valid electrical training certificate and work under the direct supervision of a certified journeyman or specialty electrician in the proper ratio, per RCW 19.28.161.

### Cheating on an examination.

~~((13))~~ (12) Anyone found cheating on an examination, attempting to bribe a proctor or other agent involved in administering an examination, or using inappropriate materials/equipment during an examination will be required to wait at least eleven months before being allowed to reexamine. All such reexaminations will be administered by the department in Tumwater, Washington and the candidate will be required to apply and schedule for the examination with the chief electrical inspector. The department may also file a civil penalty action under chapter 19.28 RCW.

### Examination confidentiality.

(13) All examination questions are confidential. Examination candidates and persons who have taken an examination are not allowed to copy or otherwise make note of or share examination content, in any manner, outside the individual's examination environment. Examination candidates must agree, prior to beginning an examination, to keep all examination content confidential. The department may also file a civil penalty action under chapter 19.28 RCW.

AMENDATORY SECTION (Amending WSR 11-12-018, filed 5/24/11, effective 6/30/11)

**WAC 296-46B-970 Continuing education and classroom education requirements.** (1) **DEFINITIONS** - For purposes of this section.

~~((a))~~ "Applicant" means the entity submitting an application for review.

~~((b))~~ "Application" means a submittal made by an applicant seeking instructor or class approval.

~~((c))~~ "Calendar day" means each day of the week, including weekends and holidays.

~~((d))~~ "Class" means continuing education or basic trainee class ~~(or course)~~.

~~((e))~~ "Contractor" means the entity who has contracted with the department to review and approve/deny continuing education classes and instructors.

~~((f))~~ "Currently adopted code," for this section means the code adopted in WAC 296-46B-010(1) or any more recently published National Electric Code.

"Date of notification" means the date of a request for additional information from the ~~(contractor)~~ department or the approval/denial letter sent to the applicant by the ~~(contractor)~~ department.

~~((g))~~ "Examination" is any examination required by this section. Each examination must be unique and must provide randomized questions, except for classroom training. Each examination question bank must be at least two times larger than the number of questions in any individual examination. Examinations must not direct or point the individual to a correct answer or reference. Individuals must be responsible to determine the correct answer without the assistance of the sponsor. No more than twenty percent of an examination's questions may have a true/false answer. Competency is demonstrated by scoring at least seventy-five percent on the examination.

"Individual" means ~~((h))~~ a master electrician, administrator or electrician seeking credit for continuing education or a trainee seeking credit for basic trainee class for renewal or certification.

~~((i))~~ "Instructor" means an individual who is authorized to instruct an approved continuing education or basic trainee class.

~~((j))~~ "Working day" means Monday through Friday, excluding state of Washington holidays.

(2) GENERAL.

(a) The department and the electrical board have the right to monitor all approved classes without notice and at no charge.

If the department or electrical board determines that the class or instructor does not meet or exceed the minimum requirements for approval ~~((k))~~, course length, or instructor qualifications, the department may revoke the class and/or instructor approval and/or reduce the number of credited hours for the class.

(b) Department-offered classes and the instructors used for ~~(those)~~ department classes are automatically approved ~~((and do not need to be sent to the contractor for review))~~.

(c) Instructors who meet the minimum requirements using subsection ~~((5)(b)(i)(D))~~ (5)(d)(iv) of this section may only instruct classes sponsored by the manufacturer(s)

who verified the instructors' qualifications ~~((under subsection (5)(b)(i)(D) of this section)).~~

(d) An individual will not be given credit for the same approved continuing education class taken more than once. A course sponsor may not submit an individual's name on a roster(s) for multiple classes (i.e., multiple class numbers) when the classes are given simultaneously (e.g., code update, industry related, and/or basic ~~((electrical classroom training))~~ trainee class that have similar class content given during the same class session). ~~((No))~~ Credit will not be granted for ~~((any))~~ a class that is not approved per this section.

~~((Telecommunications administrators do not require continuing education.~~

~~((Other))~~ Electrical administrators, master electricians, and electricians:

(i) To be eligible for renewal of an administrator certificate, master electrician or electrician certificate of competency, the individual must have completed at least eight hours of approved continuing education for each year of the prior certification period. The individual is not required to take the classes in separate years.

(A) At least eight hours of the total required continuing education must be on the changes in the ~~((2008 National Electrical Code. For certificate renewal, "currently adopted" means a valid course approved as code update by the department and taken by the applicant since their last renewal date))~~ currently adopted code.

(B) Four hours of the required continuing education must be on the currently adopted chapter 19.28 RCW and/or its related WAC~~((s))~~.

(ii) An individual changing an electrical administrator and an electrician certificate of competency into a master electrician's certificate of competency as allowed in RCW 19.28.191 (1)(a) or (b) must have completed at least eight hours of approved continuing education for each year of the electrician's prior ~~((electrician))~~ certificate period. The individual is not required to take the classes in separate years.

(A) At least eight hours of the total required continuing education must be on the changes in the currently adopted ~~((National Electrical))~~ code. ~~((For certificate renewal, "currently adopted" means a valid course approved as code update by the department and taken by the applicant since their last renewal date.))~~

(B) Four hours of the required continuing education must be on the currently adopted chapter 19.28 RCW and/or its related WAC~~((s))~~.

(iii) Any portion of a year of a prior administrator or electrician certificate period is equal to one year for the purposes of the required continuing education~~((s))~~.

(iv) An individual who has both an electrician certificate and an administrator certification may use the same class to fulfill the requirements for continuing education.

~~((g))~~ (f) Training certificates:

(i) To be eligible for renewal of a training certificate, the individual must have completed:

(A) ~~((Effective July 1, 2011,))~~ At least thirty-two hours of approved basic ((classroom electrical training)) trainee classes and effective July 1, 2013, at least forty-eight hours of approved ((electrical training)) basic trainee classes. The individual cannot use a basic ~~((classroom electrical training))~~

trainee class as credit for the continuing education requirements for renewing an electrician or administrator certificate(s) when the class is also used to satisfy the training certificate renewal requirements; or

(B) Equivalent electrical training classes taken as a part of an approved:

- Apprenticeship program under chapter 49.04 RCW; or
- Electrical training program under RCW 19.28.191

(1)(h).

Equivalent classes must be submitted to and approved by the chief electrical inspector thirty calendar days prior to offering the class.

(ii) ~~((Note that))~~ Only trainees seeking experience credit in the pump and irrigation (03) or domestic pumping (03A) specialties may ((take)) receive credit for pumping industry basic ((classroom training)) trainee classes;

~~((In addition,))~~ Trainees working in the pump and irrigation (03) or domestic pump (03A) specialties may be credited for courses approved as a part of the requirements for plumber trainees required in RCW 18.106.070(5).

~~((h))~~ (g) A continuing ~~((education))~~ or basic trainee class attended or completed by an individual before the class's effective date cannot be used to meet the certificate renewal/certification requirements.

~~((i))~~ If neither the electrical board nor the department has a contract in effect as described in this section, the department may, at its option, elect to act as the contractor. If a contractor is not in place and the department elects not to act as the contractor, the electrical board will act as the contractor. If either the electrical board or the department acts as the contractor, the following will apply:

(i) The fee for class or instructor submittal is as set in WAC 296-46B-909.

(ii) The electrical board or the department will:

(A) Review the application for completeness within fifteen working days after receipt.

(B) If the application is incomplete, notify the applicant within seven working days of the status of the review and what additional information is required.

(C) Complete the review and approval/denial process within fifteen working days upon receipt of a complete application or additional requested information.

(iii) An appeal of a denial by the department will be heard by the full electrical board in accordance with WAC 296-46B-995.)

(3) CLASS AND INSTRUCTOR - GENERAL APPROVAL PROCESS.

(a) ~~((contractor))~~ department will ~~((review submitted class and instructor applications to determine whether the application meets the minimum requirements for approval.))~~

(i) Review the application for completeness and conformance with the requirements in this section.

(ii) If the application is incomplete, notify the applicant within seven working days of the status of the review and if additional information is required.

(iii) Complete the review and approval/denial process within fifteen working days upon receipt of a complete application or additional requested information.

(b) ~~((contractor))~~ department will deny approval of applications that do not meet the minimum requirements.

(c) All applications will be considered to be new applications (i.e., Classes and instructors may not be renewed. All applications must include all information necessary to show conformance with the minimum requirements).

(d) ~~(Minimum requirements:~~

~~(i) Application review fees:~~

~~(A) The contractor may charge a fee for review of an application. Such fees, paid by the applicant, are nonrefundable.~~

~~(B) The fee will be as set by contractor between the department and the contractor.~~

~~(C) The fee will be set for a minimum of one year.~~

~~(D) Upon mutual agreement between the department and the contractor, the fee may be raised or lowered.~~

~~(ii)) Application process:~~

~~((A)) (i) The applicant must submit a complete application to the ~~(contractor)~~ department at least thirty calendar days prior to offering or instructing a class.~~

~~((B)) (ii) The ~~(contractor)~~ department will only consider material included with the application when reviewing an application.~~

~~((C)) (iii) All applications ~~(will consist of)~~ must include:~~

~~(A) One copy of all material;~~

~~(B) Applicant's name, address, contact name, e-mail address, and telephone number;~~

~~(C) All required fees;~~

~~(D) Any other information the applicant wants to consider during the review; and~~

~~Class applications will include:~~

~~—Sponsor's name, address, contact name, and telephone number;~~

~~—Class title;~~

~~—Number of continuing education hours requested for the class;~~

~~—Category of class for which approval is sought (i.e., code update, RCW/WAC update, industry related, basic classroom electrical training, pumping industry, or pumping industry basic classroom training);~~

~~—Any required examinations;~~

~~—Statement of whether the class is open to the public;~~

~~—Class syllabus (e.g., general description of the training, specific NEC articles referenced, time allowed for various subject matter, etc.). Note that for all pumping industry classes, curriculum must include fifty percent electrical and fifty percent plumbing instruction;~~

~~—List of resources (e.g., texts, references, etc.);~~

~~—Copies of all visual aids;~~

~~—Sample of the completion certificate.~~

~~Instructor application will include:~~

~~—Instructor's name, address, telephone number;~~

~~—Copies of credentials or other information showing conformance with the instructor minimum qualifications.~~

~~The sponsor of a distance learning (i.e., correspondence and internet classes) class will provide the following information with the application:~~

~~—How will the sponsor provide an orientation session with the instructor or an affiliated representative of the sponsor.~~

~~—The application must include a complete description of any hardware, software, or other technology to be used by the provider and needed by the student to effectively engage in the delivery and completion of the class material. Provide an assessment of the availability and adequacy of the equipment, software, or other technologies. In the case of computer-based instruction, describe how the class software addresses automatic shutdown after a period of inactivity.~~

~~—How will the sponsor provide security to ensure that the student who receives credit for the class is the student who enrolled in and completed the class. The approved sponsor and the student must certify that the student has completed the class and the required number of clock hours.~~

~~—The application must describe the process and the acceptable methods of how students can contact approved instructors to answer questions regarding the class.~~

~~—The application must describe the consistent and regular interactive events appropriate to the delivery method. The interactive elements must be designed to promote student involvement in the learning process and must directly support the student's achievement of the class learning objectives.~~

~~—The application must demonstrate that the class includes the same or reasonably similar information content as a course that would otherwise qualify for the requisite number of clock hours of classroom-based instruction.~~

~~—The application must demonstrate how you determined the number of clock hours requested.~~

~~—The application must demonstrate how mastery of the material is provided by: Describing how the material is divided into major learning units and describing how these learning units are divided into modules of instruction, describing how the student's progress toward completion of the mastery requirement will be measured, and describing how the class will provide a mechanism of individual remediation to correct any deficiencies in each module of instruction.)~~

~~(e) ~~(Contractor's)~~ Review process:~~

~~(i) When the application is received ~~(the contractor must)~~:~~

~~(A) ~~(Date stamp the application;~~~~

~~(B) Review the application for completeness within seven working days after receipt.~~

~~(ii)) The department must review the application for completeness within seven working days after receipt.~~

~~(B) If the application is incomplete, the ~~(contractor)~~ department must, within two working days, notify the applicant of the status of the review and what additional information is required.~~

~~((A)) • The applicant must provide any additional information requested by the ~~(contractor)~~ department within five working days after the date of notification.~~

~~((B)) • The ~~(contractor)~~ department will deny the application if the additional required information is not received within the five working days after the date of notification for additional information.~~

~~((iii) When the contractor has received a complete application, the contractor must review and evaluate the application for compliance with the minimum requirements.)~~

~~(C) The ((contractor)) department must complete the review and approval/denial process within ((seven)) fifteen working days upon receipt of a complete application or additional requested information and within two working days notify((=~~

~~• The applicant in writing; and~~

~~• The chief electrical inspector in writing and electronically. The contractor's electronic notification to the chief electrical inspector must be made in a format approved by the chief electrical inspector.~~

~~((iv)) the applicant of the approval/denial in writing or electronically.~~

~~((ii)) A notification of denial must include:~~

- ~~(A) Applicant's name and telephone number;~~
- ~~(B) Date of denial;~~
- ~~(C) Sponsor's name and class title if applicable;~~
- ~~(D) Instructor's name if applicable; and~~
- ~~(E) The reason for denial.~~

~~((v)) ((iii)) A notification of approval:~~

~~(A) For classes must include:~~

- ~~• Applicant's name and telephone number;~~
- ~~• Sponsor's name and telephone number;~~
- ~~• Sponsor number;~~
- ~~• Class title;~~
- ~~• Class number;~~
- ~~• Number of hours approved for the class. ((Note that the~~

~~contractor)) The department may reduce the hours requested in the application if the review shows that the requested number of hours is excessive;~~

- ~~• Effective date for this class;~~
- ~~• Expiration date of class;~~
- ~~• Category for which the class is approved (i.e., code update, RCW/WAC update, industry related, basic ((classroom electrical training)) trainee class, pumping industry, or pumping industry ((basic classroom training)) trainee class);~~
- ~~((Sample of written class roster and attendance sheet;))~~
- ~~• Type of class (i.e., classroom, correspondence, internet); and~~
- ~~• Whether the class is open to the public.~~

~~(B) For instructors, must include:~~

- ~~• Applicant's name and telephone number;~~
- ~~• Instructor's name and telephone number;~~
- ~~• Effective date for the approval; and~~
- ~~• Expiration date of the approval.~~

~~((vi)) Applicant's request for review of the contractor's decision;))~~

~~((iv) The ((applicant's)) applicant may request a review, by the electrical board, of the ((contractor's decision to deny or modify an application:~~

~~• All requests for review must be:~~

~~• Made in writing;~~

~~• Received by the chief electrical inspector within twenty calendar days of the contractor's denial; and~~

~~• Accompanied by a review fee of \$109.50. The review fee is nonrefundable.) department's denial or modification of the application. The applicant must submit a written request for review to the Secretary of the Electrical Board - Chief Electrical Inspector - Within twenty days of notification of the denial/modification. The request must include a review~~

~~fee of one hundred nine dollars and fifty cents. The review fee is nonrefundable.~~

~~(4) CLASS APPROVAL PROCESS.~~

~~(a) Class applications must include:~~

~~(i) Sponsor's name, address, contact name, e-mail address, telephone number, and sponsor's number (if a class was previously approved);~~

~~(ii) Class title;~~

~~(iii) Number of education hours requested for the class;~~

~~(iv) Category of class for which approval is sought (e.g., code update, RCW/WAC update, industry related, basic trainee class, pumping industry, or pumping industry basic trainee class);~~

~~(v) Statement that all requirements of this section will be complied with;~~

~~(vi) Statement of whether the class is open to the public;~~

~~(vii) Class syllabus (e.g., presentation method(s), description of the training, specific NEC/RCW/WAC articles taught, theory subjects, time allowed for various subject matter components, examination question samples, etc.) describing how the class meets the minimum requirements, described below, for the type of class being offered;~~

~~(viii) The applicant must show that the sponsor regularly employs at least one staff member who meets the requirements for instructors in this section;~~

~~(ix) List of resources (e.g., texts, references, etc.);~~

~~(b) Class approval will be valid for three years except:~~

~~(i) If the class is "code update" and a new NEC is adopted by the department within the class approval period, the class approval will be considered automatically revoked; or~~

~~(ii) If the class is modified after the application is approved, the class approval will be considered automatically revoked (i.e., change in syllabus, hours, examination, etc.).~~

~~((b)) (c) Minimum requirements:~~

~~(i) Class length:~~

~~(A) The minimum allowed length of a class is two hours; however, the minimum length for a basic trainee class or pumping industry basic trainee class is eight hours that may be delivered in multiple classroom components of not less than two hours each.~~

~~(B) Class length must be based on two-hour increments (e.g., 2, 4, 6, 8, etc.)~~

~~(C) Class length must be based on the following:~~

~~• Classroom instruction will be based on the total hours the individual is in the classroom. A continuing education class may be divided into multiple components so long as each component is not less than two hours in length and all components are completed within a one-month period. A basic trainee class may be divided into multiple components so long as each component is not less than two hours in length and all components are completed within a two-month period.~~

~~• Distance learning continuing education classes (i.e., correspondence and internet continuing education classes) will be based on clock hours necessary to complete the class if it was presented in a classroom setting.~~

~~(ii) Class content:~~

~~(A) Industry-related classes must be based on:~~

• Codes or rules included in the (~~NEC chapters 19.28 RCW or 296-46B WAC~~) currently adopted National Electrical Code (see definition of currently adopted), the electrical law/rule;

• Electrical theory based on currently published documents that are readily available for retail purchase; and/or

• Materials and methods that pertain to electrical construction, building management systems, electrical maintenance, or workplace (~~health and~~) electrical safety such as NFPA 70E - Handbook for Electrical Safety in the Workplace. First aid type classes must be approved and will be limited to four hours of credit towards the individual's total continuing education requirement.

