

**WSR 21-01-006**  
**PERMANENT RULES**  
**OFFICE OF THE**  
**INSURANCE COMMISSIONER**

[Filed December 2, 2020, 1:16 p.m., effective January 2, 2021]

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

Purpose: The commissioner has created new regulations to provide guidance and establish standards to ensure incentives intended to influence consumer behavior are directed toward protecting policyholders' privacy rights and protecting consumers in the administration of life insurance products. The anticipated effect of the proposed rules is to provide guidance to insurers and implement the legislative amendments made to RCW 48.30.140, 48.30.150, 48.30.155, and 48.23.525 by passage of SSB 6052.

Citation of Rules Affected by this Order: New WAC 284-23-850, 284-23-860, 284-23-870, and 284-23-880.

Statutory Authority for Adoption: RCW 48.02.060 and 48.43.715.

Adopted under notice filed as WSR 20-21-082 on October 19, 2020.

A final cost-benefit analysis is available by contacting Tabba Alam, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7170, email TabbaA@oic.wa.gov, website www.insurance.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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 4, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 2, 2020.

Mike Kreidler  
Insurance Commissioner

**INCENTIVIZED BENEFITS FOR INDIVIDUAL LIFE  
INSURANCE**

NEW SECTION

**WAC 284-23-850 Purpose and scope.** The purpose of these rules is to set standards for regulating noninsurance benefits permitted under RCW 48.23.525 (1)(d) related to any policy of individual life insurance that are intended to incent behavioral changes that improve the health and reduce the risk of death of the insured and establish the minimum practices required in the administration of such noninsurance benefits. These rules apply to the products or services permitted under RCW 48.23.525 (1)(d) related to individual life

insurance policies governed by chapter 48.23 RCW. All other requirements applicable to life insurers pursuant to chapters 48.23 RCW and 284-23 WAC apply to life insurers providing such products or services, unless specifically stated otherwise in statute or rule.

NEW SECTION

**WAC 284-23-860 Advertising requirements.** (1) Any advertisement for an individual life insurance policy that provides noninsurance benefits permitted under RCW 48.23.525 (1)(d) that incent healthy behavioral changes that improve the health and reduce the risk of death of the insureds, must contain the following disclaimer:

"Products or services offered under the (program/product name) program are not insurance and are subject to change. For more information, please contact the company at (website address) or via telephone at (number)."

(2) Any advertisement for an individual life insurance policy with noninsurance benefits that has additional costs or participation requirements for these products or services must also contain the following language in the disclaimer, as applicable:

(a) "There are additional costs associated with these products or services"; and/or

(b) "There are additional requirements associated with participation in the program."

(3) Any advertisement for an individual life insurance policy with noninsurance benefits that has penalties for terminating participation for these products or services must also contain the following language in the disclaimer, as applicable:

"There may be penalties for terminating participation in this program."

NEW SECTION

**WAC 284-23-870 Misleading offers to incentivize behavior.** No insurer offering noninsurance benefits permitted under RCW 48.23.525 (1)(d) that incent healthy behavioral changes that improve the health and reduce the risk of death of the insureds in an individual life insurance policy shall make, issue or circulate, or cause to be made, issued or circulated any misrepresentation of the terms of any such product or service or the benefits or advantages promised, or use any name or title of any policy or class of policies misrepresenting the nature thereof.

NEW SECTION

**WAC 284-23-880 Privacy.** Any insurer including their appointed producer, contractor, managing general agent, or third-party administrator who offers or administers noninsurance benefits permitted under RCW 48.23.525 (1)(d) that incent healthy behavioral changes that improve the health and reduce the risk of death of the insureds is subject to the privacy requirements of chapter 284-04 WAC.

**WSR 21-01-008**  
**PERMANENT RULES**  
**BELLEVUE COLLEGE**

[Filed December 2, 2020, 3:07 p.m., effective January 2, 2021]

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

Purpose: On May 19, 2020, the Federal Register printed amendments to Title IX regulations (85 F.R. 30575). The new regulations address the grievance process for formal complaints of sexual harassment and required changes to the student conduct code to be compliant with federal regulations. These permanent rule changes add a supplementary process to address reported Title IX student misconduct. Additional changes to the existing language were made to match terminology in the supplemental procedures for consistency.

Citation of Rules Affected by this Order: New Supplemental Title IX Student Conduct Procedures; WAC 132H-126-400, 132H-126-410, 132H-126-420, 132H-126-430, 132H-126-440, 132H-126-450, 132H-126-460, 132H-126-470 and 132H-126-480; and amending WAC 132H-126-040, 132H-126-100, 132H-126-120, 132H-126-130, 132H-126-140, 132H-126-160, 132H-126-170, 132H-126-200, 132H-126-210, 132H-126-300, 132H-126-310, 132H-126-320, 132H-126-330, and 132H-126-340.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13); P.L. 113-4, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.; WSR 19-01-082, § 132H-126-010, filed December 17, 2018, effective January 17, 2019.

Adopted under notice filed as WSR 20-19 [20-19-116] on September 21, 2020.

Changes Other than Editing from Proposed to Adopted Version: The permanent rule change includes clarifying language to address academic dishonesty concerns based on recent case law.

Number of Sections Adopted in Order to Comply with Federal Statute: New 9, Amended 15, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 15, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 9, Amended 15, Repealed 0.

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

Date Adopted: December 2, 2020.

Tracy Biga MacLean  
Associate Director

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

**WAC 132H-126-010 Authority.** The board of trustees, acting pursuant to RCW 28B.50.140, delegates to the president of Bellevue College the authority to administer student disciplinary action. Administration of the disciplinary procedures is the responsibility of the provost for academic and student affairs or designee and/or the designated student conduct officer. The student conduct officer shall serve as the principal investigator and administrator for ~~((alleged))~~ reported violations of this code.

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

**WAC 132H-126-040 Definitions.** The following definitions shall apply for the purposes of this student conduct code:

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

(2) **"College official"** is an employee of the college performing assigned administrative, security, professional, or paraprofessional duties.

(3) **"College premises"** shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, other property owned, used, or controlled by the college, study abroad program, retreat, and conference sites, and college-sponsored and/or college-hosted online platforms.

(4) **"Complainant"** is a student or another member of the college community who is allegedly directly affected by a reported violation of this student conduct code. The complainant may be the reporting party, but not necessarily; witnesses or other third parties may report concerns. In any case involving a report of sexual misconduct as defined in this student conduct code, a complainant is afforded certain rights under this student conduct code including, but not limited to:

(a) The right to be informed of all orders issued in the disciplinary case in which this person is a complainant;

(b) The right to appeal a disciplinary decision; and

(c) The right to be accompanied by a process advisor.

(5) **"Conduct review officer"** is the provost for academic and student affairs or designee or other college administrator designated by the president to be responsible for receiving and reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities, as set forth in this chapter, as may be reasonably necessary.

~~((6))~~ (6) **"Disciplinary action"** is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

~~((7))~~ (7) **"Disciplinary appeal"** is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or a dismissal are heard by the student conduct committee. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings (BAP).

~~((7))~~ (8) **"Filing"** is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official. Unless otherwise provided, filing shall be accomplished by:

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

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

~~((8))~~ **"Impacted party"** is a student or another member of the college community directly affected by an alleged violation of this student conduct code. The impacted party may be the reporting party, but not necessarily; witnesses or other third parties may report concerns. In any case involving an allegation of sexual misconduct as defined in this student conduct code, an impacted party is afforded certain rights under this student conduct code including, but not limited to:

~~(a) The right to be informed of all orders issued in the disciplinary case in which this person is an impacted party;~~

~~(b) The right to appeal a disciplinary decision; and~~

~~(c) The right to be accompanied by a process advisor;))~~

(9) **"Process advisor"** is a person selected by a ~~((responding party or an impacted party))~~ respondent or a complainant to provide support and guidance during disciplinary proceedings under this student conduct code.

(10) ~~((Responding party))~~ **Respondent** is a student against whom disciplinary action is initiated. Each ~~((responding party))~~ respondent is afforded certain rights including, but not limited to:

(a) The right to be presumed not responsible for the reported misconduct unless or until a determination of responsibility is reached after completion of the disciplinary process;

~~((b))~~ (b) The right to be informed of all orders issued in the ~~((responding party's))~~ respondent's disciplinary case;

~~((c))~~ (c) The right to appeal a disciplinary decision; and

~~((e))~~ (d) The right to be accompanied by a process advisor.

(11) **"Service"** is the process by which a document is officially delivered to a party. Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail. Unless otherwise provided, service upon a party shall be accomplished by:

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

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

(12) **"Sexual misconduct"** includes prohibited sexual- or gender-based conduct by a student including, but not limited to, sexual harassment, sexual violence, sexual exploitation, indecent exposure, dating violence, or ~~((relationship))~~ domestic violence.

(13) **"Student"** includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw, graduate, or complete courses after the date of ~~((an alleged))~~ a reported violation, who are not officially enrolled for a particular term but who have a continuing relationship with the

college, or who have been notified of their acceptance for admission are considered "students."

(14) **"Student conduct officer"** is a college administrator designated by the president or provost for academic and student affairs or designee to be responsible for implementing and enforcing the student conduct code. The president or provost for academic and student affairs or designee is authorized to reassign any and all of the student conduct officer's duties or responsibilities, as set forth in this chapter, as may be reasonably necessary.

(15) **"The president"** is the president of the college. The president is authorized to delegate any and all of their responsibilities, as set forth in this chapter, as may be reasonably necessary.

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

**WAC 132H-126-100 Prohibited student conduct.** The college may impose disciplinary sanctions against a student who commits or attempts to commit, or aids, abets, incites, encourages, or assists another person to commit the following acts of misconduct:

(1) **Abuse of others.** Assault, physical abuse, verbal abuse, threat(s), intimidation, or other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property unless otherwise protected by law.

(2) **Abuse of the student conduct process.**

(a) Abuse of the student conduct process includes:

(i) Attempting to influence the impartiality or participation of any decision maker including a student conduct officer, conduct review officer, or presiding student conduct committee member;

(ii) Influencing or attempting to influence another person to commit an abuse of the student conduct process;

(iii) Harassment or intimidation of any participant in the student conduct process; or

(iv) Submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in the conduct process.

(b) This provision does not apply to reports made or information provided in good faith, even if the respondent is ultimately found not responsible in that conduct proceeding.

(3) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication. The decision to bring a student conduct proceeding under this code for academic dishonesty is at the sole discretion of the student conduct officer. Nothing in this code prohibits instructors and/or academic divisions or departments from imposing academic consequences, up to and including a failing grade in an academic course or dismissal from an academic program, in response to academic dishonesty. Policies and procedures governing the imposition of academic consequences for academic dishonesty can be found in the course syllabus and any applicable program handbook.

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

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

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

(d) **Multiple submissions.** Submitting the same work in separate courses without the express permission of the instructor(s).

(e) **Deliberate damage.** Taking deliberate action to destroy or damage another's academic work or college property in order to gain an advantage for oneself or another.

~~((3))~~ **(4) Acts of dishonesty.** Acts of dishonesty include, but are not limited to:

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

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

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

~~((4))~~ **(5) Alcohol.** Use, possession, manufacture, or distribution of alcoholic beverages or paraphernalia (except as expressly permitted by college policies, and federal, state, and local laws), or public intoxication on college premises or at college-sponsored events. Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person not of legal age.

~~((5))~~ **(6) Cyber misconduct.** Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, electronic mail, text messaging, social media sites, or applications (apps), to harass, abuse, bully, or engage in other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's electronic communications or computer activities directly or through spyware, sending threatening emails or texts, disrupting electronic communications with spam or by sending a computer virus, or sending false emails or texts to third parties using another's identity (spoofing).

~~((6))~~ **(7) Dating violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

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

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

(i) The length of the relationship;

(ii) The type of relationship; and

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

**(8) Discriminatory harassment.**

(a) Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, not otherwise protected by law, that is directed at a person because of such person's pro-

tected status and that is sufficiently severe, persistent, or pervasive so as to:

(i) Limit the ability of a student to participate in or benefit from the college's educational and/or social programs and/or student housing;

(ii) Alter the terms of an employee's employment; or

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

(b) Protected status includes a person's race; color; creed/religion; national origin; presence of any sensory, mental or physical disability; use of a trained service animal; sex, including pregnancy; marital status; age; genetic information; sexual orientation; gender identity or expression; honorably discharged veteran or military status; HIV/AIDS and hepatitis C status; or membership in any other group protected by federal, state, or local law.

(c) Discriminatory harassment may be physical, verbal, or nonverbal conduct and may include written, social media, and electronic communications not otherwise protected by law.

~~((7))~~ **(9) Disorderly conduct.** Conduct that is disorderly, lewd, or indecent; disturbing the peace; or assisting or encouraging another person to disturb the peace.

~~((8))~~ **(10) Disruption or obstruction.** Disruption or obstruction of any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity, or any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

~~((9))~~ **(11) Domestic violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

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

~~((10))~~ **(13) Failure to comply with directive.** Failure to comply with the reasonable direction of a college official or employee who is acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so.

~~((11))~~ **(14) Harassment or bullying.** Conduct unrelated to a protected class that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or a person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.

(a) Harassing conduct may include, but is not limited to, physical, verbal, or nonverbal conduct, including written, social media and electronic communications unless otherwise protected by law.

(b) For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior not otherwise protected by law when a reasonable person would feel humiliated, harmed, or intimidated.

(c) For purposes of this code, "intimidation" is an implied threat. Intimidation exists when a reasonable person would feel threatened or coerced even though an explicit threat or display of physical force has not been made. Intimidation is evaluated based on the intensity, frequency, or duration of the comments or actions.

~~((12))~~ **(15) Hazing.** Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm to any student.

~~((13))~~ **(16) Indecent exposure.** The intentional or knowing exposure of a person's genitals or other private body parts when done in a place or manner in which such exposure is likely to cause affront or alarm. Breastfeeding or expressing breast milk is not indecent exposure.

~~((14))~~ **(17) Marijuana or other drugs.**

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

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

~~((15))~~ **(18) Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

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

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

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

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

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

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

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

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

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

~~((16))~~ **(19) Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism of, or other nonaccidental damaging or destruction of college property or the property of another person. Property, for purposes of this subsection, also includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

~~((17) Relationship violence.~~ The infliction of physical harm, bodily injury, assault, psychological harm, or the fear of imminent physical harm, bodily injury, or assault committed by:

~~(a) The impacted party's current or former spouse;~~

~~(b) Current or former cohabitant;~~

~~(c) A person with whom the person shares a child in common; or~~

~~(d) A person who has been in a romantic or intimate relationship with the impacted party. Whether such a relationship exists will be gauged by the length, type, and frequency of interaction.~~

~~((18))~~ **(20) Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported ~~((an alleged))~~ a violation of this code or college policy, provided information about ~~((an alleged))~~ a reported violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

~~((19))~~ **(21) Safety violations.** Safety violations include committing any reckless or unsafe act that endangers others, failing to follow established safety procedures (e.g., failing to evacuate during a fire alarm), or interfering with or otherwise compromising any college equipment relating to the safety and security of the campus community including, but not limited to, tampering with fire safety or first-aid equipment, or triggering false alarms or other emergency response systems.

~~((20))~~ **(22) Sexual exploitation.** Taking nonconsensual or abusive sexual advantage of another for the ~~((responding party's))~~ respondent's own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, when the behavior does not otherwise constitute one of the other sexual misconduct offenses described herein. Examples of sexual exploitation may include, but are not limited to:

(a) Invading another person's sexual privacy;

(b) Prostituting another person;

(c) Nonconsensual photography and digital or video recording of nudity or sexual activity, or nonconsensual audio recording of sexual activity;

(d) Unauthorized sharing or distribution of photographs or digital or video recording of nudity or sexual activity, or audio recording of sexual activity, unless otherwise protected by law;

(e) Engaging in voyeurism. A person commits voyeurism if they knowingly view, photograph, record, or film another person, without that person's knowledge and consent, while the person being viewed, photographed, recorded, or

filmed is in a place where the person has a reasonable expectation of privacy;

(f) Knowingly or recklessly exposing another person to a significant risk of sexually transmitted disease or infection; or

(g) Causing the nonconsensual indecent exposure of another person, as defined by subsection (13) of this section.

~~((21))~~ **(23) Sexual harassment.** Unwelcome sexual- or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal, or physical conduct of a sexual- or gender-based nature that is sufficiently severe, persistent or pervasive as to:

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

(b) Alter the terms or conditions of employment; or

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

~~((22))~~ For sexual harassment prohibited under Title IX, refer to WAC 132H-126-410.

**(24) Sexual violence.** A type of sexual harassment that includes nonconsensual intercourse, nonconsensual sexual contact, and sexual coercion.

(a) Consent is knowing, voluntary, and clear permission by word or action to engage in mutually agreed upon sexual activity.

(i) Effective consent cannot result from force, or threat of physical force, coercion, dishonesty, or intimidation.

(ii) Physical force means someone is physically exerting control of another person through violence. Physical force includes, but is not limited to, hitting, kicking, and restraining.

(iii) Threatening someone to obtain consent for a sexual act is a violation of this policy. Threats exist where a reasonable person would have been compelled by the words or actions of another to give permission to sexual activity to which they otherwise would not have consented.

(iv) Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

(v) A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

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

(c) **Nonconsensual sexual contact.** Any intentional sexual touching, however slight, with any object, by a person

upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(d) **Sexual coercion.** Unreasonably pressuring another for sexual contact. When ~~((an impacted party))~~ a complainant makes it clear through words or actions that they do not want to engage in sexual contact, want to stop, or do not want to go past a certain point of sexual interaction, continued pressure beyond that point is presumptively unreasonable and coercive. Other examples of coercion may include using blackmail or extortion, or administering drugs and/or alcohol to overcome resistance or gain consent to sexual activity. Sexual contact that is the result of coercion is nonconsensual.

~~((23))~~ **(e) Incest.** Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen.

**(f) Statutory rape.** Consensual sexual intercourse between someone who is eighteen years of age or older and someone who is under the age of sixteen.

**(25) Stalking.** ~~((Intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person.))~~ Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such an intent.

~~((24))~~ **(26) Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products is prohibited in any building owned, leased, or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the college. Related products include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

~~((25))~~ **(27) Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property. Providing keys to an unauthorized person or providing access to an unauthorized person is also prohibited.

~~((26))~~ **(28) Unauthorized recording.** The following conduct is prohibited:

(a) Making audio, video, digital recordings, or photographic images of a person without that person's consent in a location where that person has a reasonable expectation of privacy (e.g., restroom or residence hall room).

(b) Storing, sharing, publishing, or otherwise distributing such recordings or images by any means.

~~((27))~~ **(29) Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including on-campus housing policies and college traffic and parking rules.

~~((28))~~ (30) **Weapons.**

(a) Possessing, holding, wearing, transporting, storing, or exhibiting any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(i) Commissioned law enforcement personnel; or

(ii) Legally authorized military personnel while in performance of their official duties.

(b) Students with legally issued concealed weapons permits may store their weapons in vehicles parked in accordance with RCW 9.41.050 on campus provided the vehicle is locked and the weapon is concealed from view.

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

(d) Possession and/or use of disabling chemical sprays for purposes of self-defense is not prohibited.

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

**WAC 132H-126-120 Initiation of disciplinary action.**

(1) Any member of the college community may file a complaint against a student for possible violations of the student conduct code.

(2) Upon receipt, a student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the student conduct code.

(a) **Student on student sexual misconduct.** The college's Title IX coordinator or designee shall investigate complaints or other reports of ~~((alleged))~~ sexual misconduct by a student against a student.

(b) **Sexual misconduct involving an employee.** The college's human resource office or designee shall investigate complaints or other reports of sexual misconduct in which an employee is either the ~~((impacted or responding party))~~ complainant or respondent.

(c) Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for student disciplinary action.

(d) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done in compliance with federal and state laws and without unreasonably risking the health, safety, and welfare of the ~~((impacted party))~~ complainant or other members of the college community.

(3) If a student conduct officer determines that a complaint appears to state a violation of the student conduct code, the student conduct officer will consider whether the matter might be resolved through agreement with the ~~((responding party))~~ respondent or through alternative dispute resolution proceedings involving the ~~((impacted party))~~ complainant and the reporting party.

(a) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written per-

mission from both the ~~((impacted party))~~ complainant and the ~~((responding party))~~ respondent.

(b) If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time.

(4) If the student conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or alternative dispute resolution, the student conduct officer may initiate disciplinary action against the ~~((responding party))~~ respondent.

(a) Both the ~~((responding party))~~ respondent and the ~~((impacted party))~~ complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

(b) The student conduct officer, prior to initiating disciplinary action in cases involving allegations of sexual misconduct, will make a reasonable effort to contact the ~~((impacted party))~~ complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the ~~((responding party))~~ respondent if the allegations of sexual misconduct are found to have merit.

(5) All disciplinary actions will be initiated by a student conduct officer. If that officer is the subject of a complaint initiated by the ~~((responding party))~~ respondent or the ~~((impacted party))~~ complainant, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities.

(6) A student conduct officer shall initiate disciplinary action by serving the ~~((responding party))~~ respondent with written notice directing them to attend a disciplinary meeting.

(a) The notice shall briefly describe the factual allegations, the provision(s) of the student conduct code the ~~((responding party is alleged))~~ respondent is reported to have violated, the range of possible sanctions for the ~~((alleged))~~ reported violation(s), and it will specify the time and location of the meeting.

(b) At the disciplinary meeting, the student conduct officer will present the allegations to the ~~((responding party))~~ respondent, and the ~~((responding party))~~ respondent shall be afforded an opportunity to explain what occurred.

(c) If the ~~((responding party))~~ respondent fails to attend the meeting, the student conduct officer may take disciplinary action based upon the available information.

(7) Within ten days of the initial disciplinary meeting and after considering the evidence in the case, including any facts or argument presented by the ~~((responding party))~~ respondent, the student conduct officer shall serve the ~~((responding party))~~ respondent with a written decision setting forth the facts and conclusions supporting the decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal. This period may be extended if the student conduct officer, based on information presented at the disciplinary meeting, concludes that additional investigation is necessary. If the period is extended, the student conduct officer will notify the ~~((responding party))~~ respondent, and the ~~((impacted party))~~ complainant in cases involving

allegations of sexual misconduct, of this extension, the reason(s), and the anticipated extension time frame.

(8) A student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the ~~((responding party))~~ respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s), with or without condition(s), as described in WAC 132H-126-110.

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the ~~((responding party))~~ respondent.

(9) In cases involving allegations of sexual misconduct, the student conduct officer, on the same date that a disciplinary decision is served on the ~~((responding party))~~ respondent, will serve a written notice informing the ~~((impacted party))~~ complainant of the decision, the reasons for the decision, and any disciplinary sanctions and/or conditions that may have been imposed upon the ~~((responding party))~~ respondent, including disciplinary suspension or dismissal of the ~~((responding party))~~ respondent. The notice will also inform the ~~((impacted party))~~ complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the ~~((impacted party))~~ complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

**WAC 132H-126-130 Appeal from disciplinary action.** (1) The ~~((responding party))~~ respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within twenty-one days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the ~~((responding party))~~ respondent is seeking review.

(3) The parties to an appeal shall be the ~~((responding party))~~ respondent and the student conduct officer. If a case involves allegations of sexual misconduct, ~~((an impacted party))~~ a complainant also has a right to appeal a disciplinary decision or to intervene in the ~~((responding party's))~~ respondent's appeal of a disciplinary decision to the extent the disciplinary decision, sanctions or conditions relate to allegations of sexual misconduct against the ~~((responding party))~~ respondent.

(4) A ~~((responding party))~~ respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless the ~~((responding party))~~ respondent has been summarily suspended.

(7) The student conduct committee shall hear appeals regarding:

(a) The imposition of disciplinary suspensions in excess of ten instructional days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Residence hall dismissals;

(b) Residence hall suspensions;

(c) Suspensions of ten instructional days or less;

(d) Disciplinary probation;

(e) Written reprimands;

(f) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions; and

(g) Appeals by ~~((an impacted party))~~ a complainant in student disciplinary proceedings involving allegations of sexual misconduct in which the student conduct officer:

(i) Dismisses disciplinary proceedings based upon a finding that the allegations of sexual misconduct have no merit; or

(ii) Issues a verbal warning to the ~~((responding party))~~ respondent.

(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary complaints are final actions and are not subject to appeal.

(10) In cases involving allegations of sexual misconduct, the ~~((impacted party))~~ complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the ~~((responding party))~~ respondent:

(a) The dismissal of a sexual misconduct complaint; or

(b) Any disciplinary sanction(s) and conditions imposed against a ~~((responding party))~~ respondent for a sexual misconduct violation, including a disciplinary warning.

(11) If the ~~((responding party))~~ respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the ~~((impacted party))~~ complainant of the appeal and provide the ~~((impacted party))~~ complainant an opportunity to intervene as a party to the appeal.

(12) Except as otherwise specified in this chapter, ~~((an impacted party))~~ a complainant who timely appeals a disciplinary decision or who intervenes as a party to ~~((responding party's))~~ respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the ~~((responding party))~~ respondent.

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

**WAC 132H-126-140 Conduct hold on student records.** (1) A student conduct officer or other designated

college official may place a conduct hold on the student's record if the student is the ~~((responding party))~~ respondent in a pending complaint of prohibited conduct, a pending conduct proceeding under this code, or in conjunction with a disciplinary sanction or condition under this code.

(2) A conduct hold may restrict the student from registering for classes, requesting an official transcript, or receiving a degree from the college until the hold has been removed.

(3) If the conduct hold is placed pending or during a conduct proceeding, the student will be notified of the hold and be advised how to raise an objection about the hold or request that it be made less restrictive. The hold will remain in place until lifted by the student conduct officer or other designated college official with authority to do so.

(4) Implementation of any conduct hold prior to disciplinary action does not assume any determination of, or create any expectation of, responsibility for prohibited conduct under this conduct code.

**AMENDATORY SECTION** (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

**WAC 132H-126-160 Interim measures.** (1) After receiving a report of ~~((alleged))~~ sexual misconduct or other serious student misconduct, a student conduct officer or designee may implement interim measures which may include, but are not limited to:

(a) A no-contact order prohibiting direct or indirect contact, by any means, with ~~((an impacted party, a responding party))~~ a complainant, a respondent, a reporting party, other specified persons, and/or a specific student organization;

(b) Reassignment of on-campus housing;

(c) Changes to class schedules, assignments, or test schedules;

(d) Modified on-campus employment schedule or location;

(e) Restrictions on access to portions of campus including, but not limited to, on-campus housing; or

(f) Alternative safety arrangements such as campus safety escorts.

(2) If an interim measure is put in place pending or during a conduct proceeding, the student will be notified of the interim measure and be advised how to raise an objection about the interim measure or request that it be made less restrictive. The student conduct officer may adjust or modify interim measures as students' situations and schedules change and evolve over time. Interim measures will remain in place until the student receives notice they have been lifted or modified from the student conduct officer.

(3) Implementation of any interim measure does not assume any determination of, or create any presumption regarding responsibility for, a violation under this student conduct code.

**AMENDATORY SECTION** (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

**WAC 132H-126-170 Summary suspension.** (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a ~~((responding party))~~ respondent might otherwise

be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is reasonable basis to believe that the ~~((responding party))~~ respondent:

(a) Has violated a provision of the student conduct code; and

(b) Presents an immediate danger to the health, safety, or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any ~~((responding party))~~ respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the ~~((responding party))~~ respondent within two business days of the oral notice.

(4) The written notice shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law ~~((allegedly))~~ reportedly violated;

(b) The date, time, and location when the ~~((responding party))~~ respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the ~~((responding party))~~ respondent may physically access the campus or communicate with members of the campus community. If the ~~((responding party))~~ respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that their privilege to enter or remain on college premises has been withdrawn and that the ~~((responding party))~~ respondent shall be considered to be trespassing and subject to arrest for criminal trespass if the ~~((responding party))~~ respondent enters the college campus. The ~~((responding student))~~ respondent may be authorized to access college premises for the limited purpose of meeting with the student conduct officer, the conduct review officer, or to attend a disciplinary hearing. All such meetings and hearings shall be confirmed in writing in advance and the ~~((responding party))~~ respondent entering college premises shall be required to produce the written permission to a college official on request.

(5) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(a) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(b) The ~~((responding party))~~ respondent shall be afforded an opportunity to explain why the summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(c) If the ~~((responding party))~~ respondent fails to appear at the designated hearing time, the conduct review officer

may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(d) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(e) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

(6) In cases involving allegations of sexual misconduct, the ~~((impacted party))~~ complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the ~~((responding party))~~ respondent. The college will also provide the ~~((impacted party))~~ complainant with timely notice of any subsequent changes to the summary suspension order.

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

**WAC 132H-126-200 Brief adjudicative proceedings—Initial hearing.** (1) Brief adjudicative proceedings shall be conducted by a conduct review officer designated by the president. The conduct review officer shall not participate in any case in which they are ~~((an impacted party))~~ a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the agency's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon the parties within ten business days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within twenty-one days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) If the matter is an appeal by the ~~((responding party))~~ respondent, or the ~~((impacted party))~~ complainant in the case of sexual misconduct, the conduct review officer may affirm, reverse, or modify the disciplinary sanctions and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanctions or conditions as authorized herein. If the conduct review officer, upon review, determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

(5) In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the ~~((responding party))~~ respondent, will serve a written notice upon the ~~((impacted party))~~ complainant of the decision, the reasons for the decision, and a description of any disciplinary sanctions and/or conditions

that may have been imposed upon the ~~((responding party))~~ respondent. The notice will also inform the ~~((impacted party))~~ complainant of their appeal rights.

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

**WAC 132H-126-210 Brief adjudicative proceedings—Review of an initial decision.** (1) An initial decision is subject to review by the president, provided the ~~((responding party))~~ respondent files a written request for review with the conduct review officer within twenty-one days of service of the initial decision.

(2) The president shall not participate in any case in which they are ~~((an impacted party))~~ a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to determine whether the findings or sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing, include a brief statement of the reasons for the decision and typically must be served on the parties within twenty days of the request for review. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within twenty days after the request is submitted without a response from the president.

(5) If the president, upon review, determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or dismissal, the matter shall be referred to the student conduct committee for a disciplinary hearing.

(6) In cases involving allegations of sexual misconduct, the president, on the same date as the final decision is served on the ~~((responding party))~~ respondent, will serve a written notice upon the ~~((impacted party))~~ complainant informing the ~~((impacted party))~~ complainant of the decision, the reasons for the decision, and a description of any disciplinary sanctions and/or conditions that may have been imposed upon the ~~((responding party))~~ respondent. The notice will also inform the ~~((impacted party))~~ complainant of their appeal rights.

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

**WAC 132H-126-300 Student conduct committee.** (1) The student conduct committee shall consist of six members:

(a) Two full-time students appointed by the student government;

(b) Two faculty members appointed by the president;

(c) Two administrative staff members, other than an administrator serving as a student conduct or conduct review officer, appointed by the president prior to the beginning of the academic year for alternating two-year terms.

(2) One of the administrative staff members shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The administrative staff members shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee, so long as one faculty member, one student, and one administrative staff member are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they:

- (a) Are ~~((an impacted party))~~ a complainant or witness;
- (b) Have direct or personal interest, prejudice, or bias; or
- (c) Have acted previously in an advisory capacity.

(5) Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

**WAC 132H-126-310 Student conduct committee—Prehearing.** (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by the Model Rules of Procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request, filed at least five days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of: (a) The conduct officer's notice of discipline, or referral to the committee; and (b) the notice of appeal, or any response to referral, by the ~~((responding party))~~ respondent or, in a case involving allegations of sexual misconduct, the ~~((impacted party))~~ complainant. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they

do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer, upon request, shall provide reasonable assistance to the ~~((responding party))~~ respondent and ~~((impacted party))~~ complainant in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate. Any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) All parties may be accompanied at the hearing by a ~~((nonattorney))~~ process advisor of their choice.

(10) The ~~((responding party))~~ respondent, in all appeals before the committee, and the ~~((impacted party))~~ complainant, in an appeal involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at their own expense. The ~~((responding))~~ respondent and/or ~~((impacted party))~~ complainant will be deemed to have waived the right to be represented by an attorney unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer.

(11) The committee will ordinarily be advised by an assistant attorney general. If the ~~((responding party))~~ respondent and/or the ~~((impacted party))~~ complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened, assistant attorney general.

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

**WAC 132H-126-320 Student conduct committee—Presentation of evidence.** (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

- (a) Proceed with the hearing and issuance of its decision; or
- (b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that they select, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer, unless represented by an assistant attorney general, shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) In cases involving ~~((allegations))~~ reports of sexual misconduct, the ~~((responding and the impacted parties))~~ respondent and complainant shall not directly question or cross-examine one another. Attorneys for the ~~((responding and impacted parties))~~ respondent and complainant are also prohibited from directly questioning opposing parties absent express permission from the committee chair. Subject to this exception, all cross-examination questions by the ~~((responding and impacted parties))~~ respondent and complainant shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf. All cross-examination questions submitted to the chair in this manner shall be memorialized in writing and maintained as part of the hearing record.

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

**WAC 132H-126-330 Student conduct committee—Initial decision.** (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty days following the conclusion of the hearing or the committee's receipt of closing arguments, whichever is later, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanctions or conditions, if any, as authorized in the student conduct code. If the matter is an appeal by the ~~((responding party))~~ respondent or the ~~((impacted party))~~ complainant in the case of sexual misconduct, the committee may affirm, reverse, or modify the disciplinary sanctions and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanctions or conditions as authorized herein. The notice will also inform the ~~((responding party))~~ respondent of their appeal rights.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a

copy of the decision and the record of the committee's proceedings to the president.

(5) In cases involving allegations of sexual misconduct, the chair of the student conduct committee will make arrangements to have a written notice served on the ~~((impacted party))~~ complainant informing the ~~((impacted party))~~ complainant of the decision, the reasons for the decision, and a description of any disciplinary sanctions and/or conditions that may have been imposed upon the ~~((responding party))~~ respondent, including suspension or dismissal of the ~~((responding party))~~ respondent. The notice will also inform the ~~((impacted party))~~ complainant of their appeal rights. This notice shall be served on the ~~((impacted party))~~ complainant on the same date as the initial decision is served on the ~~((responding party))~~ respondent. The ~~((impacted party))~~ complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties.

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

**WAC 132H-126-340 Student conduct committee—Review of an initial decision.** (1) A ~~((responding party, or an impacted party))~~ respondent, or a complainant in a case involving allegations of sexual misconduct, who is aggrieved by the findings or conclusions issued by the student conduct committee may request a review of the committee's initial decision to the president by filing a notice of appeal with the president's office within twenty-one days of service of the committee's initial decision or a written notice. Failure to file a timely appeal request within this time frame constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain an argument as to why the appeal should be granted. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to those issues and arguments raised in the notice of appeal. As part of the review process, the president may ask the nonappealing party(ies) to respond to the arguments contained in the notice of appeal.

(3) The president shall provide a written decision to all parties within thirty days after receipt of the notice of appeal or receipt of the response from nonappealing parties, whichever is later. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) In cases involving allegations of sexual misconduct, the president, on the same date that the final decision is served upon the ~~((responding party))~~ respondent, shall serve a written notice informing the ~~((impacted party))~~ complainant of the final decision. This notice shall inform the ~~((impacted party))~~ complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the ~~((responding party))~~ respondent for the ~~((impacted party's))~~ complainant's

protection, including suspension or dismissal of the ((responding party)) respondent.

(5) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

## SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES

### NEW SECTION

**WAC 132H-126-400 Order of precedence.** This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the college's standard disciplinary procedures, WAC 132H-126-100 through 132H-126-340, these supplemental procedures shall take precedence.

### NEW SECTION

**WAC 132H-126-410 Prohibited conduct under Title IX.** Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

For purposes of this supplemental procedure, "sexual harassment" encompasses the following conduct:

(1) **Quid pro quo harassment.** A college employee conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct.

(2) **Hostile environment.** Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the college's educational programs or activities, or employment.

(3) **Sexual assault.** Sexual assault includes the following conduct:

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

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

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

(d) **Statutory rape.** Consensual sexual intercourse between someone who is eighteen years of age or older and someone who is under the age of sixteen.

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

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

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

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

(i) The length of the relationship;

(ii) The type of relationship; and

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

(6) **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

### NEW SECTION

**WAC 132H-126-420 Title IX jurisdiction.** (1) This supplemental procedure applies only if the reported misconduct:

(a) Occurred in the United States;

(b) Occurred during a college educational program or activity; and

(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the college exercised substantial control over both the respondent and the context in which the reported sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the college.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, chapter 132H-126 WAC.

(4) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or

part to both parties explaining why some or all of the Title IX claims have been dismissed.