(B) Code update classes must be based on the (~~latest adopted version of the NEC~~) currently adopted (see definition) National Electrical Code and must specify the (~~NEC~~) code articles to be addressed in the class presentation.

(C) RCW/WAC update classes must be based on the latest adopted versions of chapter 19.28 RCW and/or chapter 296-46B WAC.

(D) All basic (~~classroom electrical training~~) trainee classes and pumping industry basic (classroom training) trainee classes must be classroom instruction only and based upon basic electrical theory, (~~use of the NEC~~) currently adopted (see definition for currently adopted) National Electrical Code, and/or use of the electrical laws (~~and~~) or rules. Correspondence and internet classes are not allowed. All basic (~~classroom electrical training~~) trainee classes must include an appropriate written competency examination(s) to ensure the participant (~~understands~~) mastered the basic concepts of the class. (To successfully complete the class, the participant must score at least seventy percent on) The examination must consist of at least five questions per two hours of class credit.

(E) (~~In addition,~~) For all pumping industry classes, curriculum must include fifty percent electrical and fifty percent plumbing instruction.

~~((ii) Class length:~~

(A) ~~The minimum allowed length of a class is two hours; however, the minimum length for a basic classroom electrical trainee classroom training or pumping industry basic classroom trainee classroom training is eight hours that can be delivered in multiple classroom sessions of not less than two hours each.~~

(B) ~~The maximum allowed credit for a class is twenty-four hours.~~

(C) ~~Class length must be based on two-hour increments (e.g., 2, 4, 6, 8, etc.).~~

~~(D) Class length must be based on the following:~~

• ~~Classroom instruction will be based on the total hours the individual is in the classroom. A class may be divided into multiple sections so long as each section is not less than two hours in length and all sections are taken within a one month period.~~

• ~~Distance learning (i.e., correspondence and internet classes) will be based on clock hours necessary to complete the class if it was presented in a classroom setting. See the application process in subsection (3)(d)(ii) of this section for distance learning classes for additional information.~~

~~(iii) Certificates of completion:~~

(A) ~~The sponsor must award a completion certificate to each individual successfully completing the approved class. To successfully complete a correspondence or internet class, a participant must score at least 70% on the examination required for the class.~~

~~(B) The completion certificate must include the:~~

- ~~Name of participant;~~
- ~~Participant's Washington certificate number;~~
- ~~Name of sponsor;~~
- ~~Name of class;~~
- ~~Date of class;~~
- ~~Name of instructor;~~
- ~~Location of the class;~~

~~— If a classroom-type class, the city and state in which the class was given;~~

~~— If a correspondence class, state the class is a correspondence class;~~

~~— If an internet class, state the class is an internet class;~~

• ~~Class approval number;~~

• ~~Number of continuing units; and~~

• ~~Type of continuing education units.~~

~~(iv) Instructors:~~

(A) ~~For classroom instruction except first aid training, all instructors must be approved per this section; and~~

(B) ~~For correspondence and internet instruction, the applicant must show that the sponsor regularly employs at least one staff member who meets the requirements for instructors in this section.)~~ (F) The sponsor of any distance learning class (e.g., correspondence/internet continuing education) must provide the following additional information with the application:

• How the sponsor will provide an orientation session with the instructor or an affiliated representative of the sponsor.

• The application must include a complete description of any hardware, software, or other technology to be used by the provider and needed by the student to effectively engage in the delivery and completion of the class material.

• In the case of internet based continuing education classes, describe how the class software addresses automatic shutdown after a period of inactivity.

• How will the sponsor provide security to ensure that the student who receives credit for the class is the student who enrolled in and completed the class. The approved sponsor and the student must certify that the student has completed the class and the required number of clock hours.

• The application must describe the process and the acceptable methods of how students can contact approved instructors to answer questions regarding the class.

• The application must describe the consistent and regular interactive events appropriate to the delivery method. The interactive elements must be designed to promote student involvement in the learning process and must directly support the student's achievement of the class learning objectives.

• The application must demonstrate that the class includes the same or reasonably similar information content as a course that would otherwise qualify for the requisite number of clock hours of classroom-based instruction.

• The application must demonstrate how the sponsor determined the number of clock hours requested.

• The application must demonstrate how mastery of the material is evaluated (e.g., describing how the material is divided into major learning units and describing how these learning units are divided into modules of instruction, describing how the student's progress toward completion of the mastery requirement will be measured, and describing how the class will provide a mechanism of individual remediation to correct any deficiencies in each module of instruction).

(5) INSTRUCTOR APPROVAL PROCESS:

(a) Except first-aid training, all instructors must be approved per this section.

(b) The instructor application will include:

(i) Instructor's name, address, telephone number, e-mail address;

(ii) Copies of credentials or other information showing conformance with the instruction minimum qualifications.

(c) Instructor approval will be valid for three years except:

(i) If the instructor's credentials are invalidated (e.g., suspension or revocation by the issuing entity) for any reason, approval will be automatically revoked.

(ii) When the instructor approval expires or is revoked, a new application must be submitted to regain approved instructor status.

~~((b))~~ (d) Minimum requirements:

~~((+))~~ The application must show that the instructor meets one of the following:

~~((A))~~ (i) Has a valid Washington administrator, master electrician, or electrician's certificate and has appropriate knowledge of and experience working as an electrical/electronic trainer; or

~~((B))~~ (ii) Is currently an instructor in a two-year program in the electrical construction trade licensed by the Washington work force training and education coordinating board. The instructor's normal duties must include providing electrical/electronic education; or

~~((C))~~ (iii) Is a high school vocational teacher, community college, college, qualified instructor with a state of Washington approved electrical apprenticeship program, or university instructor. The instructor's normal duties must include providing electrical/electronic education; or

~~((D))~~ (iv) Works for and is approved by a manufacturer of electrical products to teach electrical continuing education.

~~((ii) Any other information the applicant wants to be considered during the review-))~~

(6) FORMS:

(a) ~~((contractor))~~ department will(;) develop an appropriate form(s) for the applicant's use when submitting for instructor or class approval;

(b) Applicants must use the ((contractor's) department's form when submitting an application for review.

(7) ~~((PUBLICATIONS:~~

~~The contractor will provide the department with appropriate material for use by the department on the electrical program web site and may post the application process, review, and approval requirements on the contractor's web site.~~

~~((8))~~ CLASS ATTENDANCE:

~~(a) ((The contractor is not responsible for monitoring any individual's attendance or class completion.~~

~~(b))~~ The department is not responsible for providing verification of an individual's continuing education or basic ~~((electrical))~~ trainee classroom training history with the class sponsor;

~~((e))~~ (b) Electrical approved classes offered in Washington:

(i) The sponsor must provide the department with an accurate on-line course attendance/completion roster for each class given. Class attendance will only be verified based on the on-line attendance/completion roster provided by the sponsor. ((Completion certificates are not an acceptable method of verifying attendance at a class approved in Washington under this chapter.))

(A) Within seven days of a student completing the class, the course sponsor must provide the attendance/completion roster in an internet format provided by the department.

(B) The attendance/completion roster must show each individual's name, Washington certificate number, class number, ((location of class,)) and date of completion(, and instructor's name).

~~(ii) ((The sponsor must provide the individual a certificate of completion within fifteen days after successful class completion for the individual's personal records. See subsection (4) of this section.~~

~~((+))~~ Individuals will not be granted credit for a class unless the sponsor's on-line attendance/completion roster shows the individual successfully completed the class.

~~((d))~~ (c) For classes approved under chapter 18.106 RCW for the pumping industry, a class number will be created for electrical continuing education. Sponsors for these classes must verify attendance for the electrical credit using the format described in subsection ((e)) (b) of this section.

~~((9) Contractor requirements:~~

~~(a) The contractor cannot be a sponsor or instructor.~~

~~(b) The contractor cannot be an employee of the department.~~

~~(c) The contractor must:~~

~~(i) Be an independent entity with no organizational, managerial, financial, design, or promotional affiliation with any sponsor or instructor covered under the contractor's review and approval/denial process;~~

~~(ii) Employ at least one staff member having a valid 01-General Administrator or 01-General Master Electrician Certificate. This staff member:~~

~~(A) Is responsible for reviewing and determining an application's approval or denial; and~~

~~(B) Must sign the written notification provided to applicants for all approvals and denials;~~

~~(iii) Receive, review, and process all applications as required in this section;~~

~~(iv) Allow the department access to the contractor's facilities during normal working hours to audit the contractor's ability to conform to the contract requirements;~~

~~(v) Treat all applications as proprietary information;~~

~~(vi) Respond to and attempt to resolve complaints contesting the review or approval/denial process performed by the applicant;~~

(vii) Notify the department within ten working days of any change in business status or ability to conform to this section;

(viii) Maintain one copy, original or electronic, of all applications and associated materials for a period of three years from the date of receipt.) (8) Noncompliance with this section by a course sponsor or instructor.

(a) Before a course sponsor or instructor is revoked or suspended for noncompliance with this section, the course sponsor or instructor will be given written notice of the department's intention to suspend or revoke. The notification will describe the allegations and provide the necessary procedures to request a hearing before the electrical board as described in RCW 19.28.341.

(b) The department may also file a civil penalty action under chapter 19.28 RCW for fraudulent, inaccurate, or material misrepresentation activity.

AMENDATORY SECTION (Amending WSR 03-09-111, filed 4/22/03, effective 5/23/03)

**WAC 296-46B-971 Training schools.** (1) The department must evaluate and approve training school programs in the electrical trade as regulated by chapter 19.28 RCW for equivalency to hours of supervised work experience. Approved training programs must be from a Washington state public community or technical college, or a not-for-profit nationally accredited technical or trade school licensed by the work force training and education coordinating board under chapter 28C.10 RCW.

(2) The minimum total hours for an electrical technical training program must be determined per RCW 19.28.191.

(3) Training school programs must be approved before their graduates may request credit for equivalent work experience hours toward journeyman or specialty electrician certification. Until December 31, 2003, existing electrical training programs, in effect after January 1, 2000, may apply for retroactive approval of their program to determine the number of hours that will be credited for the program graduates. After December 31, 2003, all training programs must be approved by the department prior to beginning instruction.

(4) Training schools must submit the curriculum of each journeyman or specific specialty electrical training program to the department for approval. The curriculum must include a detailed description of each course that is included in the total training hours required by RCW 19.28.191. The curriculum must be reviewed by the department whenever significant changes in program content or course length are implemented or at an interval not to exceed three years. After department review, the program may be renewed. In evaluating the relevance of the curriculum, the department will consider the following criteria:

(a) Scope of work for the appropriate electrician certification.

(b) Understanding whole systems related to and integrated with electrical equipment installation, maintenance, troubleshooting, and appliance repair (e.g., refrigeration, pumps, hydraulics, thermodynamics, compressed air, and similar systems).

(c) Courses not directly related to electrical technical instruction or specific scope of work, but required to complete the specific training program (i.e., mathematics, technical writing, business, safety, first aid, ergonomics, etc.), must not exceed ten percent of the total student/instructor contact time of the program.

(5) Within thirty days after beginning a program, the program sponsor must supply the department with a roster of individuals enrolled in the program. The roster must show each student's name, date of enrollment, Washington training or electrician certificate number, and the training program number. Within thirty days after each graduation cycle, approved training school programs must provide the department with a roster of individuals that have successfully completed the program. The roster must show each student's name, date of completion, Washington training or electrician certificate number (~~(or student identification number)~~), and the training program title. An individual must provide a copy of the certificate of completion or proof of graduation from the electrical training program when making application to the department for an electrician examination.

(6) All school training activities involving electrical work or appliance repair done outside of in-school lab facilities must be done under a valid Washington electrical contractor's license. All students performing such work must have a valid training certificate and work under a supervising journeyman or specialty electrician in a ratio, per RCW 19.28.161, in compliance with RCW 19.28.161.

(7) Individuals in a two-year electrical construction trade training program for journeyman electrician must obtain the additional two years of work experience required in new industrial or commercial installation prior to the beginning, or after the completion, of the technical school program.

All student electrical training hours obtained when working for contractors or other employers in intern programs arranged by the school must be evaluated as part of the training program hours. Additional work experience credit gained in an intern program is not allowed.

This does not prohibit trainees in a training program for specialty electricians from having concurrent employment and obtaining additional specialty work experience while attending school. All such concurrent work must be documented in an affidavit of experience per WAC (~~(296-46B-965 (5), (6), (7), and)~~) 296-46B-942(8).

The following supervision requirements must be met when working as an intern or student:

(a) Intern when working for contractors or other employers as a:

(i) General electrician, there must be not more than one noncertified individual for every certified master journeyman electrician or journeyman electrician.

(ii) Specialty electrician, there must be not more than two noncertified individuals for every certified master specialty electrician working in that electrician's specialty, specialty electrician working in that electrician's specialty, master journeyman electrician, or journeyman electrician.

(b) Student when working for a public community or technical college, or not-for-profit nationally accredited trade or technical school licensed by the work force training and education coordinating board under chapter 28C.10 RCW as

a journeyman or specialty electrician in the training program, the ratio requirements are one certified master specialty electrician working in that electrician's specialty, specialty electrician working in that electrician's specialty, master journeyman electrician, or journeyman electrician working as a specialty electrician to no more than four students enrolled in and working as part of an electrical construction program. All such work will be considered to be an integral part of the training program and work experience credit will not be allowed except as a part of the program.

When the ratio of certified electricians to noncertified individuals on a job site is one certified electrician to three or four noncertified individuals, the certified electrician must:

- (i) Directly supervise and instruct the noncertified individuals and the certified electrician may not directly make or engage in an electrical installation; and
- (ii) Be on the same job site as the noncertified individual for a minimum of one hundred percent of each working day.

The public community or technical colleges, or not-for-profit nationally accredited trade or technical schools must be an appropriately licensed electrical contractor when performing work outside the classroom.

(8) The department will use the criteria in this section to evaluate the hours of credit that may be allowed for United States armed forces experience and training in the electrical construction, electrical maintenance, and appliance repair trades. See WAC ((~~296-46B-940(20)~~) 296-46B-945.

**AMENDATORY SECTION** (Amending WSR 09-20-032, filed 9/29/09, effective 10/31/09)

**WAC 296-46B-985 Penalties for false statements or material misrepresentations.** (1) A person who makes a false statement or material misrepresentation on an application, statement of hours, or signed statement to the department may be referred to the county prosecutor for criminal prosecution under RCW 9A.72.020, 9A.72.030, and 9A.72.040. The department may also file a civil action under RCW 19.28.131 or 19.28.271 and may revoke or suspend a certificate under RCW 19.28.241 or 19.28.341.

(2) The department may file a civil action under RCW 19.28.131 or 19.28.271 and may revoke or suspend a certificate of competency under RCW 19.28.341 or 19.28.241 for inaccurate or false reporting of continuing or basic trainee classroom education units on the administrator, master electrician, electrician, or training certificate renewal form.

(3) If the department determines that a course sponsor has issued an inaccurate or incomplete course application or attendance/completion roster, the department may suspend or revoke the course approval and deny future approval of a continuing or basic trainee classroom education course(s) by the course sponsor.

(4) The department may file a civil action under RCW 19.28.271 against both the trainee and the contractor, apprentice training director, or other entity verifying the training hours and may subtract up to two thousand hours of employment from a trainee's total hours if the department determines a false statement or material misrepresentation has been made in an affidavit of experience.

**AMENDATORY SECTION** (Amending WSR 09-20-032, filed 9/29/09, effective 10/31/09)

**WAC 296-46B-990 Failure to comply with the electrical contractor licensing, administrator certification, or electrician certification laws. General.**

(1) If the compliance officer or electrical inspector/auditor determines that an individual, employer, or employee has violated chapter 19.28 RCW or this chapter, the department will issue a citation that describes the violation.

**Suspension or revocation - Of an electrical contractor's license, administrator's certificate, master electrician's certificate of competency, electrician's certificate of competency, or training certificate.**

(2) The department may revoke or suspend, for such time as it determines appropriate, an electrical contractor's license, administrator's certificate, master electrician's certificate of competency, electrician's certificate of competency, or training certificate if:

(a) The license, certificate, or permit was obtained through error or fraud;

(b) The license, certificate, or permit holder is judged to be incompetent to work in the electrical construction trade as a master electrician, journeyman electrician, specialty electrician, electrical technician, or electrical trainee;

(c) For serious noncompliance as described below. See RCW 19.28.241 and 19.28.341 for other grounds and procedures.

(d) The license or certificate holder incompletely or inaccurately reported continuing or basic trainee class education units on an application for renewal; or

(e) The certificate holder falsely, incompletely, or inaccurately reported previous work experience.

The department will deny an application for any license/certificate during the period of revocation or suspension of the same or another license/certificate under chapter 19.28 RCW.

(3) For the purposes of this section, serious noncompliance includes, but is not limited to, any of the following:

(a) Failure to correct a serious violation. A serious violation is a violation of chapter 19.28 RCW or chapter 296-46B WAC that creates a hazard of fire or a danger to life safety. A serious violation is also a violation that presents imminent danger to the public. Imminent danger to the public is present when installations of wire and equipment that convey or utilize electric current have been installed in such a condition that a fire-hazard or a life-safety hazard is present. Imminent danger to the public is also present when unqualified, uncertified, or fraudulently certified electricians or administrators; or unlicensed or fraudulently licensed contractors are continuously or repeatedly performing or supervising the performance of electrical work covered under chapter 19.28 RCW. For the purposes of this section, a certified electrician is considered qualified, provided the electrician is working within his or her certification;

(b) The license or certificate was obtained through error or fraud;

(c) Submitting a fraudulent document to the department;

(d) Continuous noncompliance with the provisions of chapter 19.28 RCW or this chapter. For the purposes of this

section, continuous noncompliance will be defined as three or more citations demonstrating a disregard of the electrical law, rules, or regulations within a period of three years, or where it can be otherwise demonstrated that the contractor, master electrician, electrician, or administrator has continuously failed to comply with the applicable electrical standards;

(e) Failure to make any books or records, or certified copies thereof, available to the department for an audit to verify the hours of experience submitted by an electrical trainee;

(f) Making a false statement or material misrepresentation on an application, statement of hours, or signed statement required by the department;

(g) The certificate holder falsely or inaccurately reported continuing or basic trainee class education units on an application for renewal;

(h) Installing a shortened rod/pipe grounding electrode, improper splicing of conductors in conduits/raceways or concealed within walls, or installing a fake equipment grounding conductor.

For any act of serious noncompliance, the person, firm, partnership, corporation, or other entity may be referred to the county prosecutor for criminal prosecution under chapter 9A.72 RCW. The department may also file a civil action under chapter 19.28 RCW.

(4) Before a license or certificate is revoked or suspended, the certificate holder will be given written notice of the department's intention to suspend or revoke. Notification will be sent by registered mail to the certificate holder's last known address. The notification will list the allegations against the certificate holder, and provide the certificate holder with the procedures necessary to request a hearing before the electrical board as described in WAC 296-46B-995.

**Confiscation - Of an electrical contractor's license, administrator certificate, electrician certificate of competency, or training certificate.**

(5) The department may confiscate a license or certificate that is counterfeit, revoked, expired, suspended, or altered. The individual may be referred to the county prosecutor for criminal prosecution under chapter 9A.72 RCW. The department may also file a civil action under chapter 19.28 RCW.

AMENDATORY SECTION (Amending WSR 09-20-032, filed 9/29/09, effective 10/31/09)

**WAC 296-46B-995 Electrical board—Appeal rights and hearings. General.**

(1) Chapter 19.28 RCW provides the authority for the duties and responsibilities of the electrical board. Except as provided in chapter 19.28 RCW and this chapter, all proceedings will be conducted according to chapter 34.05 RCW the Administrative Procedure Act and chapter 10-08 WAC, Model rules of procedure. See chapter 34.05 RCW the Administrative Procedure Act for specific definitions not described in this chapter.

(2) See RCW 19.28.311 for the composition of the electrical board.

(3) The board adopts the current edition of the "*Roberts' Rules of Order, Newly Revised.*"

(4) The board will hold regular meetings on the last Thursday of January, April, July, and October of each year per RCW 19.28.311.

(5) The director or the chairperson of the board may call a special meeting at any time.

(6) Each board member must be notified in writing of the agenda, date, time, and place of each regular and special meeting. "Writing" includes by electronic mail, also known as "e-mail," if the member has provided an e-mail address for such notice.

(7) The board or department may elect to have an appeal heard by the office of administrative hearings either tape recorded or transcribed by a court reporter; and the board may so elect regarding hearings or board reviews heard by the board as a whole.

(8) A majority of the board constitutes a quorum for purposes of rendering any decision.

(a) If a majority does not attend a hearing or board review on an appeal, the board may either continue the hearing or board review to a date certain or may hear the testimony and arguments.

(b) If the board hears the testimony and arguments, the members of the board who are absent may make their decisions after hearing the tape recording or reading the transcript, of the hearing or board review.

(c) If the board selects the method in subsection (8)(b) of this section, at the time of the hearing, the board (~~shall~~) will set a date certain for the absent members to complete review of the record and for the board as a whole to vote on the decision. The vote in subsection (8)(b) and (c) of this section may occur by U.S. mail, facsimile or by electronic mail and (~~shall~~) will be determined by the board at the hearing; the members' votes (~~shall~~) will be public record.

(9) All filings and documents for any matter before the board must be submitted to the chief electrical inspector, as secretary to the board, 7273 Linderson Way, P.O. Box 44460, Olympia, WA 98504-4460. Twenty copies of filings and documents must be submitted by ordinary mail, certified or registered mail, or by personal delivery. Filings and documents must be received no later than forty-five days prior to the scheduled meeting. When filings or documents are received after the deadlines, the filings and documents will be presented to the board at the second regularly scheduled board meeting.

(10) All hearings before the board as a whole (~~shall~~) will be held on regularly scheduled meeting dates, as listed in subsection (4) of this section, unless the board determines that an alternate date is necessary.

(11) All notices of appeal, with a certified check payable to the department in the sum of two hundred dollars if required, must be received in the office of the chief electrical inspector, as secretary to the board, at least forty-five days before the regularly scheduled board meeting at which the hearing would occur. A separate two hundred dollar fee is required for each entity's appeal of a specific violation type (e.g., for a single entity, the designated administrator, multiple alleged violations of RCW 19.28.061 (5)(a) - Designated administrator not available, RCW 19.28.061 (5)(d) - Desig-

nated administrator fails to ensure proper permit is purchased, and RCW 19.28.061 (5)(e) - Designated administrator fails to ensure corrections are made would require a six hundred dollar appeal fee). The total appeal fee for each entity seeking an appeal hearing is one thousand dollars maximum for all violation types. For original appeals to the board, the appellant must submit twenty copies of any written argument, briefs, testimony, or documents for the board's consideration at least forty-five days prior to the scheduled hearing. When appeals, written argument, briefs, testimony, or documents are received after the deadlines, the appeals, written argument, briefs, testimony, or documents will be presented to the board at the second regularly scheduled board meeting.

### Appeals

(12) Appeals of penalties issued by the department.

(a) A party may appeal a penalty issued by the department, pursuant to chapter 19.28 RCW and this chapter, to the board. The appeal ~~((shall))~~ will be assigned to the office of administrative hearings.

(b) The appeal must be filed within twenty days after the notice of the decision or penalty is given to the assessed party either by personal service or by certified mail, return receipt requested, sent to the last known address of the assessed party and ~~((shall))~~ must be made by filing a written notice of appeal with the chief electrical inspector, as secretary to the board. The request for an appeal must be accompanied with a certified check payable to the department in the sum of two hundred dollars.

(13) Appeals of proposed decisions issued by the office of administrative hearings.

(a) A party may appeal a proposed decision issued by the office of administrative hearings pursuant to chapter 19.28 RCW to the board. The appeal must be filed within twenty days after service of the decision and must be made by filing a written notice of appeal with the chief electrical inspector, as secretary to the board.

(b) The notice of appeal of a proposed decision must be received in the office of the chief electrical inspector, as secretary to the board, at least forty-five days before a regularly scheduled board meeting. If you want the board to consider written argument, briefs testimony or other documents, it must be submitted at least forty-five days prior to the scheduled hearing.

(14) Appeals of suspension, revocation, or nonrenewal.

(a) An appeal of the suspension or revocation of a license or certificate of competency under RCW 19.28.241 and 19.28.341 or of nonrenewal of a license or certificate of competency under this chapter will be heard by the board in accordance with chapter 34.05 RCW and not assigned to the office of administrative hearings. The board will conduct the hearing and may elect to have the assistance of an administrative law judge in the proceeding.

(b) The notice of appeal, with the certified check payable to the department in the sum of two hundred dollars for appeals of a revocation or suspension of a contractor's or administrator's license, must be filed within twenty days after the notice of suspension or revocation is served on the subject of said action, either by personal service or by certified mail,

return receipt requested, sent to the last known address of the subject and ~~((shall))~~ must be filed by written notice of appeal with the chief electrical inspector, as secretary to the board.

(15) Appeals of decisions on installation.

(a) A party may seek board review for disputes relating to the interpretation and application of electrical/telecommunications installation or maintenance standards under RCW 19.28.111, 19.28.480, and 19.28.531. The board will conduct the hearing and may elect to have the assistance of an administrative law judge in the proceeding.

(b) The notice of appeal, with the certified check payable to the department in the sum of two hundred dollars, must be received in the office of the chief electrical inspector, as secretary to the board, at least thirty days before a regularly scheduled board meeting. All parties must submit any written argument, briefs, testimony, or documents for the board's consideration at least twenty days prior to the scheduled hearing.

(16) Appeals of a continuing ~~((education))~~ or basic trainee class or instructor for denials or revocations.

A party may appeal a decision issued by the department, pursuant to WAC 296-46B-970 (3)(e)~~((vi))~~, ~~if the department acts as the contractor pursuant to WAC 296-46B-970 (2)(i))~~ (iv) to the superior court per RCW 34.05.542(3).

(17) Appeals pertaining to engineer approval or electrical testing laboratory recognition and accreditation.

(a) A party may appeal a decision issued by the department pursuant to WAC 296-46B-997 or 296-46B-999. The appeal will be heard by the board in accordance with chapter 34.05 RCW and not assigned to the office of administrative hearings. The board will conduct the hearing and may elect to have the assistance of an administrative law judge in the proceeding.

(b) The notice of appeal, with the certified check payable to the department in the sum of two hundred dollars for appeals pertaining to engineer approval or recognition and accreditation of an electrical testing laboratory, must be filed within twenty days after the notice of the department's decision is served on the subject of said action, either by personal service or by certified mail, return receipt requested, sent to the last known address of the subject and ~~((shall))~~ must be filed by written notice of appeal with the chief electrical inspector, as secretary to the board.

(18) Judicial review of final decisions of the board.

A party may seek judicial review of a final order of the board within thirty days after service of the decision. Appeals of final decisions and orders must be done in accordance with chapter 34.05 RCW.

(19) If appeal(s) according to subsections (12), (13), (15), and (16) of this section are not filed or the appeal is not filed timely, the proposed decision or action becomes final with no further action on the part of the department or the board.

(20) Appeals - General requirements.

(a) Appeals according to subsections (12), (15), or (16) of this section must specify the contentions of the appellant, and must for subsection (13) of this section specify to which conclusions of law and findings of fact the party takes exception. The appeal will be based on the record of the hearing. The board ~~((shall))~~ will not grant a hearing ~~((due))~~ de novo.

(b) In appeals under subsections (13), (14), (15), and (16) of this section, the issues to be adjudicated must be made as precise as possible, in order that the board may proceed promptly to conduct the hearing on relevant and material matter only.

(c) In all appeals of chapter 19.28 RCW and this chapter heard before the office of administrative hearings or directly by the board, the department has the burden of proof by a preponderance of the evidence.

(d) In all appeals of a decision by the office of administrative hearings to the board, the party aggrieved by the decision of the office of administrative hearings has the burden of proof by a preponderance of the evidence.

#### **Appearance and practice before board.**

(21) No party may appear as a representative in proceedings other than the following:

(a) Attorneys at law qualified to practice before the supreme court of the state of Washington;

(b) Attorneys at law qualified to practice before the highest court of record of another state, if the attorneys at law of the state of Washington are permitted to appear as representatives before administrative agencies of the other state, and if not otherwise prohibited by Washington law; or

(c) An owner, officer, partner, or full-time employee of a firm, association, organization, partnership, corporation, or other entity who appears for the firm, association, organization, partnership, corporation or other entity.

(22) All persons appearing in proceedings as a representative must conform to the standards of ethical conduct required of attorneys before the courts of Washington. If a person does not conform to these standards, the board may decline to permit the person to appear as a representative in any proceeding before the board.

**AMENDATORY SECTION** (Amending WSR 09-20-032, filed 9/29/09, effective 10/31/09)

**WAC 296-46B-997 Engineer approval.** (1) This section describes the methods required to obtain recognition and accreditation of professional engineers registered under chapter 18.43 RCW to approve industrial utilization equipment. This section provides assurance to the general consuming public that electrical products have been tested for safety and identified for their intended use.

(2) Industrial utilization equipment is considered to be safe when it is certified by an engineer accredited by the department.

(a) The department may declare industrial utilization equipment unsafe if:

(i) The equipment is not being manufactured or produced in accordance with all standards of design and construction and all terms and conditions set out in the certification report for the equipment referred to in this chapter;

(ii) The equipment has been shown by field experience to be unduly hazardous to persons or property;

(iii) An examination of the equipment or of the certification report for the equipment shows that the equipment does not comply with all applicable standards; or

(iv) An examination of the certification report or the equipment shows that the equipment cannot be installed in accordance with this chapter.

(b) When the department declares industrial utilization equipment unsafe, the department will notify the product owner and the certifying engineer in writing.

#### **Accreditation - General.**

(3) The department's chief electrical inspector's office reviews requests for accreditation. Applicants must submit supporting data to document and verify the requirements of this section have been met.

(4) The accreditation of an engineer will be valid for the period of three years.

(5) On-site inspection of an engineer's facilities.

(a) On-site inspection of the facility(ies) may be required during the initial application process or the renewal process. Representative(s) of the department will evaluate for compliance with accreditation criteria.

(b) The applicant must pay all costs associated with the on-site inspection.

(6) For purposes of chapter 19.28 RCW, all engineers who certify industrial utilization equipment offered for sale in the state of Washington must be accredited by the department.

(7) Fees are payable as required in WAC 296-46B-911.

(8) The engineer must apply for renewal of accreditation at least thirty days prior to the accreditation expiration date. The department will renew accreditation for the period of three years or notify the renewing engineer of the department's reason(s) of refusal following receipt of the completed form and renewal fee.

(9) The department accepts or denies engineer accreditation for engineers seeking to evaluate industrial utilization equipment within the state. Accreditation is determined when an engineer provides evidence to the department that all the requirements of this chapter are met. Accreditation is determined by the department and prior to making a determination, the department may require information and documentation to be provided by the engineer.

(a) Accreditation is subject to review when deemed necessary by the department. The engineer must pay all costs associated with on-site review.

(b) Every accredited engineer must continue to satisfy all the conditions specified in this chapter during the period of the accreditation. An engineer must furnish the department an annual report detailing the extent of its activities for the year. The report must include, but not be limited to:

(i) The number of industrial utilization equipment items approved;

(ii) Organizational structure of the engineer's company;

(iii) Statement of ownership of the engineer's company; and

(iv) Reports of litigation, which in any way were the result of or may affect any accreditation or testing of products covered by this chapter.