#### NEW SECTION

**WAC 132H-126-430 Initiation of discipline.** (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct committee and serving the notice on the respondent, the complainant, and their respective advisors. The notice must:

- (a) Set forth the basis for Title IX jurisdiction;
  - (b) Identify the reported Title IX violation(s);
  - (c) Set forth the facts underlying the allegation(s);
  - (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the reported violation(s); and
  - (e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:
    - (i) The advisors will be responsible for questioning all witnesses on their party's behalf;
    - (ii) An advisor may be an attorney; and
    - (iii) The college will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so; and
- (3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

#### NEW SECTION

**WAC 132H-126-440 Prehearing procedure.** (1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 132H-126-310. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the college intends to offer the evidence at the hearing.

#### NEW SECTION

**WAC 132H-126-450 Rights of parties.** (1) The student conduct code of Bellevue College, chapter 132H-126 WAC, and this supplemental procedure shall apply equally to all parties.

(2) The college bears the burden of offering and presenting sufficient testimony and evidence to establish that the

respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

#### NEW SECTION

**WAC 132H-126-460 Evidence.** The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) **Relevance:** The committee chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) **Relevance means** that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

- (a) Is asked or offered to prove someone other than the respondent committed the reported misconduct; or
- (b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(4) **Cross-examination required:** If a party or witness does not submit to cross-examination during the live hearing, the committee must not rely on any statement by that party or witness in reaching a determination of responsibility.

(5) **No negative inference:** The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(6) **Privileged evidence:** The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

- (a) Spousal/domestic partner privilege;
- (b) Attorney-client and attorney work product privileges;
- (c) Privileges applicable to members of the clergy and priests;
- (d) Privileges applicable to medical providers, mental health therapists, and counselors;
- (e) Privileges applicable to sexual assault and domestic violence advocates; and
- (f) Other legal privileges identified in RCW 5.60.060.

#### NEW SECTION

**WAC 132H-126-470 Initial order.** (1) In addition to complying with WAC 132H-126-330, the student conduct committee will be responsible for conferring and drafting an initial order that:

- (a) Identifies the allegations of sexual harassment;

(b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;

(c) Makes findings of fact supporting the determination of responsibility;

(d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;

(e) Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;

(f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;

(g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to the college's education programs or activities; and

(h) Describes the process for appealing the initial order to the president.

(2) The committee chair will serve the initial order on the parties simultaneously.

#### NEW SECTION

**WAC 132H-126-480 Appeals.** (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132H-126-340.

(2) The president or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

(3) President's office shall serve the final decision on the parties simultaneously.

**WSR 21-01-017**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Behavioral Health Administration)

[Filed December 3, 2020, 12:44 p.m., effective January 3, 2021]

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

Purpose: The purpose of these rules is to clarify the duties and authority of the forensic navigator program under RCW 10.77.074. This RCW was the result of the settlement agreement and implementation plan for the Trueblood lawsuit. These rules describe the time frames that jails must follow in providing access to forensic navigator clients, and the time frames that entities holding relevant client records must follow in providing records to forensic navigators, to help ensure timely provision of forensic navigator services. These rules also describe the caseload prioritization for forensic

navigators, and the circumstances in which forensic navigator services will terminate.

Citation of Rules Affected by this Order: New WAC 388-875-0200, 388-875-0210, 388-875-0220, and 388-875-0230.

Statutory Authority for Adoption: Chapter 10.77 RCW; RCW 10.77.074, 72.01.090.

Adopted under notice filed as WSR 20-14-118 on July 1, 2020.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-875-0220 changed "may" to "must" in response to public comment.

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 4, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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 4, Amended 0, Repealed 0.

Date Adopted: December 2, 2020.

Katherine I. Vasquez  
Rules Coordinator

#### NEW SECTION

**WAC 388-875-0200 Forensic navigators—Access to jails.** Jails that are holding forensic navigator clients must allow forensic navigators access to their clients held within that jail within twenty-four hours of a request by a forensic navigator.

#### NEW SECTION

**WAC 388-875-0210 Forensic navigators—Access to records.** A behavioral health, educational, or law enforcement agency, or a correctional facility must provide records to the forensic navigator that relate to an individual who is receiving forensic navigator services within seventy-two hours of a records request.

#### NEW SECTION

**WAC 388-875-0220 Forensic navigator caseload.** The department has discretion over the manner in which caseloads are prioritized. This prioritization must include, but is not limited to, prioritization of clients who are:

(1) In jail awaiting competency services for whom DSHS has received an order to provide competency services, over those who are not; and

(2) Frequent users of forensic mental health services over clients who are not frequent users of the forensic mental health system.

#### NEW SECTION

##### **WAC 388-875-0230 Discharge of forensic navigator.**

Forensic navigator services must conclude upon the occurrence of any of the following events:

- (1) A forensic navigator client is determined competent to stand trial;
- (2) A forensic navigator client is determined not competent to stand trial, but is not ordered into the outpatient competency restoration program (OCRCP);
- (3) A forensic navigator client has their criminal charges dismissed pending a civil commitment hearing;
- (4) A forensic navigator client enters or returns to jail due to a revocation of OCRCP or the filing of new charges;
- (5) A forensic navigator client receives a new or amended order directing inpatient admission for restoration;
- (6) A forensic navigator client refuses further forensic navigator services after the court ordered restoration period ends; or
- (7) In other situations, as deemed appropriate by the department, in its sole discretion.

#### **WSR 21-01-019**

#### **PERMANENT RULES**

#### **DEPARTMENT OF HEALTH**

[Filed December 3, 2020, 2:00 p.m., effective January 3, 2021]

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

Purpose: Chapter 246-315 WAC, Dental laboratories, the department of health has adopted a new chapter to establish registration, regulation and fees for dental laboratories as required by HB 1177 (chapter 68, Laws of 2019).

Citation of Rules Affected by this Order: New WAC 246-315-001, 246-315-010, 246-315-020, 246-315-030, 246-315-040, and 246-315-990.

Statutory Authority for Adoption: RCW 43.70.250, 43.70.280; HB 1177 (chapter 68, Laws of 2019).

Other Authority: HB 1177 (chapter 68, Laws of 2019).

Adopted under notice filed as WSR 20-19-103 on September 18, 2020.

A final cost-benefit analysis is available by contacting Bruce Bronoske, Jr., P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4843, fax 360-236-2901, TTY 711, email [bruce.bronoske@doh.wa.gov](mailto:bruce.bronoske@doh.wa.gov), website [www.doh.wa.gov](http://www.doh.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 6, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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 6, Amended 0, Repealed 0.

Date Adopted: December 3, 2020.

Jessica Todorovich  
Chief of Staff  
for John Weisman, DrPH, MPH  
Secretary

#### **Chapter 246-315 WAC**

#### **DENTAL LABORATORIES**

#### NEW SECTION

**WAC 246-315-001 Purpose.** The purpose of these rules is to further clarify and define chapter 70.352 RCW, Dental laboratories.

#### NEW SECTION

**WAC 246-315-010 Definitions.** The definitions in this section apply throughout the chapter unless the context clearly requires otherwise.

- (1) "Department" means the Washington state department of health.
- (2) "Responsible person" means an owner or employee who meets the requirements listed in RCW 70.352.050 (1) and (2).
- (3) "Supervising dentist" means an individual licensed to practice dentistry pursuant to chapter 18.32 RCW, and who has personally authorized the procedures to be performed.

#### NEW SECTION

**WAC 246-315-020 Registration required.** As of January 31, 2021, each dental laboratory operating, doing business, or intending to operate or do business in this state must possess a current registration issued by the department, unless exempt under RCW 70.352.020(3) or 70.352.900.

#### NEW SECTION

**WAC 246-315-030 Registration application requirements.** An applicant for a dental laboratory registration shall submit to the department the following:

- (1) An application on forms provided by the department;
- (2) A verification that the dental laboratory meets the requirements listed in RCW 70.352.050;
- (3) An acknowledgment by the responsible person or supervising dentist who is licensed in this state attesting that the dental laboratory will provide written material disclosure to the prescribing dentist that contains the information required in RCW 70.352.030 (1)(e);
- (4) An acknowledgment by the responsible person or supervising dentist who is licensed in this state attesting that the dental laboratory will disclose in writing to the prescrib-

ing dentist the point of origin of the manufacture of each prescribed restoration as required in RCW 70.352.030 (1)(f); and

- (5) The fee required under WAC 246-315-990.

NEW SECTION

**WAC 246-315-040 Denial of registration and disciplinary action.** (1) Under RCW 70.352.070 and chapter 34.05 RCW the department may deny a registration to any applicant who does not comply with the requirements or standards listed in chapter 70.352 RCW or the rules adopted in this chapter.

(2) Pursuant to chapter 34.05 RCW, the department may impose conditions, suspend or revoke the registration of any dental laboratory which fails or refuses to comply with the requirements of chapter 70.352 RCW or the rules adopted in this chapter.

NEW SECTION

**WAC 246-315-990 Registration renewal and fees.** Dental laboratory registration fees, renewal requirements and renewal cycle.

(1) Registration must be renewed annually prior to July 31st of each year as provided in RCW 70.352.060.

(2) The department will renew the dental laboratory registration when the responsible person or supervising dentist submits:

- (a) A completed renewal form, provided by the department;
- (b) The designated renewal fee; and
- (c) A signed attestation verifying that the dental laboratory continues to meet the registration requirements listed in RCW 70.352.030 and 70.352.050(3).

(3) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application	\$250.00
Renewal	250.00
Late renewal penalty	125.00
Expired registration reissuance	125.00
Registration verification	25.00
Duplicate registration	15.00

**WSR 21-01-023**  
**PERMANENT RULES**  
**DEPARTMENT OF HEALTH**  
 (Board of Naturopathy)

[Filed December 4, 2020, 9:10 a.m., effective January 4, 2021]

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

Purpose: The board of naturopathy (board) has repealed WAC 246-836-410 as a result of ESHB 1551 Modernizing the control of certain communicable diseases (chapter 76, Laws of 2020).

Section 22(11) of ESHB 1551 repeals RCW 70.24.270-Health professionals—Rules for AIDS education and training. This statutory repeal no longer requires health professionals to obtain AIDS education and training. As a result, the board has repealed the requirement for AIDS training in WAC 246-836-410.

The intent of ESHB 1551 is to help reduce stigma toward people living with HIV/AIDS by not singling out AIDS as an exceptional disease requiring special training and education separate from other communicable health conditions.

Citation of Rules Affected by this Order: Repealing WAC 246-836-410.

Statutory Authority for Adoption: RCW 18.36A.160.

Other Authority: Chapter 76, Laws of 2020, ESHB 1551.

Adopted under notice filed as WSR 20-16-001 on July 22, 2020.

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 1.

Number of Sections Adopted at the Request of a Non-governmental 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 1.

Date Adopted: October 6, 2020.

Chad Aschtgen, ND  
 Chair

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-836-410 AIDS prevention and information education requirements.

**WSR 21-01-024**  
**PERMANENT RULES**  
**DEPARTMENT OF HEALTH**  
 (Podiatric Medical Board)

[Filed December 4, 2020, 9:16 a.m., effective January 4, 2021]

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

Purpose: The podiatric medical board (board) has repealed WAC 246-922-070 as a result of ESHB 1551 Modernizing the control of certain communicable diseases (chapter 76, Laws of 2020).

Section 22(11) of ESHB 1551 repeals RCW 70.24.270 Health professionals—Rules for AIDS education and training. This statutory repeal no longer requires health profes-

sionals to obtain AIDS education and training. As a result, the board has repealed the requirement for AIDS training in WAC 246-922-070.

The intent of ESHB 1551 is to help reduce stigma toward people living with HIV/AIDS by not singling out AIDS as an exceptional disease requiring special training and education separate from other communicable health conditions.

Citation of Rules Affected by this Order: Repealing WAC 246-922-070.

Statutory Authority for Adoption: RCW 18.22.015.

Other Authority: Chapter 76, Laws of 2020, ESHB 1551.

Adopted under notice filed as WSR 20-15-167 on July 22, 2020.

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 1.

Number of Sections Adopted at the Request of a Non-governmental 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 1.

Date Adopted: October 6, 2020.

Randy Anderson, DPM  
Chair

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-922-070 AIDS prevention and information education requirements.

### WSR 21-01-039

#### PERMANENT RULES

#### STATE BOARD OF HEALTH

[Filed December 7, 2020, 2:50 p.m., effective January 7, 2021]

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

Purpose: Chapter 246-500 WAC, the state board of health adopted amendments to incorporate requirements for newly established methods of final disposition of human remains into existing rules for the handling of human remains. ESSB 5001 (chapter 432, Laws of 2019) established alkaline hydrolysis and natural organic reduction as allowed methods of final disposition of human remains in Washington. The rule incorporates these new methods into existing requirements for the handling of human remains and adds new requirements specific to these methods of disposition to help prevent and control health hazards.

Citation of Rules Affected by this Order: New WAC 246-500-053 and 246-500-055; and amending WAC 246-500-010, 246-500-020, 246-500-030, 246-500-040, and 246-500-050.

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

Adopted under notice filed as WSR 20-19-144 on September 23, 2020.

Changes Other than Editing from Proposed to Adopted Version: In addition to minor editing, an introduction sentence was added to WAC 246-800-010 for clarity, and clarification was added to WAC 246-500-055 that testing requirements for contaminant levels in human remains reduced through natural organic reduction apply until such time that the required number of tests meet the parameters identified in the rule, and that the testing be done by a third-party laboratory to ensure that tests are done by an entity experienced in testing for contaminants before the testing requirements are phased out.

A final cost-benefit analysis is available by contacting Samantha Pskowski, P.O. Box 47990, Olympia, WA 98504-7990, phone 360-789-2358, TTY 711, email [samantha.pskowski@sboh.wa.gov](mailto:samantha.pskowski@sboh.wa.gov), website <https://sboh.wa.gov/Rulemaking/CurrentRulesandActivity/HandlingofHumanRemains>.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 5, 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 5, Repealed 0.

Date Adopted: November 9, 2020.

Michelle A. Davis  
Executive Director

AMENDATORY SECTION (Amending WSR 06-17-182, filed 8/23/06, effective 9/23/06)

**WAC 246-500-010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Alkaline hydrolysis" or "hydrolysis" means the reduction of human remains to bone fragments and essential elements in a licensed hydrolysis facility using heat, pressure, water, and base chemical agents.

(2) "Barrier precaution" means protective attire, equipment, or other physical barriers worn to protect or prevent exposure of skin and mucous membranes of the wearer to infected or potentially infected blood, tissue, and body fluids, hazardous chemicals, dust, and other potentially hazardous materials.

~~((2))~~ (3) "Burial-transit permit" means a form, approved and supplied by the state registrar of vital statistics as described in chapter ~~((70.58))~~ 70.58A RCW, identifying the name of the deceased, date and place of death, general information, disposition and registrar and sexton information.

~~((3))~~ (4) "Coroner" means the county official as described under chapter 36.24 RCW and RCW 36.16.030.

~~((4))~~ (5) "Department" means the Washington state department of health.

~~((5))~~ (6) "Effluent" means the liquid end-product following alkaline hydrolysis. For the purpose of this chapter, this does not meet the definition of human remains.

(7) "Embalmer" means a person defined and licensed under chapter 18.39 RCW.

~~((6))~~ (8) "Funeral establishment" means a place of business defined and licensed under chapter 18.39 RCW.

~~((7))~~ (9) "Funeral director" means a person defined and licensed under chapter 18.39 RCW.

~~((8))~~ (10) "Health care provider" means any person having direct or supervisory responsibility for the delivery of health care, including persons credentialed in Washington state under Title 18 RCW and military personnel providing health care within Washington state regardless of licensure.

~~((9))~~ (11) "Human remains" or "remains" means the body of a deceased person, in any stage of decomposition, ~~((and includes cremated human))~~ including remains following the process of cremation, alkaline hydrolysis, or natural organic reduction, but ~~((excludes))~~ not including archaeological ~~((resources))~~ skeletal remains under chapter 27.53 RCW.

~~((10))~~ (12) "Local health officer" means a licensed physician defined and appointed under RCW 70.05.050.

~~((11))~~ (13) "Local registrar of vital statistics" means the local health officer or administrator who registers certificates of birth and death occurring in ~~((his or her))~~ their designated registration district under chapter ~~((70.58))~~ 70.58A RCW.

~~((12))~~ (14) "Medical examiner" means a physician appointed by the county legislative authority to replace the coroner under RCW 36.24.190.

~~((13))~~ (15) "Natural organic reduction" means the contained, accelerated conversion of human remains to soil.

(16) "Reduction" means an accelerated conversion of human remains into bone fragments, essential elements, or soil by cremation, alkaline hydrolysis, or natural organic reduction.

(17) "Reduction facility operator" means the person(s) registered and licensed with the funeral and cemetery board through WAC 308-47-090 to operate a crematory, alkaline hydrolysis equipment, or natural organic reduction facility.

(18) "Refrigerate" means:

(a) Placing in a mechanically cooled unit maintained at a maximum temperature of 48°F in a licensed funeral establishment; or

(b) Placing in a mechanically cooled unit maintained at a maximum temperature of 48°F or packing with dry ice or leak-resistant sealed ice packs outside of a funeral establishment.

AMENDATORY SECTION (Amending WSR 06-17-182, filed 8/23/06, effective 9/23/06)

**WAC 246-500-020 Contact with human remains.** (1) Funeral directors, embalmers, medical examiners, coroners, health care providers, and others directly handling or touching human remains must:

(a) Wash hands and other exposed skin surfaces with soap and water or equivalent immediately and thoroughly after contact with human remains, blood, or body fluids;

(b) Use barrier precautions if a procedure involves potential contact with blood, body fluids, or internal tissues of the deceased or hazardous chemicals, dust, or other potentially hazardous material;

(c) Not eat, drink, or smoke in areas where handling of human remains or body fluids takes place;

(d) Use reasonable precautions to prevent spillage of body fluids during transfer and transport of human remains including, when necessary:

(i) Containing, wrapping, or pouching with materials appropriate to the condition of the human remains; and

(ii) Obtaining approval from the coroner or medical examiner prior to pouching any human remains under their jurisdiction(~~;~~).

(e) Wash hands immediately after gloves are removed;

(f) Take precautions to prevent injuries by needles, scalpels, instruments, chemicals, and equipment during use, cleaning, and disposal;

(g) Properly disinfect or discard protective garments and gloves immediately after use;

(h) Properly disinfect all surfaces, instruments, and equipment after contact with human remains, blood, or body fluids;

(i) Provide appropriate means for disposing of body fluids, blood, tissues, and wastes or for retaining them for final disposition with the body(~~;~~), including:

(i) All autopsy rooms, morgues, preparation rooms, and other places where human remains are handled must be equipped with impervious containers with disposable, impervious liners and tightly fitting closures(~~;~~);

(ii) Body fluids, blood, tissues, and wastes removed from human remains must be kept with the body or disposed in accordance with local ordinances and other applicable laws and rules for infectious waste(~~;~~);

(iii) A sewage system approved by the local health officer or the department may be used for the disposal of blood ~~((and))~~, other body fluids(~~;~~), and effluent; and

(iv) All containers and liners used to receive solid or fluid materials removed from human remains must be cleaned and disinfected immediately after use, interred with the body, or disposed in accordance with local ordinances and other applicable laws and rules for infectious waste.

(2) Persons responsible for transfer or transport of human remains ~~((must))~~ shall clean and disinfect equipment and the vehicle if soiled with body fluids or any other portion of human remains.

AMENDATORY SECTION (Amending WSR 06-17-182, filed 8/23/06, effective 9/23/06)

**WAC 246-500-030 Refrigeration or embalming of human remains.** (1) Funeral directors, embalmers, and others assisting in the preparation of human remains for final disposition (~~((must))~~) shall refrigerate or embalm the remains upon receipt.

(2) Funeral directors, embalmers, and others assisting in the preparation of human remains for final disposition may delay refrigeration upon receipt or remove human remains from refrigeration for the following activities:

- (a) Embalming;
- (b) Transporting;
- (c) Cremating, reducing by alkaline hydrolysis, or burying;
- (d) ~~((Viewing for identification for a period of time not to exceed one hour by a person able to identify the deceased;))~~ Reducing by natural organic reduction;
- (e) Washing, anointing, clothing, praying over, reading to, singing to, sitting with, guarding, viewing, or otherwise accompanying the deceased for a period of time not to exceed twenty-four hours by persons acting according to the directions of the deceased or the person having the right to control the disposition of the remains under RCW 68.50.160, provided that anyone directly touching the remains uses barrier precautions according to requirements under WAC 246-500-020 (1)(b); or
- (f) As otherwise approved by the local health officer after evaluating specific circumstances, the need to protect public health, and recognition of religious beliefs.

(3) A funeral director, embalmer, or other person assisting in the preparation of human remains for final disposition (~~((must))~~) shall prohibit activities otherwise allowed under subsection (2)(d) of this section if the human remains are confirmed to have or suspected of having one or more of the following conditions:

- (a) Prion disease infection, mycobacterium tuberculosis infection, Ebola virus disease infection;
- (b) Contagious disease infection which may be a public health hazard as identified by the local health officer or medical examiner;
- (c) A radioactive seed implant within thirty days of death until such time that thirty days have elapsed or the organ containing the seed(s) has been removed;
- (d) Containing a nuclear pacemaker until such time that the nuclear pacemaker is removed; or
- (e) Perishing as a result of a radiologic incident or accident, unless a written release is provided by the department of health office of radiation protection or other state or federal agency in charge of the response to the radiological incident or accident.

(4) A funeral director, embalmer, or other person assisting in the preparation of human remains for final disposition shall prohibit activities otherwise allowed under subsection (2)(e) of this section if informed by a local health officer or medical examiner that such activities would pose a direct threat to human health.

~~((4))~~ (5) Nothing in this section restricts the authority of a coroner or medical examiner when human remains are

under ~~((his or her))~~ their jurisdiction in accordance with RCW 68.50.010.

AMENDATORY SECTION (Amending WSR 06-17-182, filed 8/23/06, effective 9/23/06)

**WAC 246-500-040 Transportation of human remains.** (1) A person((s)) who transports human remains (~~((must))~~) shall:

- (a) Use effective hygienic measures consistent with handling potentially infectious material; and
- (b) Obtain a burial-transit permit from the ~~((local health officer or))~~ local registrar of vital statistics or ~~((file a notice of removal))~~ initiates a report of death with the local registrar where the death occurred according to requirements of RCW ~~((70.58.230))~~ 70.58A.210 prior to transporting human remains from one registration district to another.

(2) Prior to transporting human remains by common carrier, the person((s)) responsible for preparing and handling the remains (~~((must))~~) shall:

- (a) Enclose the human remains in a leak-resistant container placed inside another leak-resistant, securely constructed shipping container to prevent the release of all body fluids;
  - (b) Obtain and enclose the burial-transit permit in a sturdy envelope; and
  - (c) Attach the burial-transit permit to the shipping container.
- (3) The person((s)) responsible for human remains routed to the point of final destination on a burial-transit permit:

- (a) May temporarily hold the remains at a stopover point within the state of Washington for funeral or other purposes without an additional permit; and
- (b) ~~((Must))~~ Shall surrender the burial-transit permit to the ~~((sexton or crematory official))~~ person in charge of the funeral establishment, reduction facility, or cemetery authority at the point of interment or ((cremation)) reduction.
- (4) ~~((Sextons and cremation officials))~~ A person in charge of the funeral establishment, reduction facility, or cemetery authority shall accept the burial-transit permit as authority for interment in a cemetery or for ((cremation)) reduction within the state of Washington.

AMENDATORY SECTION (Amending WSR 06-17-182, filed 8/23/06, effective 9/23/06)

**WAC 246-500-050 (~~((Cremated))~~) Human remains reduced through cremation.** (1) Other than the provisions in this section and WAC 246-500-010, this chapter does not apply to human remains after cremation.

(2) A local registrar, in cooperation with the Washington state funeral and cemetery board, may issue a burial-transit permit for disposition of cremated human remains. The permit for the disposition of cremated remains may be used in connection with the transportation of cremated remains by common carrier or other means.

(3) The local registrar or the department of health may issue a burial-transit permit for the disposition of cremated human remains which have been in the lawful possession of any person, firm, corporation, or association for a period of

ninety days or more. This permit will specify that the disposition of cremated remains must be consistent with Washington state laws and rules.

**NEW SECTION**

**WAC 246-500-053 Human remains reduced through alkaline hydrolysis.** (1) Other than the provisions in this section and WAC 246-500-010, this chapter does not apply to human remains after alkaline hydrolysis.

(2) A hydrolysis facility must:

(a) Operate a high-temperature purpose built vessel, that reaches a minimum temperature of two hundred fifty degrees Fahrenheit for a minimum of thirty minutes during the reduction process; or

(b) Operate a purpose built vessel, for which third-party validation testing is provided demonstrating the reduction process destroys prions, and achieves sterilization in both the water and airspace, according to the manufacturer's specifications. The testing criteria must include a matrix-assisted laser desorption/ionization time of flight (MALDI-TOF) mass spectrometry peptide sizing analysis and a 6 spore log reduction or greater in the level of *Bacillus* spores. An operator shall retain this documentation on-site and be able to provide it upon request to state or local health officials.

(3) A local registrar, in cooperation with the Washington state funeral and cemetery board, may issue a burial-transit permit for disposition of human remains reduced through alkaline hydrolysis. The permit for the disposition of remains reduced through alkaline hydrolysis may be used in connection with the transportation of remains reduced through alkaline hydrolysis by common carrier or other means.

(4) The local registrar or the department of health may issue a burial-transit permit for the disposition of human remains reduced through alkaline hydrolysis which have been in the lawful possession of any person, firm, corporation, or association for a period of ninety days or more. This permit will specify that the disposition of remains reduced through alkaline hydrolysis must be consistent with Washington state laws and rules.

**NEW SECTION**

**WAC 246-500-055 Human remains reduced through natural organic reduction.** (1) Other than the provisions of this section and WAC 246-500-010, this chapter does not apply to human remains after natural organic reduction.

(2) A natural organic reduction facility operator shall:

(a) Collect material samples for analysis that are representative of each instance of natural organic reduction using a sampling method such as described in the U.S. Composting Council 2002 Test Methods for the Examination of Composting and Compost, Method 02.01-A through E;

(b) Analyze each instance of reduced human remains for physical contaminants. Reduced remains must have less than 0.01 mg/kg dry weight of physical contaminants which include, but are not limited to, intact bone, dental filings, and medical implants;

(c) Analyze, using a third-party laboratory, the reduction facility's reduced human remains according to the following schedule:

(i) The reduction facility's initial twenty instances of reduced human remains for the parameters identified in Table 500-A, and any additional instances of human remains necessary to achieve twenty reductions meeting the limits identified in Table 500-A;

(ii) Following twenty reductions meeting limits outlined in Table 500-A, analyze, at minimum, twenty-five percent of a facility's monthly instances of reduced human remains for the parameters identified in Table 500-A until eighty total instances have met the requirements in Table 500-A;

(iii) The local health jurisdiction may require tests for additional parameters under (b) and (c) of this subsection.

(d) Not release any human remains that exceed the limits identified in Table 500-A; and

(e) Prepare, maintain, and provide upon request by the local health jurisdiction, an annual report each calendar year. The annual report must detail the facility's activities during the previous calendar year and must include the following information:

- (i) Name and address of the facility;
  - (ii) Calendar year covered by the report;
  - (iii) Annual quantity of reduced human remains;
  - (iv) Results of any laboratory analyses of reduced human remains; and
  - (v) Any additional information required by the local health jurisdiction.
- (f)

**Table 500-A  
Testing Parameters**

<b>Metals and other testing parameters</b>	<b>Limit (mg/kg dry weight), unless otherwise specified</b>
Fecal coliform	< 1,000 Most probable number per gram of total solids (dry weight)
or	
Salmonella	< 3 Most probable number per 4 grams of total solids (dry weight)
Arsenic	≤ 20 ppm
Cadmium	≤ 10 ppm
Lead	≤ 150 ppm
Mercury	≤ 8 ppm
Selenium	≤ 18 ppm

(3) A local registrar, in cooperation with the Washington state funeral and cemetery board, may issue a burial-transit permit for disposition of human remains reduced through natural organic reduction. The permit for the disposition of remains reduced through natural organic reduction may be used in connection with the transportation of remains reduced through natural organic reduction by common carrier or other means.

(4) The local registrar or the department of health may issue a burial-transit permit for the disposition of human remains reduced through natural organic reduction which have been in the lawful possession of any person, firm, corporation, or association for a period of ninety days or more.

This permit will specify that the disposition of remains reduced through natural organic reduction must be consistent with Washington state laws and rules.

**WSR 21-01-049**  
**PERMANENT RULES**  
**BUILDING CODE COUNCIL**

[Filed December 8, 2020, 1:51 p.m., effective January 8, 2021]

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

Purpose: The rule modifies the process of submitting proposals for amendment of the state building code and also modifies the procedure for requesting reconsideration of statewide and local amendments.

Citation of Rules Affected by this Order: Amending WAC 51-04-020 and 51-04-040.

Statutory Authority for Adoption: RCW 19.27.035.

Other Authority: RCW 19.27.074.

Adopted under notice filed as WSR 20-12-018 on May 26, 2020.

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

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

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

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

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

Date Adopted: November 6, 2020.

Diane Glenn  
Council Chair

AMENDATORY SECTION (Amending WSR 19-24-078, filed 12/2/19, effective 1/2/20)

**WAC 51-04-020 ((Policies)) Rules for the consideration of proposed statewide amendments.** (1) All petitions for statewide amendments to the building code must be compliant with the requirements set forth in WAC 51-04-025.

(2) The council will accept and consider compliant petitions for emergency statewide amendments to the building code at any time, in accordance with RCW 19.27.074 and chapter 34.05 RCW.

(3) The council will accept and consider ~~((all))~~ compliant petitions for statewide amendments that ~~((meet the complete application requirements as set by the council))~~ are submitted within the time periods the council posts for petitions relating to Group 1 and Group 2 amendments to be made in conjunction with the state building code update cycle~~((in accor-~~

~~dance with RCW 19.27.074 and chapter 34.05 RCW, and WAC 51-04-015 and 51-04-020 as follows:))~~.

(a) For the purpose of review and adoption of new model code editions and statewide amendment submission, the state building code shall be divided into two groups as follows, unless otherwise directed by the council:

(i) Group 1: International Building Code (IBC); International Existing Building Code (IEBC); International Fire Code (IFC) Washington state energy code-commercial (WSEC-C) and Wildland Urban Interface Code (WUI).

(ii) Group 2: International Residential Code (IRC); International Mechanical Code (IMC); International Fuel Gas Code (IFGC); standards liquefied petroleum gas are National Fire Protection Association (NFPA) standards 58 and 54; Uniform Plumbing Code (UPC); Washington state energy code-residential (WSEC-R).

~~(b) ((The adoption period of new model codes commences when new editions of the model codes are available to the public. Within sixty days, the council shall publish a timeline to include a report of significant model code amendments and applicability of existing state amendments, followed by a submission period for new proposed statewide amendments.~~

~~(i) The council shall review Group 1 model codes and approve a report on significant changes and applicability of existing state amendments. The Group 1 report shall be posted on the council website and a submission period of at least sixty calendar days shall be allowed for new proposed statewide amendments.~~

~~(ii) Upon completion of the Group 1, public meetings, council actions and posting of the actions on the state building code council's website and provided new editions of Group 2 model codes are available to the public, the council shall review the Group 2 codes and approve a report on significant changes and applicability of existing state amendments. The Group 2 report shall be posted on the state building code council's website and a submission period of at least sixty calendar days shall be allowed for new proposed statewide amendments.~~

(2)) During August of the year before the year of the model code edition, the council will post a timeline for Group 1 and Group 2 code update processes, including providing separate periods of at least sixty days for the submission of petitions for statewide amendments for each group the council reserves the right to modify its timeline as it determines necessary and appropriate.

(c) The timeline shall include deadlines for committee transmittal to council of separate reports for Group 1 and Group 2 that identify:

(i) The significant changes contained in the new model codes from the prior model codes;

(ii) The existing state amendments to prior model codes that are proposed to be modified or eliminated; and

(iii) All committee proposed amendments to the new model codes. The reports shall be posted on the council website.

(d) The council shall direct council staff to submit a CR-102 to the code reviser's office containing any proposed rules that the council has approved and shall conduct at least two public hearings for each group (one in western Washington

and one in eastern Washington) following the filing of the proposed rules with the code reviser's office.

(e) Upon completion of the council's review of Group 1 amendments (not including Group 1 amendments the council directs be kept open for consideration during the Group 2 period), the council will commence review of Group 2 amendments following the timeline.

(4) The council will accept and consider compliant petitions for all other statewide amendments to the state building code if one or more of the following criteria are met:

(a) The amendment is directed by the legislature;

(b) The amendment is necessary for code correlation, correction of errors, language clarification, or section update; or

(c) The council determines that the amendment would serve a critical public interest and requires immediate/accelerated action.

(5) The council shall review proposed new statewide amendments, and approve those meeting the appropriate criteria to file as proposed rules in accordance with chapter 34.05 RCW. The proposed rules filing shall include a small business economic impact statement in accordance with chapter 19.85 RCW.

~~((3) The council shall conduct at least two public hearings for each group (one in western Washington and one in eastern Washington) following the filing of the proposed rules with the code reviser's office.~~

~~(4) Amendments to Group 1 codes during the Group 2 adoption shall be limited to legislative direction, code correlation, correction of errors, language clarification and updated section references.~~

~~(5)) (6) The code development period shall conclude with formal adoption of the state building code as amended by the council. As required by RCW 19.27.074, all decisions to adopt or amend the state building code shall be made prior to December 1st and shall not take effect before the end of the regular legislative session in the next year. ((Group 1 and 2 codes shall be filed with the code reviser at the same time.~~

~~(6)) Provided, the December 1st deadline shall not apply to emergency rules or expedited adoption of rules under the Administrative Procedure Act, chapter 34.05 RCW.~~

~~(7) State amendments as approved by the council shall be submitted to the appropriate model code organization, at the direction of the council, except those adopted for consistency with state statutes or regulation and held for further review during the adoption period of those model codes by the council. ((The effective date of any statewide amendments shall be the same as the effective date of the new edition of the model codes, except for emergency amendments adopted in accordance with chapter 34.05 RCW and deemed appropriate by the council.))~~

AMENDATORY SECTION (Amending WSR 19-24-078, filed 12/2/19, effective 1/2/20)

**WAC 51-04-040 Reconsideration.** (1) When the council approves, denies or modifies a ~~((statewide or))~~ local amendment to the building code, any party with written or oral testimony to the council related to the amendment on the

record may file a petition for reconsideration. The petition must be received by the Washington State Building Code Council, 1500 Jefferson Avenue S.E., P.O. Box 41449, Olympia, Washington 98504-1449, within twenty calendar days ~~((of the date of notification))~~ of the council action on the amendment. The petition must give specific reasons for why the council should reconsider the amendment for approval or denial.

(2) Within sixty calendar days of receipt of a timely petition for reconsideration, the council shall in writing:

(a) Grant the petition for reconsideration ~~((and enter rule making to revise the amendment));~~

(b) Deny the petition for reconsideration, giving reasons for the denial; or

(c) Request additional information and extend the time period for not more than thirty calendar days to either grant or deny the petition for reconsideration.

(3) The council's denial of a ~~((proposed statewide or))~~ local government amendment, or the council denial of a petition for reconsideration under this section, is subject to judicial review under chapter 34.05 RCW.

## WSR 21-01-054

### PERMANENT RULES

#### WASHINGTON STATE PATROL

[Filed December 9, 2020, 7:44 a.m., effective January 9, 2021]

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

Purpose: The proposed rule changes would remove the reference of the C.F.R. on motorized foot scooters and add a new section that addresses the reflector requirements on motorized foot scooters.

Citation of Rules Affected by this Order: Amending WAC 204-10-060.

Statutory Authority for Adoption: RCW 46.37.005, 46.37.320, and 46.20.500.

Adopted under notice filed as WSR 20-20-099 on October 5, 2020.

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

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

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

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

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

Date Adopted: December 9, 2020.

John R. Batiste  
Chief

AMENDATORY SECTION (Amending WSR 08-19-079, filed 9/16/08, effective 10/17/08)

**WAC 204-10-060 Reflectors.** (1) On motor vehicles, reflex reflectors must be securely mounted on a rigid part of the vehicle with the plane of the lens perpendicular to the roadway and parallel to the rear axle. Side reflex reflectors must be mounted with the lens face perpendicular to the roadway and parallel to the rear wheels.

(2) On bicycles (~~and motorized foot scooters~~), the reflectors must be securely mounted and of a type conforming to 16 C.F.R. Part 1512.