(c) The department will notify the applicant of the accreditation results. A letter of accreditation from the department is proof of the accreditation of the engineer.

(10) The engineer will be approved to certify industrial utilization equipment.

**Suspension or revocation.**

(11) The department may suspend, revoke, or refuse to renew the department's accreditation of any engineer found to be in noncompliance with requirements of this chapter, the laws of the state of Washington, or submitting false information.

(12) The department will serve written notice of intent prior to suspension, revocation, or refusal to renew the accreditation of an engineer.

(13) An engineer, whose accreditation has been suspended, may not reapply for accreditation during the period of such suspension. An engineer, whose accreditation has been revoked, may reapply for accreditation no sooner than two years after the date of revocation of accreditation.

**Business structure, practices, and personnel.**

(14) The engineer must be an independent, third-party organization with no organizational, managerial, financial, design, or promotional affiliation with owners, manufacturers, suppliers, installers, or vendors of products covered under the engineer's certification or evaluation programs.

The engineer must have an adequate diversity of clients or activity so that the loss or award of a specific contract regarding certification or evaluation would not be a deciding factor in the financial well-being of the engineer.

(15) The engineer must adequately meet the following business practices:

(a) Perform the examinations, tests, evaluations, and inspections required under the certifications programs in accordance with the designated standards and procedures;

(b) Assure that reported values accurately reflect measured and observed data;

(c) Limit work to that for which competence and capacity is available;

(d) Treat test data, records, and reports as proprietary information;

(e) Respond to and attempt to resolve complaints contesting certifications and evaluation results;

(f) Maintain an independent relationship between its clients, affiliates, and other organizations so the engineer's capacity to give certifications and evaluations objectively and without bias is not adversely affected; and

(g) Notify the department within thirty calendar days should it become unable to conform to any of the requirements of this chapter.

(16) Engineers accredited under this chapter must notify the department within thirty calendar days of any of the following:

(a) Change in company name and/or address;

(b) Changes in major test equipment which affect the ability to perform work for which accredited; or

(c) Change in independent status.

(17) The engineer must develop and maintain a certification or evaluation program plan that includes, but is not limited to:

(a) The procedures and authority to ensure the product complies with the standard(s) established by the program;

(b) A quality control system;

(c) Verification and maintenance of facilities and/or equipment; or

(d) Sample selection as applicable for product certifications, and for component testing as necessary for evaluations.

The plan must demonstrate that the engineer has adequate facilities, and equipment to perform all certifications and testing for which it is accredited by the state of Washington. These elements must be contained in the engineer's operations control manual.

(18) The engineer must develop and maintain a quality control system adequate to assure the accuracy and technical integrity of its work as follows:

(a) The engineer's quality control system must include a quality control or engineer's operations control manual;

(b) The quality control or engineer's operations control manual must be adequate to guide a testing technician or inspector in conducting the inspection, evaluation, and/or test in accordance with the test methods and procedures required for the engineer's certification and/or evaluation program(s); and

(c) The engineer must have a current copy of the quality control or engineer operations control manual available for the engineer's use.

(19) The engineer must have training, technical knowledge, and experience adequate to perform the tests, examinations, and evaluations for the certification and/or evaluation activities for which recognition is sought.

(20) The engineer must:

(a) Provide adequate safeguards protecting the engineer's status from the influence or control of manufacturers, vendors, owners, or installers of electrical products certified or tested by the engineer; and

(b) Develop and maintain an adequate training program assuring that the engineer will be able to perform tasks properly and uniformly.

**Recordkeeping and reporting - General.**

(21) The engineer must develop and maintain records and reports of those testing, inspection, certification, and evaluation activities associated with each piece of industrial utilization equipment. The engineer must retain these records for a minimum of three years.

(22) The engineer must make available to the department, upon request, all records required by the department to verify compliance with this chapter.

(23) ~~((Before beginning the work, the engineer must notify the department of the intent to evaluate using forms provided by the department.))~~ See WAC 296-46B-906 for fee information. The engineer's evaluation report must include:

(a) Name and address of the engineer;

(b) Name of client;

(c) Address where the evaluated product is or will be installed;

(d) Designation of standards used to certify or test the product including edition and latest revision (e.g., UL 508, 16th Edition, Feb. 1993, Revision Oct. 9, 1997);

(e) Description of the overall product evaluated to include full nameplate data and equipment type;

(f) A statement as to whether or not the results comply with the requirements of the standard;

(g) Pertinent test evaluation data and identification of tests or inspections including anomalies;

(h) The engineer's stamp; and

(i) Any condition of acceptability or restrictions on use/relocation.

(24) Within ten calendar days after affixing the evaluation mark, the engineer must submit a copy of the evaluation report to:

(a) The department's chief electrical inspector submitted electronically in a format approved by the department;

(b) Local electrical inspection office submitted electronically in a format approved by the department; and

(c) Client submitted in any format acceptable to the client and engineer.

**AMENDATORY SECTION** (Amending WSR 06-05-028, filed 2/7/06, effective 5/1/06)

**WAC 296-46B-999 Electrical testing laboratory requirements. General.**

(1) This section describes the methods required to obtain recognition and accreditation of electrical product(s) certification and/or field evaluation laboratories by the state of Washington. This section provides assurance to the general consuming public that electrical products have been tested for safety and identified for their intended use.

(2) An electrical product is considered to be safe when it is either certified by a laboratory accredited by the department or labeled with a field evaluation mark by a laboratory accredited by the department.

(a) The department may declare electrical equipment unsafe if:

(i) The equipment is not being manufactured or produced in accordance with all standards of design and construction and all terms and conditions set out in the certification report for the equipment referred to in this chapter;

(ii) The equipment has been shown by field experience to be unduly hazardous to persons or property;

(iii) An examination of the equipment or of the certification report for the equipment shows that the equipment does not comply with all applicable standards; or

(iv) An examination of the certification report or the equipment shows that the equipment cannot be installed in accordance with this chapter.

(b) When the department declares an electrical product unsafe, the department will:

(i) Notify the product manufacturer and the appropriate testing laboratory in writing;

(ii) Notify the general public by:

(A) Report to the Consumer Product Safety Commission;

(B) A published article in the *Electrical Currents*;

(C) Internet web site posting; and/or

(D) News release.

**Accreditation - General.**

(3) The department's chief electrical inspector's office reviews requests for accreditation or evaluation. Applicants

must submit supporting data to document and verify the requirements of this section have been met.

(4) The accreditation of a NRTL will be valid for the period of the laboratory's current OSHA NRTL accreditation. The accreditation of a non-NRTL will be valid for the period of five years from the date of the department's accreditation.

(5) On-site inspection of a laboratory.

(a) On-site inspection of the laboratory may be required during the initial application process or the renewal process. Technically qualified representative(s) of the department will evaluate for compliance with accreditation criteria.

(b) On-site inspection is not required for NRTL-recognized laboratories requesting approval as certification laboratories using standards for which NRTL recognition has been approved.

(c) The department may waive on-site inspection for:

(i) Laboratories recognized or accredited by another state determined to provide an accreditation program acceptable to the department; or

(ii) NRTL-recognized laboratories requesting approval as certification laboratories for using other standards for which NRTL recognition has not been approved.

(d) The applicant must pay all costs associated with the on-site inspection.

(6) For purposes of chapter 19.28 RCW, all laboratories which certify and/or field evaluate electrical products offered for sale in the state of Washington must be accredited by the department. A NRTL requesting approval as a certification laboratory will be approved for accreditation by the department upon completion of the application process.

(7) Fees are payable as required in WAC 296-46B-911.

(8) The laboratory must apply for renewal of accreditation at least thirty days prior to the accreditation expiration date. The department will renew accreditation for the period specified in subsection (4) of this section or notify the renewing laboratory of the department's reason(s) of refusal following receipt of the completed form and renewal fee. Accreditation may be renewed or refused for one or more electrical product category(ies).

(9) The department accepts or denies laboratory accreditation for all laboratories within the state. Accreditation is determined when a laboratory provides evidence to the department that all the requirements of this chapter are met. Accreditation is determined by the department and prior to making a determination, the department may require information and documentation to be provided by the laboratory.

(a) Accreditation is subject to review when deemed necessary by the department. The laboratory must pay all costs associated with on-site review.

(b) Every accredited laboratory must continue to satisfy all the conditions specified in this chapter during the period of the accreditation. A non-NRTL accredited laboratory must furnish the department an annual report detailing the extent of its activities for the year. The report must include, but not be limited to:

(i) The number of factory inspections;

(ii) Organizational structure of the laboratory;

(iii) Statement of ownership of the laboratory;

(iv) Laboratory equipment verification;

(v) Client accreditation programs;

(vi) Reports of litigation, which in any way were the result of or may affect any accreditation or testing of products covered by this chapter; or

(vii) Assessment of recordkeeping (i.e., certification/evaluation plans, certification/evaluation reports).

(c) The department will notify the applicant of the accreditation results. A letter of accreditation from the department is proof of the accreditation of a laboratory.

(10) The laboratory will be approved to certify only those categories identified and authorized by the department. The department will approve and list electrical product category(ies) the laboratory is qualified to certify or evaluate. The accreditation letter will indicate the electrical product category(ies) for which accreditation is issued.

(11) The department may exclude specific electrical products from acceptance. When required, the laboratory must provide evidence, acceptable to the department, that the laboratory is qualified to certify or field evaluate the specific electrical product. Laboratory recognition as an NRTL for the standard(s) used to certify or field evaluate an electrical product will be acceptable evidence. The standards used for certification or field evaluation must be determined by the department to be acceptable and applicable to the electrical product being certified or field evaluated.

If a laboratory chooses to add additional standards prior to its expiration date, it must submit a Request Approval for Additional Standards form to the chief electrical inspector.

#### **Suspension or revocation.**

(12) Any laboratory failing to comply with the requirements of this chapter or submitting false information may have accreditation revoked or suspended for one or more electrical product category(ies).

(13) The department may suspend, revoke, or refuse to renew the accreditation of any laboratory found to be in non-compliance with this chapter or the laws of the state of Washington.

(14) The department will serve written notice of intent prior to suspension, revocation, or refusal to renew the accreditation of a laboratory.

(15) The laboratory must immediately notify all manufacturers whose products are covered by the accreditation that such products manufactured subsequent to the departmental revocation and offered for sale in the state of Washington can no longer bear the laboratory's label that identified it as a certified product in the state of Washington. A laboratory, whose accreditation has been suspended, may not reapply for accreditation during the period of such suspension. A laboratory, whose accreditation has been revoked, may reapply for accreditation no sooner than one year after the date of revocation of accreditation.

#### **Business structure, practices, and personnel.**

(16) The laboratory must be an independent, third-party organization with no organizational, managerial, financial, design, or promotional affiliation with manufacturers, suppliers, installers, or vendors of products covered under its certification or evaluation programs.

The laboratory must have an adequate diversity of clients or activity so that the loss or award of a specific contract

regarding certification or evaluation would not be a deciding factor in the financial well-being of the laboratory.

(17) The laboratory must adequately meet the following business practices:

(a) Perform the examinations, tests, evaluations, and inspections required under the certifications programs in accordance with the designated standards and procedures;

(b) Assure that reported values accurately reflect measured and observed data;

(c) Limit work to that for which competence and capacity is available;

(d) Treat test data, records, and reports as proprietary information;

(e) Respond and attempt to resolve complaints contesting certifications and evaluation results;

(f) Maintain an independent relationship between its clients, affiliates, and other organizations so the laboratory's capacity to give certifications and evaluations objectively and without bias is not adversely affected; and

(g) Notify the department within thirty calendar days should it become unable to conform to any of the requirements of this chapter.

(18) Laboratories accredited under this chapter must notify the department within thirty calendar days of any of the following:

(a) Change in company name and/or address;

(b) Changes in major test equipment which affect the ability to perform work for which accredited;

(c) Changes in principal officers, key supervisory and responsible personnel in the company including the director of testing and engineering services, director of follow-up services, and the laboratory supervisor; or

(d) Change in independent status.

(19) The laboratory must develop and maintain a certification or evaluation program plan that includes, but is not limited to:

(a) The procedures and authority to ensure the product complies with the standard(s) established by the program;

(b) A quality control system;

(c) Adequate personnel to perform the certification or evaluation;

(d) Verification and maintenance of facilities and/or equipment; or

(e) Sample selection as applicable for product certifications, and for component testing as necessary for field evaluations.

The plan must demonstrate that the laboratory has adequate personnel, facilities, and equipment to perform all certifications and testing for which it is accredited by the state of Washington. These elements must be contained in the laboratory operations control manual.

(20) The laboratory must develop and maintain a quality control system adequate to assure the accuracy and technical integrity of its work as follows:

(a) The laboratory's quality control system must include a quality control or laboratory operations control manual;

(b) The quality control or laboratory operations control manual must be adequate to guide a testing technician or inspector in conducting the inspection, evaluation, and/or test in accordance with the test methods and procedures required

for the laboratory's certification and/or evaluation program(s); and

(c) The laboratory must have a current copy of its quality control or laboratory operations control manual available in the laboratory for use by laboratory personnel.

(21) Competent personnel who must have training, technical knowledge, and experience adequate to perform the tests, examinations, and evaluations for the certification and/or evaluation activities for which recognition is sought must staff the laboratory.

(22) The laboratory must:

(a) Provide adequate safeguards protecting the employment status of personnel from the influence or control of manufacturers, vendors, or installers of electrical products certified or tested by the laboratory;

(b) Develop and maintain a job description for each technical position category;

(c) Ensure the competency of its staff to perform assigned tasks through individual yearly observation and/or examination by a person(s) qualified by the person who has technical responsibility for the laboratory;

(d) Develop and maintain records of the results and dates of the observation or examination of personnel performance;

(e) Maintain information on the training, technical knowledge, and experience of personnel; and

(f) Develop and maintain an adequate training program assuring that new or untrained personnel will be able to perform assigned tasks properly and uniformly.

#### **Recordkeeping and reporting - General.**

(23) The laboratory must develop and maintain records and reports of those testing, inspection, certification, and evaluation activities associated with each program for which accreditation is sought. The laboratory must retain these records for a minimum of three years.

(24) The laboratory must make available to the department, upon request, all records required by the department to verify compliance with this chapter.

#### **Recordkeeping and reporting - Certification.**

(25) Certification reports must contain, as applicable:

(a) Name and address of the laboratory;

(b) Pertinent data and identification of tests or inspections;

(c) Name of client;

(d) Appropriate product title;

(e) Designation of standards used to certify or test the product including edition and latest revision (e.g., UL 508, 16th Edition, Feb. 1993, Revision Oct. 9, 1997);

(f) Description and identification of the sample including, as necessary, where and how the sample was selected;

(g) Identification of the test, inspection, or procedure as specified for certification or evaluation by the standard;

(h) Known deviations, additions to, or exclusions from evaluation and certification activities in order to be appropriate for new or innovative products not contemplated by the standard;

(i) Measurements, examinations, derived results, and identification of test anomalies;

(j) A statement as to whether or not the results comply with the requirements of the standard;

(k) Name, contact information, and signature of person(s) having responsibility for the report;

(l) Raw data, calculations, tables, graphs, sketches, and/or photographs generated during certification or evaluation must be maintained if not included in the report;

(m) Control forms documenting the receipt, handling, storage, shipping, and testing of samples;

(n) Laboratory records of its quality control checks and audits for monitoring its test work associated with its certification programs, including:

(i) Records of products assurance (follow-up) test results; and

(ii) Records of detected errors and discrepancies and actions taken subsequent to such detection.

(o) Record of written complaints and disposition thereof; and

(p) A statement that records required by these criteria will be maintained for a minimum of three years after cessation of the certification or evaluation.

#### **Recordkeeping and reporting - Field evaluation.**

(26) The evaluation report must include:

(a) Name and address of the laboratory;

(b) Name of client;

(c) Address where the evaluated product is or will be installed;

(d) Designation of standards used to certify or test the product including edition and latest revision (e.g., UL 508, 16th Edition, Feb. 1993, Revision Oct. 9, 1997);

(e) Description and identification of the nonlisted and nonlabeled component(s) requiring evaluation by applicable standard(s);

(f) Description of the overall product evaluated to include full nameplate data and equipment type;

(g) A statement as to whether or not the results comply with the requirements of the standard;

(h) Pertinent test evaluation data and identification of tests or inspections including anomalies;

(i) Signature of person(s) having responsibility for the report;

(j) Any condition of acceptability or restrictions on use/relocation;

(k) Serial number(s) of the field evaluation label(s) applied must be included with the equipment identification; ~~((and))~~

(l) The labor and industries department file identification number; and

(m) Date the equipment label was affixed.