(3) On motorized foot scooters, a red reflector on the rear that is visible from a distance of five hundred feet when directly in front of lawful upper beams of headlamps on a motor vehicle. It shall also be equipped with reflective material and of sufficient size and reflectivity to be visible from both sides at a distance of five hundred feet.

**WSR 21-01-057**  
**PERMANENT RULES**  
**LIQUOR AND CANNABIS**  
**BOARD**

[Filed December 9, 2020, 10:28 a.m., effective January 9, 2021]

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

Purpose: Chapter 314-38 WAC, Permits, the Washington state liquor and cannabis board (WSLCB) has adopted revisions to existing permit rules to update, modernize, and clarify existing language. The WSLCB has also adopted revisions to WAC 314-38-060 to align existing rules with and implement the law as established by EHB 1563 (chapter 112, Laws of 2019), concerning special permits for alcohol tastings by students at least eighteen years of age enrolled in certain degree-related programs at community or technical colleges, regional universities, or state universities.

Citation of Rules Affected by this Order: Repealing WAC 314-38-010; and amending WAC 314-38-020, 314-38-030, 314-38-040, 314-38-050, 314-38-060, 314-38-070, 314-38-080, 314-38-090, 314-38-095, 314-38-100, and 314-38-110.

Statutory Authority for Adoption: RCW 66.08.030.

Adopted under notice filed as WSR 20-20-039 on September 30, 2020.

A final cost-benefit analysis is available by contacting Audrey Vasek, 1025 Union Avenue S.E., Olympia, WA 98501, phone 360-664-1758, fax 360-664-9689, email rules@lcb.wa.gov, website www.lcb.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 1, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 11, Repealed 1.

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 11, Repealed 1.

Date Adopted: December 9, 2020.

Jane Rushford  
Chair

AMENDATORY SECTION (Amending WSR 18-04-116, filed 2/7/18, effective 3/10/18)

**WAC 314-38-020 Permits—Fees established.** The fees for permits authorized under RCW 66.20.010 and 66.20.400 are (~~hereby~~) established as follows:

(1) ~~(A) The fee (of five dollars is established)~~ for a special permit (~~as~~) authorized by RCW 66.20.010(1) is five dollars.

(2) The fee for a special permit (~~as~~) authorized by RCW 66.20.010(2) for purchase of five gallons or less is (~~established as~~) five dollars and for purchase of over five gallons is (~~established as~~) ten dollars.

(3) ~~(A) The fee for a banquet permit((as))~~ authorized by RCW 66.20.010(3)(~~as~~) is established in WAC 314-18-040.

(4) The fee for a special business permit(~~as~~) authorized by RCW 66.20.010(4)(~~as~~) is established in WAC (~~314-38-010(2))~~ 314-38-050.

(5) The fee (~~of ten dollars is established~~) for a special permit (~~as~~) authorized by RCW 66.20.010(5) is ten dollars.

(6) ~~(A) The fee (of five dollars is established)~~ for a special permit (~~as~~) authorized by RCW 66.20.010(6) is five dollars.

(7) There is no fee for a special permit ((as)) authorized by RCW 66.20.010(7) ((shall be issued without charge to those eligible entities)).

(8) The fee (~~of twenty-five dollars is established~~) for a special permit (~~as~~) authorized by RCW 66.20.010(8) is twenty-five dollars.

(9) The fee (~~of twenty-five dollars is established~~) for a special permit (~~as~~) authorized by RCW 66.20.010(9) is twenty-five dollars.

(10) The fee (~~of thirty dollars is established~~) for a special permit (~~as~~) authorized by RCW 66.20.010(10) is thirty dollars.

(11) The fee (~~of seventy-five dollars is established~~) for a special permit (~~as~~) authorized by RCW 66.20.010(11) is seventy-five dollars.

(12) There is no fee for a special permit authorized by RCW 66.20.010(12).

(13) The fee (~~of ten dollars is established~~) for a special permit (~~as~~) authorized by RCW 66.20.010(13) is ten dollars.

~~((13))~~ (14) The fee (~~of ten dollars is established~~) for a special permit (~~as~~) authorized by RCW 66.20.010(14) is ten dollars.

~~((14))~~ (15) The fee ~~((of ten dollars is established))~~ for a special permit ~~((as))~~ authorized by RCW 66.20.010(15) is ten dollars.

~~((15))~~ (16) The fee ~~((of twenty-five dollars is established))~~ for a special permit ~~((as))~~ authorized by RCW 66.20.010(16) is twenty-five dollars.

~~((16))~~ (17) The fee ~~((of twenty-five dollars is established))~~ for a special permit ~~((as))~~ authorized by RCW 66.20.010(17) is twenty-five dollars for each winery selling wine at the auction.

(18) The fee for a day spa permit authorized by RCW 66.20.400 is established in WAC 314-38-070.

AMENDATORY SECTION (Amending WSR 83-23-123, filed 11/23/83)

**WAC 314-38-030 Fee for replacement of a lost or destroyed license or permit.** (1) ~~((A))~~ The fee ~~((of five dollars is established))~~ for replacement by the board of a lost or destroyed ~~((agent's))~~ representative's license issued pursuant to RCW 66.24.310 is five dollars.

(2) The fee ~~((of five dollars is established))~~ for replacement by the board of a lost or destroyed retail or wholesale liquor license of any class is five dollars.

AMENDATORY SECTION (Amending WSR 92-01-079, filed 12/16/91, effective 1/16/92)

**WAC 314-38-040 ~~((Beverage))~~ Alcohol raffle permit—Fee.** (1) Any organization authorized to conduct a raffle under RCW 9.46.0315 may raffle ~~((beverage))~~ alcohol upon obtaining a raffle permit from the board. The fee for a raffle permit ~~((shall be))~~ is ten dollars for a one-time raffle permit or twenty-five dollars for an annual permit.

(2) An application for a raffle permit ~~((shall be on a form prescribed by the board and filed with the board at the headquarters office in Olympia))~~ must be submitted at least thirty days in advance of ~~((the commencement of))~~ ticket sales.

(3) An application for a raffle permit must contain the following information:

(a) The full name of the bona fide charitable or bona fide nonprofit organization with verification of qualification as ~~((prescribed))~~ referenced in RCW 9.46.0209;

(b) The name, address, and phone number of the ~~((organization))~~ organization's officer in charge of the raffle;

(c) The date the raffle ticket sales will ~~((commence))~~ begin;

(d) The date, time, and exact location of the drawing;

(e) A description of the ~~((beverage))~~ alcohol being raffled including its estimated value; and

(f) ~~((And))~~ The source of the alcohol to be raffled ~~((purchased at retail or donated by a private citizen)).~~

(4) An ~~((organization))~~ organization's officer must certify that:

(a) Only organization members may purchase tickets or be awarded prizes;

(b) The organization meets the qualifications of a bona fide charitable or bona fide nonprofit organization ~~((as provided in))~~ under RCW 9.46.0209;

(c) The organization will not sell more than ~~(((\$5,000))~~ five thousand dollars ~~((worth))~~ of raffle tickets in a calendar year; and

(d) The organization will not sell raffle tickets to anyone under twenty-one years of age when alcohol is awarded as a prize.

(5) Alcohol to be raffled must have all applicable Washington State taxes paid and may only be:

(a) Purchased at retail; or

(b) Donated by a private citizen.

(6) ~~((Upon application being filed and fee paid the board may issue a raffle permit.))~~ The issued raffle permit will ~~((state the))~~ include:

(a) The organization name~~((;~~

~~((b))~~ and address~~((;~~

~~((c))~~;

(b) The date and time of the drawing~~((;~~

~~((d))~~;

(c) The effective dates of the raffle permit~~((;~~

~~((e))~~; and

(d) A description of the alcohol to be raffled.

(7) The raffle permit ~~((shall))~~ must be posted at the location of the drawing prior to and during the drawing. The organization or person in charge of the raffle ~~((shall; when requested by))~~ must allow any representative ~~((or agent))~~ of either the board ~~((and/or))~~ or any law enforcement officer~~((;~~ exhibit to such person the raffle permit and shall allow such person), or both, to inspect the raffle permit and raffle items at any time.

AMENDATORY SECTION (Amending WSR 12-17-006, filed 8/1/12, effective 9/1/12)

**WAC 314-38-050 Special permit to serve employees and guests ~~((permit))~~—Purpose—Use—Fee.** (1) ~~((The purpose of a serve employees and guests permit as))~~ Businesses that are not licensed under Title 66 RCW may apply for a special permit authorized by RCW 66.20.010(4) ~~((is to:~~

~~((a) Allow for the consumption of liquor products in private businesses; and~~

~~((b) Not to compete with liquor licensed establishments.~~

~~((2) All liquor served by holders of a serve employees and guests permit must be purchased at retail from the board or a retail liquor licensee.~~

~~((3) Liquor may not be sold by holders of a serve employees and guests permit, but may be provided at no charge for consumption on the premises of the permit holder.~~

~~((4) The holder of a serve employees and guests permit))~~ to serve alcohol free of charge to employees and invited guests of the business.

(2) The annual fee for each permit is five hundred dollars.

(3) A separate permit is required for each business premises at which alcohol will be served or consumed.

(4) A permit is not transferable to another business or organization.

(5) A permit is valid for twelve months from the first day of the month in which it is issued.

(6) Permits may only be issued to businesses at which the service and consumption of alcohol is incidental to, and is not part of, the service of the business.

(7) The permit may not be used to stimulate or increase business from the general public.

(8) All alcohol served by permit holders must be purchased at retail from a Washington state retail liquor licensee.

(9) Alcohol service and consumption must be limited to either hospitality rooms or dining rooms, or both, on the premises of the permit holder's business.

(10) The general public may not enter an area of the business where alcohol is being served or consumed.

(11) Permit holders may not charge for admission to an area where alcohol is being served.

(12) Permit holders may not advertise the service of alcohol.

(13) Alcohol may not be sold by permit holders, including by scrip, donation, contribution, or other means.

(14) Permit holders may serve ~~((liquor))~~ alcohol for no more than twenty-four hours during any weekly ~~((168))~~ one hundred sixty-eight hour period.

~~((5) While the serve employees and guests permit holder may advertise their business services, no liquor service shall be advertised.))~~ (15) Consistent with RCW 66.20.070, failure to comply with applicable laws and rules may result in the suspension or cancellation of the permit.

AMENDATORY SECTION (Amending WSR 16-01-102, filed 12/16/15, effective 1/16/16)

**WAC 314-38-060 Special permit for ~~((technical or))~~ community or technical colleges, regional ~~((university))~~ universities, or state ~~((university as authorized by RCW 66.20.010(12) shall be called a class 15 permit))~~ universities.** (1) ~~((The class 15 permit allows tasting of alcohol by persons between eighteen and twenty years old. The requirements for a class 15 permit are as follows:~~

~~((a) The permit applicant is a technical or community college, regional university, or state university;~~

~~((b) The permit allows tasting, not consuming of alcohol.))~~ Community or technical colleges, regional universities, or state universities may apply for a special permit authorized by RCW 66.20.010(12) to allow tasting of alcohol by persons at least eighteen years of age who are enrolled as students in a required or elective class that is part of a culinary, sommelier, wine business, enology, viticulture, wine technology, beer technology or spirituous technology-related degree program.

(2) Students at least eighteen but under twenty-one years of age may not consume or purchase alcohol, but may taste alcohol for the purposes of educational training as part of the class curriculum with approval of the educational provider(

~~((~~ (c) The student must be enrolled in a required or elective class at the college premises as part of a culinary, sommelier, wine business, enology, viticulture, beer technology, wine technology, or spirituous technology-related degree program;

~~((~~ (d) The alcohol served to any person in the program under twenty-one years of age is tasted but not consumed for the purpose of educational training as part of the class curriculum with the approval of the educational provider;

~~((~~ (e) Faculty or staff of the educational provider must be at least twenty-one years of age, supervise the service and tasting, and hold a class 12 or class 13 alcohol server permit; and

~~((~~ (f) Students may not purchase the alcoholic beverages).)

(3) Tastings may occur on the premises of the college or university at which the student is enrolled or while on a field trip to a grape-growing area or production facility.

(4) All tastings must be done under the supervision of a faculty or staff member of the college or university who is at least twenty-one years of age and possesses a class twelve or thirteen alcohol server permit under the provisions of RCW 66.20.310.

~~((2))~~ (5) There is no ~~((annual))~~ fee for this permit.

AMENDATORY SECTION (Amending WSR 14-20-046, filed 9/24/14, effective 10/25/14)

**WAC 314-38-070 ~~((Class 16))~~ Day spa permit—Fee.**

(1) The annual fee for a day spa permit authorized by RCW 66.20.400 is one hundred twenty-five dollars.

(2) "Day spa" is defined as a business that offers at least three of the following four service categories:

(a) Hair care (haircut, hair color, perms, etc.);

(b) Skin care (facials, makeup application);

(c) Nail care (manicure, pedicure); and

(d) Body care (massage, wraps, waxing).

~~((2))~~ (3) The holder of a ~~((Class 16))~~ day spa permit may offer complimentary wine or beer by the individual glass under the following conditions:

(a) Customers must be at least twenty-one years of age;

(b) Spa services must last more than one hour;

(c) A customer may consume no more than one six ounce glass of wine or one twelve ounce glass of beer per day;

(d) Employees involved in the service of wine or beer must complete a board-approved limited alcohol server training program;

(e) Permit holders may not advertise the service of complimentary wine or beer;

(f) Wine and beer must be purchased from a Washington state licensed retailer;

(g) The permit must be posted in a conspicuous area at the point of sale; and

(h) At least three of the service area categories must be in separate areas of the spa.

~~((3))~~ (4) The board has the right to inspect the premises and business records at any time.

~~((4) The annual fee for this permit is one hundred twenty-five dollars.))~~

(5) ~~((Where the holder of any permit issued under this title violates any provision of this title or of the regulations, or is an interdicted person, or is otherwise disqualified from holding a permit, the board, upon proof to its satisfaction of the fact or existence of such violation, interdiction, or disqualification, and in its discretion, may with or without any hearing, suspend the permit and all rights of the holder thereunder for such period as the board sees fit, or may cancel the permit.))~~ Consistent with RCW 66.20.070, failure to comply with applicable laws and rules may result in the suspension or cancellation of the permit.

AMENDATORY SECTION (Amending WSR 17-08-099, filed 4/5/17, effective 5/6/17)

**WAC 314-38-080 ((Class 18)) Special winery permit.**

(1) ~~((The special winery permit is for))~~ Domestic wineries may apply for a special permit authorized by RCW 66.20.010(14).

(2) ~~((A special winery))~~ The permit allows a manufacturer of wine to be present at a private event not open to the general public at a specific place and date for the purpose of tasting wine and selling wine of its own production for on-premises and off-premises consumption.

(3) ~~((The winery must obtain the special permit by submitting an application for a class 18 special winery permit to the board with a ten-dollar permit fee.~~

~~((a))~~ The application and fee must be submitted to the board at least ten days prior to ~~((the))~~ each event.

~~((b))~~ (4) The special permit must be posted at the event.

~~((4))~~ (5) The winery is limited to twelve events per calendar year.

AMENDATORY SECTION (Amending WSR 17-08-099, filed 4/5/17, effective 5/6/17)

**WAC 314-38-090 ((Class 19)) Special distillery permit.** (1) ~~((A special distillery/craft distillery permit is for))~~ Washington ~~((distillers only))~~ distilleries or craft distilleries may apply for a special permit authorized by RCW 66.20.010(13).

(2) ~~((A special distillery/craft distillery))~~ The permit allows a manufacturer of spirits to be present at a private event not open to the general public at a specific place and date for the purpose of tasting spirits and selling spirits of its own production for on-premises and off-premises consumption.

(3) The activities at the event are limited to the activities allowed on the distillery~~(s)~~ or craft distillery premises.

(4) ~~((The distillery or craft distillery must obtain the special permit by submitting an application for a class 19 special distillery/craft distillery permit to the board with a ten-dollar permit fee.~~

~~((a))~~ The application and fee must be submitted to the board at least ten days prior to ~~((the))~~ each event.

~~((b))~~ (5) The special permit must be posted at the event.

~~((5))~~ (6) The licensee is limited to twelve events per calendar year.

AMENDATORY SECTION (Amending WSR 17-08-099, filed 4/5/17, effective 5/6/17)

**WAC 314-38-095 ((Class 20)) Special brewery permit.** (1) ~~((A special brewery/microbrewery permit is for Washington brewers only))~~ Domestic breweries and microbreweries may apply for a special permit authorized by RCW 66.20.010(15).

(2) ~~((A special brewery/microbrewery))~~ The permit allows a manufacturer of beer to be present at a private event not open to the general public at a specific place and date for the purpose of tasting beer and selling beer of its own production for on-premises and off-premises consumption.

(3) ~~((The brewery or microbrewery must obtain the special permit by submitting an application for a class 20 special brewery/microbrewery permit to the board with a ten-dollar permit fee.~~

~~((a))~~ The application and fee must be submitted to the board at least ten days prior to ~~((the))~~ each event.

~~((b))~~ (4) The special permit must be posted at the event.

~~((4))~~ (5) The licensee is limited to twelve events per calendar year.

AMENDATORY SECTION (Amending WSR 17-08-099, filed 4/5/17, effective 5/6/17)

**WAC 314-38-100 Accommodation sale permit.** (1)

An accommodation sale permit ~~((is for))~~ authorized by RCW 66.20.010(16) allows an individual or business to sell a private collection of wine or spirits to another individual or business.

(2) The seller must ~~((complete))~~ submit an application ~~((for accommodation sale permit and submit with a fee of twenty-five dollars))~~ and twenty-five dollar fee to the ~~((WSLCB))~~ board.

(3) Once the ~~((WSLCB))~~ board verifies the information on the application, a permit for the sale will be issued to the seller.

(4) The seller must wait at least five business days after receiving the permit to release either the wine ~~((and/or))~~ or spirits, or both, to the buyer.

(5) Within twenty calendar days of the sale, the seller must complete an accommodation sale inventory report and submit it to the ~~((WSLCB))~~ board.

(6) The following are definitions for the purposes of this section:

(a) "Accommodation sale" means the sale of a private collection of wine or spirits to an individual or business. Both the seller and the buyer must be located in Washington state.

(b) "Buyer" means the individual or business buying a private collection of wine or spirits. A buyer may be a liquor licensee.

(c) "Private collection" means a privately owned collection of wine or spirits. There is no minimum or maximum quantity to be considered a collection.

(d) "Seller" means the individual or business selling a private collection of wine or spirits. The seller cannot be a liquor licensee.

AMENDATORY SECTION (Amending WSR 18-04-116, filed 2/7/18, effective 3/10/18)

**WAC 314-38-110 Nonprofit private wine auction permit.** (1)

A nonprofit private wine auction permit ~~((is for))~~ authorized under RCW 66.20.010(17) allows a nonprofit organization to sell wine through a private auction not open to the public.

(2) The nonprofit organization must ~~((complete a nonprofit wine auction permit application and))~~ submit ~~((the))~~ an application and fee to the ~~((WSLCB))~~ board.

(a) The date and location of the auction must be specified on the application.

(b) Consistent with RCW 66.20.010(17), the one-time event fee is twenty-five dollars multiplied by the number of wineries that are selling wine at the auction event.

(c) A list of event attendees must be submitted with the wine auction permit application.

(3) The holder of the permit may conduct wine tastings of the wine to be auctioned at the event.

(4) All wine sold by auction cannot be consumed during the event.

(5) Wine from multiple wineries may be sold at the auction. Each winery must be listed on the application.

(6) The permit must be posted in a conspicuous location at the premises for which the permit was issued during all times the permit is in use.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 314-38-010 Serve employees and guests permit under Title 66 RCW.

**WSR 21-01-060**  
**PERMANENT RULES**  
**SECRETARY OF STATE**

[Filed December 9, 2020, 11:01 a.m., effective January 9, 2021]

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

Purpose: Permanent adoption of WAC changes related to repeal of chapter 434-626 WAC related to powers and duties of the state agency records officer.

The repealed rules language is nearly verbatim to the underlying statute RCW 40.14.040, adds nothing of substance to guide agency staff, and in one part is in conflict with current law.

Citation of Rules Affected by this Order: Repealing WAC 434-626-010 and 434-626-020.

Statutory Authority for Adoption: RCW 40.14.020.

Adopted under notice filed as WSR 20-19-086 on September 15, 2020.

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 2.

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

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

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

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

Date Adopted: December 9, 2020.

Mark Neary  
Assistant Secretary of State

#### REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 434-626-010 Designation.

WAC 434-626-020 Powers and duties of agency records officers.

**WSR 21-01-061**  
**PERMANENT RULES**  
**DEPARTMENT OF REVENUE**

[Filed December 9, 2020, 11:02 a.m., effective January 9, 2021]

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

Purpose: The department is repealing WAC 458-20-27702 to account for the repeal of RCW 82.32.760 via ESB 5402 (2020).

Citation of Rules Affected by this Order: Repealing WAC 458-20-27702 Taxpayer relief—Sourcing compliance—One thousand dollar credit and certified service provider compensation for small businesses.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060.

Other Authority: Repeal of RCW 82.32.760 by section 64, chapter 139, Laws of 2020.

Adopted under notice filed as WSR 20-20-054 on October 1, 2020.

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 1.

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

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

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

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

Date Adopted: December 9, 2020.

Atif Aziz  
Rules Coordinator

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 458-20-27702 Taxpayer relief—Sourcing compliance—One thousand dollar credit and certified service provider compensation for small businesses.

**WSR 21-01-062**

**PERMANENT RULES**

**DEPARTMENT OF REVENUE**

[Filed December 9, 2020, 11:07 a.m., effective January 9, 2021]

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

Purpose: The department is amending WAC 458-20-168 to incorporate 2020 legislation ESB 5402 (2020). The legislation codifies terms relating to sales and use tax exemptions in RCW 82.08.808, 82.12.808, 82.08.02807, and 82.12.-02749.

Citation of Rules Affected by this Order: Amending WAC 458-20-168 Hospitals, nursing homes, assisted living facilities, adult family homes and similar health care facilities.

Statutory Authority for Adoption: RCW 82.24.550 and 82.01.060.

Other Authority: RCW 82.08.808, 82.12.808, 82.08.-02807, and 82.12.02749.

Adopted under notice filed as WSR 20-20-053 on October 1, 2020.

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 the Request of a Non-governmental 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: December 9, 2020.

Atif Aziz  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-21-092, filed 10/21/15, effective 11/21/15)

**WAC 458-20-168 Hospitals, nursing homes, assisted living facilities, adult family homes and similar health care facilities.** (1) **Introduction. This rule explains the application of business and occupation (B&O), retail sales, and use taxes to persons operating:**

- Hospitals as defined in RCW 70.41.020;
- Nursing homes as defined in RCW 18.51.010;
- Assisted living facilities as defined in RCW 18.20.020;
- Adult family homes as defined in RCW 70.128.010;

and

- Similar health care facilities.

(a) **Examples.** This rule contains examples that identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(b) **What other rules might apply?** The department of revenue (department) has adopted other rules that may apply to the provision of health care. Readers may want to refer to the rules in the following list for additional information:

- (i) WAC 458-20-102 Reseller permits.
- (ii) WAC 458-20-111 Advances and reimbursements.
- (iii) WAC 458-20-150 Optometrists, ophthalmologists, and opticians.
- (iv) WAC 458-20-151 Dentists and other health care providers, dental laboratories, and dental technicians.
- (v) WAC 458-20-169 Nonprofit organizations.
- (vi) WAC 458-20-178 Use tax and the use of tangible personal property.

(vii) WAC 458-20-18801 Medical substances, devices, and supplies for humans—Drugs prescribed for human use—Medically prescribed oxygen—Prosthetic devices—Mobility enhancing equipment—Durable medical equipment.

(viii) WAC 458-20-233 Tax liability of medical and hospital service bureaus and associations and similar health care organizations.

(2) **Personal and professional services of hospitals.** For the purpose of this subsection, the following definitions apply:

• **"Hospital"** - The term hospital is as defined in RCW 70.41.020. It includes hospitals that come within the scope of chapter 71.12 RCW, but only if they are also licensed under chapter 70.41 RCW.

• **"Public hospital" or "nonprofit hospital"** - Public or nonprofit hospitals are hospitals operated by the state or any of its political subdivisions or operated as nonprofit corporations.

(a) **Hospital services to patients.** Gross income earned by hospitals for providing personal or professional services to patients is subject to B&O tax as shown on the table below. RCW 82.04.260.

Report Income From Providing Personal or Professional Services	Time Frame Prior to May 1, 2010	Time Frame May 1, 2010 and After
For profit hospitals	Service and other B&O tax classification	For profit hospitals B&O tax classification

Report Income From Providing Personal or Professional Services	Time Frame Prior to May 1, 2010	Time Frame May 1, 2010 and After
Public and nonprofit hospitals	Public or nonprofit hospitals B&O tax classification	Public or nonprofit hospitals B&O tax classification

Gross income earned for providing nonmedical services, interest received on patient accounts receivable, and amounts earned for providing transcribing services to physicians are subject to service and other activities B&O tax.

(b) **Clinics and departments operated by hospitals.** Gross income earned by medical clinics and departments providing services to patients and operated by a hospital is subject to B&O tax as shown in the table in subsection (2)(a) of this rule, where the operation of a medical clinic or department is covered by the hospital's license. If the clinic or department is not covered by the hospital's license, the gross income earned by a medical clinic or department providing services to patients is subject to B&O tax under the service and other activities B&O tax classification.

(i) **Example 1.** Acme Hospital is a nonprofit hospital that has a medical clinic that is physically located within the hospital. The clinic is open only during regular business hours (8:00 a.m. to 5:00 p.m.) and provides no domiciliary care or overnight facilities to its patients. The medical clinic is covered under Acme Hospital's hospital license. Gross income earned by the medical clinic for providing patient care is subject to the Public and Nonprofit Hospital B&O Tax Classification because the clinic is covered under the hospital license.

(ii) **Example 2.** Mountain Hospital is a for profit hospital with a cancer treatment facility that is located one mile from the hospital campus. The cancer treatment facility provides the type of services normally provided by hospitals to cancer patients but only during regular business hours. The cancer treatment facility is covered under the hospital's license. Gross income earned by the cancer treatment facility is subject to B&O tax as shown in the table in subsection (2)(a) of this rule because the facility is covered under the hospital's license.

(c) **Educational programs and services.** Amounts earned by public or nonprofit hospitals for providing educational programs and services to the general public are subject to B&O tax under the public or nonprofit hospitals classification if the educational programs and services are an integral, interrelated, and essential part of the hospital. Otherwise, such amounts are subject to B&O tax under the service and other activities tax classification. Educational services are considered an integral, interrelated, and essential part of the hospital only if they are unique and incidental to the provision of hospitalization services. Only those educational programs and services offered by a hospital that would be very difficult or impossible to duplicate by a person other than a hospital because of the specialized body of knowledge, facilities, and equipment required are unique and incidental to the provision of hospitalization services. Amounts received from educational programs and services are subject to the service and other activities B&O tax when the educational programs or services could be provided by any physician, clinic, or trained lay person.

(3) **Personal and professional services from other medical clinics, nursing homes, and similar health care facilities.** Gross income earned by medical clinics, nursing homes, and similar health care facilities for providing personal and professional services is subject to service and other activities B&O tax. Physicians performing these services are also subject to service and other activities B&O tax on gross income earned. Services provided are ones not integral, interrelated, and an essential part of a hospital operation.

(4) **Assisted living facilities and domiciliary care.** For the purpose of this rule, "assisted living facilities" and "domiciliary care" have the same meaning as found in RCW 18.20.020. A preferential B&O tax rate is provided by RCW 82.04.2908 to persons operating assisted living facilities licensed under chapter 18.20 RCW. Persons operating licensed assisted living facilities should report their gross income derived from providing room and domiciliary care to residents under the licensed assisted living facilities B&O tax classification. Refer to subsection (9)(h) of this rule for B&O tax deductions and exemptions available to persons operating assisted living facilities.

(5) **Hospitals or other health care facilities operated by the state of Washington.** Gross income earned by the state of Washington for operating a hospital or other health care facilities, whether or not owned by the state, is not subject to B&O tax.

(6) **Nonprofit corporations and associations performing research and development.** A separate B&O tax rate applies to nonprofit corporations and nonprofit associations for gross income earned in performing research and development within this state, including medical research. See RCW 82.04.260.

(7) **Sales of tangible personal property.** Retailing B&O tax applies to sales of tangible personal property sold and billed separately from the performance of personal or professional services by hospitals, nursing homes, assisted living facilities, adult family homes, and similar health care facilities. This includes charges for making copies of medical records. The seller must collect retail sales tax from the buyer and remit the tax to the department unless the sale is specifically exempt by law.

(a) **Tangible personal property used in providing medical services to patients.** Retailing B&O and retail sales taxes do not apply to charges to a patient for tangible personal property used in providing medical services to the patient, even if separately billed. Tangible personal property used in providing medical services is not considered to have been sold separately from the medical services simply because those items are separately invoiced. These charges, even if separately itemized, are for providing medical services.

For example, when a hospital charges a patient for drugs physically administered by the hospital staff, the charges to the patient are subject to B&O tax under the appropriate tax classification as shown in the table in subsection (2)(a) of this rule based on the hospital making the charge. On the other

hand, charges for drugs sold to persons or their caregivers, either for self-administration or administration by a caregiver other than the seller, are subject to retailing B&O tax and retail sales tax unless specifically exempt by law. Readers should refer to WAC 458-20-18801 for detailed information regarding retail sales tax exemptions that apply to sales of prescription drugs and other medical items.

(b) **Sales of meals.** Although the sale of meals is generally considered to be a retail sale, hospitals, nursing homes, assisted living facilities, and similar health care facilities that furnish meals to patients or residents as a part of the services provided to those patients or residents are not considered to be making retail sales of meals. Thus amounts earned by hospitals, nursing homes, assisted living facilities, and similar health care facilities for furnishing meals to patients or residents are subject to B&O tax as part of the services provided to those patients or residents. Such amounts are not subject to retail sales tax.

RCW 82.08.0293 and 82.12.0293 provide, respectively, retail sales tax and use tax exemptions for prepared meals sold to senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW. The exemptions apply to sales of prepared meals to not-for-profit organizations organized under chapter 24.03 or 24.12 RCW, that provide the meals to senior citizens, disabled persons, or low-income persons as a part of the patient services they render.

Hospitals, nursing homes, assisted living facilities, and similar health care facilities may have restaurants, cafeterias, or other dining facilities where meals are sold to doctors, employees, and visitors. These sales of meals are subject to retailing B&O and retail sales taxes. For additional information regarding the sale of meals, including meals furnished to employees, refer to WAC 458-20-124.

(8) **Industry reporting.** This subsection discusses common reporting issues affecting persons operating medical or other health care facilities.

(a) **Adjustments to revenues.** Many hospitals provide medical care without charge or where some portion of the charge will be canceled. In other cases, medical care is billed to patients at "standard" rates but is later adjusted to reduce the charges to the rates established by contract with medicare, medicaid, or private insurers. In these situations, the hospital must initially include the total charges as billed to the patient as gross income unless the hospital's records clearly indicate the amount of income to which it will be entitled under its contracts with insurance carriers. Where tax returns are initially filed based on gross charges, an adjustment may be taken on future tax returns after the hospital has adjusted its records to reflect the actual amounts collected. In no event may the hospital reduce the amount of its current gross income by amounts that were not previously reported on its excise tax return. If the tax rate changes from the time the B&O tax was first paid on the gross charges and the time of the adjustment, the hospital must file amended tax returns to report the B&O tax on the transaction as finally completed at the rate in effect when the service was performed.

(b) **What are the tax consequences when a hospital contracts with an independent contractor to provide medical services at the hospital?** When a hospital contracts with

an independent contractor (service provider) to provide medical services, such as managing and staffing the hospital's emergency department, the hospital may not deduct the amount paid to the service provider from its gross income. If, however, the patients are alone liable for paying the service provider, and the hospital has no personal liability, either primarily or secondarily, for paying the service provider, other than as agent for the patients, then the hospital may deduct from its gross income the amount it receives and pays to the service provider.

In addition, the service provider is subject to service and other activities B&O tax on the amount earned from the hospital for providing these services for the hospital. If the service provider subcontracts with a third party, such as a physician or nurse, to help provide medical services as an independent contractor, the service provider may not deduct from its gross income amounts paid to the subcontractor where the service provider is personally liable, either primarily or secondarily, for paying the subcontractor. If, however, the hospital is alone liable for paying the subcontractor, and the service provider has no personal liability, either primarily or secondarily, other than as agent for the hospital, then the service provider may deduct from its gross income the amount it receives from the hospital and pays to the subcontractor. For additional information regarding deductible advances and reimbursements, refer to WAC 458-20-111.

(c) **May nursing homes and assisted living facilities claim a B&O tax exemption for the rental of real estate?**

No. The purpose of nursing homes is to provide medical care to their residents. The purpose of assisted living facilities is to assume general responsibility for the safety and well-being of their residents and to provide other services to residents such as housekeeping, meals, laundry, and activities. Assisted living facilities may also provide residents with assistance with activities of daily living, health support services, and intermittent nursing services. Because the purpose of nursing homes and assisted living facilities is to provide services and not to lease or rent real property, no part of the gross income of nursing homes or assisted living facilities is exempted from B&O tax as the rental of real estate.

(9) **B&O tax deductions, credits, and exemptions.**

This subsection provides information about B&O tax deductions, credits, and exemptions available to persons operating medical or other health care facilities.

Deductible amounts should be included in the gross income reported on the excise tax return and then identified on the appropriate deduction detail line of the excise tax return to determine the amount of taxable income.

(a) **Organ procurement organizations.** RCW 82.04.-326 provides a B&O tax exemption for amounts earned by a qualified organ procurement organization under 42 U.S.C. Sec. 273(b) in effect as of January 1, 2001, to the extent that the amounts are exempt from federal income tax.

(b) **Contributions, donations, and endowment funds.** RCW 82.04.4282 provides a B&O tax deduction for amounts received as contributions, donations, and endowment funds, including grants, which are not in exchange for goods, services, or business benefits. For example, a B&O tax deduction is allowed for donations received by a public hospital, as long as the donors do not receive any goods, services, or any

business benefits in return. On the other hand, a public hospital may not take a B&O tax deduction on amounts earned from a state university for work-study programs or training seminars, because the university receives business benefits in return, as students receive education and training while enrolled in the university's degree programs.

(c) **Adult family homes.** RCW 82.04.327 provides a B&O tax exemption for gross income derived from personal and professional services of adult family homes licensed by the department of social and health services (DSHS), or which are specifically exempt from licensing under the rules of DSHS. This exemption does not apply to persons who provide home care services to clients in the clients' own residences.

For the purpose of this rule, "adult family home" has the same meaning as in RCW 70.128.010.

(d) **Nonprofit kidney dialysis facilities, hospice agencies, and nonprofit nursing homes and homes for unwed mothers.** RCW 82.04.4289 provides a B&O tax exemption for amounts earned as compensation for services rendered to patients or from sales of drugs for human use pursuant to a prescription furnished as an integral part of services rendered to patients by kidney dialysis facilities operated as a nonprofit corporation, nonprofit hospice agencies licensed under chapter 70.127 RCW, nonprofit nursing homes and homes for unwed mothers operated as religious or charitable organizations. This exemption applies only if no part of the net earnings earned by such an institution inures, directly or indirectly, to any person other than the institution entitled to this exemption. This exemption is available to nonprofit hospitals for income from the operation of kidney dialysis facilities if the hospital accurately identifies and accounts for the income from this activity.

Examples of nonprofit nursing homes include nursing homes operated by church organizations or by nonprofit corporations designed to assist alcoholics in recovery and rehabilitation. Nursing homes and homes for unwed mothers operated by governmental entities, including public hospital districts, do not qualify for the B&O tax exemption provided in RCW 82.04.4289.

(e) **Government payments made to health or social welfare organizations.** RCW 82.04.4297 provides a B&O tax deduction to health or social welfare organizations, as defined in RCW 82.04.431, for amounts earned directly from the United States, any instrumentality of the United States, the state of Washington, or any municipal corporation or political subdivision of the state of Washington as compensation for health or social welfare services.

Effective August 1, 2011, RCW 82.04.4275 provides a B&O tax deduction for amounts health or social welfare organizations receive as compensation for providing child welfare services under a government-funded program.

A deduction is not allowed, however, for amounts that are received under an employee benefit plan. For purposes of the deduction provided by RCW 82.04.4297, "employee benefit plan" includes any plan, trust, commingled employee benefit trust, or custodial arrangement that is subject to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., or that is described in sections 125, 401, 403, 408, 457, and 501 (c)(9) and (17)

through (23) of the Internal Revenue Code of 1986, as amended, or a similar plan maintained by a state or local government, or a plan, trust, or custodial arrangement established to self-insure benefits required by federal, state, or local law.

(f) **Amounts earned under a health service program subsidized by federal or state government.** RCW 82.04.4311 provides a B&O tax deduction to:

- A public hospital that is owned by a municipal corporation or political subdivision; or
- A nonprofit hospital; or
- A nonprofit community health center; or
- A network of nonprofit community health centers, that qualifies as a health and social welfare organization as defined in RCW 82.04.431, for amounts earned as compensation for health care services covered under the federal medicare program authorized under Title XVIII of the federal Social Security Act; medical assistance, children's health, or other program under chapter 74.09 RCW; or for the state of Washington basic health plan under chapter 70.47 RCW. This deduction applies to amounts received directly or through a third party from the qualified programs or plans. However, it does not apply to amounts received from patient copayments or patient deductibles. For purposes of the deduction provided by RCW 82.04.4311, "community health center" means a federally qualified health center as defined in 42 U.S.C. Sec. 1396d as existed on August 1, 2005.

**Example 3.** Acme Hospital is a nonprofit hospital that qualifies as a health and social welfare organization as defined in RCW 82.04.431. Acme receives \$1,000 for providing health care services to Jane, who qualifies for the federal medicare program authorized under Title XVIII of the federal Social Security Act. Jane is covered in a health care plan that is a combination of medicare, which is B&O tax deductible by Acme, and a medicare plus plan, which is paid for by Jane and is not B&O tax deductible by Acme. Jane pays \$20 to Acme as patient copayments. Medicare pays \$600 to Acme for the health care services, and the medicare plus plan pays \$380. Acme may deduct only the \$600 received from medicare.

(g) **Blood and tissue banks.** Except as otherwise provided, RCW 82.04.324 provides a B&O tax exemption for amounts earned by a qualifying blood bank, a qualifying tissue bank, or a qualifying blood and tissue bank to the extent such amounts are exempt from federal income tax.

Effective October 1, 2013, RCW 82.04.324 provides that persons claiming this exemption must report amounts exempt under this subsection to the department on their excise tax returns. Except for persons whose primary business purpose is the collection, preparation, and processing of blood, the exemption per person is limited to one hundred fifty thousand dollars in tax per calendar year. RCW 82.04.324(3) is scheduled to expire June 30, 2016.

For the purposes of this exemption, the following definitions apply:

(i) **Qualifying blood bank.** "Qualifying blood bank" means a blood bank that qualifies as an exempt organization under 26 U.S.C. 501 (c)(3) as existing on June 10, 2004, that is registered under 21 C.F.R., Part 607 as existing on June 10, 2004, and whose primary business purpose is the collection, preparation, and processing of blood.

Effective October 1, 2013, the definition of "qualifying blood bank" includes an exempt organization, as described above, that tests or processes blood, on behalf of itself or other qualifying blood bank or qualifying blood and tissue bank. This definition is scheduled to expire June 30, 2016. "Qualifying blood bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute.

(ii) **Qualifying tissue bank.** "Qualifying tissue bank" means a tissue bank that qualifies as an exempt organization under 26 U.S.C. 501 (c)(3) as existing on June 10, 2004, is registered under 21 C.F.R., Part 1271 as existing on June 10, 2004, and whose primary business purpose is the recovery, processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue and similar musculoskeletal tissues, skin tissue, heart valve tissue, or human eye tissue. "Qualifying tissue bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute.

(iii) **Qualifying blood and tissue bank.** "Qualifying blood and tissue bank" means a bank that qualifies as an exempt organization under 26 U.S.C. 501 (c)(3) as existing on June 10, 2004, is registered under 21 C.F.R., Parts 607 and 1271 as existing on June 10, 2004, and whose primary business purpose is the collection, preparation, and processing of blood, and the recovery, processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue and similar musculoskeletal tissues, skin tissue, and heart valve tissue.

Effective October 1, 2013, the definition of "qualifying blood and tissue bank" includes an exempt organization, as described in (g)(iii) of this subsection, that tests or processes blood, on behalf of itself or other qualifying blood bank or qualifying blood and tissue bank. "Qualifying blood and tissue bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute. This definition is scheduled to expire June 30, 2016.

(h) **Assisted living facilities.** RCW 82.04.4337 provides a B&O tax deduction to licensed assisted living facility operators for amounts earned as compensation for providing adult residential care, enhanced adult residential care, or assisted living services under contract with the department of social and health services authorized by chapter 74.39A RCW to residents who are medicaid recipients. For the purpose of this rule, "adult residential care," "enhanced adult residential care," and "assisted living services" have the same meaning as in RCW 74.39A.009.

In addition, RCW 82.04.4264 provides a B&O tax exemption for amounts earned by a nonprofit assisted living facility licensed under chapter 18.20 RCW for providing room and domiciliary care to residents of the assisted living facility. For purposes of this rule, "nonprofit assisted living facility" means an assisted living facility that is operated as a religious or charitable organization, is exempt from federal income tax under 26 U.S.C. Sec. 501 (c)(3), is incorporated under chapter 24.03 RCW, is operated as part of a nonprofit hospital, or is operated as part of a public hospital district.

(i) **Comprehensive cancer centers.** RCW 82.04.4265 provides a B&O tax exemption for amounts earned by a comprehensive cancer center to the extent such amounts are

exempt from federal income tax. For purposes of this rule, "comprehensive cancer center" means a cancer center that has written confirmation that it is recognized by the National Cancer Institute as a comprehensive cancer center and that qualifies as an exempt organization under 26 U.S.C. Sec. 501 (c)(3) as existing on July 1, 2006.

(j) **Prescription drugs administered by the medical service provider.** RCW 82.04.620 allows a deduction from the measure of tax for reporting under the service and other activities classification of the B&O tax (RCW 82.04.290) for amounts earned by physicians or clinics for drugs for infusion or injection by licensed physicians or their agents for human use pursuant to a prescription. This deduction only applies to amounts that:

(i) Are separately stated on invoices or other billing statements;

(ii) Do not exceed the then current federal rate; and

(iii) Are covered or required under a health care service program subsidized by the federal or state government.

For the purpose of this deduction only, amounts that "are covered or required under a health care service program subsidized by the federal or state government" include any required drug copayments made directly from the patient to the physician or clinic.

(A) "Federal rate" means the rate at or below which the federal government or its agents reimburse providers for prescription drugs administered to patients as provided for in the medicare, Part B, drugs average sales price information resource as published by the United States Department of Health and Human Services, or any index that succeeds it.

(B) The deduction is available on an "all or nothing" basis against the total amount earned for a specific drug charge. If the total amount earned by the physician or clinic for a specific drug exceeds the federal reimbursement rate, none of the total amount earned qualifies for the deduction (including any required copayment received directly from the patient). In other words, a physician or clinic may not simply take an "automatic" deduction equal to the federal reimbursement rate for each drug.

(C) For physicians or clinics reporting taxes on the accrual basis, the total amount charged for a drug must be included in the gross income at the time of billing if it is in excess of the federal rate. However, in some cases the gross income from charges may be adjusted, as indicated in subsection (8)(a) of this rule. If such an adjustment to gross income is appropriate, the exemption discussed in this subsection may also be taken at the time of billing if the adjustment leaves the physician or clinic contractually liable to receive a total amount (including any copayment received from the patient) that does not exceed the federal rate.

(10) **Sales, use, and other specified taxes deductions and exemptions.** Unless otherwise exempt by law, hospitals, nursing homes, adult family homes, assisted living facilities, and similar health care providers are required to pay retail sales tax on purchases of equipment and supplies. The ~~(following)~~ deductions and exemptions listed in this subsection are available to qualified persons.

(a) For the purpose of this subsection, the following definitions apply:

(i) **"Chemical"** means any catalyst, solvent, water, acid, oil, or other additive that physically or chemically interacts with blood, bone, or tissue.

(ii) **"Materials"** for the purposes of RCW 82.08.02807 means any item of tangible personal property including, but not limited to, bags, packs, collecting sets, filtering materials, testing reagents, antisera, and refrigerants, used or consumed in performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(iii) **"Medical supplies"** means any item of tangible personal property, including any repair and replacement parts for such tangible personal property, used by a comprehensive cancer center for the purpose of performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue. The term includes tangible personal property used to:

(A) Provide preparatory treatment of blood, bone, or tissue;

(B) Control, guide, measure, tune, verify, align, regulate, test, or physically support blood, bone, or tissue; and

(C) Protect the health and safety of employees or others present during research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(iv) **"Research"** means basic and applied research that has as its objective the design, development, refinement, testing, marketing, or commercialization of a product, service, or process.

(b) **Temporary medical housing provided by a health or social welfare organization.** RCW 82.08.997 provides an exemption from state and local sales taxes and lodging taxes for temporary medical housing provided by a health or social welfare organization. The term "health or social welfare organization" is defined in RCW 82.04.431. "Temporary medical housing" means transient lodging and related services provided to a patient or the patient's immediate family, legal guardian, or other persons necessary to the patient's mental or physical well-being.

(i) The exemption applies to the following taxes:

(A) Retail sales tax levied under RCW 82.08.020;

(B) Lodging taxes levied under chapter 67.28 RCW;

(C) Convention and trade center tax levied under chapter 36.100 RCW;

(D) Public facilities tax levied under RCW 36.100.040; and

(E) Tourism promotion areas tax levied under RCW 35.101.050.

(ii) The exemptions in this subsection apply to charges made for "temporary medical housing" only:

(A) While the patient is receiving medical treatment at a hospital required to be licensed under RCW 70.41.090 or at an outpatient clinic associated with such hospital, including any period of recuperation or observation immediately following such medical treatment; and

(B) By a person that does not furnish lodging or related services to the general public.

~~((b))~~ (c) **Purchases for resale.** Purchases of tangible personal property for resale without intervening use are not subject to retail sales tax. Persons purchasing tangible per-

sonal property for resale must furnish a copy of their reseller permit to the seller to document the wholesale nature of the sale. Reseller permits replaced resale certificates effective January 1, 2010.

~~((e))~~ (d) **Sales of medical supplies, chemicals, or materials to a comprehensive cancer center.** RCW 82.08.-808 and 82.12.808 provide, respectively, retail sales tax and use tax exemptions for sales of medical supplies, chemicals, or materials to a comprehensive cancer center. These exemptions do not apply to sales of construction materials, office equipment, building equipment, administrative supplies, or vehicles.

~~((i) Medical supplies.~~ For purposes of this exemption, "medical supplies" means any item of tangible personal property, including any repair and replacement parts for such tangible personal property, used by a comprehensive cancer center for the purpose of performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue. The term includes tangible personal property used to:

(A) Provide preparatory treatment of blood, bone, or tissue;

(B) Control, guide, measure, tune, verify, align, regulate, test, or physically support blood, bone, or tissue; and

(C) Protect the health and safety of employees or others present during research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

~~((ii) Chemicals.~~ For purposes of this exemption, "chemical" means any catalyst, solvent, water, acid, oil, or other additive that physically or chemically interacts with blood, bone, or tissue.

~~((iii) Materials.~~ For purposes of this exemption, "materials" means any item of tangible personal property including, but not limited to, bags, packs, collecting sets, filtering materials, testing reagents, antisera, and refrigerants used or consumed in performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

~~((iv) Research.~~ For purposes of this exemption, "research" means basic and applied research that has as its objective the design, development, refinement, testing, marketing, or commercialization of a product, service, or process.

~~((f))~~ (e) **Sales of medical supplies, chemicals, or materials to organ procurement organizations.** RCW 82.08.-02807 and 82.12.02749 provides, respectively, retail sales tax and use tax exemptions for sales of medical supplies, chemicals, or materials to organ procurement organizations exempt under RCW 82.04.326. These exemptions do not apply to the sale of construction materials, office equipment, building equipment, administrative supplies, or vehicles.

(11) **Buyer's responsibility to remit deferred sales or use tax.** If the seller does not collect retail sales tax on a retail sale, the buyer must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department unless the purchases are specifically exempt by law. For detailed information regarding the use tax, refer to WAC 458-20-178.

(a) **How do I report deferred sales or use tax.** Persons registered with the department and required to file tax returns should report deferred sales or use tax on their excise tax return. As the excise tax return does not have a separate line for reporting deferred sales tax, the buyer should report the tax liability on the use tax line. If a deferred sales tax or use tax liability is incurred by a person who is not required to be registered with the department, the person must report the tax on a "Consumer Use Tax Return" and remit the appropriate tax to the department.

(b) **Where can I obtain a Consumer Use Tax Return?** The Consumer Use Tax Return may be obtained from the department's website at [dor.wa.gov](http://dor.wa.gov), or by calling the department's telephone information center at 1-800-647-7706.

**WSR 21-01-063**  
**PERMANENT RULES**  
**DEPARTMENT OF REVENUE**

[Filed December 9, 2020, 11:12 a.m., effective January 9, 2021]

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

Purpose: The department is amending the rules listed below to incorporate 2020 legislation, SHB 2384. This legislation changed the eligibility requirements for nonprofit organizations receiving this exemption to account for income growth in qualifying households. Updating these rules to provide the correct exemption requirements will provide accurate information to nonprofit organizations that apply for this exemption.

Citation of Rules Affected by this Order: Amending WAC 458-16-110 Applications—Who must file, initial applications, annual declarations, appeals, filing fees, penalties, and refunds, 458-16-150 Cessation of use—Taxes collectible for prior years, and 458-16-560 Housing for very low-income households.

Statutory Authority for Adoption: RCW 84.36.865.

Adopted under notice filed as WSR 20-20-059 on October 1, 2020.

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 3, Repealed 0.

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

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

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

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

Date Adopted: December 9, 2020.

Atif Aziz  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-23-060, filed 11/12/10, effective 12/13/10)

**WAC 458-16-110** (~~Applications—Who must file, initial applications, annual declarations, appeals, filing fees, penalties, and refunds.~~) **Initial application and renewal declaration.** (1) **Introduction.** This rule explains the ~~(procedures)~~ requirements in RCW 84.36.815 that property owners must follow to apply for and renew all real and personal property exemptions or leasehold excise tax exemptions under chapter 84.36 RCW ~~(for which the taxpayer must apply in order to receive)~~. It also ~~(specifies)~~ explains the late filing penalty that is due whenever an application or renewal declaration is received after the filing deadline.

(2) **Application required.** All foreign national governments~~(s)~~; cemeteries~~(s)~~; nongovernmental nonprofit corporations, organizations, or associations~~(s)~~; soil and water conservation districts~~(s)~~; hospitals established under chapter 36.62 RCW; and ~~(a)~~ public hospital districts established under chapter 70.44 RCW, seeking a property tax exemption or a leasehold excise tax exemption under chapter 84.36 RCW must submit an application for exemption ~~(and)~~ with supporting documentation to the ~~(state)~~ department of revenue (department). Unless otherwise exempted by law, no real or personal property or leasehold interest is exempt from taxation until an application is submitted and an exemption is granted.

(3) **Where to obtain initial application and ~~(annual)~~ renewal declaration forms.** An initial application~~(s)~~ for exemption may be obtained from any county assessor's office~~(, the department's property tax division,)~~ or on the ~~(internet at <http://dor.wa.gov> under Property Tax, "Forms."~~ **Annual**) department's website at [dor.wa.gov](http://dor.wa.gov). Renewal declaration forms are ~~(mailed)~~ provided by the department to all entities receiving a property tax or leasehold excise tax exemption, except for certain cemeteries, military housing providers and tribal governments. ~~(If such a form is not received in the mail, an annual renewal declaration may be obtained from the department's property tax division.)~~ Refer to subsection (8) of this rule for additional information on renewal declarations.

(4) **Initial application~~(, filing deadlines, and other requirements)~~.** ~~(In general)~~ Generally, initial applications for exemption must be filed with the department on or before March 31st to exempt the property from taxes due in the following year. However, an initial application may be filed after March 31st if the property is acquired or converted to an exempt use after that date, if the property may qualify for an exemption under chapter 84.36 RCW. ~~(In this situation)~~ For property acquired or converted after March 31st, the initial application must be submitted within sixty days of acquisition or conversion ~~(of the property)~~ to an exempt use. If an initial application is not received within this sixty day period, the late filing penalty described in subsection (12) of this rule is imposed.

The following requirements apply to all initial applications:

(a) The application must be made on a form prescribed by the department and signed by the applicant or the applicant's authorized agent;

(b) One application can be submitted for all real property that is contiguous and part of a homogeneous unit. If exemption is sought for multiple parcels of real property, which are not contiguous ~~((not))~~ or not part of a homogeneous unit, a separate application for each parcel must be submitted. However, multiple applications are not required for church property with a noncontiguous parsonage or convent.

(i) "Contiguous property" means real property adjoining other real property, all of which is under the control of a single applicant even though the properties may be separated by public roads, railroads, rights of way, or waterways.

(ii) "Homogeneous unit" means the property is controlled by a single applicant and the operation and use of the property is integrated with and directly related to the exempt activity of the applicant.

(5) **Documentation ~~((a nonprofit organization must submit with its))~~ required for initial application ~~((for exemption))~~.** Unless the following information was previously submitted to the department and ~~((it))~~ is still current, the applicant must submit the following in addition to the initial application ~~((for exemption, a nonprofit organization, corporation, or association must also submit))~~:

(a) ~~((Copies of the articles of incorporation or association, constitution, or other establishing documents, as well as all current amendments to these documents, showing nonprofit status;~~

~~((b))~~ A legal description of all real property, listing the county tax parcel number;

~~((b))~~ A copy of the deed for real property owned by the applicant or a copy of the lease agreement if the property is being leased. If leased, the applicant must also indicate how the property is being used, and the monthly amount of maintenance and operation costs related to rented or loaned property if a nonprofit entity is claiming an exemption for property leased to another party;

~~((c))~~ A copy of the bylaws of the nonprofit entity, and articles of incorporation or association, constitution, or other establishing documents, as well as all current amendments to these documents showing nonprofit status, if requested by the department;

~~((e))~~ (d) A copy of any current letter issued by the Internal Revenue Service that exempts the applicant from federal income taxes ~~((This letter is not usually, but may be, required if the nonprofit entity applying for an exemption is part of a larger organization, association, or corporation, like a church or the Boy Scouts of America, that was issued a group 501(c)(3) exemption ruling by or is otherwise exempt from filing with the Internal Revenue Service))~~; and

~~((d))~~ The information required in subsection (6) of this rule.

~~((6))~~ **Other documentation a nonprofit entity, foreign national government, hospital established under chapter 36.62 RCW, hospital owned and operated by a public hospital district, or soil and water conservation district must submit with its initial application for exemption.** In addition to the initial application for exemption, a nonprofit entity, foreign national government, and public hospital district established under chapter 70.44 RCW, or soil and water conservation district must submit the following information regarding the real or personal property for which exemption

is sought, unless it was previously submitted to the department and it is still current:

~~((a))~~ An accurate description of the real and personal property;

~~((b))~~ (c) An accurate map identifying by dimension the use or proposed use of all real property that shows buildings, building sites, parking areas, landscaping, vacant areas, and if requested by the department, floor plans of the buildings. The map will be used to determine whether the property is entitled to a total or partial exemption based upon the use of the total area;

~~((c))~~ A legal description of all real property, listing the county tax parcel number, and if the property is owned by the applicant, a copy of the current deed; and

~~((d))~~ If the property is rented or loaned to or from another property owner, a copy of the rental agreement or other document explaining the terms of the lease or loan. This documentation must describe:

~~((i))~~ What property is rented or loaned;

~~((ii))~~ The amount of the rent or other consideration paid or received;

~~((iii))~~ The name of the party from whom and the name of the party to whom the property is rented or loaned;

~~((iv))~~ How the property is being used; and

~~((v))~~ The monthly amount of maintenance and operation costs related to rented or loaned property if a nonprofit entity is claiming an exemption for property leased to another party).

~~((7))~~ **Department's review of the** (6) Initial application review and notice of ~~((its))~~ determination. Upon receipt of an initial application for exemption, the department will review the application and all supporting documentation. Additional information may be requested by the department about the ownership and use of the property ~~((, if the department needs this information))~~ to determine if the exemption should be granted. An application for exemption is not considered complete until all required and requested information is received by the department.

(a) Physical inspection. The department may physically inspect the property as part of the application review process.

(b) Deadline. If a complete application is received by March 31st ~~((for that))~~ of the assessment year, the department will issue a determination about the application by August 1st of that same year. If a complete application is not received by March 31st, the determination will be made within thirty days of the date the complete application is received by the department or by August 1st, whichever is later.

(c) Notice to applicant. The department will ~~((mail))~~ issue a written determination about the exemption application to the applicant. An application may be approved or denied, in whole or in part. If the application is denied for any portion of the property covered by the application, the department must clearly explain its reason for denial in its written determination.

(d) Notice to assessor. Once the department makes its determination about the application for exemption, it will notify the assessor of the county in which the property is located ~~((about))~~ regarding the determination ~~((made. In turn,)).~~ The assessor will then take ~~((s))~~ appropriate action so ~~((that))~~ the department's determination is reflected on the

county's assessment (~~(roll(s) for the years covered by the determination)~~) roll.

~~((8))~~ (7) Effective date of ~~(the)~~ exemption. If an initial application is approved, the property is exempt from property taxes due the year immediately following the year the application for exemption is submitted.

~~((a))~~ For example, if an application for exemption is submitted to the department in ~~((2010))~~ 2020 and the application is approved for assessment year ~~((2010))~~ 2020, the property will be exempt from taxes due in ~~((2011))~~ 2021.

~~((b))~~ Retroactive initial applications for exemption for previous years are accepted, up to a maximum of three years from the date taxes were due on the property, if the applicant provides the department with acceptable proof that the property qualified for exemption during the pertinent assessment years and pays the late filing penalties described in subsection (12) of this rule.

~~((9) Annual)~~ (8) Renewal declarations. ~~(To retain a property tax exemption, each nonprofit entity (except nonprofit cemeteries), foreign national government, public hospital district, and soil and water conservation district))~~ The renewal declaration is a form provided by the department and may be submitted electronically.

(a) Annual renewal declaration. Except as provided in (b) and (c) of this subsection, any entity receiving an exemption must annually submit a renewal declaration certifying that the use and exempt status of the real and personal property has not changed.

~~(The renewal declaration is a form provided by the department.)~~ (b) Other renewal declarations. Nonprofits receiving an exemption under RCW 84.36.560 must file a renewal declaration on or before March 31st of every third year following initial qualification for the exemption. Except for this renewal requirement, all other requirements in this rule apply to this exemption. Refer to WAC 458-16-560 Housing for qualifying households, for additional information about this exemption.

(c) No renewal declaration. Nonprofit cemeteries receiving an exemption under RCW 84.36.020 and nonprofit low-income housing developers receiving an exemption under RCW 84.36.049, are not required to file a renewal declaration. See subsection (11) of this rule for additional information on renewal declarations for cemeteries.

(9) Documentation required for renewal declaration. Unless otherwise indicated in subsection (8) of this rule, the following requirements apply to all renewal declarations:

(a) On or before January 1st of each year, the department ~~((mails a))~~ will send information about the renewal declaration to the entity receiving an exemption for the property ~~((at the entity's last known address)).~~ If an entity changes its mailing or contact information at any time during the year, it must notify the department within sixty days ~~((of changing its mailing address, the exempt entity must notify the department))~~ about the change.

(b) The renewal declaration, signed by the exempt entity or the exempt entity's authorized agent, must be ~~((mailed or delivered))~~ submitted to the department ~~((or submitted electronically using the department's online service))~~ no later than March 31st of each year.

(i) The renewal declaration must include information about any change of use of the exempt property and a statement certifying the truth and accuracy of the information listed.

(ii) The renewal declaration is due on or before March 31st of each year even if the department fails to ~~((mail))~~ send the declaration to the exempt entity. ~~((If an exempt entity does not receive a renewal declaration, a replacement))~~ A renewal declaration form may be requested from the department to renew the exemption or the exempt entity may use the department's online system to submit the declaration.

(c) If the renewal declaration and renewal fee are not received by March 31st, the department will ~~((mail))~~ send a second notice to the exempt entity ~~((at the entity's last known mailing address)).~~ If the exempt entity fails to respond to the second notice, the department will remove the exemption from the property and notify the assessor of the county in which the property is located that the exemption has been canceled.

(d) Real property, which was previously exempt from taxation, is assessed and taxed as provided in RCW 84.40.-350 through 84.40.390 when it loses its exempt status.

(i) Property that no longer retains its exempt status is subject to a pro rata portion of the taxes allocable to the remaining portion of the year after the date the property lost its exempt status.

(ii) The assessor lists and assesses the property with reference to its true and fair value on the date the property lost its exempt status.

(iii) RCW 84.40.380 ~~((sets forth))~~ provides the dates ~~((upon which))~~ that taxes are payable when property loses its exempt status. Taxes due and payable under RCW 84.40.350 through 84.40.390 constitute a lien on the property that attaches on the date the property loses its exempt status.

(10) Failure to submit ~~((an annual))~~ a renewal declaration ~~((and reapplication for exemption)).~~ ~~((If))~~ When property loses its exempt status because the ~~((annual))~~ renewal declaration was not submitted and ~~((subsequently))~~ the owner wishes to reapply for the property tax exemption:

(a) If the owner reapplies within the same assessment year ~~((during which))~~ the exemption ~~((is canceled))~~ was removed, the owner must submit the ~~((annual))~~ renewal declaration and pay the required late filing penalties; or

(b) If the owner reapplies after the assessment year ~~((during which))~~ the exemption ~~((is canceled))~~ was removed, the owner must submit an initial application and pay the required late filing penalties.

(11) Initial application and renewal declaration procedures ~~((regarding))~~ for cemeteries. There are several types of cemeteries. The initial application for exemption and renewal declaration procedures are specific as to the type of cemetery at issue.

(a) The assessor ~~((shall))~~ will consider the following types of cemeteries exempt from property tax, and no initial application or renewal declaration is required for:

(i) Cemeteries owned, controlled, operated, and maintained by a cemetery district authorized by RCW 68.52.090; or

(ii) Indian cemeteries, which are considered to be held by the tribe or held in trust for the tribe by the United States.

(b) An initial application is submitted to the department, but no renewal declaration is required, for:

- (i) Family cemeteries;
- (ii) Historical cemeteries;
- (iii) Community cemeteries; and
- (iv) Cemeteries belonging to nonprofit organizations, associations, or corporations.

(c) An initial application (~~(for exemption)~~) is submitted to the department, and a renewal declaration (~~(must be submitted)~~) is required annually by all for-profit cemeteries seeking a property tax exemption.

(12) **Late filing penalty.** When an initial application or renewal declaration is submitted after the due date, a late filing penalty of ten dollars is due for every month, or portion (~~(thereof)~~) of the month. This penalty is calculated from the date the initial application or renewal declaration was due until the postmark date shown on the application or declaration or the date the application or declaration is (~~(given to)~~) received by the department. RCW 84.36.825.

(13) **Refund of filing penalty.** No late filing penalty is refunded after a determination on the application is issued by the department. However, the late filing penalty will be refunded under the following circumstances:

(a) (~~(When)~~) A duplicate application or renewal declaration for the same property is submitted during the same calendar year;

(b) (~~(When)~~) An application or renewal declaration is received by the department and the department has no authority to grant the exemption requested; or

(c) (~~(When)~~) A written request to withdraw the application is received before the department issues a determination. The withdrawal request must be (~~(signed)~~) submitted by the owner or the owner's authorized agent.

(14) **Appeals.** Any applicant that receives a negative determination from the department on either an initial application or a renewal declaration may appeal this determination to the state board of tax appeals (BTA). Similarly, any assessor who disagrees with the department's determination may appeal the determination to the BTA. See WAC 458-16-120 Appeals, for specific information about the appeal process.

AMENDATORY SECTION (Amending WSR 02-02-009, filed 12/20/01, effective 1/20/02)

**WAC 458-16-150 Cessation of use—Taxes collectible for prior years.** (1) **Introduction.** This rule explains what occurs when property loses its tax exempt status and is placed back on the tax rolls. It also describes the back taxes and interest that are collected when an exempt use ceases, unless the property has been exempt for more than ten consecutive years or is otherwise exempt from the provisions of RCW 84.36.810. This rule does not apply to property that received an exemption as a nature conservancy under RCW 84.36.260(~~(-see))~~, RCW 84.36.262 and WAC 458-16-290 (~~(for more))~~ Nature conservancy lands, provide additional information about the collection of back taxes (~~(in this situation))~~ for nature conservancies.

(2) **Definitions.** For purposes of this rule, the following definitions apply:

(a) "Back taxes" means the property taxes that would have been paid but for the existence of the property tax exemption during the three years immediately preceding the cancellation or removal of the exemption or during the life of the exemption, whichever is less, plus interest at the same rate and computed in the same way as delinquent property taxes. However, if the property was exempt under RCW 84.36.050(2), "back taxes" means the taxes that would have been collected but for the existence of the property tax exemption during the seven years immediately preceding the cancellation or removal of the exemption or during the life of the exemption, whichever is less.

(b) "Cessation of use" means that an owner or user of exempt real property has ceased to use the property for an exempt purpose. The term also refers to property that has lost its exempt status because it was transferred, loaned, or rented to an owner that is not entitled to an exemption.

(c) "Department" means the state department of revenue.

(d) "Relocation of the activity" means that a portion or all of an exempt use has been relocated from the original site to a new location. The term (~~(shall)~~) does not include undeveloped property of camp facilities.

(e) "Rollback" means the back taxes and interest imposed in accordance with RCW 84.36.810 because the exempt property has lost its exempt status and is now taxable. However, when an exemption granted to a nature conservancy under RCW 84.36.260 is (~~(cancelled))~~ canceled or removed different rollback procedures (~~(are applied,))~~ apply. See RCW 84.36.262 and WAC 458-16-290 Nature conservancy lands, for additional information.

(3) **Applicability of this rule.** Upon cessation of a use for which an exemption was granted under one of the statutes listed below, and if directed to do so by the department, the county treasurer (~~(shall)~~) must collect all taxes which would have been paid (~~(but)~~) if not for the existence of the property tax exemption. If the property was exempt for more than ten consecutive years, no back taxes or interest are due. Back taxes and interest will be collected only when ownership of property is transferred or when fifty-one percent or more of the total exempt property loses its exempt status.

(a) **Generally applied rollback - Three years of back taxes plus interest.** When the status of real property changes from exempt to taxable, all taxes that would have been collected (~~(but)~~) if not for the existence of the exemption during the three preceding years, or the life of the exemption, whichever is less, plus interest at the same rate and computed in the same way as that (~~(upon))~~ on delinquent property taxes are due. The rollback provisions of RCW 84.36.810 apply if the property was previously exempt from property tax under any of the following statutes:

TYPE OF EXEMPT ORGANIZATION	AUTHORIZING STATUTE
A nonprofit character building, benevolent, protective, or rehabilitative social service organization, association or corporation	RCW 84.36.030

TYPE OF EXEMPT ORGANIZATION	AUTHORIZING STATUTE
A church camp owned by a non-profit church, denomination, group of churches, or an organization or association, the membership of which is comprised solely of churches and/or their qualified representatives	RCW 84.36.030
A nonprofit organization or association engaged in character building of boys and girls under eighteen years of age or to serve boys and girls up to twenty-one years if the charter of the nonprofit organization or association requires it	RCW 84.36.030
An organization or society of veterans of any war of the United States	RCW 84.36.030
Corporations formed under an act of Congress to furnish volunteer aid to members of the armed forces of the United States	RCW 84.36.030
Corporations formed under an act of Congress to carry on a system of national and international relief to mitigate and to prevent suffering caused by pestilence, famine, fire, floods, and other national calamities	RCW 84.36.030
Nonprofit organizations exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code that are guarantee agencies under the federal guaranteed student loan program or guarantee agencies that issue debt to provide or acquire student loans	RCW 84.36.030
Nonprofit organizations, associations or corporations in connection with the operation of a public assembly hall, public meeting place, community meeting hall, or community celebration facility	RCW 84.36.037
Nonprofit day care centers	RCW 84.36.040
Free public libraries	RCW 84.36.040
Nonprofit orphanages	RCW 84.36.040
Nonprofit homes for the sick or infirm or nonprofit hospitals for the sick	RCW 84.36.040

TYPE OF EXEMPT ORGANIZATION	AUTHORIZING STATUTE
Nonprofit outpatient dialysis facilities	RCW 84.36.040
Public hospital district established under chapter <u>36.62</u> or <u>70.44</u> RCW for hospital purposes	RCW 84.36.040
Nonprofit homes for the aging	RCW 84.36.041
A nonprofit organization, corporation, or association providing housing for low income eligible persons with developmental disabilities	RCW 84.36.042
Nonprofit organizations providing emergency or transitional housing to low-income homeless persons or victims of domestic violence	RCW 84.36.043
A nonprofit organization, corporation, or association in connection with a nonprofit cancer clinic or center	RCW 84.36.046
Nonprofit schools or colleges	RCW 84.36.050
Associations maintaining and exhibiting art, scientific or historical collections for the benefit of the general public and not for profit	RCW 84.36.060
Associations engaged in the production and performance of musical, dance, artistic, dramatic, or literary works for the benefit of the general public and not for profit	RCW 84.36.060
Fire companies for preventing and fighting fires	RCW 84.36.060
Humane societies	RCW 84.36.060
Nonprofit organizations created for the solicitation or collection of gifts, donations, or grants for character building, benevolent, protective, or rehabilitative social services or for the distribution of funds to at least five other nonprofit organizations or associations that provide such social services	RCW 84.36.550
A nonprofit organization, corporation, or association providing rental housing for ( <del>very low income</del> ) <u>qualifying</u> households	RCW 84.36.560

TYPE OF EXEMPT ORGANIZATION	AUTHORIZING STATUTE
A nonprofit organization, corporation, or association providing a demonstration farm with research and extension facilities, a public agricultural museum, and an educational tour site, which is used by a state university for agricultural research and education programs	RCW 84.36.570
<u>Nonprofit organizations soliciting or collecting donations, gifts, or grants for artists</u>	<u>RCW 84.36.650</u>

(b) **Exception to general rollback provision - Property exempt under RCW 84.36.050(2) - Seven years of back taxes plus interest.** If property owned by a not-for-profit foundation but leased to and used by an institution of higher education, as defined in RCW 28B.10.016, loses its exempt status and it has not been exempt for at least ten consecutive years under RCW 84.36.050(2), the county treasurer, if directed by the department to do so, will collect all taxes that would have been paid on the property but for the existence of the exemption during the seven preceding years, or the life of the exemption, whichever is less, plus interest at the same rate and computed in the same way as that ~~((upon))~~ on delinquent property taxes are due.

(c) **No rollback imposed.** Back taxes and interest are not imposed if the cessation of use results solely from any of the following:

- (i) Transfer to a nonprofit organization, association, or corporation for a use that also qualifies for and is granted exemption under the provisions of chapter 84.36 RCW;
- (ii) A taking through an exercise of the power of eminent domain;
- (iii) A sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of this power;
- (iv) An official action by an agency of the state of Washington or by the county or city within which the exempt property is located that disallows the present exempt use of the property;
- (v) A natural disaster (such as a flood, windstorm, earthquake, or other such calamity) that changes the use of the property;
- (vi) Relocation of the activity and use of another location or site except for undeveloped properties of camp facilities exempt under RCW 84.36.030. This exemption does not apply to property leased to a state institution of higher education and exempt under RCW 84.36.050(2);
- (vii) Cancellation of a lease on property previously exempt as:
  - (A) A nonprofit day care center;
  - (B) A library;
  - (C) An orphanage;
  - (D) A home for the sick or infirm;
  - (E) A hospital;
  - (F) An outpatient dialysis facility;
  - (G) A nonprofit home for the aging;

(H) A nonpermanent shelter for low-income homeless persons or victims of domestic violence;

(I) An organization that either produces or performs, or both, musical, dance, artistic, dramatic, or literary works;

(J) Housing for low-income eligible persons with developmental disabilities;

(K) A nonprofit cancer clinic or center; or

(L) Rental housing for ~~((very low income))~~ qualifying households.

(viii) A change in the exempt portion of a home for the aging that is partially exempt from property tax, as long as some portion of the home remains exempt.

**(4) Duty to notify.**

(a) An owner of exempt property who knows of or who has information regarding a change in the use of exempt property ~~((shall))~~ must notify the department of this change. If any portion of the exempt property is loaned or rented, the owner is required to report this change to the department because the loan or rental may affect the taxable status of the property ~~((see))~~, RCW 84.36.813(3).

(b) Any other person who knows or has information regarding a change in use of exempt property is to notify the county assessor of any such change. The assessor ~~((, in turn,))~~ is required to report this information to the department.

(c) The department may physically inspect exempt property after being notified about a change in the use or ownership of exempt property. It may also conduct physical inspections at any time ~~((that))~~ it deems necessary to ~~((ascertain))~~ determine the exempt use of the property ~~((, this))~~ and may ~~((include))~~ conduct routine inspections.