(27) Within thirty calendar days after affixing the evaluation mark, the laboratory must submit a copy of the evaluation report to:

(a) The department's chief electrical inspector submitted electronically in a format approved by the department;

(b) Local electrical inspection office submitted electronically in a format approved by the department; and

(c) Client submitted in any format acceptable to the client and testing laboratory.

**Facilities and equipment.**

(28) The laboratory must provide adequate evidence of the calibration, verification, and maintenance of the facilities and equipment specified for each certification or evaluation.

(29) Verification and maintenance of facilities and equipment must include as applicable, but not be limited to:

- (a) Equipment description;
- (b) Name of manufacturer;
- (c) Model, style, serial number, or other identification;
- (d) Equipment variables subject to calibration and verification;
- (e) Statement of the equipment's allowable error and tolerances of readings;
- (f) Calibration or verification procedure and schedule;
- (g) Dates and results of last calibrations or verifications;
- (h) Specified maintenance practices;
- (i) Calibration and/or verification of equipment used;
- (j) Name and contact information of personnel or outside contractor providing the calibration or verification service; and
- (k) Traceability to National Institute of Standards and Technology or other equivalent standard reference authority.

**Standards.**

(30) The laboratory must have copies available, for laboratory personnel use, of applicable standards and other documents referred to or used in performing each certification or test for which approval is sought.

(31) If a laboratory desires to use a standard other than an ANSI standard, the department will evaluate the proposed standard to determine that it provides an adequate level of safety. The National Electrical Code, NFPA 70, will not be allowed to be the primary standard used to evaluate a product.

**Product certification.**

(32) The electrical product certification program must contain test procedure(s), standard(s) used, certification agreement(s), method(s) of identification of products, follow-up inspection, and other laboratory procedures and authority necessary to ensure that the product complies with the standards (requirements) established by the program.

(33) All components of certified or tested products must be labeled or evaluated for compliance with all standards and conditions of use applicable to such components.

(34) The laboratory must publish an *Annual Product Directory* identifying products that are authorized to bear the laboratory's certification mark. The products directory must briefly describe the program, the products covered, the name of the manufacturer or vendor of the certified products, and the identification of the published standards or the compiled requirements on which the program is based. The product directory must be available to the public. Supplemental up-to-date information must be available to the public at the office of the laboratory during normal business hours.

**Certification laboratory/manufacturer - Agreement.**

(35) Measures to provide for manufacturer compliance with the provisions of the product standard and laboratory

control of the use of the certification mark must be embodied in an agreement between the manufacturer and the certification laboratory. The certification agreement must:

- (a) Require the manufacturer to provide information and assistance as needed by the laboratory to conduct the necessary product conformity and production assurance evaluation;
- (b) Allow the laboratory's representative(s) access to the manufacturer's facilities during working hours for inspection and may allow audit activities without prior notice;
- (c) Restrict the manufacturer's application of certification marks to products that comply with requirements of the product standard;
- (d) Secure the manufacturer's agreement to the publication of notice by the certification laboratory for any product already available in the marketplace that does not meet the safety standard;
- (e) Require reevaluation of products whenever the standard covering the product is revised;
- (f) Require the laboratory to notify the manufacturer's personnel responsible for and authorized to institute product recall in the case of a hazard;
- (g) Provide for control of certification marks by the laboratory;
- (h) Require that the laboratory provide the manufacturer with a report of original product evaluation. The report must document conformity with applicable product standards by test results and other data; and
- (i) Require the identification of the manufacturer(s) of the product and the location(s) where the product is produced.

**Certification mark.**

- (36) The laboratory owns the certification mark.
- (37) The certification mark must be registered as a certification mark with the United States Patent and Trademark Office.
- (38) The certification mark must:
  - (a) Not be readily transferable from one product to another;
  - (b) Be directly applied to each unit of production in the form of labels or markings suitable for the environment and use of the product. When the physical size of the unit does not permit individual marking, markings may be attached to the smallest package in which the unit is marketed;
  - (c) Include the name or other appropriate identification of the certification laboratory;
  - (d) Include the product category; and
  - (e) The laboratory must have a system of controls and records for all marks. The records must include marks removed or otherwise voided. See WAC 296-46B-999(25).
- (39) The certification mark may be applied to the product prior to authorizing the use of a certification mark on a product. The laboratory must:
  - (a) Determine by examination and/or tests that representative samples of the product comply with the requirements (standards). Components of certified products must comply with the applicable safety requirements (standards) or be listed. Evaluation of the product design must be made on representative production samples or on prototype product sam-

ples with subsequent verification that factory productions are the same as the prototype;

(b) Determine that the manufacturer has the necessary facilities, test equipment, and control procedures to ensure that continuing production of the product complies with the requirements; and

(c) If the certification mark is not applied at the manufacturing facility, the laboratory must provide prior notification to the department of its intent to affix the certification mark in the field.

#### **Certification laboratory product - Assurance/follow up.**

(40) To verify continued product acceptability, the laboratory must develop and maintain a factory follow-up inspection program and manual to determine continued compliance of certified products with the applicable standard.

(41) The follow-up inspection file must include the:

(a) Conditions governing the use of the certification mark on products;

(b) Identification of the products authorized for certification;

(c) Identification of manufacturer and plant location at which manufacture and certification are authorized;

(d) Description, specifications, and requirements applicable to the product;

(e) Description of processes needed for control purposes;

(f) Description of the manufacturer's quality assurance program when used as part of the follow-up program;

(g) Description of inspections and tests to be conducted by the manufacturer and the laboratory; and

(h) Description of follow-up tests to be conducted in the laboratory.

(42) Follow-up procedures and activities must include:

(a) Periodic inspections at the factory with testing at the factory or certification laboratory of representative samples selected from production and, if appropriate, from the market;

(b) Periodic auditing or surveillance of the manufacturer's quality assurance program through the witnessing of manufacturer's tests, review of the manufacturer's records, and verification of the manufacturer's produced data;

(c) Investigation of alleged field failures upon department request; and

(d) Procedures for control of the use of the certification mark by:

(i) Keeping records of the release and use of certification marks;

(ii) Removal of marks from noncomplying products;

(iii) Return or destruction of unused marks when the authority to use the marks is terminated; and

(iv) Legal action.

(43) The frequency of laboratory follow-up inspections must not be less than four times per year during production, unless adequate data is provided to the department to justify less frequent inspections. If there is no production during the year, at least one follow-up inspection is to be completed. The frequency of follow-up inspections must be sufficient to provide a reasonable check on the method(s) the manufacturer exercises to assure that the product bearing the certification mark complies with the applicable standards.

#### **Field evaluation - Requirements.**

(44) The field evaluation laboratory may perform evaluations on any products or product categories previously approved by the department. NRTL recognition may be accepted by the department as a basis for approval to perform field evaluations. Since OSHA does not review or recognize laboratories for field evaluation purposes, laboratories seeking accreditation from the department for field evaluation may be required to provide additional justification of capability such as, but not limited to: Recordkeeping, employee standards and proficiency, equipment requirements, and other requirements described in this chapter.

~~(45) ((The laboratory must request permission from the department in writing two working days prior to conducting any field evaluation of an electrical product to be installed in any jurisdiction in the state. Requests must be made using a department-supplied form.~~

~~(46) The field evaluation process must be completed within six months following department approval. If the field evaluation is not completed within six months following department approval, the laboratory must request permission from the department in writing to continue the evaluation process. If this secondary permission is granted to the laboratory, the department may require the equipment to be placed out of service except as necessary to complete the field evaluation process.~~

~~(47))~~ The scope of a field evaluation will depend on the status of the item to be evaluated as follows:

(a) A new piece of equipment must have a complete evaluation of all components and the assembly as provided by the manufacturer. For example: An industrial machine with a control panel, remote motors, sensors, controls, and other utilization equipment; and

(b) A product that has been modified internally or by an addition need have only those portions evaluated that were affected by the modification. For example: A switchboard with multiple sections that has a section added would only need the new section, the one section immediately adjacent, and any control modifications evaluated.

~~((48))~~ (46) Each unit that receives a field evaluation mark applied by the field evaluation laboratory must have sufficient inspections and/or testing completed to ensure it is in essential conformance with the applicable product standard(s).

~~((49))~~ (47) The laboratory may perform the preliminary evaluation in the manufacturer's facility. Final evaluation and acceptance of the product must be made on-site at the location of final installation, unless waived by the department.

#### **Field evaluation mark.**

~~((50))~~ (48) Only laboratory personnel may apply the field evaluation mark after final acceptance of the product. The field evaluation label must be applied on-site at the location of the final installation, unless waived by the department.

~~((51))~~ (49) The field evaluation laboratory must have a system of controls and records for all field evaluation marks it applies. The records must include labels removed or otherwise voided.

~~((52))~~ (50) A field evaluated product may be relocated or fed from a different power source if not prohibited by the field evaluation mark or the field evaluation report.

~~((53))~~ (51) The field evaluation mark must:

(a) Not be readily transferable from one product to another;

(b) Be directly applied by the laboratory personnel to each unit of production in the form of labels or markings suitable for the environment and use of the product;

(c) Include the name or other appropriate identification of the certification laboratory; ~~((and))~~

(d) Include a unique evaluation laboratory reference number; and

(e) Include a reference to the evaluation report or other notation if there are any limitations of use noted within the report.

~~((54))~~ (52) The field evaluation laboratory must have a system of controls and records for all field evaluation marks it applies. The records must include labels removed or otherwise voided. See subsection (26) of this section.

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

- WAC 296-46B-520 Special occupancies—Theaters, motion picture and television studios, performance areas and similar areas.
- WAC 296-46B-965 Training certificate required.

**WSR 13-03-129  
PERMANENT RULES  
DEPARTMENT OF  
LABOR AND INDUSTRIES**

[Filed January 22, 2013, 11:39 a.m., effective February 25, 2013]

Effective Date of Rule: February 25, 2013.

Purpose: Independent medical exams (IMEs) are scheduled by the department and self-insurers, and workers are required to attend or face sanctions for noncooperation. High quality IMEs are very important for effectively managing workers' compensation claims and ensuring appropriate medical decisions.

The department has already adopted new rules to implement provisions of SSB 5801 (chapter 6, Laws of 2011) that establish minimum standards for credentialing of medical providers and other requirements for the medical provider network to treat injured workers. Without amending the IME WACs, the credentialing standards for IME examiners will be inconsistent and below the standards for treating physicians.

The amended rules will fill the gap between the current standards for IME providers and the recently adopted provider network credentialing standards. This rule making also includes changes to address other stakeholder concerns and

incorporate best practices to ensure that high quality IME services are available and that appropriate medical decisions are made to promote the quickest recovery and earliest safe return to work possible for injured workers. The rules will ensure the medical providers who become independent medical examiners know and meet the department's requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 296-23-302, 296-23-317, and 296-23-337.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030, 51.32.112, 51.32.114, 51.32.055, 51.36.060, 51.36.070.

Adopted under notice filed as WSR 12-21-102 on October 23, 2012.

Changes Other than Editing from Proposed to Adopted Version: Removed language requiring an IME firm's medical director to reside in Washington state.

A final cost-benefit analysis is available by contacting Kristen Baldwin-Boe, P.O. Box 44322, Olympia, WA 98504-4322, phone (360) 902-6815, fax (360) 902-4249, e-mail Kristen.Baldwin-Boe.Lni.wa.gov.

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

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

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

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

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

Date Adopted: January, 22, 2013.

Joel Sacks  
Director

AMENDATORY SECTION (Amending WSR 09-24-085, filed 11/30/09, effective 3/1/10)

**WAC 296-23-302 Definitions.** Approved independent medical examination (IME) provider - A licensed doctor or firm whose credentials are approved to conduct an independent medical examination, rating evaluation, or provide IME associated services including but not limited to file preparation, scheduling of examinations and processing billing. An approved IME provider is assigned a unique provider number.

Department - For the purpose of this section, department means the department of labor and industries industrial insurance workers' compensation state fund and self-insured programs.

Direct patient care - For the purpose of meeting the qualifications of an independent medical examination (IME) provider, direct patient care means face-to-face contact with the patient for the purpose of evaluation and management of care that includes, but is not limited to:

- History taking and review of systems;
- Physical examination;
- Medical decision making;
- Coordination of care with other providers and agencies.

This does not include time spent in independent medical examinations.

**Impairment rating examination** - An examination to determine whether or not the injured/ill worker has any permanent impairment(s) as a result of the industrial injury or illness after the worker has reached maximum medical improvement. An impairment rating may be conducted by a qualified attending provider, a medical consultant, or an approved examiner. An impairment rating may be a component of an IME.

**Independent medical examination (IME)** - An objective medical-legal examination requested (by the department or self-insurer) to establish medical ~~((facts))~~ findings, opinions, and conclusions about a worker's physical condition. These examinations may only be conducted by department-approved examiners.

**Independent medical examination (IME) provider** - A firm, partnership, corporation, or individual licensed doctor (examiner) who has been approved and given an independent medical examination (IME) provider number by the department to perform IMEs.

**Medical director** - A licensed doctor and approved IME examiner in the firm, partnership, corporation or other legal entity responsible to provide oversight on quality of independent medical examinations, impairment ratings and reports.

**Medical Examiners' Handbook** - A handbook ~~((distributed))~~ developed by the department containing department policy and information to assist providers who perform independent medical examinations and impairment rating examinations.

**Patient related services** - Patient related services are defined as one or more of the following professional activities:

- Direct patient care;
- Locum tenens;
- Clinical consultations for treating/attending doctors;
- Clinical ~~((or classroom))~~ instruction of medical, osteopathic, dental, podiatry, or chiropractic students and/or residents;
- On-call emergency services;
- Volunteer clinician providing direct patient care services in his or her specialty(~~;~~  
• ~~Participation in clinically based peer review or quality review activities~~).

**Provider number** - A unique number(s) assigned to a provider by the department of labor and industries. The number identifies the provider and is linked to a tax identification number that has been designated by the provider for payment purposes. A provider may have more than one provider number assigned by the department.

**Suspension** - A department action during which the provider is approved by the department but not available to accept referrals.

**Temporarily unavailable** - Provider is approved by the department but is temporarily unavailable to accept referrals. Temporarily unavailable applies at the provider's request for

personal reasons or by the department as part of an administrative action. Provider remains unavailable until the issue is resolved.

**Termination** - The permanent removal of a provider from the list of approved IME examiners. All IME provider numbers assigned to the examiner are inactivated.

AMENDATORY SECTION (Amending WSR 11-01-069, filed 12/10/10, effective 1/10/11)

**WAC 296-23-317 What qualifications must a provider meet to become an approved independent medical examination (IME) provider and be assigned an IME provider number?** To ensure that independent medical examinations are of the highest quality and propriety, examiners and firms (partnerships, corporations, or other legal entities) that derive income from independent medical exams must apply and meet the following requirements for department approval:

(1) Examiners must:

(a) ~~((Have a current, unrestricted, and active professional license to practice in this state))~~ Submit an accurate and complete IME provider application, including any required supporting documentation and sign without modification, an IME provider agreement with the department.

(b) Be currently licensed, certified, accredited or registered according to Washington state laws and rules or in any other jurisdiction where the applicant would conduct an examination.

(i) ~~((Unrestricted is defined as not currently having a temporary or permanent probation, suspension, revocation or any other limitation of any kind placed on a professional license or privilege to practice by any court, board, or administrative agency in any jurisdiction.))~~ The license, registration or certification must be free of any restrictions, limitations, or conditions relating to the provider's acts, omissions, or conduct.

(ii) The applicant must not have surrendered, voluntarily or involuntarily his or her professional state license or Drug Enforcement Administration (DEA) registration in any state while under investigation or due to findings resulting from the provider's acts, omissions, or conduct. The department may grant an exception for any restriction, limitation, or condition deemed by the department to be minor or clerical in nature or for a case where the restriction, limitation, or condition has been removed.

(iii) If any restriction once existed against the applicant's license, registration, or certification, the department must automatically deny the application if the applicant's record has not been clear for at least five years. If after five years the record has been cleared, then the department exclusively reserves the right to grant or deny the application based on the nature of the prior restriction.

~~((iii))~~ (iv) Exception to the five-year limit may be granted for any restriction or offense deemed by the department to be of a minor or clerical nature.

~~((iv))~~ (c) Not have had clinical admitting and management privileges denied, limited, or terminated for quality of care issues.