(d) The department will determine whether the property may retain its exempt status or whether it will become taxable after a change in use is reported.

(5) **Notice to owner.** The department must notify the current owner and, in the case of a transfer, the previous legal owner of the exempt property that the cessation of use of the property for an exempt purpose has changed the property's taxable status. The notice must address the applicability of the rollback provisions ~~((set forth))~~ in subsection (3) of this rule. Within thirty days of receiving this notice, the owner(s) may submit comments or information to the department as to why the exemption should not be removed or rollback provisions should not be applied. The department will then issue a final determination.

(6) **County treasurer.** The treasurer will ~~((compute))~~ calculate and collect the back taxes and interest due when the department notifies the treasurer that the property tax exemption is to be ~~((cancelled))~~ cancelled or removed. The interest will be computed at the same rate and in the same manner as that ~~((upon))~~ on delinquent property taxes. The back taxes collected are ~~((to be))~~ disbursed to the taxing districts impacted by the previous property tax exemption. The interest collected is ~~((to be))~~ placed in the county current expense fund.

AMENDATORY SECTION (Amending WSR 20-03-105, filed 1/15/20, effective 2/15/20)

**WAC 458-16-560 Housing for ~~((very low income))~~ qualifying households. (1)(a) **Introduction.** This rule**

explains the real and personal property tax exemption that may be claimed by nonprofit entities providing rental housing or lots for mobile homes within a mobile home park, mobile home park cooperative, or manufactured housing cooperative for occupancy by ~~((a very low income household))~~ qualifying households in accordance with RCW 84.36.560.

(b) **Examples.** This rule includes examples that identify a number of facts and then state a conclusion. These examples should only be used as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(2) **Definitions.** For the purposes of this rule, the following definitions apply:

(a) "Group home" means a single-family dwelling financed, in whole or in part, by one or more of the sources listed in subsection ~~((3))~~ (4)(d) of this rule. A "group home" has multiple units occupied on a twenty-four-hour basis by persons who are not related by birth or marriage and who are not dependent upon each other financially. Residents of a "group home" typically receive financial assistance from the federal or state government, such as Social Security benefits or supplementary security insurance~~((s))~~.

(b) "Mobile home lot" or "mobile home park" means the same as these terms are defined in RCW 59.20.030~~((s))~~.

(c) "Nonprofit entity" means a:

(i) Nonprofit as defined in RCW 84.36.800 that is exempt from income tax under section 501(c) of the federal Internal Revenue Code, as amended;

(ii) Limited partnership in which a general partner is a nonprofit as defined in RCW 84.36.800 that is exempt from income tax under section 501(c) of the federal Internal Revenue Code, as amended, a public corporation established under RCW 35.21.660, 35.21.670, or 35.21.730, a housing authority created under RCW 35.82.030 or 35.82.300, or a housing authority meeting the definition in RCW 35.82.210 (2)(a);

(iii) Limited liability company in which a managing member is a nonprofit as defined in RCW 84.36.800 that is exempt from income tax under section 501(c) of the federal Internal Revenue Code, as amended, a public corporation established under RCW 35.21.660, 35.21.670, or 35.21.730, a housing authority established under RCW 35.82.030 or 35.82.300, or a housing authority meeting the definition in RCW 35.82.210 (2)(a); or

(iv) Mobile home park cooperative or a manufactured housing cooperative, as defined in RCW 59.20.030. A "mobile home park cooperative" and a "manufactured housing cooperative" are defined as real property consisting of common areas and two or more lots held out for placement of mobile homes, manufactured homes, or park models in which both the individual lots and the common areas are owned by an association of shareholders which leases or otherwise extends the right to occupy individual lots to its own members.

(d) "Occupied dwelling unit" means a living unit that is occupied by an individual or household as of December 31st of the first assessment year the rental housing or mobile home park becomes operational or is occupied by an individual or

household on January 1st of each subsequent assessment year in which the claim for exemption is submitted~~((s))~~.

(e) "Qualifying household" means:

(i) Until June 30, 2021, a single person, family, or unrelated persons living together whose income is at or below fifty percent of the median income adjusted for family size as most recently determined by the federal Department of Housing and Urban Development for the county in which the rental housing or mobile home park is located. The median income level is that which is in effect as of January 1st of the year the application for exemption is submitted.

(ii) Beginning July 1, 2021, a single person, family, or unrelated persons living together whose income is at or below sixty percent of the median income adjusted for family size as most recently determined by the federal Department of Housing and Urban Development for the county in which the rental housing or mobile home park is located. The median income level is that which is in effect as of January 1st of the year the application for exemption is submitted.

(f) "Rental housing" means a residential housing facility or group home that is occupied, but not owned, by ~~((very low income households; and~~

~~((f))~~ "Very low income household" means a single person, family, or unrelated persons living together whose income is at or below fifty percent of the median income adjusted for family size as most recently determined by the federal department of housing and urban development for the county in which the rental housing or mobile home park is located. The median income level is that which is in effect as of January 1st of the year the application for exemption is submitted.

~~((3))~~ qualifying households.

**(3) Initial application and renewal declaration.**

(a) Initial application. An initial application for exemption must be filed with the department on or before March 31st to exempt property from taxes due in the following year. However, an initial application may be filed after March 31st if the property is acquired or converted to an exempt use after that date, if the property may qualify for an exemption under chapter 84.36 RCW.

(b) Renewal declaration. In order to requalify for exempt status, a nonprofit entity receiving this exemption must file a renewal declaration on or before March 31st of every third year following initial qualification for exemption.

(c) Additional information about the application and renewal requirements for this exemption can be found in WAC 458-16-110 Initial application and renewal declaration.

**(4) Full exemption.** Real and personal property is exempt from property taxes if:

(a) The property is owned or used by a nonprofit entity, as defined in subsection (2) of this rule, in providing rental housing for ~~((very low income))~~ qualifying households or used to provide a lot of land upon which a mobile home for a ~~((very low income))~~ qualifying household will be placed in a mobile home park;

(b) The benefit of the exemption is received by the nonprofit entity. That is, if the property is leased to or used by, but not owned by, a nonprofit entity, the reduction in property taxes due to the exemption is passed on to the nonprofit user either through a reduction in rent, reimbursement of rent, or property tax paid;

(c) At least seventy-five percent of the occupied dwelling units in the rental housing or lots in the mobile home park are occupied by ~~((very low income))~~ qualifying households; and

(d) The rental housing or lots in the mobile home park are insured, financed, or assisted, in whole or in part, through one or more of the following sources:

(i) A federal or state housing program administered by the department of commerce;

(ii) A federal housing program administered by a city or county government;

(iii) An affordable housing levy authorized under RCW 84.52.105;

(iv) The surcharges authorized by RCW 36.22.178 and 36.22.179 and any of the surcharges authorized in chapter 43.185C RCW; or

(v) The Washington state housing finance commission, provided that the financing is for a mobile home park cooperative or a manufactured housing cooperative, as defined in RCW 59.20.030, or a nonprofit entity.

~~((4))~~ **(5) Partial exemption.** If less than seventy-five percent of the occupied dwelling units within the rental housing or lots in the mobile home park are occupied by ~~((very low income))~~ qualifying households, the rental housing or mobile home park is eligible for a partial exemption on the real property and a total exemption on the housing's or park's personal property. The property must be owned or used by a nonprofit entity in providing rental housing for ~~((very low income))~~ qualifying households or used to provide a lot upon which a mobile home for a ~~((very low income))~~ qualifying household will be placed in a mobile home park.

(a) A partial exemption will be allowed for each dwelling unit in the rental housing or for each lot in the mobile home park occupied by a ~~((very low income))~~ qualifying household; and

(b) The amount of the real property exemption will be calculated by multiplying the assessed value of the property reasonably necessary to provide the rental housing or to operate the mobile home park by a fraction. The formula for determining the fraction is as follows:

(i) The numerator of the fraction is the number of dwelling units or lots occupied by ~~((very low income))~~ qualifying households as of December 31st of the first assessment year in which the rental housing facility or mobile home park becomes operational, or on January 1st of each subsequent assessment year in which the claim for exemption is submitted; and

(ii) The denominator of the fraction is the total number of dwelling units or lots occupied as of December 31st of the first assessment year in which the rental housing facility or mobile home park becomes operational, or on January 1st of each subsequent assessment year in which the claim for exemption is submitted.

~~((5))~~ **(6) Exempt facility with three or fewer units or a mobile home park with three or fewer lots with vacancy on January 1st.** If the rental housing or mobile home park is comprised of three or fewer dwelling units or lots and there are any unoccupied dwelling units or lots on January 1st, the department will determine the size of the exemption based on the number of occupied dwelling units or lots as of December

31st of the first assessment year the rental housing becomes operational, and on May 1st of each subsequent assessment year in which a claim for exemption is submitted. For example, if one-half of an exempt duplex is vacant on January 1st and it is the duplex's third year of operation, the department will determine the size of the exemption based on the number of occupied units on May 1st of that assessment year.

~~((6) Facilities with ten or fewer units or mobile home parks with ten or fewer lots--)~~ **(7) Allowance for income growth.** Because the occupants of rental housing and mobile home parks granted an exemption under RCW 84.36.560 are generally attempting to improve their financial situation, the income of the household is likely to fluctuate during the time they occupy the rental housing unit or lot in the mobile home park.

(a) In an attempt to assist these households in improving their circumstances, the exemption will continue for specific rental housing units or mobile home lots ~~((when))~~ if the rental housing or mobile home park continues to meet the certification requirements in subsection (4)(d) of this rule, and if the household's income rises above ~~((fifty percent of median income under the following conditions:~~

(i) ~~The currently exempt rental housing unit in a facility with ten or fewer units, or mobile home lots in a mobile home park with ten or fewer lots, was occupied by a very low income household at the time the exemption was granted;~~

(ii) ~~The household's income rises above fifty percent of the median income)~~ the applicable "qualifying household" threshold in subsection (2)(e) of this rule, but remains at or below eighty percent of the median income adjusted for family size as most recently determined by the federal Department of Housing and Urban Development for the county in which the rental housing or mobile home park is located; and

~~((iii) The rental housing or mobile home park continues to meet the certification requirements of a very low income housing program listed in subsection (3)(d) of this rule; and))~~

(b) If a ~~((dwelling))~~ rental housing unit or mobile home lot receiving an exemption under ~~((this))~~ the exception in (a) of this subsection becomes vacant and is subsequently rented, the income of the household moving into the rental unit or onto the mobile home lot must ~~((be at or below fifty percent of the median income adjusted for family size as most recently determined by the federal Department of Housing and Urban Development for the county in which the rental housing or mobile home park is located))~~ meet the applicable median income requirements for a qualifying household as described in subsection (2)(e) of this rule to remain exempt from property tax.

(c) Example. If a rental unit is occupied by a qualifying household whose income rises up to ~~((sixty))~~ seventy percent of median income, the unit will retain its exempt status as long as the household continues to occupy the rental unit and the household's income remains below eighty percent of median income. If the residents of ~~((this))~~ the rental unit move out on June 1st and the unit is subsequently rented to a qualifying household whose income is at or below ~~((fifty percent of median income;))~~ the median income threshold in subsection (2)(e) of this rule, the unit will retain its exempt status. Conversely, if the rental unit is rented to a household whose income is above ~~((fifty percent of))~~ the median income

threshold in subsection (2)(e) of this rule, the unit becomes ineligible for exemption as of January 1st of the following year.

~~((7))~~ **(8) Group homes - Income of residents.** The income of the individual residents of a group home, as defined in subsection (2) of this rule, will not be combined so as to constitute the income of a single household. Each resident will be considered an independent household occupying a separate dwelling unit. In other words, the income of the residents of a group home will not be aggregated when the department determines the size of the exemption the group home is entitled to receive. For example, if there are six residents in a group home, the department will process the application for exemption as if there were six separate dwelling units and determine the size of the exemption on that basis. If three of the residents have income at or below ~~((fifty percent of))~~ the median income threshold in subsection (2)(e) of this rule, the group home will receive a fifty percent reduction in the property taxes due on the group home.

~~((8))~~ **(9) Eligibility of property unoccupied at the time of initial application or at any time after the exemption is granted.** Property that is unoccupied at the time of initial application or on January 1st of any subsequent year is still eligible for exemption if certain conditions are met. If the property is currently taxable, it may receive exempt status as of the assessment year in which the claim for exemption is submitted. If the property is currently exempt but the exempt use will cease or will be reduced because of renovations or repairs, the exempt status of the property may be continued for taxes payable the next year. The following conditions must be satisfied to receive an exemption under either of these circumstances:

(a) The rental housing or mobile home park will be used for the exempt purpose stated in RCW 84.36.560 within two assessment years;

(b) The nonprofit entity applying for or receiving the exemption has obtained a commitment for financing, in whole or in part, to acquire, construct, remodel, renovate, or otherwise convert the property to provide housing for ~~((very low income))~~ qualifying households from one or more of the sources listed in subsection ~~((3))~~ (4)(d) of this rule;

(c) The nonprofit entity has manifested its intent in writing to construct, remodel, renovate, or otherwise convert the rental housing or mobile home park to housing for ~~((very low income))~~ qualifying households; and

(d) If less than the entire facility or mobile home park will be used to provide rental housing or mobile home lots for ~~((very low income))~~ qualifying households, only that portion is entitled to an exemption under this rule.

~~((9))~~ **(10) Exclusive use required.** To be exempt under RCW 84.36.560, the property must be exclusively used to provide rental housing or mobile home lots for ~~((very low income))~~ qualifying households, except as provided in RCW 84.36.805.

~~((10))~~ **(11) Payments in-lieu of property tax will be accepted.** Any nonprofit entity that qualifies for a property tax exemption under RCW 84.36.560 may agree to make payments to the city, county, or other political subdivision for the improvements, services, and facilities furnished by the city, county, or political subdivision for the benefit of the

exempt rental housing facility or mobile home lots. However, these payments may not exceed the amount of property tax last levied as the annual tax by the city, county, or political subdivision ~~((upon))~~ on the property prior to the time the exemption was effective.

**WSR 21-01-064**  
**PERMANENT RULES**  
**DEPARTMENT OF REVENUE**

[Filed December 9, 2020, 11:16 a.m., effective January 9, 2021]

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

Purpose: WAC 458-20-249 Artistic and cultural organizations, is being amended to incorporate language from 2020 legislation, chapter 139, Laws of 2020 (ESB 5402). The rule has also been updated with formatting changes to improve clarity.

Citation of Rules Affected by this Order: Amending WAC 458-20-249.

Statutory Authority for Adoption: RCW 82.01.060, 82.32.300.

Adopted under notice filed as WSR 20-20-114 on October 6, 2020.

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; and Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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 0, Repealed 0.

Date Adopted: December 9, 2020.

Atif Aziz  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 86-07-006, filed 3/6/86)

**WAC 458-20-249 Artistic or cultural organizations.** ~~((For purposes of business and occupation tax deduction and certain retail sales tax and use tax exemptions, RCW 82.04-4328 expressly defines the term "artistic or cultural organizations" in pertinent part as follows:~~

~~". . . the term))~~ **(1) Introduction.** This rule explains deductions and exemptions from Washington business and occupation tax, retail sales tax and use tax as applied to artistic and cultural organizations. Readers may refer to the following for additional information.

RCW 82.04.4327 Deductions—Artistic and cultural organizations—Income from business activities.

RCW 82.04.4328 Artistic or cultural organization defined.

RCW 82.08.031 Exemptions—Sales to artistic or cultural organizations of certain objects acquired for exhibition or presentation.

RCW 82.12.031 Exemptions—Use by artistic or cultural organizations of certain objects.

WAC 458-20-169 Nonprofit organizations.

WAC 458-20-178 Use tax and the use of tangible personal property.

**(2) Definitions.**

(a) "Artistic or cultural organization" means an organization ~~((which))~~ that is organized and operated exclusively for the purpose of providing artistic or cultural exhibitions, presentations, or performances or cultural or art education programs ~~((---))~~ for viewing or attendance by the general public ~~((:))~~ and meets all of the following requirements:

(i) The organization ~~((must be))~~ is a not-for-profit corporation under chapter 24.03 RCW ~~((and))~~;

(ii) The organization is managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization ~~((or by a corporation sole under chapter 24.12 RCW. In addition, to qualify for deduction or exemption from taxation . . . the corporation shall satisfy the following conditions:~~

~~((a))~~;

(iii) No part of ~~((its))~~ the organization's income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the corporation in accordance with its purposes and bylaws;

~~((b))~~ (iv) Salary or compensation paid to ~~((its))~~ the organization's officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the state;

~~((c))~~ (v) Assets of the corporation must be irrevocably dedicated to the activities for which the exemption is granted ~~((and))~~;

(vi) On the liquidation, dissolution, or abandonment by the corporation, assets of the corporation may not inure directly or indirectly to the benefit of any member or individual except a nonprofit organization, association, or corporation which also would be entitled to the exemption;

~~((d))~~ (vii) The corporation must be duly licensed or certified when licensing or certification is required by law or regulation;

~~((e))~~ (viii) The amounts received that qualify for exemption must be used for the activities for which the exemption is granted;

~~((f))~~ (ix) Services must be available regardless of race, color, national origin, or ancestry; and

~~((g))~~ (x) The director of revenue ~~((shall))~~ must have access to its books in order to determine whether the corporation is exempt from taxes.

~~((2))~~ (b) The term "artistic or cultural exhibitions, presentations, or performances or cultural or art education programs" includes and is limited to:

~~((a))~~ (i) An exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums;

~~((b))~~ (ii) A musical or dramatic performance or series of performances; or

~~((c))~~ (iii) An educational seminar or program, or series of such programs, offered by the organization to the general public on an artistic, cultural, or historical subject. ~~(("~~

~~Effective July 1, 1985, artistic or cultural organizations, as defined herein, are not subject to business and occupation tax upon amounts derived from conducting any business activities whatever. Formerly, a business and occupation tax deduction was available only for amounts received by such organizations from the United States and its instrumentalities or the state and local government entities (RCW 82.04.4322); certain manufacturing activities (RCW 82.04.4324); and tuition fees for artistic or cultural education programs (RCW 82.04.4326). Under current law, however, the deduction is unrestricted and applies to all activities conducted by such qualifying organizations.))~~ (3) **Business and occupation tax deduction.** In computing tax under RCW 82.04.4327, an artistic or cultural organization may deduct the following from the measure of tax:

(a) All amounts received by the artistic or cultural organization; and

(b) The value of articles manufactured by the artistic or cultural organization solely for use by the organization in displaying art objects or presenting artistic or cultural exhibitions, performances, or programs for attendance or viewing by the general public.

**(4) Retail sales tax.**

(a) Artistic or cultural organizations ~~((which make any))~~ that charge ~~((s))~~ for goods or services ~~((which are))~~ included in the definition of "retail sale" under RCW 82.04.050, must collect and report the retail sales tax ~~((thereon))~~. No sales tax exemption is available for sales by such organizations.

(b) Such organizations are exempt ~~((of))~~ from paying retail sales tax ~~((upon))~~ on their purchases of certain "objects" for the purpose of exhibition or presentation to the general public if the objects are:

~~((1))~~ (i) Objects of art;

~~((2))~~ (ii) Objects of cultural value;

~~((3))~~ (iii) Objects to be used in the creation of a work of art, other than tools; or

~~((4))~~ (iv) Objects to be used in displaying art objects or presenting artistic or cultural exhibitions or performances. (RCW 82.08.031)

(c) The term "objects" ~~((is deemed to))~~ means items of tangible personal property. It does not include professional or commercial services rendered by third parties. Where ~~((, however,))~~ certain services are performed which are merely incidental to sales of tangible personal property, e.g., designing playbills or altering stage curtains which are then sold to qualifying organizations, the total charge ~~((therefore))~~ will be exempt.

(d) Charges for materials, equipment, and services related to repair, maintenance, or replacement of buildings or structures are not exempt. Thus, e.g., theater seats, aisle carpeting, air conditioning systems, painting of interior or exterior of buildings, and the like are not tax exempt "objects."

~~((Under Washington law))~~ (e) Exempt sales include rentals of exempt objects. Examples of objects ~~((which may be~~

~~purchased by~~) that qualifying artistic or cultural organizations may purchase without payment of retail sales tax are:

((a)) (i) Tickets, programs, signs, posters, fliers, and playbills printed for particular displays or performances; scenery, costumes, stage(~~(s)~~) props, scrims, and materials for their construction;

((b)) (ii) Stage lights, filters, control panels, color medium, stage drapes, sets, set paint, gallery exhibition materials, risers, display platforms, and materials for their construction;

((c)) (iii) Sheet music, recordings, musical instruments and musical supplies for the staging of displays and performances;

((d)) (iv) Movie projectors, films, sound systems, video and sound equipment and supplies (~~and~~), computer hardware and standard, prewritten software directly used exclusively in the staging of performances or actual display of art objects.

(f) Examples of objects (~~(which may be purchased by)~~) that qualifying artistic or cultural organizations may purchase, (~~upon~~) on which the retail sales tax must be paid are:

((a)) (i) Supplies and equipment for clerical support, including bulk tickets for general use, stationery, typewriters, copy machines, and general office supplies;

((b)) (ii) Theater seats, lobby furniture, carpeting, vending machines, and general supplies for audience or patrons' convenience and use;

((c)) (iii) Shipping and packing materials, crates, boxes, dunnage, labels, tags, and container-related items for transfer or storage of exempt objects;

((d)) (iv) Sewing machines and other durable equipment used to prepare, repair, and maintain exempt objects (such items are deemed to be "tools," rather than exempt objects);

((e)) (v) Theater or building lighting and utility fixtures and systems, and computer hardware and software not directly and exclusively used in staging performances or actually displaying art objects.

(g) Qualified artistic and cultural organizations may obtain the tax exemptions by providing their suppliers with a written statement in essentially the following form:

I, (buyer's name), hereby confirm that the items purchased on (date of purchase), without payment of retail sales tax, from (seller's name) are all objects of art or cultural value or to be used in the creation of such objects or in displaying art objects or presenting artistic or cultural exhibitions or performances.

(signature of authorized purchaser)

for: (name of organization)

(registration no. of organization)

(h) Vendors who accept such certifications in good faith (~~(will be excused from the responsibility of collecting and remitting)~~) are not required to collect and remit sales tax on such sales.

(6) **Use tax.** Under RCW 82.12.031, the use tax does not apply to the use of any objects (~~(for the purposes explained earlier in this rule, and upon which the retail sales tax would be exempt if)~~) that would be exempt from sales tax had the

objects (~~(were)~~) been purchased in this state. The use tax applies (~~(upon)~~) to all other items of tangible personal property (~~(used by)~~) that artistic or cultural organizations use upon which retail sales tax has not been paid.

## WSR 21-01-075

### PERMANENT RULES

#### WASHINGTON STATE PATROL

[Filed December 10, 2020, 8:56 a.m., effective January 10, 2021]

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

Purpose: The proposed changes will provide clean up and clarification to the existing language to ensure the rules reference and comply with current laws in the state of Washington.

Citation of Rules Affected by this Order: Amending chapter 446-16 WAC.

Statutory Authority for Adoption: Chapters 10.97 and 43.43 RCW.

Adopted under notice filed as WSR 20-20-130 on October 6, 2020.

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

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

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

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

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

Date Adopted: December 10, 2020.

John R. Batiste  
Chief

**AMENDATORY SECTION** (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

**WAC 446-16-010 Definitions.** For the purposes of these rules, the following words and phrases will have the following meanings:

(1) "Criminal history record information" includes, and will be restricted to identifying data and (~~(public record)~~) information recorded as the result of an arrest or other initiation of criminal proceedings and the consequent proceedings related thereto. "Criminal history record information" will not include intelligence, analytical or investigative reports and files.

(2) "Criminal justice agencies" are those public agencies within or outside the state which perform, as a principal function, activities directly relating to the apprehension, prosecution, adjudication or rehabilitation of criminal offenders.

(3) "Disposition" means ~~((that result which is reached at a determination))~~ the formal conclusion of a criminal proceeding ~~((s against an individual at any))~~ at whatever stage it occurs in the criminal justice system ~~((and resulting in the culmination or final disposal of the criminal charge))~~.

(4) "~~((Section))~~ Division" means the ~~((identification and criminal history section))~~ criminal records division of the Washington state patrol.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

**WAC 446-16-020 Scope of the rules.** Criminal ~~((offender))~~ history record information will not be released or inspected except in accordance with RCW 43.43.700 et seq., RCW 10.97.050, and these rules.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

**WAC 446-16-025 Deletion of arrest records.** (1) A person desiring the destruction of his or her fingerprints and/or other identifying data, pursuant to RCW 43.43.730, must make his or her request on a form furnished by the ~~((section))~~ division.

(2) The request must be completed, signed by the person whose record is sought to be deleted and his or her signature witnessed. It must include the address of the applicant, the printed name and the address of the witness to the applicant's signature and such other information requested on the application as identifies the applicant and the offense for which the request of deletion is made.

(3) The request must include ~~((reasonable))~~ proof that the person making the request for deletion is the same person whose fingerprints or other identifying data are sought to be deleted. Such proof must include fingerprints of the applicant ~~((if requested by the section))~~.

(4) The request must include the information necessary for the ~~((section))~~ division to determine whether the request is consistent with RCW 10.97.060 including all details pertaining to the decision not to prosecute, dismissal, or acquittal of the offense for which the fingerprints or other identifying data were taken.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

**WAC 446-16-060 Disposition reports—When required.** In every case where a fingerprint record ~~((or other report))~~ of the arrest of an individual on criminal charges has been submitted to the ~~((section))~~ division, the agency which makes the final determination of such criminal charges or in whose jurisdiction the final determination is made must report the disposition of such charges to the ~~((section))~~ division at whatever stage it occurs in the criminal justice system.

AMENDATORY SECTION (Amending WSR 16-21-024, filed 10/10/16, effective 11/10/16)

**WAC 446-16-070 Report contents—General.** The report of disposition must be made on forms provided or

approved by the ~~((section))~~ division or shall be transferred electronically on forms approved by the ~~((section))~~ division. The disposition report must include all arrest details as they appeared on the fingerprint card ~~((or arrest record previously))~~ forwarded to the ~~((section))~~ division. The state identification number ~~((and))~~, process control number (PCN), and/or the transaction control number (TCN) must be indicated, if known, on the disposition report ~~((if fingerprints were taken))~~.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

**WAC 446-16-080 Report time limitations.** All of the information requested on the disposition report must be completed and the report mailed or electronically transferred to the ~~((section))~~ division, within ten days of the date that a disposition becomes ~~((effective))~~ final.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

**WAC 446-16-090 Law enforcement agencies—Reporting responsibilities.** (1) If the disposition of criminal charges is made by the arresting agency, as where the individual is released without charge, the arresting agency shall fill in and complete the disposition report and submit same to the ~~((section))~~ division. If the disposition is known at the time of the arrest ~~((record or fingerprint card is submitted to the section))~~, this information should be noted ~~((thereon))~~ on the fingerprint card or submitted electronically through livescan with the arrest information. In this case, it will be unnecessary to forward a disposition report.

(2) In all cases where the arresting agency does not make the final disposition, it shall initiate the preparation of a disposition report by recording the name of the individual arrested, the charges on which ~~((he was))~~ they were arrested, the name of the contributor of the ~~((arrest or))~~ fingerprint record, the process control and/or transaction control number, the arrest number and any other information that may identify the individual. At this stage the disposition of charges will be left blank ~~((, but the agency will note the action that it has taken, e.g., referred to the prosecutor))~~. The partially completed disposition report must then be included as part of the individual's case file and must be forwarded with other information concerning the charges against the individual to the prosecutor or other agency to which the arresting agency forwards the case.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

**WAC 446-16-100 Prosecutorial agencies—Reporting responsibilities.** The prosecutor ~~((or county clerk))~~ must promptly transmit the completed disposition information to the ~~((section))~~ division if the prosecutor determines not to file charges or the case is not otherwise acted upon by a judicial body. In such cases, the prosecutor ~~((or county clerk))~~ must mail or transfer the completed disposition report to the ~~((section))~~ division within ten days from the date that it is determined no further judicial action will be taken on the charges.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

**WAC 446-16-110 Courts—Reporting responsibilities.** Where the disposition of criminal charges occurs as a result of action taken by or within the jurisdiction of any court in the state of Washington, the disposition of such charges must be submitted electronically to the WSP via the electronic data exchange between the administrative office of the courts (AOC) and WSP or promptly reported to the ((section pursuant to rules of the supreme court of the state of Washington on forms approved by the supreme court and supplied by the section. However, in a county where the judicial information system or other secure method of electronic transfer of information has been implemented between the court and the section, the court may electronically provide the disposition information to the section)) division on a disposition report form or judgment and sentence.

### WSR 21-01-077

#### PERMANENT RULES

#### STATE BOARD OF EDUCATION

[Filed December 10, 2020, 10:01 a.m., effective January 10, 2021]

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

Purpose: The state board of education (SBOE) has adopted amendments to chapters 180-51, 180-90, and 180-111 WAC to make changes as necessary to align rule to current policy or practice, correct references to law, implement recently passed legislation, improve readability of the rule, and make other changes identified during the review of the WAC chapter. SBOE is responding to emergent COVID-19 issues in the education system with clarifications on flexibility in chapter 180-51 WAC and with turning emergency rule making into permanent rule making on chapters 180-90 and 180-111 WAC. These rules clarify existing flexibilities and make emergency rule into permanent rule as necessary.

The changes to chapter 180-90 WAC allow private schools to use online-only education if state or local health requirements prevent in-person education or if the school deems it unsafe to open.

The changes to chapter 180-111 WAC put the emergency waiver program for graduation requirements and private school time requirements into permanent rule. The emergency waiver program was administered using emergency rule.

SBOE is also proposing clarifications to chapter 180-51 WAC to allow for flexibility in meeting graduation requirements so that local education agencies may use these flexibilities to respond to the emergency situation. The changes to chapter 180-51 WAC address the following:

- Flexibility for the Washington state history noncredit requirement.
- Clarification on districts' authority to provide mastery-based crediting opportunities.

Citation of Rules Affected by this Order: New WAC 180-111-010, 180-111-020, 180-111-030, 180-111-040, 180-111-050 and 180-51-051; and amending WAC 180-90-141,

180-90-160, 180-51-015, 180-51-050, 180-51-056, 180-51-067, 180-51-068, 180-51-095, and 180-51-210.

Statutory Authority for Adoption: Sections 10 through 12, chapter 7, Laws of 2020 (EHB 2965); RCW 28A.195-010, 28A.230.090, 28A.150.220(7).

Adopted under notice filed as WSR 20-15-151 on July 22, 2020.

Changes Other than Editing from Proposed to Adopted Version: Based on stakeholder feedback received during the public comment period, the board removed proposed amendments to chapter 180-51 WAC that were intended to clarify existing WAC that permits a single course to meet more than one graduation requirement.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 5, Amended 1, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 6, Amended 9, 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: September 17, 2020.

Randy Spaulding  
Executive Director

AMENDATORY SECTION (Amending WSR 84-11-049, filed 5/17/84)

**WAC 180-51-015 Application of chapter to charter and tribal compact schools, approved private schools, and community colleges.** High school diplomas granted by a charter school established under chapter 28A.710 RCW, tribal compact school operated according to the terms of state-tribal education compacts authorized under chapter 28A.715 RCW, approved private schools under chapter 28A.195 RCW and by community colleges under RCW 28B.50.535 shall meet the requirements of this chapter. References in this chapter to the board of directors of a school district shall apply to the governing board of the charter school, tribal compact school, approved private school or the community college district affected. References within this chapter to school district shall refer to the charter school, tribal compact school, approved private school or community college district. References within this chapter to high school shall refer to each charter school, tribal compact school, approved private school or ((each)) community college.

AMENDATORY SECTION (Amending WSR 20-01-101, filed 12/13/19, effective 1/13/20)

**WAC 180-51-050 High school credit—Definition.** As used in this chapter the term "high school credit" shall mean:

(1) Grades nine through twelve or the equivalent of a four-year high school program, or as otherwise provided in RCW 28A.230.090(4):

(a) Successful completion, as defined by written district policy, of courses taught to the state's learning standards. If there are no state-adopted learning standards for a subject, the local governing board, or its designee, shall determine learning standards for the successful completion of that subject; or

(b) Satisfactory demonstration by a student of proficiency/competency/mastery, as defined by written district policy, of the state's learning standards.

(2) College and university course work. At the college or university level, five quarter or three semester hours shall equal one high school credit: Provided, that for the purpose of this subsection, "college and university course work" means course work that generally is designated 100 level or above by the college or university.

(3) Community/technical college high school completion program - Diploma awarded by community/technical colleges. Five quarter or three semester hours of community/technical college high school completion course work shall equal one high school credit: Provided, that for purposes of awarding equivalency credit under this subsection, college and university high school completion course work includes course work that is designated below the 100 level by the college and the course work is developmental education at grade levels nine through twelve or the equivalent of a four-year high school program. (See also WAC 180-51-053)

(4) Community/technical college high school completion program - Diploma awarded by school district. A minimum of one-half and a maximum of one high school credit may be awarded for every five quarter or three semester hours of community/technical college high school completion course work: Provided, that for purposes of awarding equivalency credit under this subsection, college and university high school completion course work includes course work that is designated below the 100 level by the college and the course work is developmental education at grade levels nine through twelve or the equivalent of a four-year high school program. (See also WAC 180-51-053)

(5) Each high school district board of directors shall adopt a written policy for determining the awarding of equivalency credit authorized under subsection (4) of this section. The policy shall apply uniformly to all high schools in the district.

(6) Each high school district board of directors shall adopt a written policy regarding the recognition and acceptance of earned credits. The policy shall apply to all high schools in the district. The policy may include reliance on the professional judgment of the building principal or designee in determining whether or not a credit meets the district's standards for recognition and acceptance of a credit. The policy shall include an appeal procedure to the district if it includes reliance on the professional judgment of the building principal or designee.

(7) A student must first obtain a written release from their school district to enroll in a high school completion program under subsection (3) of this section if the student has not reached age eighteen or whose class has not graduated.

## NEW SECTION

**WAC 180-51-051 Procedure for granting students mastery-based credit.** (1) Definitions. The definitions in this section apply throughout this chapter.

(a) Per WAC 180-51-015, references to "district" within this section means a school district, a charter school established under chapter 28A.710 RCW, a tribal compact school operated according to the terms of state-tribal education compacts authorized under chapter 28A.715 RCW, and community and technical colleges per WAC 180-51-015.

(b) Per E2SHB 1599 (section 301, chapter 252, Laws of 2019), "mastery-based learning" means:

(i) Students advance upon demonstrated mastery of content;

(ii) Competencies include explicit, measurable, transferable learning objectives that empower students;

(iii) Assessments are meaningful and a positive learning experience for students;

(iv) Students receive rapid, differentiated support based on their individual learning needs; and

(v) Learning outcomes emphasize competencies that include application and creation of knowledge along with the development of important skills and dispositions.

(2) Per WAC 180-51-050, a district may award credit to a student who demonstrates mastery on the state learning standards. If no state standard is available for a subject the district may award credit based on mastery of locally adopted standards.

(3) A district's written policy for awarding mastery-based credit must include:

(a) A provision that details how the district will ensure cultural responsiveness and equity in awarding of mastery-based credit. Each district shall maintain disaggregated student data and periodically review which subgroups of students are receiving mastery-based credit. If the district finds disproportionality among student groups receiving mastery-based credit, the district should be prepared to take appropriate actions to ensure equitable access to mastery-based credit opportunities.

(b) Which subjects or courses are eligible for mastery-based credit.

(c) Other methods allowable for a student to demonstrate proficiency and qualify for mastery credit, beyond what is established in subsection (4)(b) of this section for locally developed assessment options.

(4) Student demonstration of mastery: Student demonstration of mastery of the state's learning standards is not limited to standardized assessment results. Nothing in this section prohibits LEAs from developing additional methods to allow students to show proficiency and earn mastery-based credit, beyond what is included in this section. Districts who adopt a written policy for awarding mastery-based credit may make the following methods of earning mastery-based credit available to their students:

(a) State assessments in English language arts, math, and science, in accordance with RCW 28A.655.070;

(b) Local assessment options: Districts are encouraged to allow students to choose their assessment method from a variety of district-approved options. Additionally, districts may consider using standards-based grading for any local

assessment approach to awarding credit. Local assessment options may include:

- (i) Locally created written or oral test;
- (ii) Written report by the student;
- (iii) Student-designed portfolio of work;
- (iv) Student presentation or oral defense of their learning in the course;
- (v) Hands-on demonstration of knowledge and skills; or
- (vi) A combination of assessment approaches, as defined by the district.

(c) **Equivalency course of study:** Students may receive credit for learning experiences outside of school that align to state learning standards, in accordance with WAC 392-410-300.

(d) **Successful completion of next higher-level course:** Districts may award credit for a course when the student successfully completes the next higher-level course in a sequence that includes a natural progression of the state learning standards from the previous course. Districts shall use the state or locally determined learning standards as their guide when making decisions regarding what courses should qualify.

(5) **High school and beyond plan (HSBP):** In accordance with WAC 180-51-220, a student's high school and beyond plan should reflect subject area requirements intended to be met, or that have been met, through mastery-based credit per WAC 180-51-220.

**AMENDATORY SECTION** (Amending WSR 20-01-101, filed 12/13/19, effective 1/13/20)

**WAC 180-51-056 Previous requirements for high school graduation.** This section describes the statewide minimum credit and subject areas requirements for high school graduation for students who entered the ninth grade or began the equivalent of a four-year high school program prior to July 1, 2012 (the class of 2015 and previous classes). This section applies to students of the applicable graduation cohorts in high school completion programs at community and technical colleges.

(1) The minimum credit and subject area requirements, except as noted in subsections (2) and (3) of this section, are as follows:

(a) Three **English** credits (reading, writing, and communications) that at minimum align with grade level expectations for ninth and tenth grade, plus content that is determined by the district.

(b) Two **science** credits (physical, life, and earth) that at minimum align with grade level expectations for ninth and tenth grade, plus content that is determined by the district. At least one credit in laboratory science is required which shall be defined locally.

(c) Two and one-half **social studies** credits that at minimum align with the state's learning standards in civics, economics, geography, history, and social studies skills at grade ten and/or above plus content that is determined by the district. The social studies requirement shall consist of the following mandatory courses or equivalencies:

(i) One credit shall be required in United States history and government which shall include study of the Constitution of the United States.

(ii) Under the provisions of RCW 28A.230.170 and 28A.230.090, one-half credit shall be required in Washington state history and government which shall include study of the Constitution of the state of Washington and shall include information on the culture, history, and government of the American Indian peoples who were the first inhabitants of the state. If taken in seventh or eighth grade, this course may meet the state history and government graduation requirement. However, the course may only count as a high school credit if the academic level of the course exceeds the requirements for seventh and eighth grade classes or is equivalent to a course offered at a high school in the district as determined by the school district board of directors (RCW 28A.230.090). The study of the United States and Washington state Constitutions shall not be waived but may be fulfilled through an alternative learning experience approved locally under written district policy. Secondary school students who have completed and passed a state history and government course of study in another state, and students who transferred from another state as eleventh or twelfth grade students who have or will have earned two credits in social studies at graduation, may have the Washington state history and government requirement waived.

(iii) One credit shall be required in contemporary world history, geography, and problems. Courses in economics, sociology, civics, political science, international relations, or related courses with emphasis on current problems may be accepted as equivalencies.

(d) One-half credit of **health**.

(e) One and one-half credits of **physical education**. Students may be excused from the physical education requirement under RCW 28A.230.050. Such excused students shall be required to demonstrate proficiency/competency/mastery in the knowledge portion of the physical education requirement, in accordance with written district policy. Such policies that should be based upon meeting both health and physical education curricula concepts as well as alternative means of engaging in physical activities, as directed in RCW 28A.210.365.

(f) One **arts** credit that at minimum is aligned to learning standards.

(g) One credit in **career and technical education** or occupational education. Courses that meet this requirement include courses that are part of career and technical education programs, as defined in chapter 28A.700 RCW, or occupational education courses as identified by the district. "Occupational education" means credits resulting from a series of learning experiences designed to assist the student to acquire and demonstrate competency/mastery of skills under student learning goal four (RCW 28A.150.210) and are required for success in current and emerging occupations. At a minimum, these competencies shall align with the definition of an exploratory course as contained in the career and technical education program standards of the office of the superintendent of public instruction. Districts are encouraged to offer career and technical education programs, as defined in RCW 28A.700.010.

(i) An exception of the career and technical education requirement may be made for private schools as provided in WAC 180-90-160.

(ii) A student who earns credit through a career and technical education course determined by the district or by the office of the superintendent of public instruction to be equivalent to a noncareer and technical education course per RCW 28A.700.070, will not be required to pass a course in the noncareer and technical education subject to earn a credit in the noncareer and technical education subject. The single career and technical education course equivalency meets two graduation requirements, the career and technical education subject area graduation requirement and the noncareer and technical education subject area graduation requirement. The student therefore has an additional elective credit.

(h) Five and one-half credits of **electives**. Districts may replace these credits with local district requirements through written district policy.

(i) Each student shall have a **high school and beyond plan** for their high school experience, that informs course-taking and that is aligned with the student's postsecondary goals.

(2) For students who entered ninth grade prior to July 1, 2009 (graduating classes preceding the class of 2013), additional graduation requirements are as follows:

(a) The total minimum number of credits required for high school graduation is nineteen.

(b) Two mathematics credits that at minimum align with mathematics grade level expectations for ninth and tenth grade, plus content that is determined by the district.

(3) For students who entered ninth grade as of July 1, 2009, through June 30, 2012 (the class of 2013 through the class of 2015), additional graduation requirements are as follows:

(a) The total minimum number of credits required for high school graduation is twenty.

(b) Three mathematics credits that align with the high school mathematics standards as developed and revised by the office of the superintendent of public instruction and satisfy the requirements set forth below:

(i) Unless otherwise provided for in (b)(ii) of this subsection, the three mathematics credits required under this section must include:

- (A) Algebra 1 or integrated mathematics I;
- (B) Geometry or integrated mathematics II; and
- (C) Algebra 2 or integrated mathematics III.

(ii) A student may elect to pursue a third credit of high school-level mathematics, other than algebra 2 or integrated mathematics III, based on a career-oriented program of study identified in the student's high school and beyond plan that is currently being pursued by the student.

**AMENDATORY SECTION** (Amending WSR 20-01-101, filed 12/13/19, effective 1/13/20)

**WAC 180-51-067 State subject and credit requirements for high school graduation—Students entering the ninth grade on or after July 1, 2012, through June 30, 2015.** The statewide subject areas and credits required for high school graduation, beginning July 1, 2012, for students

who enter the ninth grade or begin the equivalent of a four-year high school program, as of July 1, 2012, through June 30, 2015, except as provided in WAC 180-51-068(11), shall total twenty as provided below. The credit and subject area requirements in this section apply to districts with a waiver to delay implementing WAC 180-51-068. For such districts, this section will apply to students who entered ninth grade between July 1, 2012, and June 30, 2016. All credits are to be aligned with the state's learning standards for the subject. The content of any course shall be determined by the local school district.

(1) Four **English** credits.

(2) Three **mathematics** credits that satisfy the requirements set forth below:

(a) Unless otherwise provided for in (d) through (g) of this subsection, the three mathematics credits required under this section must include:

- (i) Algebra 1 or integrated mathematics I;
- (ii) Geometry or integrated mathematics II; and
- (iii) Algebra 2 or integrated mathematics III.

(b) A student may elect to pursue a third credit of high school-level mathematics, other than algebra 2 or integrated mathematics III, if all of the following requirements are met:

(i) The student's elective choice is based on a career-oriented program of study identified in the student's high school and beyond plan that is currently being pursued by the student;

(ii) The student's parent(s)/guardian(s) (or designee for the student if a parent or guardian is unavailable) agree that the third credit of mathematics elected is a more appropriate course selection than algebra 2 or integrated mathematics III because it will better serve the student's education and career goals;

(iii) A meeting is held with the student, the parent(s)/guardian(s) (or designee for the student if a parent or guardian is unavailable), and a high school representative for the purpose of discussing the student's high school and beyond plan and advising the student of the requirements for credit bearing two- and four-year college level mathematics courses; and

(iv) The school has the parent(s)/guardian(s) (or designee for the student if a parent or guardian is unavailable) sign a form acknowledging that the meeting with a high school representative has occurred, the information as required was discussed, and the parent(s)/guardian(s) (or designee for the student if a parent or guardian is unavailable) agree that the third credit of mathematics elected is a more appropriate course selection given the student's education and career goals.

(c) Equivalent career and technical education mathematics courses meeting the requirements set forth in RCW 28A.230.097 can be taken for credit instead of any of the mathematics courses set forth in (a) of this subsection if the career and technical education mathematics courses are recorded on the student's transcript using the equivalent academic high school department designation and course title.

(d) A student who prior to ninth grade successfully completes one or more high school level math courses with a passing grade that is automatically transcribed on the student's high school transcript in accordance with RCW

28A.230.090 and WAC 180-51-030, or a student who demonstrates mastery(~~(competency)~~) in high school math subjects and has received credit for them, may use these credits to meet their math graduation requirements. Upon completion of algebra I or integrated math I, geometry or integrated math II, and a third credit of high school level math that aligns with the student's high school and beyond plan, the student should be encouraged to consider additional math courses, which align with the student's education and career goals in their high school and beyond plan.

(e) A student who prior to ninth grade successfully completes one or more high school level math courses with a passing grade and opts to receive no high school credit for such course(s) in accordance with RCW 28A.230.090 and WAC 180-51-030, or a student who demonstrated mastery(~~(competency)~~) in these subjects but did not receive high school credits, may either:

(i) Repeat the course(s) for credit in high school; or

(ii) Earn three credits of high school mathematics in different math subjects than those completed before high school. The student must take algebra I or integrated mathematics I and geometry or integrated math II in high school if the student did not complete these courses at a high school level prior to high school, but the student does not need to repeat courses if the student already took the courses at a high school level.

(3) Two **science** credits, at least one of the two credits must be in laboratory science.

(4) Three **social studies** credits (two credits prescribed courses, plus one credit social studies elective) and a non-credit requirement. The social studies requirement shall consist of the following mandatory courses or equivalencies:

(a) One credit shall be required in United States history.

(b) Successful completion of Washington state history and government shall be required, subject to the provisions of RCW 28A.230.170(~~(RCW)~~), 28A.230.090, 28A.320.170 and WAC 392-410-120, and shall include information on the cultures, histories, and governments of the American Indian peoples who are the first inhabitants of the state. Successful completion of Washington state history must be noted on each student's transcript. The Washington state history and government requirement may be waived by the principal for individual students who:

(i) Have successfully completed a state history and government course of study in another state; or

(ii) Are in eleventh or twelfth grade and who have not completed a course of study in Washington's history and state government because of previous residence outside the state or because emergency school closure, or other circumstance due to an emergency, prevented the student from having the opportunity to fulfill this requirement.

(c) One-half credit shall be required in contemporary world history, geography, and problems. Courses in economics, sociology, civics, political science, international relations, or related courses with emphasis on contemporary world problems may be accepted as equivalencies.

(d) One-half credit shall be required in civics and include at a minimum the content listed in RCW 28A.230.093.

(5) One-half credits of **health**.

(6) One and one-half credits of physical education. Students may be excused from the physical education requirement under RCW 28A.230.050. Such excused students shall be required to demonstrate (~~(competency)~~) mastery of the knowledge portion of the physical education requirement, in accordance with written district policy. Such policies should be based upon addressing health and physical education learning standards as well as alternative means of engaging in physical activities, as directed in RCW 28A.210.365.

(7) One **arts** credit. The essential content in this subject area may be satisfied in the visual or performing arts.

(8) One credit in **career and technical education** or **occupational education**.

(a) "Occupational education" means credits resulting from a series of learning experiences designed to assist the student to acquire and demonstrate (~~(competency)~~) mastery of skills under student learning goal four and which skills are required for success in current and emerging occupations. At a minimum, these competencies shall align with the definition of an exploratory course as contained in the career and technical education program standards of the office of the superintendent of public instruction.

(b) Students who earn a graduation requirement credit through a career and technical education course determined by the district or by the office of the superintendent of public instruction to be equivalent to a noncareer and technical education course will not be required to earn a second credit in the noncareer and technical education course subject. The student earns one credit while meeting two graduation requirements, a career and technical education requirement and the noncareer and technical education subject requirement. The total number of credits required for graduation remains unchanged, and the student will need to earn an additional elective credit.

(9) Four credits of **electives**.

(10) Each student shall have a **high school and beyond plan** for their high school experience, as described in WAC 180-51-220.

(11) Students who complete and pass all required International Baccalaureate Diploma Programme courses are considered to have satisfied state subject and credit requirements for graduation from a public high school, subject to the provisions of RCW 28A.230.090, 28A.230.170, and chapter 28A.230 RCW.

(12) A student with an individualized education program (IEP) must be provided the opportunity to meet graduation requirements that align with the student's high school and beyond plan pursuant to WAC 180-51-115.

AMENDATORY SECTION (Amending WSR 20-01-101, filed 12/13/19, effective 1/13/20)

**WAC 180-51-068 State subject and credit requirements for high school graduation—Students entering the ninth grade on or after July 1, 2015, through June 30, 2017.** The statewide subject areas and credits required for high school graduation, beginning July 1, 2015, for students who enter the ninth grade or begin the equivalent of a four-year high school program (the class of 2019), shall total twenty-four as required in this section, except as otherwise

provided in subsections (12) and (13) of this section. All credits are to be aligned with the state's learning standards developed under RCW 28A.655.070 for the subject. The content of any course shall be determined by the local school district.

(1) Four **English** credits.

(2) Three **mathematics** credits that satisfy the requirements set forth in (a) through ~~((c))~~ (c) of this subsection:

(a) Unless otherwise provided for in (b) of this subsection, the three mathematics credits required under this section must include:

(i) Algebra I or integrated mathematics I;

(ii) Geometry or integrated mathematics II; and

(iii) A third credit of high school mathematics, aligning with the student's interests and high school and beyond plan, with agreement of the student's parent or guardian. The high school and beyond plan must be provided to the student's parents or guardians in their native language if that language is one of the two most frequently spoken non-English languages of students in the district (RCW 28A.230.090). Districts are encouraged to provide plans to parents and guardians in additional languages as needed, to the extent feasible. If the parent or guardian is unavailable or does not indicate a preference for a specific course, the school counselor or principal may provide agreement with the plan.

(b) A student who prior to ninth grade successfully completes one or more high school level math courses with a passing grade that is automatically transcribed on the student's high school transcript in accordance with RCW 28A.230.090 and WAC 180-51-030, or a student who demonstrates mastery ~~((competency))~~ in high school math subjects and has received credit for them, may use these credits to meet their math graduation requirements. Refer to WAC 180-51-030 for information about opting out of credits and numerical grades. Upon completion of algebra I or integrated math I, geometry or integrated math II, and a third credit of high school level math that aligns with the student's high school and beyond plan, the student should be encouraged to consider additional math courses, which align with the student's education and career goals in their high school and beyond plan.

(c) A student who prior to ninth grade successfully completes one or more high school level math courses with a passing grade and opts to receive no high school credit for such course(s) in accordance with RCW 28A.230.090 and WAC 180-51-030, or a student who demonstrated mastery ~~((competency))~~ in these subjects but did not receive high school credits, may either:

(i) Repeat the course(s) for credit in high school; or

(ii) Earn three credits of high school mathematics in different math subjects than those completed before high school. The student must take algebra I or integrated mathematics I and geometry or integrated math II in high school if the student did not complete these courses at a high school level prior to high school, but the student does not need to repeat courses if the student already took the courses at a high school level.

(3) Three **science** credits, at least two of which must be in laboratory science as provided in subsection (17)(a) of this section. A student may choose the content of the third credit

of science, based on the student's interests and high school and beyond plan, with agreement of the student's parent or guardian. The high school and beyond plan must be provided to the student's parents or guardians in their native language if that language is one of the two most frequently spoken non-English languages of students in the district (RCW 28A.230.090). Districts are encouraged to provide plans to parents and guardians in additional languages as needed, to the extent feasible. If the parent or guardian is unavailable or does not indicate a preference for a specific course, agreement may be provided by the school counselor or principal.

(4) Three **social studies** credits (two credits prescribed courses, plus a one credit social studies elective) and a non-credit requirement. The social studies requirement shall consist of the following mandatory courses or equivalencies:

(a) One credit shall be required in United States history.

(b) Successful completion of Washington state history and government shall be required, subject to the provisions of RCW 28A.230.170, 28A.230.090, ~~28A.320.170~~ and WAC 392-410-120, and shall include information on the cultures, histories, and governments of the American Indian peoples who are the first inhabitants of the state. Successful completion of Washington state history must be noted on each student's transcript. The Washington state history and government requirement may be waived by the principal for individual students who:

(i) Have successfully completed a state history and government course of study in another state; or

(ii) Are in eleventh or twelfth grade and who have not completed a course of study in Washington's history and state government because of previous residence outside the state or because emergency school closure, or other circumstance due to an emergency, prevented the student from having the opportunity to fulfill this requirement.

(c) One-half credit shall be required in contemporary world history, geography, and problems. Courses in economics, sociology, civics, political science, international relations, or related courses with emphasis on contemporary world problems may be accepted as equivalencies.

(d) One-half credit shall be required in civics and include at a minimum the content listed in RCW 28A.230.093.

(5) One-half credit in **health**.

(6) One and one-half in **physical education**. Students may be excused from the physical education requirement under RCW 28A.230.050. Such excused students shall be required to demonstrate ~~((competency))~~ mastery of the knowledge portion of the fitness requirement, in accordance with written district policy. Such policies should be based upon addressing health and physical education learning standards as well as alternative means of engaging in physical activities, as directed in RCW 28A.210.365.

(7) Two **arts** credits. The essential content in this subject area may be satisfied in the visual or performing arts. One of the two arts credits may be replaced with a personalized pathway requirement as provided in subsection (17)(c) of this section.

(8) One credit in **career and technical education**.

(a) A career and technical education credit means a credit resulting from a course in a career and technical education program or occupational education credit as contained in

the career and technical education program standards of the office of the superintendent of public instruction. "Occupational education" means credits resulting from a series of learning experiences designed to assist the student to acquire and demonstrate ~~((competency))~~ mastery of skills under student learning goal four and which skills are required for success in current and emerging occupations. At a minimum, these competencies shall align with the definition of an exploratory course as contained in the career and technical education program standards of the office of the superintendent of public instruction. Districts are encouraged to offer career and technical education programs, as defined in RCW 28A.700.010.

(b) An exception may be made for private schools as provided in WAC 180-90-160.

(c) A student who earns credit through a career and technical education course determined by the district or by the office of the superintendent of public instruction to be equivalent to a noncareer and technical education core course (RCW 28A.700.070 and subsection (14) of this section), will not be required to pass a course in the noncareer and technical education subject to earn a credit in that subject. The student earns one credit while meeting two graduation requirements, a career and technical education requirement and the noncareer and technical education subject requirement. The total number of credits required for graduation remain unchanged, and the student will need to earn an additional elective credit.

(9) Two credits in **world languages or personalized pathway requirements**. If the student has chosen a four-year degree pathway under subsection (11) of this section, the student shall be advised to earn two credits in world languages.

(10) Four credits of **electives**.

(11) Each student shall have a **high school and beyond plan** to guide his or her high school experience, as described in WAC 180-51-220.

(12) A school district wishing to implement the requirements for high school graduation for students who enter the ninth grade or begin the equivalent of a four-year high school program on July 1, 2016, or July 1, 2017, rather than July 1, 2015, may apply to the state board of education for a temporary waiver of the requirements of this section. The state board of education shall post an application form on its website for use by districts seeking this waiver.

(a) An application for a waiver must:

(i) Meet the requirements of chapter 217, Laws of 2014 (E2SSB 6552), which include describing why the waiver is being requested, the specific impediments preventing timely implementation of the high school graduation requirements established in subsections (1) through (10) of this section, and the efforts that will be taken to achieve implementation with the graduating class proposed under the waiver.

(ii) Be accompanied by a resolution adopted by the district board of directors requesting the waiver. The resolution must state the entering freshman class or classes for whom the waiver is requested, and be signed by the board chair or president and the district superintendent.

(b) A district implementing a waiver shall continue to be subject to the requirements of WAC 180-51-067 during the school year or years for which the waiver has been granted.

(c) Nothing shall prevent a district granted a waiver from electing to implement subsections (1) through (11) of this section during the term for which the waiver is granted. A district granted a waiver that elects to implement subsections (1) through (11) of this section shall provide notification of such decision to the state board of education.

(d) The state board of education shall post the application for each waiver on its public website.

(13) A school district that grants high school diplomas may waive up to two of the credits required for graduation under this section for individual students for reason of a student's circumstances, as defined by the district. Unless otherwise provided in law, students granted a waiver under this subsection must earn the seventeen required subject credits in subsections (1) through (7) of this section, which may be by satisfactory demonstration of competence under WAC 180-51-050. The waiving of credits for individual students for reason of a student's circumstances must be in accordance with written policies adopted by resolution of each board of directors of a district that grants diplomas.

(14) Career and technical education courses determined by the district or by the office of the superintendent of public instruction to be equivalent to a noncareer and technical education course in accordance with RCW 28A.700.070 can be taken for credit in place of that course. Equivalencies may be determined for any of the core credit graduation requirements of subsections (1) through (7) of this section.

(15) Students who complete and pass all required International Baccalaureate Diploma Programme courses are considered to have satisfied state subject and credit requirements for graduation from a public high school, subject to the provisions of RCW 28A.230.090, 28A.230.170, and chapter 28A.230 RCW.

(16) A student with an individualized education program must be provided the opportunity to meet graduation requirements that align with the student's high school and beyond plan pursuant to WAC 180-51-115.

(17) Definitions:

(a) "Laboratory science" means any instruction that provides opportunities for students to interact directly with the material world, or with data drawn from the material world, using the tools, data collection techniques, models and theories of science. A laboratory science course meeting the requirement of subsection (3) of this section may include courses conducted in classroom facilities specially designed for laboratory science, or coursework in traditional classrooms, outdoor spaces, or other settings which accommodate elements of laboratory science as identified in this subsection;

(b) "Personalized pathway" means a locally determined body of coursework identified in a student's high school and beyond plan that is deemed necessary to attain the post-secondary career or educational goals chosen by the student;

(c) "Personalized pathway requirements" means up to three course credits chosen by a student under subsections (7) and (9) of this section that are included in a student's personalized pathway and prepare the student to meet specific post-secondary career or educational goals.

AMENDATORY SECTION (Amending WSR 20-01-101, filed 12/13/19, effective 1/13/20)

**WAC 180-51-095 Temporary exemption from course and credit requirements.** Annual exemptions to the definition of an annualized high school credit may be granted upon the request of an approved private school which offers evidence that delineates content, time, or ~~((competency))~~ mastery assessments which are substantially equivalent to the definition stated in WAC 180-51-050. The waiver process shall be administered by the state board of education.

AMENDATORY SECTION (Amending WSR 20-01-101, filed 12/13/19, effective 1/13/20)

**WAC 180-51-210 State subject and credit requirements for high school graduation.** (1) Definitions. The definitions in this section apply throughout this chapter.

(a) "Laboratory science" means any instruction that provides opportunities for students to interact directly with the material world, or with data drawn from the material world, using the tools, data collection techniques, models and theories of science. A laboratory science course meeting the requirement of subsection (4) of this section may include courses conducted in classroom facilities specially designed for laboratory science, or course work in traditional classrooms, outdoor spaces, or other settings which accommodate elements of laboratory science as identified in this subsection;

(b) "Personalized pathway" means a locally determined body of course work identified in a student's high school and beyond plan that is deemed necessary to attain the postsecondary career or educational goals chosen by the student;

(c) "Personalized pathway requirements" means up to three course credits chosen by a student that are included in a student's personalized pathway, that prepare the student to meet specific postsecondary career or educational goals, and that align with the student's high school and beyond plan. A student's personalized pathway requirements are included in the student's flexible credits, as defined in this subsection.

(d) "Core credit" is a credit earned through course work or through ~~((mastery or competency based))~~ mastery-based credit in the subject areas listed in subsection (4) of this section. Students subject to the graduation requirements in this section must earn seventeen core credits in high school. Core credits do not include electives or personalized pathway requirements and may not be waived under RCW 28A.230.090 (1)(e) or subsection (2) of this section.

(e) "Flexible credit" is a credit that is either an elective credit or a personalized pathway requirement. Flexible credits may be waived under RCW 28A.230.090 and subsection (2) of this section, and are listed in subsection (5) of this section.

(2) A school district that grants high school diplomas may waive up to two of the flexible credits required for graduation under subsection (4) of this section for an individual student, based on the student's circumstances. Districts will grant any such waiver in accordance with written district policy. A student granted a waiver under this subsection must earn the core credits in subsection (4) of this section, but may

graduate with as few as twenty-two credits, rather than twenty-four credits.

(3) The statewide subject areas and credits required for high school graduation, for students who enter the ninth grade or begin the equivalent of a four-year high school program on or after July 1, 2017, (the class of 2021 and beyond) shall total twenty-four, except as otherwise provided in this section. The twenty-four subject area credits for graduation include core credits and flexible credits listed in subsections (4) and (5) of this section. All credits are to be aligned with the state's learning standards developed under RCW 28A.655.070 for the subject and may be earned through ~~((mastery or competency based))~~ mastery-based credit. The contents of any course shall be determined by the local school district. Districts are encouraged to adopt ~~((culturally responsive))~~ culturally responsive curricula that is relevant to the district's students, including the incorporation of curricula about the history, culture, and government of the nearest federally recognized Indian tribe or tribes as required by RCW 28A.320.170.

(4) Core credits are credits and subject areas that may not be waived under RCW 28A.230.090 (1)(e) and subsection (2) of this section. The core credits include:

(a) Four **English** credits.

(b) Three **mathematics** credits.

(i) Unless otherwise provided for in (b)(ii) of this subsection, the three mathematics credits required under this section must include:

(A) Algebra 1 or integrated mathematics I;

(B) Geometry or integrated mathematics II; and

(C) A third credit of high school mathematics, aligning with the student's interests and high school and beyond plan, with agreement of the student's parent or guardian. The high school and beyond plan must be provided to the student's parents or guardians in their native language if that language is one of the two most frequently spoken non-English languages of students in the district (RCW 28A.230.090). Districts are encouraged to provide plans to parents and guardians in additional languages as needed, to the extent feasible. If the parent or guardian is unavailable or does not indicate a preference for a specific course, agreement may be provided by the school counselor or principal.

(ii) A student who prior to ninth grade successfully completes one or more high school level math courses with a passing grade that is automatically transcribed on the student's high school transcript in accordance with RCW 28A.230.090 and WAC 180-51-030, or a student who demonstrates mastery ~~((competency))~~ in high school math subjects and has received credit for them, may use these credits to meet their math graduation requirements. Refer to WAC 180-51-030 for information about opting out of credits and numerical grades. Upon completion of algebra 1 or integrated math I, geometry or integrated math II, and a third credit of high school level math that aligns with the student's high school and beyond plan, schools are urged to encourage the student to consider additional math courses, which align with the student's education and career goals in their high school and beyond plan.

(iii) A student who prior to ninth grade successfully completes one or more high school level math courses with a

passing grade and opts to receive no high school credit for such course(s) in accordance with RCW 28A.230.090 and WAC 180-51-030, or a student who demonstrated mastery (~~competency~~) in these subjects but did not receive high school credits, may either:

(A) Repeat the course(s) for credit in high school; or

(B) Earn three credits of high school mathematics in different math subjects than those completed before high school. The student must take algebra I or integrated mathematics I and geometry or integrated math II in high school if the student did not complete these courses at a high school level prior to high school, but the student does not need to repeat courses if the student already passed the courses at a high school level.

(c) Three **science** credits, at least two of which must be in laboratory science. A student may choose the content of the third credit of science based on the student's interests and high school and beyond plan, with agreement of the student's parent or guardian. The high school and beyond plan must be provided to the student's parents or guardians in their native language if that language is one of the two most frequently spoken non-English languages of students in the district (RCW 28A.230.090). Districts are encouraged to provide plans to parents and guardians in additional languages as needed, to the extent feasible. If the parent or guardian is unavailable or does not indicate a preference for a specific course, the school counselor or principal may provide agreement with the plan.

(d) Three **social studies** credits (two credits prescribed courses, plus one credit social studies elective) and Washington state history and government, a noncredit requirement typically met in middle school. In accordance with RCW 28A.320.170, when a school district board of directors reviews or adopts its social studies curriculum, it shall incorporate curricula about the history, culture, and government of the nearest federally recognized Indian tribe or tribes, so that students learn about the unique heritage and experience of those tribe or tribes. The social studies requirement shall consist of the following mandatory courses:

(i) One credit shall be required in United States history or its equivalent.

(ii) One-half credit shall be required in contemporary world history, geography, and problems, or its equivalent. Courses in economics, sociology, civics (through the class of 2023), political science, international relations, or related courses with emphasis on contemporary world problems may be accepted as equivalencies.

(iii) One-half credit shall be required in civics, including at a minimum the content listed in RCW 28A.230.094. Starting with the class of 2024, districts must offer this graduation requirement as a stand-alone course, subject to the provisions of RCW 28A.230.094.

(iv) Successful completion of Washington state history and government shall be required, subject to the provisions of RCW 28A.230.170, 28A.230.090, ~~28A.320.170~~ and WAC 392-410-120, and shall include information on the cultures, histories, and governments of the American Indian peoples who are the first inhabitants of the state. Successful completion of Washington state history must be noted on each stu-

dent's transcript. The Washington state history requirement may be waived by the principal for individual students who:

(A) Have successfully completed a state history course of study in another state; or

(B) Are in eleventh or twelfth grade and who have not completed a course of study in Washington's history because of previous residence outside the state or because emergency school closure, or other circumstance due to an emergency, prevented the student from having the opportunity to fulfill this requirement.

(e) One-half credit of **health**.

(f) One and one-half credit of **physical education**. Students may be excused from the physical education requirement under RCW 28A.230.050. Such excused students shall be required to demonstrate (~~competency~~) mastery in the knowledge portion of the physical education requirement, in accordance with written district policy. Such policies should be based upon addressing health and physical education learning standards as well as alternative means of engaging in physical activities, as directed in RCW 28A.210.365.

(g) One credit in **career and technical education**.

(i) Courses that meet this requirement include courses that are part of career and technical education programs, as defined in chapter 28A.700 RCW, or occupational education courses as identified by the district. "Occupational education" means credits resulting from a series of learning experiences designed to assist the student to acquire and demonstrate (~~competency~~) mastery of skills under student learning goal four and are required for success in current and emerging occupations. At a minimum, these competencies shall align with the definition of an exploratory course as contained in the career and technical program standards of the office of the superintendent of public instruction. Districts are encouraged to offer career and technical education programs, as defined in RCW 28A.700.010.

(ii) An exception of the career and technical education requirement may be made for private schools as provided in WAC 180-90-160.

(iii) A student who earns credit through a career and technical education course determined by the district or by the office of the superintendent of public instruction to be equivalent to a noncareer and technical education core course (RCW 28A.700.070 and subsection (7) of this section), will not be required to pass a course in the noncareer and technical education subject to earn a credit in that subject. The student earns one credit while meeting two graduation requirements, a career and technical education requirement and the noncareer and technical education subject requirement. The total number of credits required for graduation remain unchanged, and the student will need to earn an additional elective credit.

(h) One **arts** credit. The essential content in this subject area may be satisfied in dance, media arts, music, theater, and visual arts.

(5) Flexible credits are credits that may be waived under RCW 28A.230.090 and subsection (2) of this section. Districts may replace these credits with local district requirements through written district policy. Flexible credits include:

(a) One **arts** credit. The essential content in this subject area may be satisfied in dance, media arts, music, theater and

visual arts. This credit may be replaced with a personalized pathway requirement as provided in subsection (1)(c) of this section.

(b) Two credits in **world languages**. These credits may be replaced with personalized pathway requirements as provided in subsection (1)(c) of this section. If the student has an educational goal of attaining a baccalaureate degree, the student shall be advised to earn at least two credits in the same world language. Students who earn a Seal of Biliteracy (RCW 28A.300.575) are considered to have met this requirement.

(c) Four credits of **electives**.

(6) Each student shall have a **high school and beyond plan** to guide his or her high school experience and prepare the student for postsecondary education, training, and career, as described in WAC 180-51-220.

(7) Career and technical education courses determined by the district or by the office of the superintendent of public instruction to be equivalent to a noncareer and technical education course in accordance with RCW 28A.700.070 can be taken for credit in place of that course. Equivalencies may be determined for any of the core credit graduation requirements of subsection (4) of this section.

(8) Students who complete and pass all required International Baccalaureate Diploma Programme courses are considered to have satisfied state subject and credit requirements for graduation from a public high school, subject to the provisions of RCW 28A.230.090, 28A.230.170, and chapter 28A.230 RCW.

(9) A student with an individualized education program (IEP) must be provided the opportunity to meet graduation requirements that align with the student's high school and beyond plan, pursuant to WAC 180-51-115.

**AMENDATORY SECTION** (Amending WSR 18-24-090, filed 12/3/18, effective 1/3/19)

**WAC 180-90-141 Loss of private school approval.**

The state board of education may rescind approval of a private school for one or more of the following reasons:

(1) Failure to have students enrolled for any six consecutive calendar months in the school's physical facilities or failure to provide evidence of student enrollment upon request of the state board of education for the said period of time.

(a) For the 2020-21 school year, schools that implement an online education program consistent with the provisions of RCW 28A.195.090 will not be subject to rescission based on a failure to have students enrolled in the school's physical facilities; and

(b) The school maintains a physical address in Washington and plans to resume classroom instruction when the governing body of the school determines it is safe to do so and resumption is allowable under state and local emergency status.

(2) Failure to provide verification that the approved private school teaching staff have a valid Washington state teaching certificate or meet the provisions of WAC 180-90-112(5).

(3) Failure to provide verification that the physical facilities of the school meet the health and fire safety standards.

**AMENDATORY SECTION** (Amending WSR 18-24-090, filed 12/3/18, effective 1/3/19)

**WAC 180-90-160 Minimum standards and certificate form.** (1) The annual certificate required by WAC 180-90-130 shall be in substantial compliance with the form and substance of the following:

CERTIFICATE OF COMPLIANCE  
WITH STATE STANDARDS

ESD/County/Public  
School District  
Private School/  
District Address

I, . . . . ., do hereby certify that I am the principal or chief administrator of the above named school; that said school is located at the address listed above, and conducts grades . . . . . through . . . . . with a projected enrollment of . . . . .; and that said school is scheduled to meet throughout the . . . . . school year, the following standards with the exception only of such deviations, if any, as are set forth in an attachment to this certificate of compliance

or

I, . . . . ., do hereby certify that I am the superintendent of the above named private school district; and that the private schools under my jurisdiction are scheduled to meet throughout the school year, the following standards with the exception only of such deviations as are set forth in an attachment to this certificate of compliance; and that a list of such schools, including the grades conducted and the projected enrollment for each school, accompanies this certificate:

(a) Except as provided in chapter 180-111 WAC for the 2019-20 school year, the minimum school year for instructional purposes consists of no less than one hundred eighty school days or the equivalent in annual minimum instructional hour offerings as prescribed in RCW 28A.195.010.

(b) On each school day, pupils enrolled and in attendance at the school are engaged in educational activity planned by and under the direction of the school; and that pupils are provided an annual total instructional hour offering, as prescribed in RCW 28A.195.010, of at least:

(i) 450 Hours for students in kindergarten.

(ii) 1000 Hours for students in grades one through twelve.

(c) All classroom teachers hold appropriate Washington State certification except for:

(i) Teachers for religious courses or courses for which no counterpart exists in the public schools: Provided, That a religious course is a course of study separate from the courses of study defined in RCW 28A.195.010 including occupational education, science, mathematics, language, social studies, history, health, reading, writing, spelling, and the development of the appreciation of art and music all in sufficient

units for meeting state board of education graduation requirements, except as provided in chapter 180-111 WAC; and/or

(ii) A person of unusual competence who is not certified but who will teach students in an exceptional case under the general supervision of a Washington state certificated teacher, administrator, or superintendent pursuant to WAC 180-90-112. The non-Washington state certificated teacher, the Washington state certificated person who will supervise, and the exceptional circumstances are listed on the addendum to this certificate.

(d) If the school operates an extension program for parents, guardians, or persons having legal custody of a child to teach children in their custody, the extension program meets the following requirements:

(i) The parent, guardian, or custodian is supervised by a person certified under chapter 28A.410 RCW and who is employed by the school;

(ii) The planning by the certified person and the parent, guardian, or person having legal custody includes objectives consistent with (a), (b), (e) through (g) of this subsection;

(iii) The certified person spends a minimum average each month of one contact hour per week with each student under his or her supervision who is enrolled in the extension program;

(iv) Each student's progress is evaluated by the certified person; and

(v) The certified person does not supervise more than thirty students enrolled in the approved private school's extension program.