(i) If an applicant has any pending action on their privilege to practice by any court, board, or administrative agency, or by any health care institution such as a hospital in any jurisdiction, the department exclusively reserves the right to grant or deny the application based upon the nature of the action.

~~((b)) Have no final action by the department to suspend or revoke a previously assigned provider number as a treating provider or independent medical examiner.~~

~~((i)) (ii) If the applicant has any criminal history, history of a violation of statutes or rules by any administrative agency, court or board in any jurisdiction, the department must automatically deny the application if such history exists within five years of the application. If such history exists but is older than five years, then the department exclusively reserves the right to grant or deny the application based upon the nature of the history.~~

~~((ii)) (iii) Exception to the five-year limit may be granted for any restriction or offense deemed by the department to be of a minor or clerical nature.~~

~~((e)) (d) Have no final action by the department to suspend or revoke a previously assigned provider number as a treating provider or independent medical examiner.~~

(e) Have no pending civil or administrative action in any jurisdiction that affects the ability or fitness to practice medicine. The department will not process the application until the matter has been resolved.

~~((f)) (f) Have not been excluded, expelled, terminated, or suspended from any federally or state funded health care programs including, but not limited to, medicare or medicaid programs based on cause or quality of care issues.~~

(g) Have no significant malpractice claims or professional liability claims (based on severity, recency, frequency, or repetition).

(h) Have not been denied approval, or removed, from the provider network as defined in WAC 296-20-01010.

(i) Attest that all information submitted on the application or credentialing materials is true and accurate and must sign under penalty of perjury.

~~((e)) (j) Comply with all federal, state, and local laws, regulations, and other requirements with regard to business operations, including specific requirements for the provision of medical services.~~

~~((f)) (k) Adhere to the independent medical examination standards of conduct, and all other laws, rules, and policies. These include but are not limited to the following:~~

- IME provider application agreement;
- Medical Aid Rules and Fee Schedules (MARFS);
- Payment policies;
- Medical Examiners' Handbook.p

~~((g)) (l) Review and sign the IME report and attest to its accuracy.~~

~~((h)) (m) Conduct examinations in a facility ~~((designed))~~ primarily designated as a professional office ~~((suitable))~~ for medical, dental, podiatric, chiropractic or psychiatric examinations where the primary use of the ~~((site))~~ facility is for medical services. The ~~((site))~~ facility must not be residential, commercial, educational or retail in nature. The ~~((site))~~ facility must be clean, sanitary and provide adequate~~

access, climate control, light, space, and equipment. The ~~((site))~~ facility must provide for the comfort and safety of the worker and for the privacy necessary to conduct examinations and discuss medical issues. Providers must have a private disrobing area and adequate provision of examination gowns if disrobing is required.

~~((i)) (n) Have telephone answering capability during regular business hours, Monday through Friday, in order to facilitate scheduling of independent examinations and means for workers to contact the provider regarding their scheduled examination. If the office is open on Saturday, telephone access must be available.~~

~~((j)) (o) Agree that either they or the department may inactivate their IME provider number or numbers. If an IME provider number has been inactivated and the examiner wishes to resume performing IMEs, they must reapply and meet current requirements.~~

~~((k)) (p) Agree to keep the department informed and updated with any new information regarding changes or actions that may affect their status as an IME examiner.~~

~~((l)) (q) Reapply every three years in order to maintain an active IME provider number.~~

(i) In the first year of the new rule, effective March 1, ~~((2010))~~ 2013, all current examiners must reapply.

(ii) Examiners may have until March 1, 2014, to comply with the new continuing education (CE) documentation requirement.

~~((m)) (iii) Examiners will be notified by mail sixty days prior to their renewal application due date.~~

~~((n)) (r) Achieve a passing score on the *Medical Examiners' Handbook* test prior to initial application and ~~((every three years thereafter))~~ when renewal is due or required.~~

(2) Requirements for specific examiner specialties:

(a) Medical physician and surgeon (MD) or osteopathic physician and surgeon (DO) applicants must: Hold a current board certification in their specialty; or have completed a residency and become board certified within five years of completing the residency.

(i) Residency must be in a program approved by the American College of Graduate Medical Education (ACGME) or the American Osteopathic Association (AOA) or equivalent approving body.

(ii) Fellowships will not be accepted in lieu of accredited residency training though they may be used to determine examination specialty qualifications.

(b) Podiatric physician (DPM) applicants must: Have a current board certification in their specialty or have completed a residency and become board certified within five years of completing the residency.

(i) Complete a residency program approved by the American Podiatric Medical Association (APMA).

(ii) Fellowships will not be accepted in lieu of accredited residency training though they may be used to determine examination specialty qualifications.

(c) Chiropractic physician (DC) applicants must be a chiropractic consultant for the department for at least two years and attend the department's chiropractic IME seminar in the twenty-four months before initial application.

(d) Dentist (doctor of dental science/doctor of dental medicine) (DDS/DMD) applicants must have at least two years of clinical experience after licensure, and:

- (i) Hold current certification in their specialty; or
- (ii) Have one year of postdoctoral training in a program approved by the American Dental Association Commission on Dental Accreditation (CODA); or
- (iii) Be a general dentist.

(3) All examiners must meet ~~((one of the following two criteria:~~

~~(a) Document a minimum of three hundred eighty-four hours of patient related services (excluding independent medical examinations) per calendar year; or~~

~~(b) Complete a minimum of twelve continuing medical education (CME) units of department approved education and training per year or a total of thirty-six CMEs in three years.) the continuing education (CE) requirement for their respective state licensure. Washington state CE requirements are shown in the table below.~~

| <b>Doctors licensed to practice:</b>               |  |  |  |                            |                          |
|--|--|--|--|----------------------------|--------------------------|
|  | <b><u>Medicine &amp; surgery</u></b>             | <b><u>Osteopathic medicine &amp; surgery</u></b> | <b><u>Podiatric medicine &amp; surgery</u></b>     | <b><u>Chiropractic</u></b> | <b><u>Dentistry</u></b>  |
| <b><u>Required continuing education hours:</u></b> | <u>50 hours per year or 200 hours in 4 years</u> | <u>50 hours per year or 150 hours in 3 years</u> | <u>25 hours per year or 50 hours every 2 years</u> | <u>25 hours per year</u>   | <u>21 hours per year</u> |

~~Applicants must submit documentation of CE hours with their initial application and when renewal is due or required. This training ((would) must focus on ((improving the provider's skills in completing IMEs or staying current in the)) subject areas relevant to the provider's specialty or skills required to complete IMEs. ((Topics include, but are not limited to:~~

- ~~Report writing;~~
- ~~Providing testimony;~~
- ~~Standards of practice;~~
- ~~Medical ethics;~~
- ~~Patient care;~~
- ~~Impairment rating.))~~

~~**Exception:** The requirement to submit CE documentation will be waived for applicants who provide documentation of a minimum of seven hundred sixty-eight hours of patient related services (excluding independent medical examinations) per calendar year.~~

Only examiners in the following practice specialties who meet all other requirements may perform IMEs:

| <b>Doctors licensed to practice:</b> |                               |   |   |                     |                  |
|--------------------------------------|-------------------------------|---|---|---------------------|------------------|
| <b>Examiner is:</b>                  | <b>Medicine &amp; surgery</b> | <b>Osteopathic medicine &amp; surgery</b> | <b>Podiatric medicine &amp; surgery</b> | <b>Chiropractic</b> | <b>Dentistry</b> |
| <b>In Washington</b>                 | Yes                           | Yes                                       | Yes                                     | Yes                 | Yes              |
| <b>Outside Washington</b>            | Yes                           | Yes                                       | Yes                                     | No                  | Yes              |

(4) IME firms (partnerships, corporations or other legal entities) that derive income from independent medical examinations must:

(a) Have a medical director. The medical director must be a licensed medical physician and surgeon (MD) or ~~((an))~~ osteopathic physician and surgeon (DO), be responsible to provide oversight on the quality of independent medical examinations, impairment ratings and reports, and be available to resolve any issue that department staff may bring to the medical director's attention.

(i) IME firms conducting exams in Washington state must have a medical director who has a Washington state medical license.

(ii) The medical director must be an approved independent medical examiner.

(b) Have no previous business or audit action by the department to suspend or revoke an assigned provider number.

(c) Have no previous action taken by any federal or state agency for any business previously owned or operated.

(d) Facilitate scheduling of providers both for the examination and for any required follow up, including amendments to the report, subsequent reports, or for any testimony required. If the provider fails to participate in scheduling or otherwise causes an undue expense to the department, whether intentionally or not, the department may fine the provider up to five hundred dollars per violation.

(e) Attest that all information submitted on the application is true and accurate and must sign under penalty of perjury.

(f) Comply with all federal, state, and local laws, regulations, and other requirements with regard to business operations including specific requirements for any business operations for the provision of medical services.

(g) Adhere to the independent medical examination standards of conduct, and all other laws, rules, and policies. These include, but are not limited to, the following:

- IME provider application agreement;
- Medical Aid Rules and Fee Schedules (MARFS);
- Payment policies;
- Medical Examiners' Handbook.

(h) Ensure that examinations are conducted in a facility ~~((designed))~~ primarily designated as a professional office ~~((suitable))~~ for medical, dental, podiatric, chiropractic or psychiatric examinations where the primary use of the ~~((site))~~ facility is for medical services. The ~~((site))~~ facility must not be residential, commercial, educational or retail in nature. The ~~((site))~~ facility must be clean, sanitary and provide adequate access, climate control, light, space, and equipment. The ~~((site))~~ facility must provide for the comfort and safety of the worker and for the privacy necessary to conduct examinations and discuss medical issues. Providers must have a private disrobing area and adequate provision of examination gowns if disrobing is required.

(i) Have telephone answering capability during regular business hours, Monday through Friday, in order to schedule independent medical examinations and communicate with workers about scheduled examinations. If an exam site is open on Saturday, telephone access must be available.

(j) Agree that either the firm or the department may inactivate their IME provider number or numbers. If an IME provider number has been inactivated and the firm wishes to resume related services, they must reapply and meet current requirements.

(k) Agree to keep the department informed and updated with any new information such as exam site or administrative office locations, phone numbers or contact information.

(l) Reapply every three years in order to maintain an active IME provider number.

(i) In the first year of the new rule, effective March 1, ~~((2010))~~ 2013, all IME firms must reapply.

(ii) Firms will be notified by mail sixty days prior to their renewal application due date.

(m) Have their medical director and a representative from their quality assurance (QA) staff achieve a passing score on the *Medical Examiners' Handbook* test prior to initial application and ~~((every three years thereafter))~~ when renewal is due or required.

AMENDATORY SECTION (Amending WSR 11-01-069, filed 12/10/10, effective 1/10/11)

**WAC 296-23-337 For what reasons shall the department's medical director or designee suspend or terminate approval of an independent medical examination (IME) examiner or firm?** To ensure high quality independent medical examinations (IMEs), the department's medical director or designee may, in the situations described below, terminate, suspend, or inactivate approval of examiners or firms (partnerships, corporations, or other legal entities) that derive income from IMEs. IME providers must have an active provider account number to perform IMEs or provide IME related services.

**FOR EXAMINERS:**

(1) **AUTOMATIC TERMINATION.** The department's medical director or designee may terminate approval of examiners in situations including, but not limited to, the following:

(a) Their license has been revoked in any jurisdiction.

(b) A final order or stipulation to informal disposition has been issued against the examiner by a state authority in any jurisdiction including, but not limited to, the Washington

state department of health, when such charges involve conduct or behavior as defined in chapter 18.130 RCW, Uniform Disciplinary Act. These include, but are not limited to:

(i) Sexually inappropriate conduct, behavior or language.

(ii) Behavior that puts a patient's safety or well-being at risk.

(c) The examiner has committed perjury or falsified documents provided to the department or insurer.

(d) The examiner has a criminal felony history in any jurisdiction.

(e) The examiner has failed to reapply every three years or when required.

(2) **AUTOMATIC SUSPENSION.** The department's medical director or designee may suspend approval of examiners in situations including, but not limited to, the following listed below. The department will initiate a review within ninety days of notification. The results of the review will determine if further action is necessary, which may include termination of approval status.

(a) The examiner has failed to meet or maintain the requirements for approval as an IME examiner.

(b) The examiner's license or Drug Enforcement Administration (DEA) registration has been restricted in any jurisdiction. Exceptions may be granted for any restriction or offense deemed by the department to be of a minor or clerical nature.

(c) The examiner has lost hospital privileges for cause.

(d) A statement of charges has been filed against the examiner by a state authority in any jurisdiction, including, but not limited to the Washington state department of health, when such charges involve conduct or behavior as defined in chapter 18.130 RCW, Uniform Disciplinary Act. These include, but are not limited to:

(i) Sexually inappropriate conduct, behavior or language.

(ii) Behavior that puts a patient's safety or well-being at risk.

(e) The examiner has any pending or history of criminal charges or violation of statutes or rules by any administrative agency, court or board in any jurisdiction.

(3) **OTHER EXAMINER ACTIONS.** In addition to automatic terminations and suspensions described in subsections (1) and (2) of this section, the department's medical director or designee may consider any of the following factors in determining a change in status for examiners. These status changes include temporarily unavailable, suspension or termination of the approval to conduct IMEs.

These factors include, but are not limited to:

(a) Substandard quality of reports, failure to comply with current department policy on report contents, or inability to effectively convey and substantiate medical findings, opinions, and conclusions, concerning workers.

(b) Unavailable or unwilling to testify on behalf of the department, worker, or employer.

(c) Failure to cooperate with attorneys representing a party in industrial insurance litigation at the board of industrial insurance appeals (board) by not cooperating in a timely manner to schedule preparatory activities and/or testimony

during business hours and within the dates and locations ordered by the board to complete testimony.

~~((d))~~ ~~(Inability to support examination and report findings in any legal proceeding as evidenced by board decisions finding the testimony less credible.~~

~~((e))~~ Failure to stay current in the area of specialty and in the areas of impairment rating, performance of IMEs, industrial injury and occupational disease/illness, industrial insurance statutes, regulations and policies.

~~((f))~~ ~~(e)~~ Substantiated complaints or pattern of complaints about the provider.

~~((g))~~ ~~(f)~~ Other disciplinary proceedings or actions not listed in subsections (1) and (2) of this section.

~~((h))~~ ~~(g)~~ Other proceedings in any court dealing with the provider's professional conduct, quality of care or criminal actions not listed in subsections (1) and (2) of this section.

~~((i))~~ ~~(h)~~ Untimely reports.

~~((j))~~ ~~(i)~~ Unavailable or unwilling to communicate with the department in a timely manner.

~~((k))~~ ~~(j)~~ Misrepresentation of information provided to the department.

~~((l))~~ ~~(k)~~ Failure to inform the department of changes or actions that may affect the approval status as an IME examiner.

~~((m))~~ ~~(l)~~ Failure to comply with the department's orders, statutes, rules, or policies.

~~((n))~~ ~~(m)~~ Failure to accept the department fee schedule rate for independent medical examinations, testimony, or other IME related services.

~~((o))~~ ~~(n)~~ Any pending action in any jurisdiction.

**FOR FIRMS:**

(4) **AUTOMATIC TERMINATION.** The department's medical director or designee may terminate approval of firms when they fail to reapply every three years.

(5) **AUTOMATIC SUSPENSION.** The department's medical director or designee may suspend approval of firms in situations including, but not limited to, those listed below. The department will review the matter to determine if further action is necessary, which may include termination of approval status.

(a) The firm no longer meets requirements for approval as an IME provider.

(b) The firm's representative has committed perjury or falsified documents provided to the department or insurer.

(c) A firm representative's behavior has placed a patient's safety or well-being at risk.

(6) **OTHER FIRM ACTIONS.** In addition to automatic terminations and suspensions described in subsections (4) and (5) of this section, the department's medical director or designee may consider any of the following factors in determining a change in status for firms. These status changes include temporarily unavailable, suspension or termination of the approval to provide IME related services.

These factors include, but are not limited to:

(a) Substantiated complaints or pattern of complaints about the firm.

(b) Other disciplinary proceedings or actions not listed in subsections (4) and (5) of this section.

(c) Other proceedings in any court dealing with the provider's professional conduct, quality of care or criminal actions not listed in subsections (4) and (5) of this section.

(d) Untimely reports.

(e) Unavailable or unwilling to communicate with the department in a timely manner.

(f) Misrepresentation of information provided to the department.

(g) Failure to inform the department of changes affecting the firm's status as an IME provider.

(h) Failure to comply with the department's orders, statutes, rules, or policies.