(e) Measures have been taken to safeguard all permanent records against loss or damage through either the storage of such records in fire-resistant containers or facilities, or the retention of duplicates in a separate and distinct area;

(f) The physical facilities of the school are adequate to meet the program offered, and all school facilities and practices are in substantial compliance with reasonable health and fire safety standards, as substantiated by current inspection reports of appropriate health and fire safety officials which are on file in the chief administrator's office;

(g) The school's curriculum includes instruction in the basic skills of occupational education, science, mathematics, language, social studies, history, health, reading, writing, spelling, and the development of appreciation of art and music in sufficient units for meeting state board of education graduation requirements, as set forth in chapter 180-51 WAC. A school may substitute courses specific to the mission or focus of the school to satisfy the career and technical education requirement of chapter 180-51 WAC and may waive requirements as provided in chapter 180-111 WAC;

(h) The school or its organized district maintains up-to-date policy statements related to the administration and operation of the school or district;

(i) The school does not engage in a policy of racial segregation or discrimination;

(j) The governing authority of this private school or private school district has been apprised of the requirements of chapter 180-90 WAC relating to the minimum requirements for approval of private schools and such governing authority has further been apprised of all deviations from the rules and regulations of the state board of education and the standards

contained in chapter 180-90 WAC. I have reported all such deviations herewith.

Dated this . . . . day of . . . . ., 20 . . .

.....

(signed)

.....

(title)

.....

(phone number)

(2) Approval by the state board of education is contingent upon on-going compliance with the standards certified herein. The school shall notify the state board of education of any deviation from these standards which occurs after the action taken by the state board of education. Such notification shall be filed within thirty days of occurrence of the deviation.

(3) Failure to comply with the requirements of this chapter may result in the revocation of the approval of the private school and shall be considered in subsequent application for approval as a private school.

(4) Following initial approval as a private school by the state board of education, evidence of current accreditation by a state board of education approved accrediting body may be submitted annually in lieu of approval documents described in subsection (1)(a) through (j) of this section.

**Chapter 180-111 WAC**

**EMERGENCY WAIVER OF CERTAIN REQUIREMENTS IN RESPONSE TO NOVEL CORONAVIRUS**

NEW SECTION

**WAC 180-111-010 Authority and purpose.** (1) The authority for this chapter is sections 10 through 12, chapter 7, Laws of 2020 (EHB 2965) which authorizes the state board of education to administer an emergency waiver program.

(2) The purpose of this chapter is:

(a) To establish an emergency waiver program to grant local education agencies and private schools flexibility so that students in the graduating class of 2020 or earlier who were on track to graduate before the gubernatorial declaration of emergency of February 29, 2020, the proclamation of statewide school closures on March 13, 2020, and any subsequent amendments to these proclamations, are not negatively impacted by measures taken by the local education agency or private school in response to the novel coronavirus (COVID-19); and

(b) To allow flexibility from instructional hour or school day requirements for the 2019-20 school year for private schools that close due to the novel coronavirus.

(3) This chapter expires July 31, 2020.

NEW SECTION

**WAC 180-111-020 Definitions.** The definitions in this section apply throughout this chapter.

(1) "Good faith effort" means the local education agency or private school considered and implemented options, determined appropriate by the local education agency or private school, to support individual students in meeting credit requirements. Options for helping students meet credit requirements or waive credit requirements include, but are not limited to:

(a) Recommendations provided by the office of the superintendent of public instruction in its published guidance on supporting seniors during long-term school closures, as outlined in Bulletin Number 022-20 issued on March 20, 2020, and Bulletin Number 024-20 issued on March 23, 2020, and any related subsequent bulletins.

(b) Awarding or waiving of credits through existing authority of local education agencies and private schools:

(i) Local graduation requirements under WAC 180-51-020 may be waived at local discretion without approval of the state board of education.

(ii) Local education agencies and private schools that have implemented state credit requirements under WAC 180-51-068 (the twenty-four-credit graduation requirement framework) have the authority to award a two-credit waiver of flexible credits for individual student circumstances.

(iii) Students may be excused from physical education, provided they demonstrate competency/mastery in the knowledge portion of the required one and one-half credits, as articulated in WAC 180-51-056 (1)(e), 180-51-067(6), and 180-51-068(6).

(iv) Per WAC 180-51-056 (1)(c)(ii), 180-51-067 (4)(b), and 180-51-068 (4)(b)(i) and (ii), the noncredit requirement of Washington state history can be waived for students who either have completed a state history course in another state, or for eleventh or twelfth grade students who have not completed the course because of previous residence in another state.

(v) Credits may be awarded based on the student's demonstrated proficiency/competency of the state's learning standards under WAC 180-51-050.

(2) "Local education agency" means a school district, charter school established under chapter 28A.710 RCW, or tribal compact school operated according to the terms of state-tribal education compacts authorized under chapter 28A.715 RCW. References within this chapter to local education agency shall also apply to community and technical college colleges per WAC 180-51-015.

(3) "On track to graduate" means the individual student's earned credits and current or planned enrollment as of the gubernatorial declaration of emergency of February 29, 2020, would have been sufficient, as determined by the student's local education agency or private school, for the student to meet the applicable state minimum graduation requirements (as defined in WAC 180-51-056, 180-51-067, and 180-51-068) by the end of the 2019-20 school year as defined by RCW 28A.150.203.

#### NEW SECTION

**WAC 180-111-030 Application and approval process.** (1) Beginning no later than April 15, 2020, the state board of education shall make an application available to

local education agencies seeking this waiver. A local education agency may apply to the state board of education for the authority to waive credit-based graduation requirements for individual students. The state board of education will accept applications through a deadline to be determined by the state board of education.

(2) In order to be granted the waiver authority, the local education agency must certify the following:

(a) The local education agency has considered equity in applying for the waiver and will consider equity in administering the waiver. This may include, but is not limited to, an equity analysis, community outreach, or other means to assess and mitigate potential disparate impacts of this waiver.

(b) The local education agency will grant waivers on an individual student basis to eligible students in accordance with WAC 180-111-040.

(c) Prior to granting a waiver, the local education agency will make a good faith effort, as defined in WAC 180-111-020, to help individual students address credit deficiencies and meet core course requirements.

(d) The local education agency will administer the waiver in accordance with program rules as outlined in this chapter.

(3) The application must be certified by the district superintendent or equivalent personnel with authority to sign on behalf of the local education agency.

(4) The state board of education may approve applications that meet the criteria outlined in subsections (2) and (3) of this section. The board may delegate this authority to its executive director for efficiency per RCW 28A.305.130(7).

(5) The state board of education shall promptly post on its public website the information collected on the application, a list of all applications received, and the decision to approve or deny each application.

#### NEW SECTION

**WAC 180-111-040 Emergency waiver of credit-based graduation requirements.** (1) Beginning from the date of approval of its waiver, in accordance with WAC 180-111-030, through July 31, 2020, in accordance with the establishing legislation, a local education agency may waive subject area credit graduation requirements outlined in subsection (2) of this section for individual students after completing all of the following requirements:

(a) The local education agency shall review the individual student's completed and planned coursework and determine that the student was on track to graduate, as defined in WAC 180-111-020.

(b) The local education agency shall demonstrate a good faith effort, as defined in WAC 180-111-020, to help the individual student meet credit-based graduation requirements through other options.

(c) The local education agency shall consult with the individual student, and make a reasonable effort to consult with a parent or guardian of the student, and shall make a reasonable effort to provide information about this waiver in the preferred languages of the student, and of the parent or guardian of the student if applicable. The information shall include, but is not limited to:

- (i) What is being waived for the individual student;
- (ii) Potential benefits and limitations that could result from receiving the waiver including impacts on high school graduation and postsecondary plans;
- (iii) The option for the individual student to decline the waiver and for the student to be provided with the opportunity to earn the credits needed to complete graduation requirements through continued enrollment beyond the planned graduation date.

(2) Waived credit graduation requirements:

(a) Waived credit graduation requirements are limited to credits a student would have had the opportunity to earn by the end of the 2019-20 school year including:

(i) Courses and other credit-earning opportunities the student was enrolled in as of February 29, 2020; and

(ii) Credits that the student planned to complete by the end of the 2019-20 school year as defined in RCW 28A.150.-203 for terms not yet started as of February 29, 2020, that were scheduled to occur during the period of school closure due to the novel coronavirus. These planned credits must be indicated on the student's high school and beyond plan, in course registration records, or in the student's credit attainment or recovery plan.

(b) Waived graduation requirement credits may include both core credit graduation requirements and flexible credit graduation requirements, as defined in WAC 180-51-210.

(3) This waiver may apply to individual students participating in the international baccalaureate diploma programme as defined in RCW 28A.230.122 to enable these students to earn a Washington high school diploma.

(4) Schools operating under the waiver defined in WAC 180-18-055 may waive graduation requirements in a manner consistent with this section.

(5) Each local education agency shall maintain a record of courses and requirements waived as part of the individual student record and shall report to the state board of education in a manner determined by the state board of education.

(6) The local education agency shall consider equity in administering the emergency waiver under this section. This consideration should be designed to identify and mitigate potential disparate impacts of the emergency waiver and to determine if any changes to the local education agency's approach in administering the emergency waiver are needed before the conclusion of the 2019-20 school year.

#### NEW SECTION

**WAC 180-111-050 Emergency waiver for private schools.** (1) This section applies to private schools approved to operate in Washington for the 2019-20 school year under chapter 180-90 WAC.

(2) Private schools may waive credit-based graduation requirements for individual students who were on track to graduate, as defined in WAC 180-111-020, in a manner consistent with the provisions of WAC 180-111-040.

(3) Private schools that have implemented an online education program consistent with the provisions of RCW 28A.195.090 that provide the remaining curriculum will be considered to have the instructional hour requirements met.

Private schools have discretion to determine whether the curriculum has been adequately satisfied.

(4) The state board of education waives the instructional hours and days requirement under RCW 28A.195.010 for the 2019-20 school year. The number of hours or days offered after February 29, 2020, will not be considered for continued approval of private schools.

(5) Each private school shall notify the state board of education in a format provided by the board whether the private school is waiving requirements under this section.

#### **WSR 21-01-085**

#### **PERMANENT RULES**

#### **DEPARTMENT OF ECOLOGY**

[Order 19-04—Filed December 10, 2020, 2:49 p.m., effective January 10, 2021]

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

Purpose: The rule prohibits the use of hydrofluorocarbons (HFCs) and other substitutes in various products and equipment in the air conditioning and refrigeration, aerosol propellant, and foam end-use categories. This will occur in a phased approach, similar to rules adopted under EPA's Significant New Alternatives Policy (SNAP) program and HFC rules adopted or proposed for adoption by other states around the country.

The rule defines requirements for manufacturers, importers, and distributors of covered products and equipment to:

- Notify ecology about the use of HFCs and other prohibited substitutes.
- Disclose HFCs and other substitutes used in an on-product label or other designated format.

Ecology modified the prohibition date for the new and existing vending machine end-use category from January 1, 2020, to January 1, 2022.

Citation of Rules Affected by this Order: New WAC 173-443-010, 173-443-020, 173-443-030, 173-443-040, 173-443-050, 173-443-060, 173-443-070, 173-443-080, 173-443-090, 173-443-100, and 173-443-110.

Statutory Authority for Adoption: Chapter 70A.45 RCW, Limiting greenhouse gas emissions.

Other Authority: Chapter 70A.15 RCW, Washington Clean Air Act.

Adopted under notice filed as WSR 20-13-089 on June 16, 2020.

Changes Other than Editing from Proposed to Adopted Version: See the "concise explanatory statement" for more details.

**Throughout Rule:** We updated references to ecology RCW that were recodified to implement HB [SHB] 2246, which reorganized environmental health laws without making any substantive or policy changes.

**WAC 173-443-030 Definitions and acronyms:** We revised the following definitions in the foam end-use category to more closely align the definitions with industry terminology:

**"Flexible polyurethane"** means a nonrigid synthetic polyurethane foam including, but not limited to, that used in furniture, bedding, and chair cushions containing polymers of urethane radicals including, but not limited to, that used in furniture, bedding, chair cushions, and shoe soles.

**"Foam blowing agent"** means a ~~product or substance~~ that functions as a source of gas to generate bubbles or cells in the mixture during the formation of foam used to produce the product with a cellular structure formed via a foaming process in a variety of materials that undergo hardening or phase transition.

**"Foam system"** means a multipart liquid ~~material product~~ that expands when mixed to form a foam solid or flexible substance in which thin films of material separate pockets of gas.

**"Integral skin polyurethane"** means a synthetic self-skinning polyurethane foam containing polymers of urethane radicals including, but not limited to, that used in shoe soles and car steering wheels and dashboards.

**"Rigid polyurethane appliance foam"** means polyurethane ~~insulation~~ foam in domestic appliances used for insulation.

**"Rigid polyurethane commercial refrigeration and sandwich panels"** means polyurethane foam used to provide insulation for use in walls and doors, including that used for commercial refrigeration equipment, and used in doors, including garage doors.

**"Rigid polyurethane high-pressure two-component spray foam"** means a liquid polyurethane foam system product that is pressurized 800-1600 psi during manufacture; sold in pressurized containers as two parts (i.e., A-side and B-side) in nonpressurized containers; and is field or factory blown and applied in situ using high-pressure proportioning pumps at 800 - 1600 psi to propel the foam components; and an application gun to mix and dispense the chemical components may use liquid blowing agents without an additional propellant.

**"Rigid polyurethane low-pressure two-component spray foam"** means a ~~foam product~~ liquid polyurethane foam system that is pressurized to less than 250 psi during manufacture; sold in pressurized containers as two parts (i.e., A-side and B-side) in containers that are pressurized to less than 250 psi during manufacture of the system for application without pumps; and are typically applied in situ relying upon a liquid blowing agent and/or gaseous foam blowing agent that also serves as a propellant so pumps typically are not needed.

**"Rigid polyurethane marine flotation foam"** means buoyancy or flotation polyurethane foam used in boat and ship manufacturing for both structural and flotation purposes.

**"Rigid polyurethane one-component foam sealants"** means a polyurethane foam generally packaged in aerosol cans that is applied in situ using a gaseous foam-blowing agent that is also the propellant for the aerosol formulation.

**"Rigid polyurethane slabstock and other"** means a rigid closed-cell polyurethane foam containing polymers of urethane radicals formed into slabstock insulation for panels and fabricated shapes for pipes and vessels.

We added a definition for the term "stationary" to address ambiguity in the definition of "refrigeration equipment."

**"Stationary"** means the system is (1) installed in a building, structure, or facility; or (2) attached to a foundation, or if not attached, will reside at the same location for more than twelve consecutive months; or (3) located intermittently at the same facility for at least two consecutive years and operates at that facility a total of at least 90 days each year.

We added a definition of "sufficient disclosure" to address ambiguity in the option of using another jurisdiction's label for refrigeration and foam end-uses.

**"Sufficient disclosure"** means providing the name of the substitute.

**WAC 173-443-060 Prohibitions: Subsection (2):** We added additional distribution methods in the sell-through provision to align with similar provisions in the HFC law and United States Climate Alliance model rule.

Products and equipment manufactured prior to the applicable effective date of a prohibition in WAC 173-443-040 may be sold, leased, rented, imported, exported, distributed, installed, or used, or otherwise introduced into Washington commerce after the date of prohibition.

**Subsection (2)(c):** We expanded the sell-through provision from "spray foam systems" to "polyurethane foam systems."

Polyurethane Spray foam systems manufactured (blended) before an applicable prohibition date and not yet applied on site may be used after the prohibition date.

**WAC 173-443-070 Product labeling and disclosure requirements: Throughout section:** We removed the qualifier "HFC" from all references to "HFC disclosure requirements of another jurisdiction."

**Subsection (3)(a):** We revised the order in which the two federal agencies appear.

For aerosol products regulated by the U.S. Consumer Product Safety Commission, the U.S. Food and Drug Administration excluding prescription drug products, ~~the U.S. Consumer Product Safety Commission~~, or products that are not covered by (b) of this subsection.

**Subsection (4) and (5):** We added the option of using another jurisdiction's label and clarified when it must be combined with online disclosure in subsections (4)(a)(iii) and (iv), (4)(c)(iv) and (v), and (5)(a)(iv) and (v).

A label required by another jurisdiction with sufficient HFC disclosure requirements; and online disclosure;

A label required by another jurisdiction that does not disclose the substitute; and online disclosure; or

**Subsection (6):** We revised subsections (6)(a)(ii)(C) and (D) and (6)(b)(iv) and (v) so that online disclosure is only required with use of another jurisdiction's label if the other jurisdiction's label does not adequately disclose the substitute.

A label required by another jurisdiction with sufficient HFC disclosure requirements; and online disclosure;

A label required by another jurisdiction that does not disclose the substitute; and online disclosure; or

We revised terminology in subsection (6)(c) to align with revisions in subsection (2)(c).

For the foam blowing agent used in polyurethane foam systems, including spray foam systems:

We added two new options in subsection (6)(c)(iv) and (v) to allow use of another jurisdiction's label for polyurethane foam systems.

A label required by another jurisdiction with sufficient disclosure requirements;

A label required by another jurisdiction that does not disclose the substitute; and online disclosure; or

**Subsection (7):** We removed unnecessary language to improve consistency with other subsections.

Ecology must approve in advance the use of a symbol or code ~~to comply with this section.~~

**Subsection (9):** We added clarification that online publication of a safety data sheet, owner's manual, or other product document qualifies as "online disclosure."

Online disclosure may occur through online publication of an owner's manual, safety data sheet, or other documentation that provides information about the product to the end-user of the product.

**WAC 173-443-080 Manufacturer Notification: Subsection (1):** We clarified that notification is only required for manufacturers using HFCs or other prohibited substitutes for an end-use listed in WAC 173-443-040.

A manufacturer of a product or equipment that contains, uses, or will use HFCs or other substitutes prohibited for an end-use listed in WAC 173-443-040 or a representative on behalf of the manufacturer, must report to ecology consistent with WAC 173-443-090 and 173-443-100.

A final cost-benefit analysis is available by contacting Linda Kildahl, Department of Ecology, Air Quality Program, 300 Desmond Drive, Lacey, WA 98503, phone 360-407-7655, for Washington relay service or TTY call 711 or 877-833-6341, email [linda.kildahl@ecy.wa.gov](mailto:linda.kildahl@ecy.wa.gov), website <https://fortress.wa.gov/ecy/publications/SummaryPages/2002027.html>.

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 11, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 11, Amended 0, Repealed 0.

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

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

Date Adopted: December 10, 2020.

Laura Watson  
Director

## Chapter 173-443 WAC

### HYDROFLUOROCARBONS (HFCs)

#### NEW SECTION

**WAC 173-443-010 Policy and purpose.** (1) Ecology's policy under chapters 70A.15 and 43.21A RCW is to provide for the systematic control of air pollution from air contaminant sources. Ecology's policy under chapter 70A.45 RCW is to reduce the emissions of greenhouse gases.

(2) This chapter establishes requirements for the transition to less damaging HFCs or suitable substitutes in the air conditioning and refrigeration, aerosol propellant, and foam end-use categories in Washington in a manner similar to rules adopted under EPA's Significant New Alternative Policy (SNAP) program and HFC rules adopted or proposed for adoption by other states around the country (RCW 70A.45-.080).

#### NEW SECTION

**WAC 173-443-020 Applicability.** (1) The requirements of this chapter apply to any person who offers for sale, leases, rents, installs, or otherwise causes to enter into Washington commerce any product or equipment that contains, uses, or will use HFCs or other substitutes for an end-use listed in WAC 173-443-040.

(2) Labeling requirements.

(a) The labeling requirements in WAC 173-443-070 apply to manufacturers of products or equipment that contains, uses, or will use HFCs as of July 28, 2019, or to manufacturers that introduce such products or equipment into Washington commerce after that date.

(b) A manufacturer may apply the applicability determination in (a) of this subsection to separate divisions or similar segments of its business based on the end-use that products associated with each division or similar segmentation are intended to serve.

#### NEW SECTION

**WAC 173-443-030 Definitions and acronyms.** The definitions in this section apply throughout this chapter unless the text clearly indicates otherwise.

"Aerosol propellant" means a liquid or compressed gas that is used in whole or in part, such as a cosolvent, to expel a liquid or other material from the same self-pressurized container or from a separate container.

"Bunstock" or "bun stock" means a large solid box-like structure formed during the production of polyurethane, polyisocyanurate, phenolic, or polystyrene insulation.

"C" means Centigrade.

"Centrifugal chiller" means air conditioning equipment that utilizes a centrifugal compressor in a vapor-compression refrigeration cycle typically used for commercial comfort air conditioning. Under this definition, a centrifugal chiller is a chiller intended for comfort cooling and does not include chillers for industrial process cooling and refrigeration.

"Code" means a collection of letters, numbers, graphics, or symbols that translates into a form that conveys the infor-

mation provided by a dedicated or existing product label, or that can convey a user or reader to that information through electronic means (such as a QR code).

"Cold storage warehouse" means a cooled facility designed to store meat, produce, dairy products, and other products that are delivered to other locations for sale to the ultimate consumer.

"Commercial refrigeration equipment" means equipment designed to store and display chilled or frozen goods for commercial sale including, but not limited to, stand-alone units, refrigerated food processing and dispensing equipment, remote condensing units, supermarket systems, and vending machines.

"Component" means a part of a refrigeration system including, but not limited to, condensing units, compressors, evaporators, and receivers; and all of its connections and sub-assemblies, without which the refrigeration system will not properly function or will be subject to failures.

"Dedicated label" means a label adhered or attached to a product, or otherwise included with the product, that is designed to convey required information to the end-user of that product on the inclusion or use of substitutes associated with that product.

"EPA" means the U.S. Environmental Protection Agency.

"Ecology" means the department of ecology.

"End-use" means processes or classes of specific applications within industry sectors including, but not limited to, those listed in WAC 173-443-040.

"Equipment" means a collection of components assembled or manufactured to function together that contains at least one product, or that is in and of itself a product.

"Existing product label" means a label adhered or attached to a product, such as a nameplate or sticker, or to the box or packaging enclosing the product that discloses the substitute contained, used, or to be used in the product.

"F" means Fahrenheit.

"Flexible polyurethane" means a nonrigid polyurethane foam including, but not limited to, that used in furniture, bedding, and chair cushions.

"Foam" means a product with a cellular structure formed via a foaming process in a variety of materials that undergo hardening via a chemical reaction or phase transition.

"Foam blowing agent" means a substance that functions as a source of gas to generate bubbles or cells in the mixture during the formation of foam.

"Foam system" means a multipart liquid product that expands when mixed to form a foam.

"HFC" means hydrofluorocarbon as the term is defined in RCW 70A.45.010.

"Household refrigerators and freezers" means refrigerators, refrigerator-freezers, freezers, and miscellaneous household refrigeration appliances intended for residential use. "Household refrigerators and freezers" does not include "household refrigerators and freezers - Compact," or "household refrigerators and freezers - Built-in."

"Household refrigerators and freezers - Built-in" means any refrigerator, refrigerator-freezer or freezer intended for residential use with 7.75 cubic feet or greater total volume and twenty-four inches or less depth not including doors,

handles, and custom front panels; with sides which are not finished and not designed to be visible after installation; and that is designed, intended, and marketed exclusively to be: Installed totally encased by cabinetry or panels that are attached during installation; securely fastened to adjacent cabinetry, walls or floor; and equipped with an integral factory-finished face or accept a custom front panel.

"Household refrigerators and freezers - Compact" means any refrigerator, refrigerator-freezer or freezer intended for residential use with a total refrigerated volume of less than 7.75 cubic feet (220 liters).

"Integral skin polyurethane" means a self-skinning polyurethane foam including, but not limited to, that used in car steering wheels and dashboards.

"MDI" means metered dose inhaler or medical dose inhaler.

"Manufacturer" means any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces any product that contains or uses HFCs or is an importer or domestic distributor of such a product (RCW 70A.45.010).

"New" means:

(a) Products or equipment that are manufactured after the effective date of this chapter;

(b) Products or equipment first installed for an intended purpose with new or used components;

(c) Products or equipment expanded by the addition of components to increase system capacity after the effective date of this chapter; or

(d) Products or equipment replaced or cumulatively replaced such that the cumulative capital cost after the effective date of this chapter of replacement exceeds fifty percent of the capital cost of replacing the whole system.

"Nonretail foam products" means products consisting entirely of foam created solely to be an input for another product or manufacturing purpose resulting in another type of product.

"Online disclosure" means disclosing the substitute contained, used, or to be used in products or equipment by ensuring that the information is available on an internet website that is accessible to the public free of charge.

"Owner's manual" means a paper or online instructional book that is available for an end-use product, which provides basic information about the product.

"PSI" means pounds per square inch.

"Person" means an individual, partnership, franchise holder, association, corporation, a state, a city, a county, or any subdivision or instrumentality of the state (RCW 70A.45.010).

"Phenolic insulation board and bunstock" means phenolic insulation including, but not limited to, that used for roofing and wall insulation.

"Polyolefin" means foam sheets and tubes made of polyolefin, a macromolecule formed by the polymerization of olefin monomer units.

"Polystyrene extruded boardstock and Billet (XPS)" means a foam formed from polymers of styrene and produced on extruding machines in the form of continuous foam slabs which can be cut and shaped into panels used for roofing, walls, flooring, and pipes.

"Polystyrene extruded sheet" means polystyrene foam including that used for packaging and buoyancy or floatation. It is also made into food-service items, including hinged polystyrene containers (for "take-out" from restaurants); food trays (meat and poultry) plates, bowls, and retail egg containers.

"Polyurethane" means a polymer formed principally by the reaction of an isocyanate and a polyol.

"Positive displacement chiller" means vapor compression cycle chillers that use positive displacement compressors, typically used for commercial comfort air conditioning. Positive displacement chiller in this definition is a chiller intended for comfort cooling and does not include cooling for industrial process cooling and refrigeration.

"Product" means an article manufactured or refined for sale that contains or uses a substitute.

"Refrigerant" or "refrigerant gas" means any substance, including blends and mixtures, which is used for heat transfer purposes.

"Refrigerated food processing and dispensing equipment" means retail food refrigeration equipment that is designed to process food and beverages dispensed via a nozzle that are intended for immediate or near-immediate consumption including, but not limited to, chilled and frozen beverages, ice cream, and whipped cream. This end-use excludes water coolers, or units designed solely to cool and dispense water.

"Refrigeration equipment" means any stationary device that is designed to contain and use refrigerant gas including, but not limited to, retail or commercial refrigeration equipment, household refrigeration equipment, and cold storage warehouses.

"Remote condensing units" means retail refrigeration equipment or units that have a central condensing portion and may consist of one or more compressors, condensers, and receivers assembled into a single unit, which may be located external to the sales area. The condensing portion (and often other parts of the system) is located outside the space or area cooled by the evaporator. Remote condensing units are commonly installed in convenience stores, specialty shops (e.g., bakeries, butcher shops), supermarkets, restaurants, and other locations where food is stored, served, or sold.

"Retail foam products" means products consisting entirely of foam that are created for the purpose of selling or otherwise providing that product in a finished state that does not involve any additional manufacturing or refinement.

"Retrofit" means to convert an appliance from one refrigerant to another refrigerant. Retrofitting includes the conversion of the appliance to achieve system compatibility with the new refrigerant and may include, but is not limited to, changes in lubricants, gaskets, filters, driers, valves, o-rings, or appliance components (RCW 70A.45.010).

"Rigid polyurethane and polyisocyanurate laminated boardstock" means laminated board insulation made with polyurethane or polyisocyanurate foam, including that used for roofing and walls.

"Rigid polyurethane appliance foam" means polyurethane foam in domestic appliances used for insulation.

"Rigid polyurethane commercial refrigeration and sandwich panels" means polyurethane foam used to provide insu-

lation in walls and doors, including that used for commercial refrigeration equipment, and used in doors, including garage doors.

"Rigid polyurethane high-pressure two-component spray foam" means a liquid polyurethane foam system sold as two parts (i.e., A-side and B-side) in nonpressurized containers; and is field or factory applied in situ using high-pressure proportioning pumps at 800 - 1600 psi and an application gun to mix and dispense the chemical components.

"Rigid polyurethane low-pressure two-component spray foam" means a liquid polyurethane foam system sold as two parts (i.e., A-side and B-side) in containers that are pressurized to less than 250 psi during manufacture of the system for application without pumps; and are typically applied in situ relying upon a liquid blowing agent and/or gaseous foam blowing agent that also serves as a propellant.

"Rigid polyurethane marine flotation foam" means buoyancy or flotation polyurethane foam used in boat and ship manufacturing for both structural and flotation purposes.

"Rigid polyurethane one-component foam sealants" means a polyurethane foam generally packaged in aerosol cans that is applied in situ using a gaseous foam blowing agent that is also the propellant for the aerosol formulation.

"Rigid polyurethane slabstock and other" means a rigid closed-cell polyurethane foam formed into slabstock insulation for panels and fabricated shapes for pipes and vessels.

"Stand-alone low-temperature unit" means a stand-alone unit that maintains food or beverages at temperatures at or below 32°F (0°C).

"Stand-alone medium-temperature unit" means a stand-alone unit that maintains food or beverages at temperatures above 32°F (0°C).

"Stand-alone unit" means retail refrigerators, freezers, and reach-in coolers (either open or with doors) where all refrigeration components are integrated and, for the smallest types, the refrigeration circuit is entirely brazed or welded. These systems are fully charged with refrigerant at the factory and typically require only an electricity supply to begin operation.

"Stationary" means the system is:

- (a) Installed in a building, structure, or facility;
- (b) Attached to a foundation, or if not attached, will reside at the same location for more than twelve consecutive months; or
- (c) Located intermittently at the same facility for at least two consecutive years and operates at that facility a total of at least ninety days each year.

"Substitute" means a chemical, product substitute, or alternative manufacturing process, whether existing or new, that is used to perform a function previously performed by a class I substance or class II substance and any substitute subsequently adopted to perform that function including, but not limited to, hydrofluorocarbons. "Substitute" does not include 2-BTP or any compound as applied to its use in aerospace fire extinguishing systems (RCW 70A.45.010).

"Sufficient disclosure" means providing the name of the substitute.

"Supermarket systems" means multiplex or centralized retail food refrigeration equipment systems designed to cool or refrigerate, which operate with racks of compressors

installed in a machinery room and which includes both direct and indirect systems.

"Symbol" means a graphical or hybrid word-graphical symbol for the purposes of conveying the types of substitutes used in the product or equipment and signaling that further information on the use of substitutes is available through online disclosure.

"Unit" means a collection of like products bundled together for purposes of commerce.

"Unit label" means a label adhered or attached, or capable of being adhered or attached, to a collection of like products bundled together for purposes of commerce.

"Vending machine" means a self-contained unit that dispenses goods that must be kept cold or frozen.

**NEW SECTION**

**WAC 173-443-040 List of prohibited substitutes.** (1) The tables in this section list substitutes prohibited in specific end-uses and the effective date of prohibition, unless an exemption is provided for in WAC 173-443-050.

(2) Prohibitions for the aerosol propellants end-use category.

<b>End-Use Category: Aerosol Propellants</b>		
<b>End-Use</b>	<b>Prohibited Substitutes</b>	<b>Effective Date</b>
Aerosol propellants	HFC-125, HFC-134a, HFC-227ea and blends of HFC-227ea and HFC-134a	January 1, 2020

(3) Prohibitions for the air conditioning end-use category.

<b>End-Use Category: Air Conditioning</b>		
<b>End-Use</b>	<b>Prohibited Substitutes</b>	<b>Effective Date</b>
Centrifugal chillers (new)	FOR12A, FOR12B, HFC-134a, HFC-227ea, HFC-236fa, HFC-245fa, R-125/134a/600a (28.1/70/1.9), R-125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R-407C, R-410A, R-410B, R-417A, R-421A, R-422B, R-422C, R-422D, R-423A, R-424A, R-434A, R-438A, R-507A, RS-44 (2003 composition), THR-03	January 1, 2024
Positive displacement chillers (new)	FOR12A, FOR12B, HFC-134a, HFC-227ea, KDD6, R-125/134a/600a (28.1/70/1.9), R-125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R-407C, R-410A, R-410B, R-417A, R-421A, R-422B, R-422C, R-422D, R-424A, R-434A, R-437A, R-438A, R-507A, RS-44 (2003 composition), SP34E, THR-03	January 1, 2024

(4) Prohibitions for the refrigeration end-use category.

<b>End-Use Category: Refrigeration</b>		
<b>End-Use</b>	<b>Prohibited Substitutes</b>	<b>Effective Date</b>
Cold storage warehouses (new)	HFC-227ea, R-125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R-407A, R-407B, R-410A, R-410B, R-417A, R-421A, R-421B, R-422A, R-422B, R-422C, R-422D, R-423A, R-424A, R-428A, R-434A, R-438A, R-507A, RS-44 (2003 composition)	January 1, 2023
Household refrigerators and freezers (new)	FOR12A, FOR12B, HFC-134a, KDD6, R-125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R-407C, R-407F, R-410A, R-410B, R-417A, R-421A, R-421B, R-422A, R-422B, R-422C, R-422D, R-424A, R-426A, R-428A, R-434A, R-437A, R-438A, R-507A, RS-24 (2002 formulation), RS-44 (2003 formulation), SP34E, THR-03	January 1, 2022

<b>End-Use Category: Refrigeration</b>		
<b>End-Use</b>	<b>Prohibited Substitutes</b>	<b>Effective Date</b>
Household refrigerators and freezers - Compact (new)	FOR12A, FOR12B, HFC-134a, KDD6, R-125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R-407C, R-407F, R-410A, R-410B, R-417A, R-421A, R-421B, R-422A, R-422B, R-422C, R-422D, R-424A, R-426A, R-428A, R-434A, R-437A, R-438A, R-507A, RS-24 (2002 formulation), RS-44 (2003 formulation), SP34E, THR-03	January 1, 2021
Household refrigerators and freezers - Built-in appliances (new)	FOR12A, FOR12B, HFC-134a, KDD6, R-125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R-407C, R-407F, R-410A, R-410B, R-417A, R-421A, R-421B, R-422A, R-422B, R-422C, R-422D, R-424A, R-426A, R-428A, R-434A, R-437A, R-438A, R-507A, RS-24 (2002 formulation), RS-44 (2003 formulation), SP34E, THR-03	January 1, 2023
Supermarket systems (retrofit)	R-404A, R-407B, R-421B, R-422A, R-422C, R-422D, R-428A, R-434A, R-507A	January 1, 2020
Supermarket systems (new)	HFC-227ea, R-404A, R-407B, R-421B, R-422A, R-422C, R-422D, R-428A, R-434A, R-507A	January 1, 2020
Remote condensing units (retrofit)	R-404A, R-407B, R-421B, R-422A, R-422C, R-422D, R-428A, R-434A, R-507A	January 1, 2020
Remote condensing units (new)	HFC-227ea, R-404A, R-407B, R-421B, R-422A, R-422C, R-422D, R-428A, R-434A, R-507A	January 1, 2020
Stand-alone units (retrofit)	R-404A, R-507A	January 1, 2020
Stand-alone medium-temperature units (new)	FOR12A, FOR12B, HFC-134a, HFC-227ea, KDD6, R-125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R-407A, R-407B, R-407C, R-407F, R-410A, R-410B, R-417A, R-421A, R-421B, R-422A, R-422B, R-422C, R-422D, R-424A, R-426A, R-428A, R-434A, R-437A, R-438A, R-507A, RS-24 (2002 formulation), RS-44 (2003 formulation), SP34E, THR-03	January 1, 2020
Stand-alone low-temperature units (new)	HFC-227ea, KDD6, R-125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R-407A, R-407B, R-407C, R-407F, R-410A, R-410B, R-417A, R-421A, R-421B, R-422A, R-422B, R-422C, R-422D, R-424A, R-428A, R-434A, R-437A, R-438A, R-507A, RS-44 (2003 formulation)	January 1, 2020
Refrigerated food processing and dispensing equipment (new)	HFC-227ea, KDD6, R-125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R-407A, R-407B, R-407C, R-407F, R-410A, R-410B, R-417A, R-421A, R-421B, R-422A, R-422B, R-422C, R-422D, R-424A, R-428A, R-434A, R-437A, R-438A, R-507A, RS-44 (2003 formulation)	January 1, 2021
Vending machines (retrofit)	R-404A, R-507A	January 1, 2022
Vending machines (new)	FOR12A, FOR12B, HFC-134a, KDD6, R-125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R-407C, R-410A, R-410B, R-417A, R-421A, R-422B, R-422C, R-422D, R-426A, R-437A, R-438A, R-507A, RS-24 (2002 formulation), SP34E	January 1, 2022

(5) Prohibitions for the foams end-use category.