(i) Failure to accept the department fee schedule rate for independent medical examinations and services.

(j) Any pending action in any jurisdiction.

**WSR 13-03-137**

**PERMANENT RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed January 23, 2013, 9:36 a.m., effective February 23, 2013]

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

Purpose: The community services division is amending WAC 388-466-0120 Refugee cash assistance (RCA), to repeal refugee medical assistance (RMA) language from the RCA rule. The responsibility for RMA was transferred to the health care authority and rules were recodified under Title 182 WAC, Health care authority.

Citation of Existing Rules Affected by this Order: Amending WAC 388-466-0120.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.08A.250.

Other Authority: 2E2SHB 1738, Laws of 2011.

Adopted under notice filed as WSR 12-22-073 on November 7, 2012.

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

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

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

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

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

Date Adopted: January 17, 2013.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-19-037, filed 9/12/12, effective 10/13/12)

**WAC 388-466-0120 Refugee cash assistance (RCA).**

**(1) Who can apply for refugee cash assistance (RCA)?**

Anyone can apply to the department of social and health services (DSHS) for refugee cash assistance and have their eligibility determined within thirty days.

**(2) How do I know if I qualify for RCA?**

You may be eligible for RCA if you meet all of the following conditions:

(a) You have resided in the United States for less than eight months;

(b) You meet the immigration status requirements of WAC 388-466-0005;

(c) You meet the income and resource requirements under chapters 388-450 and 388-470 WAC;

(d) You meet the work and training requirements of WAC 388-466-0150; and

(e) You provide the name of the voluntary agency (VOLAG) which helped bring you to this country.

**(3) What are the other reasons for not being eligible for RCA?**

You may not be able to get RCA if you:

(a) Are eligible for temporary assistance for needy families (TANF) or supplemental security income (SSI); or

(b) Have been denied TANF due to your refusal to meet TANF eligibility requirements; or

(c) Are employable and have voluntarily quit or refused to accept a bona fide offer of employment within thirty consecutive days immediately prior to your application for RCA; or

(d) Are a full-time student in a college or university.

**(4) If I am an asylee, what date will be used as an entry date?**

If you are an asylee, your entry date will be the date that your asylum status is granted. For example: You entered the United States on December 1, 1999 as a tourist, then applied for asylum on April 1, 2000, interviewed with the asylum office on July 1, 2000 and were granted asylum on September 1, 2000. Your entry date is September 1, 2000. On September 1, 2000, you may be eligible for refugee cash assistance.

**(5) If I am a victim of human trafficking, what kind of documentation do I need to provide to be eligible for RCA?**

You are eligible for RCA to the same extent as a refugee if you are:

(a) An adult victim, eighteen years of age or older, you provide the original certification letter from the U.S. Department of Health and Human Services (DHHS), and you meet eligibility requirements in subsections (2)(c) and (d) of this section. You do not have to provide any other documentation of your immigration status. Your entry date will be the date on your certification letter;

(b) A child victim under the age of eighteen, in which case you do not need to be certified. DHHS issues a special letter for children. Children also have to meet income eligibility requirement;

(c) A family member of a certified victim of human trafficking, you have a T-2, T-3, T-4, or T-5 Visa (Derivative T-

Visas), and you meet the eligibility requirements in subsections (2)(c) and (d) of this section.

**(6) Does getting a onetime cash grant from a voluntary agency (VOLAG) affect my eligibility for RCA?**

No. In determining your eligibility for RCA DSHS does not count a onetime resettlement cash grant provided to you by your VOLAG.

**(7) What is the effective date of my eligibility for RCA?**

The date DSHS has sufficient information to make eligibility decision is the date your RCA begins.

**(8) When does my RCA end?**

(a) Your RCA ends on the last day of the eighth month starting with the month of your arrival to the United States. Count the eight months from the first day of the month of your entry into the United States. For example, if you entered the United States on May 28, 2000, May is your first month and December 2000 is your last month of RCA.

(b) If you get a job, your income will affect your RCA based on the TANF rules (chapter 388-450 WAC). If you earn more than is allowed by WAC 388-478-0035, you are no longer eligible for RCA. (~~Your medical coverage may continue for up to eight months from your month of arrival in the United States (WAC 388-466-0130).)~~)

**(9) Are there other reasons why RCA may end?**

Your RCA also ends if:

(a) You move out of Washington state;

(b) Your unearned income and/or resources go over the maximum limit (WAC 388-466-0140); or

(c) You, without good cause, refuse to meet refugee employment and training requirements (WAC 388-466-0150).

**(10) Will my spouse be eligible for RCA, if he/she arrives in the U.S. after me?**

When your spouse arrives in the United States, DSHS determines his/her eligibility for RCA and/or other income assistance programs.

(a) Your spouse may be eligible for up to eight months of RCA based on his/her date of arrival into the United States.

(b) If you live together, you and your spouse are part of the same assistance unit and your spouse's eligibility for RCA is determined based on you and your spouse's combined income and resources (WAC 388-466-0140).

**(11) Can I get additional money in an emergency?**

If you have an emergency and need a cash payment to get or keep your housing or utilities, you may apply for the DSHS program called additional requirements for emergent needs (AREN). To receive AREN, you must meet the requirements in WAC 388-436-0002.

**(12) What can I do if I disagree with a decision or action that has been taken by DSHS on my case?**

If you disagree with a decision or action taken on your case by the department, you have the right to request a review of your case or an administrative hearing (WAC 388-02-0090). Your request must be made within ninety days of the date of the decision or action.

**WSR 13-03-153**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 13-16—Filed January 23, 2013, 11:11 a.m., effective February 23, 2013]

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

Purpose: This rule making streamlines, reorganizes, and updates WAC 220-20-010 and adds provisions for reporting derelict fishing gear. The project splits WAC 220-20-010, a large and general rule, into more manageable and logical sections.

Reasons Supporting Proposal: The commission discussed this rule change proposal during the fish and wildlife commission meeting and public hearing held on December 14, 2012. The commission adopted the proposed changes at the January 11, 2013, commission meeting. The changes update, clarify, reorganize, and improve enforceability of provisions originally found within WAC 220-20-010.

Citation of Existing Rules Affected by this Order: Amending WAC 220-20-010.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047.

Adopted under notice filed as WSR 12-21-115 on October 23, 2012.

Changes Other than Editing from Proposed to Adopted Version: Some small editing changes were made from the proposed to the adopted version in WAC 220-20-117. However, these were technical changes rather than substantive. The Northern Pike addition in the original proposed version was determined unnecessary and removed from the proposed amendments.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 11, Amended 1, Repealed 0.

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

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

Date Adopted: January 23, 2013.

Miranda Wecker, Chair  
 Fish and Wildlife Commission

**AMENDATORY SECTION** (Amending Order 10-33, filed 3/2/10, effective 4/2/10)

**WAC 220-20-010 General (~~provisions—Lawful and unlawful acts—Salmon, other fish and shellfish~~) rules—Fish.** (1) It (~~shall be~~) is unlawful to take, fish for, possess or transport (~~for any purpose~~) fish, shellfish, or fish or shellfish parts (~~thereof~~), in or from any (~~of the~~) waters or land

(~~over which~~) within the jurisdiction of the state of Washington (~~has jurisdiction~~), or from the waters of the Pacific Ocean, except (~~at the times, places and in the manners and for the species, quantities, sizes or sexes provided for in the regulations of the~~) as provided by department rule.

(~~(2) It shall be unlawful for any person to have in possession or under control or custody any food fish or shellfish within the land or water boundaries of the state of Washington, except in those areas which are open to commercial fishing or wherein the possession, control or custody of salmon or other food fish or shellfish for commercial purposes is made lawful under a statute of the state of Washington or the rules and regulations of the commission or director, unless otherwise provided.~~)

(~~3) A person may fish for, possess, process and otherwise deal in food fish and fish offal or scrap for any purpose, provided that it shall be unlawful to use any of the following listed species for purposes other than human consumption or fishing bait:~~)

Pacific halibut (*Hippoglossus stenolepis*)

Pacific herring (*Clupea harengus pallasi*)

(~~except as prescribed in WAC 220-49-020~~)

Anchovy (~~except as provided for in WAC 220-~~ *Engraulis mordax*)

~~33-060, 220-36-03001, 220-44-020, and 220-40-030~~)

Salmon

Chinook (*Oncorhynchus tshawytscha*)

Coho (*Oncorhynchus kisutch*)

Chum (*Oncorhynchus keta*)

Pink (*Oncorhynchus gorbuscha*)

Soekeye (*Oncorhynchus nerka*)

Masu (*Oncorhynchus masu*)

Sardine (*Sardinops sagax*)

(~~Except as provided for in WAC 220-88C-040~~)

(~~2) It is unlawful for any person who takes or possesses fish or shellfish taken from any of the waters or beaches of the Columbia River, the state of Washington, or the Pacific Ocean, for any purpose, to fail to submit the fish or shellfish for inspection by authorized department personnel. Violation of this subsection is punishable under RCW 77.15.360. Unlawful interfering in department operations—Penalty.~~)

(~~3) It is unlawful for the owner or operator of any fishing gear to refuse to submit to inspection of the gear in any manner specified by a fish and wildlife officer. Violation of this subsection is punishable under RCW 77.15.470.~~)

(~~4) It (~~shall be~~) is unlawful for any person to fish for fish or shellfish while in possession in the field of fish or shellfish that are in violation of the (~~harvest regulations~~) rules for the area (~~being~~) fished. This (~~regulation~~) subsection does not apply to vessels in transit. Violation of this subsection is punishable under RCW 77.15.380 or RCW 77.15.550, depending on the circumstances of the violation.~~)

(5) ((It shall be unlawful for the owner or operator of any commercial food fish or shellfish gear to leave such gear unattended in waters of the state or offshore waters unless said gear is marked.

(a) Shellfish pot, bottom fish pot, set line and set net gear must be marked with a buoy to which shall be affixed, in a visible and legible manner, the department approved and registered buoy brand issued to the licensee, provided that:

(i) Buoys affixed to unattended gear must be visible on the surface of the water except during strong tidal flow or extreme weather conditions.

(ii) When two or more shellfish pots are attached to a common ground line, the number of pots so attached must be clearly labeled on the required buoy.

(b) It is unlawful to operate any gillnet, attended or unattended, unless there is affixed, within five feet of each end of the net, a buoy, float, or some other form of marker, visible on the cork line of the net, on which shall be marked in a visible, legible and permanent manner the name and gillnet license number of the fisher.

(c) It shall be unlawful at any time to leave a gillnet unattended in the commercial salmon fishery.

(6) It shall be unlawful to place any commercial food fish or shellfish gear in any waters closed to commercial fishing, provided that this provision shall not apply to reef nets or brush weirs or to gear being tested under supervision of the department. In addition, it shall be unlawful to take, fish for or possess food fish with any type of commercial fishing gear in the waters of Carr Inlet north of north latitude 47°20', from August 15 through November 30, except as provided in chapter 220-47 WAC.

(7) It shall be unlawful for the owner or operator of any fishing gear to refuse to submit such gear to inspection in any manner specified by authorized representatives of the department.

(8) It shall be unlawful for any person taking or possessing fish or shellfish taken from any of the waters or beaches of the Columbia River, the state of Washington, or the Pacific Ocean, for any purpose, to fail to submit such fish or shellfish for inspection by authorized representatives of the department.

(9) It shall be unlawful for any person licensed by the department to fail to make or return any report required by the department relative to the taking, selling, possessing, transporting, processing, freezing and storing of fish or shellfish, whether taken within the jurisdiction of the state of Washington or beyond, or on Indian reservations or usual and accustomed Indian fishing grounds.

(10)) It ((shall be)) is unlawful to take, fish for, possess, injure, kill, or molest fish in any fishway, fish ladder, fish screen, holding pond, rearing pond, or other fish protective device, or to interfere ((in any manner)) with the proper operation of ((such)) a fish protective device((s)) in any way. Violation of this subsection is punishable under RCW 77.15.370 or 77.15.380, depending on the circumstances of the violation.

((11) It shall be unlawful to club, gaff, snag, snare, dip net, harass, spear, stone, or otherwise molest, injure, kill, destroy, or shoot with a firearm, crossbow, bow and arrow, or compressed air gun, any fish or shellfish or parts thereof, or

for any person to attempt to commit such acts, or to have any fish, shellfish or parts thereof so taken in possession, except as provided for in this subsection:

(a) A person may use a dip net or club in the landing of fish taken by personal use angling, unless otherwise provided; and a person may use a gaff in the landing of tuna, halibut and dogfish, and a harpoon in the landing of halibut, in all catch record card areas.

(b)(i) A person may use a dip net, gaff, or club in the landing of food fish or shellfish taken for commercial purposes, except that it is unlawful to use a fish pew, pitchfork, or any other instrument that will penetrate the body of the fish or shellfish that are not going to be retained or are unlawful to possess.

(ii) It is unlawful under any circumstance to use a device that penetrates the body of a sturgeon whether legal to retain or not.

(c) A person may use a spear in underwater spear fishing, as provided for in WAC 220-56-160.

(d) A person may use a bow and arrow or spear to take carp, as provided for in WAC 220-56-280.

(e) A person may snag herring, smelt, anchovies, pilchard, sand lance, and squid when using forage fish jigger gear or squid jigs.

(f) A person may shoot halibut when landing them with a dip net, harpoon or gaff.

(12)) (6) It ((shall be)) is unlawful to take or possess(,; for any purpose,) any fish or shellfish smaller or larger than the ((lawful)) minimum or maximum size limits or in excess of catch or possession limits prescribed by department rule. A person must immediately return to the water any ((such)) fish ((either)) or shellfish snagged, hooked, netted or gilled ((must be immediately returned to the water)) that do not conform to department size requirements or are in excess of catch or possession limits with the least possible injury to the fish or shellfish. Violation of this subsection is a misdemeanor punishable under RCW 77.15.380 or 77.15.550, depending on the circumstances of the violation.

((13) It shall be unlawful to allow salmon or sturgeon or fish unlawful to retain that are entangled in commercial nets to pass through a power block or onto a power reel or drum.

(14) Notwithstanding the exceptions listed in subsection (15) of this section, it shall be unlawful to possess, aboard any vessel engaged in commercial fishing or having commercially caught fish aboard, any food fish or shellfish in such condition that its species, length, weight or sex cannot be determined if a species, species group or category, length, weight, or sex limit is prescribed for said species.

(15) It is unlawful to possess food fish or shellfish mutilated in any manner such that the natural length or weight cannot be determined if a length or weight limit is prescribed for said species, except as follows:

(a) The food fish or shellfish have been legally taken for commercial purposes, are landed, and are properly accounted for on a completed fish receiving ticket.

(b) A person may possess, transport through the waters of the state, or land dressed sablefish as defined in WAC 220-16-330.

(c) A person may possess, transport through the waters of the Pacific Ocean, or land dressed salmon caught during a

legal commercial salmon troll fishery, provided that frozen Chinook salmon, dressed with the heads off, shall be 21 1/2 inches minimum; and frozen coho salmon, dressed with the heads off, shall be 12 inches minimum, measured from the midpoint of the clavicle arch to the fork of the tail.

(d) A person may possess, transport through the waters of the Pacific Ocean, or land dressed halibut if allowed by International Pacific Halibut Commission (IPHC) rules and such fish meet any IPHC size requirements. All halibut must be landed with the heads on.

(e) A person may possess, transport through the waters of the Pacific Ocean, or land dressed lingcod as defined by WAC 220-16-330 when taken during a lawful commercial fishery.

(16) It shall be unlawful to possess for any purpose any fish or shellfish in excess of catch or possession limits prescribed by department rule. Any such fish either snagged, hooked, netted or gilled must be immediately returned to the water with the least possible injury to the fish or shellfish.

(17) It shall be unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department.

(18) It shall be unlawful for any permit holder to fail to comply with all provisions of any special permit or letter of approval issued to him under the authority of the director, or to perform any act not specifically authorized in said document or in the regulations of the commission or director.

(19) It shall be unlawful to use, place or cause to be placed in the waters or on the beaches or tidelands of the state any substance or chemical used for control of predators or pests affecting fish or shellfish or other aquatic marine organisms, without first having obtained a special permit to do so from the director.

(20) It shall be unlawful to test commercial fishing gear, except as follows:

(a) Bellingham Bay—Inside and northerly of a line from Governor's Point to the south tip of Eliza Island to Point Frances, in waters 10 fathoms and deeper.

(b) Boundary Bay—North of a line from Birch Point to Point Roberts, and south of the international boundary, in waters 10 fathoms and deeper during times not under control of the Pacific Salmon Commission.

(c) San Juan Channel—Within a 1-mile radius of Point Caution during times not under control of the Pacific Salmon Commission.

(d) Port Angeles—Inside and westerly of a line projected from the east tip of Ediz Hook through buoy C "1" to the mainland.

(e) Port Gardner—Within a 2-mile radius of the entrance to Everett breakwater, in waters 10 fathoms and deeper.

(f) Central Puget Sound—Between lines from Meadow Point to Point Monroe, and Skiff Point to West Point, in waters 50 fathoms and deeper.

(g) East Pass—Between lines from Point Robinson true east to the mainland, and from Dash Point to Point Piner, in waters 50 fathoms and deeper.

(h) Port Townsend—Westerly of a line from the Coast Guard station in Port Townsend to Wala Point to Kala Point, in waters 10 fathoms and deeper.

(i) All tows or sets are limited to 20 minutes, exclusive of setting and retrieving time.

(j) All testing is to be accomplished between 8:00 a.m. and 4:00 p.m.

(k) Cod ends of trawl nets must be left open, all hooks of set line gear must be unbaited, and no lures or baited hooks shall be used with jig or troll gear.

(l) Any and all incidentally caught fish and shellfish must be returned to the waters immediately, and no fish or shellfish are to be retained aboard the vessel at any time during a gear test operation.

(m) It shall be unlawful for any person conducting such gear testing operations to fail to notify the fish and wildlife enforcement office in Olympia prior to testing.

~~(21))~~ (7) It is unlawful for any person or ~~((corporation either))~~ entity licensed by the department or bringing fish or shellfish into the state to fail to comply with the directions of authorized department personnel related to the collection of sampling data or material from fish or shellfish. It is also unlawful for any ~~((such))~~ person or ~~((corporation))~~ entity to fail to relinquish to the department, upon request, any part of a salmon or other fish containing coded-wire tags~~(s)~~ including, but not limited to, the snouts of ~~((those))~~ salmon ~~((that are marked by having))~~ with clipped adipose fins.

~~((22))~~ It is unlawful for any person to possess live bottom fish taken under a commercial fishery license.

(23) It is unlawful for any person to use chemical irritants to harvest fish, shellfish or unclassified marine invertebrates except as authorized by permit issued by the department.

(24) The lower Columbia River, Grays Harbor and Willapa Bay are closed to commercial sturgeon fishing, except as provided by emergency rule of the director. Sturgeon taken incidentally during an open commercial salmon fishing period may be retained for commercial purposes as described by department rule.)

## NEW SECTION

**WAC 220-20-116 Aquatic use of chemicals.** (1) It is unlawful to use, place, or cause to be placed in state waters or on state beaches or tidelands any substance or chemical used for control of predators or pests that affects fish or shellfish or other aquatic marine organisms, without first obtaining a special permit to do so from the director.

(2) It is unlawful for any person to use chemical irritants to harvest fish, shellfish, or unclassified marine invertebrates, except as authorized by department permit.

(3) Violation of this section is a misdemeanor, punishable under RCW 77.15.150 or 77.15.196, depending on the circumstances of the violation.

## NEW SECTION

**WAC 220-20-117 Gaffing and use of other body-penetrating devices—Personal use.** (1) It is unlawful to club, gaff, snag, snare, dip net, harass, spear, stone, or otherwise molest, mutilate, injure, kill, destroy, or shoot with a firearm,

crossbow, bow and arrow, or compressed air gun, any fish or shellfish or fish or shellfish parts for personal-use purposes, except:

(a) A person may use a dip net or club in the landing of fish taken by personal-use angling, unless otherwise provided; and a person may use a gaff in the landing of tuna, halibut and dogfish, and a harpoon in the landing of halibut, in all catch record card areas;

(b) A person may use a spear in underwater spear fishing, as provided in WAC 220-56-160;

(c) A person may use a bow and arrow or spear to take carp or as provided by department rule;

(d) A person may snag herring, smelt, anchovies, pilchard, sand lance, and squid when using forage fish jigger gear or squid jigs; and

(e) A person may shoot halibut when landing them with a dip net, harpoon or gaff for personal use only.

(2) It is unlawful to possess fish or shellfish or parts of fish or shellfish taken using the unlawful methods described in subsection (1) of this section.

(3) It is unlawful to use a device that penetrates the body of a sturgeon under any circumstance, whether the sturgeon is legal to retain or not.

(4) Violation of this section is a gross misdemeanor punishable under RCW 77.15.370, Unlawful recreational fishing in the first degree—Penalty.

(5) It is unlawful to attempt acts that violate this section. Violation of this subsection is punishable under RCW 77.15.380, Unlawful recreational fishing in the second degree—Penalty.

#### NEW SECTION

**WAC 220-20-118 General rules—Commercial fishery.** (1) It is unlawful for any person to possess any food fish or shellfish within the jurisdiction of the state of Washington, except in areas open to commercial fishing or where the possession of salmon or other food fish or shellfish for commercial purposes is permissible under state law or department rule.

(2) It is permissible to fish for, possess, process, and otherwise deal in food fish and fish offal or scrap for any purpose, except it is unlawful to use any of the following listed species for purposes other than human consumption or fishing bait:

|  |                                     |
|--|-------------------------------------|
| Pacific halibut  | ( <i>Hippoglossus stenolepis</i> )  |
| Pacific herring<br>(except as prescribed<br>in WAC 220-49-020)                               | ( <i>Clupea harengus pallasii</i> ) |
| Anchovy (except as provided for in WAC 220-33-060, 220-36-03001, 220-44-020, and 220-40-030) | ( <i>Engraulis mordax</i> )         |
| Salmon   |                                     |
| Chinook  | ( <i>Oncorhynchus tshawytscha</i> ) |
| Coho   | ( <i>Oncorhynchus kisutch</i> )     |
| Chum   | ( <i>Oncorhynchus keta</i> )        |

|         |                                   |
|---------|-----------------------------------|
| Pink    | ( <i>Oncorhynchus gorbuscha</i> ) |
| Sockeye | ( <i>Oncorhynchus nerka</i> )     |
| Masu    | ( <i>Oncorhynchus masu</i> )      |
| Sardine | ( <i>Sardinops sagax</i> )        |

(3) Violation of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

#### NEW SECTION

**WAC 220-20-119 General gear rules—Commercial fishery.** (1) Commercial shellfish pot, bottom fish pot, set line and set net gear must be marked with a buoy that bears the department approved and registered buoy brand issued to the license in a visible and legible manner. It is unlawful for the owner or operator of any commercial food fish or shellfish gear to leave the gear unattended in state or offshore waters unless the gear is marked. Violation of this subsection is punishable under RCW 77.15.520 or 77.15.522, depending on the circumstances of the violation.

(2) Violations of the following are punishable under 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty:

(a) Buoys affixed to unattended commercial food fish or shellfish gear must be visible on the surface of the water except during strong tidal flow or extreme weather conditions.

(b) It is unlawful to operate any gill net unless there is a buoy, float, or other marker affixed within 5 feet of each end of the net and visible on the cork line. The buoy, float, or other marker must be labeled legibly and permanently with the name and gill-net license number of the owner of the net.

(c) It is unlawful to leave a gill net unattended at any time in the commercial salmon fishery.

(d) It is unlawful to allow salmon, sturgeon, or fish unlawful to retain that are entangled in commercial nets to pass through a power block or onto a power reel or drum.

(3) It is unlawful for any person who loses or abandons non-tribal commercial net fishing gear within the waters of the state to fail to:

(a) Contact the department of fish and wildlife within twenty-four hours of the loss, by phone at 855-542-3935, or on-line at <http://wdfw.wa.gov/fishing/derelect/>; and

(b) Provide the following required information:

- (i) Type of gear;
- (ii) General location of the gear;
- (iii) Latitude (if known) of the gear;
- (iv) Longitude (if known) of the gear;
- (v) Estimated water depth where the gear is located;
- (vi) Date the gear was lost;
- (vii) Time the gear was lost;
- (viii) Name of gear's owner;
- (ix) Telephone number of the gear's owner; and
- (x) E-mail address (if available) of the gear's owner.

(c) Failing to report lost or abandoned nontribal commercial net gear under this subsection is an infraction under RCW 77.15.160.

NEW SECTION**WAC 220-20-120 General rules—Fish—Reporting.**

(1) It is unlawful for any person licensed by the department to fail to make or return any report required by the department relative to the taking, selling, possessing, transporting, processing, freezing, and storing of fish or shellfish, whether taken within the jurisdiction of the state of Washington or beyond, or on Indian reservations or usual and accustomed Indian fishing grounds.

(2) Violation of this section is punishable under RCW 77.15.280, 77.15.560, or 77.15.568, depending on the circumstances of the violation.

NEW SECTION

**WAC 220-20-121 Possession of food fish and shellfish—Identification—Commercial.** (1) It is unlawful to possess any food fish or shellfish in a condition where the species, length, weight, or sex cannot be determined if a species, species group or category, length, weight, or sex limit is prescribed for that species on a vessel engaging in commercial fishing or that has commercially caught fish aboard, except:

(a) It is permissible to possess fish or shellfish legally taken for commercial purposes, landed, and properly accounted for on a completed fish receiving ticket;

(b) It is permissible to possess, transport through the waters of the state, or land dressed sablefish;

(c) It is permissible to possess, transport through the waters of the Pacific Ocean, or land dressed salmon caught during a legal commercial salmon troll fishery, provided that frozen dressed Chinook salmon are 21 1/2 inches or more in length and frozen dressed coho salmon are 12 inches or more in length, measured from the midpoint of the clavicle arch to the fork of the tail;

(d) It is permissible to possess, transport through the waters of the Pacific Ocean, or land dressed halibut if allowed by International Pacific Halibut Commission (IPHC) rules and such fish meet any IPHC size requirements so long as halibut is landed with the heads still attached; and

(e) It is permissible to possess, transport through the waters of the Pacific Ocean, or land dressed lingcod when taken during a lawful commercial fishery.

(2) Violation of this section is a gross misdemeanor under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

(3) "Dressed fish" is defined as provided in WAC 220-16-330.

NEW SECTION

**WAC 220-20-122 Possession of a net aboard a vessel—Commercial fishery.** (1) It is unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum size or length permissible for a single net in that area, except as otherwise provided by department rule.

(2) Violation of this section is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

NEW SECTION**WAC 220-20-123 Testing commercial fishing gear.**

(1) It is unlawful to test commercial fishing gear, except as follows:

(a) Bellingham Bay - Inside and northerly of a line from Governor's Point to the south tip of Eliza Island to Point Frances, in waters 10 fathoms and deeper.

(b) Boundary Bay - North of a line from Birch Point to Point Roberts, and south of the international boundary, in waters 10 fathoms and deeper during times not under control of the Pacific Salmon Commission.

(c) San Juan Channel - Within a 1-mile radius of Point Caution during times not under control of the Pacific Salmon Commission.

(d) Port Angeles - Inside and westerly of a line projected from the east tip of Ediz Hook through buoy C "1" to the mainland.

(e) Port Gardner - Within a 2-mile radius of the entrance to Everett breakwater, in waters 10 fathoms and deeper.

(f) Central Puget Sound - Between lines from Meadow Point to Point Monroe, and Skiff Point to West Point, in waters 50 fathoms and deeper.

(g) East Pass - Between lines from Point Robinson true east to the mainland, and from Dash Point to Point Piner, in waters 50 fathoms and deeper.

(h) Port Townsend - Westerly of a line from the Coast Guard station in Port Townsend to Walan Point to Kala Point, in waters 10 fathoms and deeper.

(i) All tows or sets are limited to 20 minutes, exclusive of setting and retrieving time.

(j) All testing must only occur between 8:00 a.m. and 4:00 p.m.

(k) Cod ends of trawl nets must be left open, all hooks of set line gear must be unbaited, and no lures or baited hooks may be used with jig or troll gear.

(l) All incidentally caught fish and shellfish must be returned to the waters immediately. It is unlawful to retain fish or shellfish aboard the vessel at any time during a gear test operation.

(2) It is unlawful for any person conducting gear testing operations to fail to notify fish and wildlife enforcement in Olympia at 360-902-2936 prior to testing.

(3) Violation of this section is punishable under RCW 77.15.520, 77.15.550, or 77.15.580, depending on the circumstances of the violation.

NEW SECTION

**WAC 220-20-124 Placing commercial gear in closed waters—Unlawful.** (1) It is unlawful to place any commercial food fish or shellfish gear in any waters closed to commercial fishing, except reef nets, brush weirs, or gear tested in accordance with WAC 220-20-123 and under department supervision.

(2) It is unlawful to take, fish for, or possess food fish with any type of commercial fishing gear in the waters of

Carr Inlet north of north latitude 47°20', from August 15 through November 30, except as provided in chapter 220-47 WAC.

(3) Violation of this section is punishable under RCW 77.15.520 or 77.15.550.

#### NEW SECTION

**WAC 220-20-125 Commercial sturgeon fishery—Gillnet—Lower Columbia, Grays Harbor and Willapa Bay.** (1) The lower Columbia River, Grays Harbor and Willapa Bay are closed to commercial sturgeon fishing, except as provided by emergency rule of the director. Sturgeon taken incidentally during an open commercial salmon fishing period may be retained for commercial purposes when allowed by department rule.

(2) Violation of this subsection is a gross misdemeanor under RCW 77.15.550, Violation of commercial fishing area or time—Penalty, unless the circumstances constitute violating commercial fishing area or time in the first degree, which is a class C felony.

#### NEW SECTION

**WAC 220-20-126 Gaffing and use of other body-penetrating devices—Commercial.** (1) It is unlawful to club, gaff, snag, snare, dip net, harass, spear, stone, or otherwise molest, injure, kill, destroy, or shoot with a firearm, cross-bow, bow and arrow, or compressed air gun, any fish or shellfish or parts of fish or shellfish for commercial purposes, except: It is permissible to use a dip net, gaff, or club in the landing of food fish or shellfish. However, it is unlawful to use a fish pew, pitchfork, or any other instrument that penetrates the body of the fish or shellfish if the fish or shellfish will not be retained or are unlawful to possess.

(2) It is unlawful to possess fish or shellfish or parts of fish or shellfish taken using the unlawful methods described in subsection (1) of this section.

(3) It is unlawful under any circumstance to use a device that penetrates the body of a sturgeon whether the sturgeon is legal to retain or not.

(4) Violation of this section is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

(5) It is unlawful to attempt acts that violate this section. Violation of this subsection is punishable under RCW 77.15.382, Unlawful recreational fishing in the second degree—Penalty.

**WSR 13-03-155**  
**PERMANENT RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed January 23, 2013, 11:20 a.m., effective February 23, 2013]

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

Purpose: Technical edits to WAC 181-78A-220. The professional educator standards board deregulated school social worker programs and language no longer is required.

Citation of Existing Rules Affected by this Order:  
Amending x [WAC 181-78A-220].

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 12-22-010 on October 26, 2012.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 400, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: January 23, 2013.

David Brenna  
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 11-01-047, filed 12/7/10, effective 1/7/11)

**WAC 181-78A-220 Program approval standards for approved preparation programs.** The program approval standards for approved preparation programs for teachers, administrators, and educational staff associates are as follows:

(1) **Professional education advisory boards:** The institution or organization, in compliance with the provisions of WAC 181-78A-250, has established and maintained a professional education advisory board to participate in and cooperate with the institution or organization on decisions related to the development, implementation, and revision of each preparation program—i.e., teacher, administrator, school counselor, and school psychologist(~~(, and school social workers)~~).

(2) **Accountability:** Each institution or organization, in compliance with the provision of WAC 181-78A-255, has established a performance-based preparation program.

(3) **Unit governance and resources:** A separate school, department, or other administrative unit within the institution or organization, in compliance with the provision of WAC 181-78A-261, is responsible for providing the resources needed to develop and maintain quality preparation programs.

(4) **Program design:** Each institution or organization, in compliance with the provision of WAC 181-78A-264, is responsible for establishing a collaboratively developed approved preparation program that is based on a conceptual framework, current research and best practice that reflects the

state's learning goals and essential academic learning requirements.

(5) **Knowledge and skills:** Each institution or organization, in compliance with the provision of WAC 181-78A-270, has established policies requiring all candidates for certification to know and demonstrate the content, pedagogical, and professional knowledge and skills required for the particular certificate and areas of endorsement, which reflect the state's learning goals and essential academic learning requirements, and are necessary to help all students learn.