<b>End-Use Category: Foams</b>		
<b>End-Use</b>	<b>Prohibited Substitutes</b>	<b>Effective Date</b>
Rigid polyurethane and polyisocyanurate laminated boardstock	HFC-134a, HFC-245fa, HFC-365mfc, and blends thereof	January 1, 2020

<b>End-Use Category: Foams</b>		
<b>End-Use</b>	<b>Prohibited Substitutes</b>	<b>Effective Date</b>
Flexible polyurethane	HFC-134a, HFC-245fa, HFC-365mfc, and blends thereof	January 1, 2020
Integral skin polyurethane	HFC-134a, HFC-245fa, HFC-365mfc, and blends thereof; Formacel TI, Formacel Z-6	January 1, 2020
Polystyrene extruded sheet	HFC-134a, HFC-245fa, HFC-365mfc, and blends thereof; Formacel TI, Formacel Z-6	January 1, 2020
Phenolic insulation board and bunstock	HFC-143a, HFC-134a, HFC-245fa, HFC-365mfc, and blends thereof	January 1, 2020
Rigid polyurethane slabstock and other	HFC-134a, HFC-245fa, HFC-365mfc, and blends thereof; Formacel TI, Formacel Z-6	January 1, 2020
Rigid polyurethane appliance foam	HFC-134a, HFC-245fa, HFC-365mfc, and blends thereof; Formacel TI, Formacel Z-6	January 1, 2020
Rigid polyurethane commercial refrigeration and sandwich panels	HFC-134a, HFC-245fa, HFC-365mfc, and blends thereof; Formacel TI, Formacel Z-6	January 1, 2020
Polyolefin	HFC-134a, HFC-245fa, HFC-365mfc, and blends thereof; Formacel TI, Formacel Z-6	January 1, 2020
Rigid polyurethane marine flotation foam	HFC-134a, HFC-245fa, HFC-365mfc, and blends thereof; Formacel TI, Formacel Z-6	January 1, 2020
Polystyrene extruded boardstock and billet (XPS)	HFC-134a, HFC-245fa, HFC-365mfc, and blends thereof; Formacel TI, Formacel B, Formacel Z-6	January 1, 2021
Rigid polyurethane high-pressure two-component spray foam	HFC-134a, HFC-245fa, and blends thereof; blends of HFC-365mfc with at least 4 percent HFC-245fa, and commercial blends of HFC-365mfc with 7 to 13 percent HFC-227ea and the remainder HFC-365mfc; Formacel TI	January 1, 2020
Rigid polyurethane low-pressure two-component spray foam	HFC-134a, HFC-245fa, and blends thereof; blends of HFC-365mfc with at least 4 percent HFC-245fa, and commercial blends of HFC-365mfc with 7 to 13 percent HFC-227ea and the remainder HFC-365mfc; Formacel TI	January 1, 2021
Rigid polyurethane one-component foam sealants	HFC-134a, HFC-245fa, and blends thereof; blends of HFC-365mfc with at least 4 percent HFC-245fa, and commercial blends of HFC-365mfc with 7 to 13 percent HFC-227ea and the remainder HFC-365mfc; Formacel TI	January 1, 2020

**NEW SECTION**

**WAC 173-443-050 Exemptions.** The following table lists exemptions to the prohibitions in WAC 173-443-040.

<b>End-Use Category</b>	<b>Prohibited Substitutes</b>	<b>Acceptable Uses</b>
Aerosol propellants	HFC-134a	Cleaning products for removal of grease, flux and other soils from electrical equipment; refrigerant flushes; products for sensitivity testing of smoke detectors; lubricants and freeze sprays for electrical equipment or electronics; sprays for aircraft maintenance; sprays containing corrosion preventive compounds used in the maintenance of aircraft, electrical equipment or electronics, or military equipment; pesticides for use near electrical wires, in aircraft, in total release insecticide foggers, or in certified organic use pesticides for which

End-Use Category	Prohibited Substitutes	Acceptable Uses
		EPA has specifically disallowed all other lower-GWP propellants; mold release agents and mold cleaners; lubricants and cleaners for spinnerettes for synthetic fabrics; duster sprays specifically for removal of dust from photographic negatives, semiconductor chips, specimens under electron microscopes, and energized electrical equipment; adhesives and sealants in large canisters; document preservation sprays; FDA-approved MDIs for medical purposes; wound care sprays; topical coolant sprays for pain relief; products for removing bandage adhesives from skin; bear spray; and pepper spray.
Aerosol propellants	HFC-227ea and blends of HFC-227ea and HFC-134a	FDA-approved MDIs for medical purposes.
Air conditioning	HFC-134a	Military marine vessels where reasonable efforts have been made to ascertain that other alternatives are not technically feasible due to performance or safety requirements.
Air conditioning	HFC-134a and R-404A	Human-rated spacecraft and related support equipment where reasonable efforts have been made to ascertain that other alternatives are not technically feasible due to performance or safety requirements.
Foams - Except rigid polyurethane spray foam	All substitutes	Military applications where reasonable efforts have been made to ascertain that other alternatives are not technically feasible due to performance or safety requirements until January 1, 2022.
Foams - Except rigid polyurethane spray foam	All substitutes	Space- and aeronautics-related applications where reasonable efforts have been made to ascertain that other alternatives are not technically feasible due to performance or safety requirements until January 1, 2025.
Rigid polyurethane two-component spray foam	All substitutes	Military or space- and aeronautics-related applications where reasonable efforts have been made to ascertain that other alternatives are not technically feasible due to performance or safety requirements until January 1, 2025.

**NEW SECTION**

**WAC 173-443-060 Prohibitions.** (1) No person may offer for sale, lease, rent, install, or otherwise cause to enter into Washington commerce any product or equipment that contains, uses, or will use HFCs or other substitutes prohibited for an end-use in WAC 173-443-040 unless an exemption is provided for in WAC 173-443-050.

(2) Products and equipment manufactured prior to the applicable effective date of a prohibition in WAC 173-443-040 may be sold, leased, rented, imported, exported, distributed, installed, used, or otherwise introduced into Washington commerce after the date of prohibition.

(a) For products and equipment imported from outside the United States, the date of import may be considered the date of manufacture.

(b) For refrigeration equipment and chillers, the date the manufacturer affixed an equipment label indicating the equipment's date of manufacture is the date of manufacture.

(c) Polyurethane foam systems manufactured (blended) before an applicable prohibition date and not yet applied on site may be used after the prohibition date.

(3) Except where an existing system is retrofit, nothing in this chapter requires a person that acquired a product or equipment containing or using a prohibited substitute prior to

the effective date of a prohibition in WAC 173-443-040 to cease use of that product or equipment.

**NEW SECTION**

**WAC 173-443-070 Product labeling and disclosure requirements.** (1) Except for products and equipment that use prohibited substitutes for an acceptable use listed in WAC 173-443-050, a manufacturer must disclose the substitutes contained, used, or to be used in its products or equipment applicable to the end-uses listed in WAC 173-443-040.

(2) This disclosure must occur no later than one year following an applicable prohibition date, or no later than one year following the effective date of this chapter.

(3) A manufacturer of aerosol propellant products must disclose the substitutes through one of following methods:

(a) For aerosol products regulated by the U.S. Consumer Product Safety Commission, the U.S. Food and Drug Administration excluding prescription drug products, or products that are not covered by (b) of this subsection:

- (i) New dedicated label;
- (ii) Existing product label;
- (iii) On-packaging label;
- (iv) On-product symbol or code; and online disclosure;

or

- (v) On-packaging symbol or code; and online disclosure.
- (b) For aerosol products regulated by EPA under the Federal Insecticide Fungicide and Rodenticide Act, aerosol products regulated by the Occupational Safety and Health Administration, or aerosol prescription drug products regulated by the U.S. Food and Drug Administration:
  - (i) Any option in (a)(i) through (v) of this subsection; or
  - (ii) A product document, such as a Safety Data Sheet (SDS), that complies with the 29 C.F.R. 1910.1200; and online disclosure if the SDS is not posted online.
- (4) A manufacturer of refrigeration products and equipment (including refrigeration products and equipment that contain foam) must disclose the substitutes through one of following methods:
  - (a) For the refrigerant used in household refrigerators and freezers, household refrigerators and freezers - Compact, and household refrigerators and freezers - Built-in:
    - (i) New dedicated label;
    - (ii) Underwriters Laboratories or equivalent safety label;
    - (iii) A label required by another jurisdiction with sufficient disclosure requirements;
    - (iv) A label required by another jurisdiction that does not disclose the substitute; and online disclosure; or
    - (v) On-product or on-equipment symbol or code; and online disclosure.
  - (b) For the foam blown in or installed by the manufacturer of household refrigerators and freezers, household refrigerators and freezers - Compact, and household refrigerators and freezers - Built-in:
    - (i) New dedicated label;
    - (ii) Underwriters Laboratories or equivalent safety label;
    - (iii) Owner's manual; or
    - (iv) On-product or on-equipment symbol or code; and online disclosure.
  - (c) For the refrigerant used in commercial refrigeration equipment:
    - (i) New dedicated label;
    - (ii) Existing product label;
    - (iii) Underwriters Laboratories or equivalent safety label;
    - (iv) A label required by another jurisdiction with sufficient disclosure requirements;
    - (v) A label required by another jurisdiction that does not disclose the substitute; and online disclosure; or
    - (vi) On-product or on-equipment symbol or code; and online disclosure.
  - (d) For the foam blown in or installed by the manufacturer of commercial refrigeration equipment:
    - (i) New dedicated label;
    - (ii) Existing product label;
    - (iii) Underwriters Laboratories or equivalent safety label;
    - (iv) Owner's manual; or
    - (v) On-product or on-equipment symbol or code; and online disclosure.
- (5) A manufacturer of centrifugal or positive displacement chillers must disclose the substitutes through one of following methods:
  - (a) For the refrigerant used in centrifugal and positive displacement chillers:

- (i) New dedicated label;
- (ii) Existing product label;
- (iii) Underwriters Laboratories or equivalent safety label;
- (iv) A label required by another jurisdiction with sufficient disclosure requirements;
- (v) A label required by another jurisdiction that does not disclose the substitute; and online disclosure; or
- (vi) On-product or on-equipment symbol or code; and online disclosure.
- (b) For the foam blown in or installed by the manufacturer of centrifugal and positive displacement chillers:
  - (i) New dedicated label;
  - (ii) Existing product label;
  - (iii) Underwriters Laboratories or equivalent safety label;
  - (iv) Owner's manual; or
  - (v) On-product or on-equipment symbol or code; and online disclosure.
- (6) A manufacturer of foam products must disclose the substitutes through one of following methods:
  - (a) For nonretail foam products:
    - (i) Unit label; or
    - (ii) One of the following methods for each individual product within a unit:
      - (A) New dedicated label;
      - (B) Existing product label;
      - (C) A label required by another jurisdiction with sufficient disclosure requirements;
      - (D) A label required by another jurisdiction that does not disclose the substitute; and online disclosure; or
      - (E) On-product symbol or code; and online disclosure.
  - (b) For retail foam products:
    - (i) New dedicated label;
    - (ii) Existing product label;
    - (iii) On-packaging label;
    - (iv) A label required by another jurisdiction with sufficient disclosure requirements;
    - (v) A label required by another jurisdiction that does not disclose the substitute; and online disclosure;
    - (vi) On-product symbol or code; and online disclosure;
  - or
  - (vii) On-packaging symbol or code; and online disclosure.
- (c) For the foam blowing agent used in polyurethane foam systems, including spray foam systems:
  - (i) New dedicated label on the canister or cylinders;
  - (ii) Existing product label on the canister or cylinders;
  - (iii) On-packaging label;
  - (iv) A label required by another jurisdiction with sufficient disclosure requirements;
  - (v) A label required by another jurisdiction that does not disclose the substitute; and online disclosure; or
  - (vi) On-packaging symbol or code; and online disclosure.
- (7) Ecology must approve in advance the use of a symbol or code.
- (8) Ecology must approve in advance the use of another jurisdiction's disclosure label.

(9) Online disclosure may occur through online publication of an owner's manual, safety data sheet, or other documentation that provides information about the product to the end-user of the product.

(10) The requirements of this section do not apply to aircraft and aircraft components subject to certification requirements of the Federal Aviation Administration.

#### NEW SECTION

**WAC 173-443-080 Manufacturer notification.** (1) A manufacturer of a product or equipment that contains, uses, or will use HFCs or other substitutes prohibited for an end-use listed in WAC 173-443-040 or a representative on behalf of the manufacturer, must report to ecology consistent with WAC 173-443-090 and 173-443-100.

(2) It is only necessary for one person or entity to report with respect to a particular product or equipment.

(3) In the event of a failure by at least one person to provide a complete, accurate, and timely report for a product or equipment within a specific end-use, ecology will require information from the manufacturer associated with the product or equipment in the following order of precedence:

(a) The person or entity that manufactured, produced, or assembled the product or equipment, unless it has no presence in the United States.

(b) The person or entity that marketed the product or equipment under its name or trademark, unless it has no presence in the United States.

(c) The first person or entity, whether an importer or a distributor, that owned the product or equipment in the United States.

(4) This section in no way limits the liability of any manufacturer as defined in WAC 173-443-030 associated with a product or equipment from enforcement under chapter 70A.15 RCW.

#### NEW SECTION

**WAC 173-443-090 Initial notification.** (1) By December 31, 2019, a manufacturer or its representative must provide ecology an initial status notification of the status of all products and equipment within each applicable end-use that contains, uses, or will use HFCs or other substitutes prohibited in WAC 173-443-040.

(2) An initial status notification must include all covered products and equipment that the manufacturer offers for sale, leases, rents, installs, or otherwise causes to enter into Washington commerce.

(3) A manufacturer must submit an initial status notification using ecology's notification form. The current form is available on ecology's website. This initial status notification must provide:

(a) Contact information on the manufacturer.

(b) The name of the party authorized to represent the manufacturer for purposes of providing initial status notifications and status updates.

(c) All products and equipment within an end-use that are applicable to the manufacturer.

(d) Which HFCs or other prohibited substitutes are being used by products or equipment within each applicable end-use.

(e) Signature and certification by the authorized representative for the manufacturer.

#### NEW SECTION

**WAC 173-443-100 Status update notification.** Within one hundred twenty days after the date of a prohibition in WAC 173-443-040, a manufacturer affected by the prohibition or its representative must provide ecology with an updated status notification using ecology's form. This updated status notification must include:

(1) Whether the manufacturer has ceased the use of HFCs or other substitutes prohibited in WAC 173-443-040 within each applicable end-use.

(2) What, if any, HFCs other prohibited substitutes remain in use.

(3) Updated responses on all information requested in the initial status notification required in WAC 173-443-090.

#### NEW SECTION

**WAC 173-443-110 Severability.** If any provision of this chapter or its application is held invalid, the remainder of the chapter or application of the provision is not affected.

### **WSR 21-01-094**

#### **PERMANENT RULES**

#### **OFFICE OF THE**

#### **INSURANCE COMMISSIONER**

[Insurance Commissioner Matter Number R 2019-05—Filed December 11, 2020, 9:08 a.m., effective January 11, 2021]

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

Purpose: The commissioner is adopting rules regarding network access and notice requirements to ensure implementation as provided for in ESHB 1099 (chapter 11, Laws of 2019), which was codified as RCW 48.43.765. In addition to adding a new section, the commissioner is amending existing WAC.

Citation of Rules Affected by this Order: New WAC 284-170-285; and amending WAC 284-170-130, 284-170-200, and 284-170-260.

Statutory Authority for Adoption: RCW 48.02.060, 48.43.765.

Adopted under notice filed as WSR 20-21-105 on October 21, 2021 [2020].

Changes Other than Editing from Proposed to Adopted Version: A technical change was made to WAC 284-170-260(2) to add "carrier's" in order [to] clarify whose telephone number should be posted. Another technical change was made in WAC 284-170-260(7) to remove the term "facility" to align the language of other similar laws.

A final cost-benefit analysis is available by contacting Tabba Alam, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7170, email TabbaA@oic.wa.gov, website www.insurance.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 1, Amended 3, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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 1, Amended 3, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 11, 2020.

Mike Kreidler  
Insurance Commissioner

**AMENDATORY SECTION** (Amending WSR 16-07-144, filed 3/23/16, effective 4/23/16)

**WAC 284-170-130 Definitions.** Except as defined in other subchapters and unless the context requires otherwise, the following definitions shall apply throughout this chapter.

(1) "Adverse determination" has the same meaning as the definition of adverse benefit determination in RCW 48.43.005, and includes:

(a) The determination includes any decision by a health carrier's designee utilization review organization that a request for a benefit under the health carrier's health benefit plan does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness or is determined to be experimental or investigational and the requested benefit is therefore denied, reduced, or terminated or payment is not provided or made, in whole or in part for the benefit;

(b) The denial, reduction, termination, or failure to provide or make payment, in whole or in part, for a benefit based on a determination by a health carrier or its designee utilization review organization of a covered person's eligibility to participate in the health carrier's health benefit plan;

(c) Any prospective review or retrospective review determination that denies, reduces, or terminates or fails to provide or make payment in whole or in part for a benefit;

(d) A rescission of coverage determination; or

(e) A carrier's denial of an application for coverage.

(2) "Authorization" or "certification" means a determination by the carrier that an admission, extension of stay, or other health care service has been reviewed and, based on the information provided, meets the clinical requirements for medical necessity, appropriateness, level of care, or effectiveness in relation to the applicable health plan.

(3) "Clinical review criteria" means the written screens, or screening procedures, decision rules, medical protocols, or clinical practice guidelines used by the carrier as an element in the evaluation of medical necessity and appropriateness of requested admissions, procedures, and services, including prescription drug benefits, under the auspices of the applica-

ble health plan. Clinical approval criteria has the same meaning as clinical review criteria.

(4) "Covered health condition" means any disease, illness, injury or condition of health risk covered according to the terms of any health plan.

(5) "Covered person" or "enrollee" means an individual covered by a health plan including a subscriber, policyholder, or beneficiary of a group plan.

(6) "Emergency medical condition" means the emergent and acute onset of a symptom or symptoms, including severe pain or emotional distress, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical, mental health, or substance use disorder treatment attention, if failure to provide medical, mental health, or substance use disorder treatment attention would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part, or would place the person's health in serious jeopardy.

(7) "Emergency services" has the meaning set forth in RCW 48.43.005.

(8) "Enrollee point-of-service cost-sharing" or "cost-sharing" means amounts paid to health carriers directly providing services, health care providers, or health care facilities by enrollees and may include copayments, coinsurance, or deductibles.

(9) "Facility" means an institution providing health care services including, but not limited to, hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory, and imaging centers, and rehabilitation and other therapeutic settings, and as defined in RCW 48.43.005.

(10) "Formulary" means a listing of drugs used within a health plan.

(11) "Grievance" has the meaning set forth in RCW 48.43.005.

(12) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 RCW or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

(13) "Health care service" or "health service" means that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(14) "Health carrier" or "carrier" means a disability insurance company regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, and a health maintenance organization as defined in RCW 48.46.020, and includes "issuers" as that term is used in The Patient Protection and Affordable Care Act (P.L. 111-148, as amended (2010)).

(15) "Health plan" or "plan" means any individual or group policy, contract, or agreement offered by a health carrier to provide, arrange, reimburse, or pay for health care service except the following:

(a) Long-term care insurance governed by chapter 48.84 RCW;

(b) Medicare supplemental health insurance governed by chapter 48.66 RCW;

(c) Limited health care service offered by limited health care service contractors in accordance with RCW 48.44.035;

(d) Disability income;

(e) Coverage incidental to a property/casualty liability insurance policy such as automobile personal injury protection coverage and homeowner guest medical;

(f) Workers' compensation coverage;

(g) Accident only coverage;

(h) Specified disease and hospital confinement indemnity when marketed solely as a supplement to a health plan;

(i) Employer-sponsored self-funded health plans;

(j) Dental only and vision only coverage; and

(k) Plans deemed by the insurance commissioner to have a short-term limited purpose or duration, or to be a student-only plan that is guaranteed renewable while the covered person is enrolled as a regular full-time undergraduate or graduate student at an accredited higher education institution, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner.

(16) "Indian health care provider" means:

(a) The Indian Health Service, an agency operated by the U.S. Department of Health and Human Services established by the Indian Health Care Improvement Act, Section 601, 25 U.S.C. Sec. 1661;

(b) An Indian tribe, as defined in the Indian Health Care Improvement Act, Section 4(14), 25 U.S.C. Sec. 1603(14), that operates a health program under a contract or compact to carry out programs of the Indian Health Service pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. Sec. 450 et seq.;

(c) A tribal organization, as defined in the Indian Health Care Improvement Act, Section 4(26), 25 U.S.C. Sec. 1603(26), that operates a health program under a contract or compact to carry out programs of the Indian Health Service pursuant to the ISDEAA, 25 U.S.C. Sec. 450 et seq.;

(d) An Indian tribe, as defined in the Indian Health Care Improvement Act, Section 4(14), 25 U.S.C. Sec. 1603(14), or tribal organization, as defined in the Indian Health Care Improvement Act, Section 4(26), 25 U.S.C. Sec. 1603(26), that operates a health program with funding provided in whole or part pursuant to 25 U.S.C. Sec. 47 (commonly known as the Buy Indian Act); or

(e) An urban Indian organization that operates a health program with funds in whole or part provided by Indian Health Service under a grant or contract awarded pursuant to Title V of the Indian Health Care Improvement Act, Section 4(29), 25 U.S.C. Sec. 1603(29).

(17) "Managed care plan" means a health plan that coordinates the provision of covered health care services to a covered person through the use of a primary care provider and a network.

(18) "Medically necessary" or "medical necessity" in regard to mental health services and pharmacy services is a carrier determination as to whether a health service is a covered benefit because the service is consistent with generally recognized standards within a relevant health profession.

(19) "Mental health provider" means a health care provider or a health care facility authorized by state law to provide mental health services.

(20) "Mental health services" means in-patient or out-patient treatment including, but not limited to, partial hospitalization ~~((or)), residential treatment~~, out-patient facility-based treatment, intensive outpatient treatment, emergency services, or prescription drugs to manage, stabilize, or ameliorate the effects of a mental disorder listed in the most current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM) ((IV)) published by the American Psychiatric Association, ~~((excluding))~~ including diagnoses and treatment~~((s))~~ for substance ~~((abuse, 291.0 through 292.9 and 303.0 through 305.9))~~ use disorder.

(21) "Network" means the group of participating providers and facilities providing health care services to a particular health plan or line of business (individual, small, or large group). A health plan network for issuers offering more than one health plan may be smaller in number than the total number of participating providers and facilities for all plans offered by the carrier.

(22) "Out-patient therapeutic visit" or "out-patient visit" means a clinical treatment session with a mental health provider of a duration consistent with relevant professional standards used by the carrier to determine medical necessity for the particular service being rendered, as defined in Physicians Current Procedural Terminology, published by the American Medical Association.

(23) "Participating provider" and "participating facility" mean a facility or provider who, under a contract with the health carrier or with the carrier's contractor or subcontractor, has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, from the health carrier rather than from the covered person.

(24) "Person" means an individual, a corporation, a partnership, an association, a joint venture, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing.

(25) "Pharmacy services" means the practice of pharmacy as defined in chapter 18.64 RCW and includes any drugs or devices as defined in chapter 18.64 RCW.

(26) "Primary care provider" means a participating provider who supervises, coordinates, or provides initial care or continuing care to a covered person, and who may be required by the health carrier to initiate a referral for specialty care and maintain supervision of health care services rendered to the covered person.

(27) "Preexisting condition" means any medical condition, illness, or injury that existed any time prior to the effective date of coverage.

(28) "Premium" means all sums charged, received, or deposited by a health carrier as consideration for a health plan or the continuance of a health plan. Any assessment or any "membership," "policy," "contract," "service," or similar fee or charge made by a health carrier in consideration for a health plan is deemed part of the premium. "Premium" shall not include amounts paid as enrollee point-of-service cost-sharing.

(29) "Service area" means the geographic area or areas where a specific product is issued, accepts members or enrollees, and covers provided services. A service area must be defined by the county or counties included unless, for good cause, the commissioner permits limitation of a service area by zip code. Good cause includes geographic barriers within a service area, or other conditions that make offering coverage throughout an entire county unreasonable.

(30) "Small group plan" means a health plan issued to a small employer as defined under RCW 48.43.005~~((33))~~ (34) comprising from one to fifty eligible employees.

(31) "Substance use disorder services" means in-patient or out-patient treatment including, but not limited to, partial hospitalization, residential treatment, or out-patient facility-based treatment, intensive outpatient treatment, emergency services, or prescription drugs to manage, stabilize, or ameliorate the effects of a substance use disorder listed in the most current version of the *Diagnostic and Statistical Manual of Mental Disorders (DSM)* published by the American Psychiatric Association, including diagnoses and treatment for substance use disorder.

(32) "Substitute drug" means a prescription medication, drug or therapy that a carrier covers based on an exception request. When the exception request is based on therapeutic equivalence, a substitute drug means a therapeutically equivalent substance as defined in chapter 69.41 RCW.

~~((32))~~ (33) "Supplementary pharmacy services" or "other pharmacy services" means pharmacy services involving the provision of drug therapy management and other services not required under state and federal law but that may be rendered in connection with dispensing, or that may be used in disease prevention or disease management.

**AMENDATORY SECTION** (Amending WSR 16-14-106, filed 7/6/16, effective 8/6/16)

**WAC 284-170-200 Network access—General standards.** (1) An issuer must maintain each provider network for each health plan in a manner that is sufficient in numbers and types of providers and facilities to assure that, to the extent feasible based on the number and type of providers and facilities in the service area, all health plan services provided to enrollees will be accessible in a timely manner appropriate for the enrollee's condition. An issuer must demonstrate that for each health plan's defined service area, a comprehensive range of primary, specialty, institutional, and ancillary services are readily available without unreasonable delay to all enrollees and that emergency services are accessible twenty-four hours per day, seven days per week without unreasonable delay.

(2) Each enrollee must have adequate choice among health care providers, including those providers which must be included in the network under WAC 284-170-270, and for qualified health plans and qualified stand-alone dental plans, under WAC 284-170-310.

(3) An issuer's service area must not be created in a manner designed to discriminate or that results in discrimination against persons because of age, gender, gender identity, sexual orientation, disability, national origin, sex, family struc-

ture, ethnicity, race, health condition, employment status, or socioeconomic status.

(4) An issuer must establish sufficiency and adequacy of choice of providers based on the number and type of providers and facilities necessary within the service area for the plan to meet the access requirements set forth in this subchapter. Where an issuer establishes medical necessity or other prior authorization procedures, the issuer must ensure sufficient qualified staff is available to provide timely prior authorization decisions on an appropriate basis, without delays detrimental to the health of enrollees.

(5) In any case where the issuer has an absence of or an insufficient number or type of participating providers or facilities to provide a particular covered health care service, the issuer must ensure through referral by the primary care provider or otherwise that the enrollee obtains the covered service from a provider or facility within reasonable proximity of the enrollee at no greater cost to the enrollee than if the service were obtained from network providers and facilities. An issuer must satisfy this obligation even if an alternate access delivery request has been submitted and is pending commissioner approval.

An issuer may use facilities in neighboring service areas to satisfy a network access standard if one of the following types of facilities is not in the service area, or if the issuer can provide substantial evidence of good faith efforts on its part to contract with the facilities in the service area. Such evidence of good faith efforts to contract will include documentation about the efforts to contract but not the substantive contract terms offered by either the issuer or the facility. This applies to the following types of facilities:

- (a) Tertiary hospitals;
- (b) Pediatric community hospitals;
- (c) Specialty or limited hospitals, such as burn units, rehabilitative hospitals, orthopedic hospitals, and cancer care hospitals;
- (d) Neonatal intensive care units; and
- (e) Facilities providing transplant services, including those that provide solid organ, bone marrow, and stem cell transplants.

(6) An issuer must establish and maintain adequate arrangements to ensure reasonable proximity of network providers and facilities to the business or personal residence of enrollees, and located so as to not result in unreasonable barriers to accessibility. Issuers must make reasonable efforts to include providers and facilities in networks in a manner that limits the amount of travel required to obtain covered benefits.

(7) A single case provider reimbursement agreement must be used only to address unique situations that typically occur out-of-network and out of service area, where an enrollee requires services that extend beyond stabilization or one time urgent care. Single case provider reimbursement agreements must not be used to fill holes or gaps in the network and do not support a determination of network access.

(8) An issuer must disclose to enrollees that limitations or restrictions on access to participating providers and facilities may arise from the health service referral and authorization practices of the issuer. A description of the health plan's referral and authorization practices, including information

about how to contact customer service for guidance, must be set forth as an introduction or preamble to the provider directory for a health plan. In the alternative, the description of referral and authorization practices may be included in the summary of benefits and explanation of coverage for the health plan.

(9) To provide adequate choice to enrollees who are American Indians/Alaska Natives, each health issuer must maintain arrangements that ensure that American Indians/Alaska Natives who are enrollees have access to covered medical and behavioral health services provided by Indian health care providers.

Issuers must ensure that such enrollees may obtain covered medical and behavioral health services from ~~((the))~~ an Indian health care provider at no greater cost to the enrollee than if the service were obtained from network providers and facilities, even if the Indian health care provider is not a contracted provider. Issuers are not responsible for credentialing providers and facilities that are part of the Indian health system. Nothing in this subsection prohibits an issuer from limiting coverage to those health services that meet issuer standards for medical necessity, care management, and claims administration or from limiting payment to that amount payable if the health service were obtained from a network provider or facility.

(10) An issuer must have a demonstrable method and contracting strategy to ensure that contracting hospitals in a plan's service area have the capacity to serve the entire enrollee population based on normal utilization.

(11) At a minimum, an issuer's provider network must adequately provide for mental health and substance use disorder treatment, including behavioral health therapy. An issuer must include a sufficient number and type of mental health and substance use disorder treatment providers and facilities within a service area based on normal enrollee utilization patterns.

(a) Adequate networks must include crisis intervention and stabilization, psychiatric inpatient hospital services, including voluntary psychiatric inpatient services, and services from mental health providers.

(b) There must be mental health providers of sufficient number and type to provide diagnosis and medically necessary treatment of conditions covered by the plan through providers acting within their scope of license and scope of competence established by education, training, and experience to diagnose and treat conditions found in the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders* or other recognized diagnostic manual or standard.

~~((b))~~ (c) An issuer must establish a reasonable standard for the number and geographic distribution of mental health providers who can treat serious mental illness of an adult and serious emotional disturbances of a child, taking into account the various types of mental health practitioners acting within the scope of their licensure.

The issuer must measure the adequacy of the mental health network against this standard at least twice a year, and submit an action plan with the commissioner if the standard is not met.

~~((e))~~ (d) Emergency mental health services and substance use disorder services, including crisis intervention and

crisis stabilization services, must be included in an issuer's provider network.

~~((d) An issuer must include a sufficient number and type of mental health and substance use disorder treatment providers and facilities within a service area based on normal utilization patterns.)~~

(e) An issuer's monitoring of network access and adequacy must be based on its classification of mental health and substance use disorder services to either primary or specialty care, ensuring that a sufficient number of providers of the required type are in its network to provide the services as classified. An issuer may use the classifications established in WAC 284-43-7020 for this element of its network assessment and monitoring.

(f) An issuer must ensure that an enrollee can identify information about mental health services and substance use disorder treatment including benefits, providers, coverage, and other relevant information by calling a customer service representative during normal business hours, by using the issuer's transparency tool developed pursuant to RCW 48.43.007 and by referring to the network provider directory.

(12) The provider network must include preventive and wellness services, including chronic disease management and smoking cessation services as defined in RCW 48.43.005 ~~((37))~~ and WAC 284-43-5640(9) and 284-43-5642(9). If these services are provided through a quit-line or help-line, the issuer must ensure that when follow-up services are medically necessary, the enrollee will have access to sufficient information to access those services within the service area. Contracts with quit-line or help-line services are subject to the same conditions and terms as other provider contracts under this section.

(13) For the essential health benefits category of ambulatory patient services, as defined in WAC 284-43-5640(1) and 284-43-5642(1), an issuer's network is adequate if:

(a) The issuer establishes a network that affords enrollee access to urgent appointments without prior authorization within forty-eight hours, or with prior authorization, within ninety-six hours of the referring provider's referral.

(b) For primary care providers the following must be demonstrated:

(i) The ratio of primary care providers to enrollees within the issuer's service area as a whole meets or exceeds the average ratio for Washington state for the prior plan year;

(ii) The network includes such numbers and distribution that eighty percent of enrollees within the service area are within thirty miles of a sufficient number of primary care providers in an urban area and within sixty miles of a sufficient number of primary care providers in a rural area from either their residence or work; and

(iii) Enrollees have access to an appointment, for other than preventive services, with a primary care provider within ten business days of requesting one.

(c) For specialists:

(i) The issuer documents the distribution of specialists in the network for the service area in relation to the population distribution within the service area; and

(ii) The issuer establishes that when an enrollee is referred to a specialist, the enrollee has access to an appoint-

ment with such a specialist within fifteen business days for nonurgent services.

(d) For preventive care services, and periodic follow-up care including, but not limited to, standing referrals to specialists for chronic conditions, periodic office visits to monitor and treat pregnancy, cardiac or mental health conditions, and laboratory and radiological or imaging monitoring for recurrence of disease, the issuer permits scheduling such services in advance, consistent with professionally recognized standards of practice as determined by the treating licensed health care provider acting within the scope of his or her practice.

(14) The network access requirements in this subchapter apply to stand-alone dental plans offered through the exchange or where a stand-alone dental plan is offered outside of the exchange for the purpose of providing the essential health benefit category of pediatric oral benefits. All such stand-alone dental plans must ensure that all covered services to enrollees will be accessible in a timely manner appropriate for the enrollee's conditions.

(a) An issuer of such stand-alone dental plans must demonstrate that, for the dental plan's defined service area, all services required under WAC 284-43-5700(3) and 284-43-5702(4), as appropriate, are available to all enrollees without unreasonable delay.

(b) Dental networks for pediatric oral services must be sufficient for the enrollee population in the service area based on expected utilization.

(15) Issuers must meet all requirements of this subsection for all provider networks. An alternate access delivery request under WAC 284-170-210 may be proposed only if:

(a) There are sufficient numbers and types of providers or facilities in the service area to meet the standards under this subchapter but the issuer is unable to contract with sufficient providers or facilities to meet the network standards in this subchapter; or

(b) An issuer's provider network has been previously approved under this section, and a provider or facility type subsequently becomes unavailable within a health plan's service area; or

(c) A county has a population that is fifty thousand or fewer, and the county is the sole service area for the plan, and the issuer chooses to propose an alternative access delivery system for that county; or

(d) A qualified health plan issuer is unable to meet the standards for inclusion of essential community providers, as provided under WAC 284-170-310(3).

~~((16) This section is effective for all plans, whether new or renewed, with effective dates on or after January 1, 2015.))~~

**AMENDATORY SECTION** (Amending WSR 16-14-106, filed 7/6/16, effective 8/6/16)

**WAC 284-170-260 Provider directories.** (1) ~~((Provider directories must be updated at least monthly, and must be offered to accommodate individuals with limited-English proficiency or disabilities.))~~

~~An issuer must post the current provider directory for each health plan online, and must make a printed copy of the~~

~~current directory available to an enrollee upon request as required under RCW 48.43.510 (1)(g).~~

~~(2) For each health plan, the associated provider directory must include the following information for each provider:~~

~~(a)) For each carrier that uses a provider network, the carrier must make information about that network available to the general public, prospective enrollees and enrollees, in the form of an easily accessible and searchable online provider directory.~~

~~Easily accessible for the purposes of this section means:~~

~~(a) The general public is able to view all of the current providers for each plan in the provider directory on the carrier's public website through a clearly identifiable link or tab and without creating or accessing an account or entering a policy number; and~~

~~(b) If a carrier maintains multiple provider networks, the carrier must post the current provider directory for each plan so the general public is able to easily discern which providers participate in which plans and which provider networks.~~

~~(2) Carriers must make a printed copy of the current provider directory available to an enrollee upon request as required under RCW 48.43.510 (1)(g). The printed directory must contain the carrier's telephone number, including a TTY/TTD number, and any other contact information to enable the enrollee to obtain information about providers in the health plan network.~~

~~(3) Printed and online provider directories must be made available to the general public, prospective enrollee's and enrollee's in a manner that accommodates individuals with limited-English proficiency or disabilities.~~

~~(4) Printed and online provider directories must be updated for accuracy at least monthly. To ensure accuracy:~~

~~(a) Each provider directory must include clear instructions about how a consumer or an enrollee can report inaccurate information in the provider directory to the carrier.~~

~~(b) Carriers must have an easily available method for providers to report changes to their provider directory information, in addition to any reports associated with initial or renewed credentialing used by the carrier.~~

~~(c) Carriers must investigate reported inaccuracies from providers and consumers, and if verified, correct inaccuracies as part of the carrier's monthly updates.~~

~~(d) Carriers must establish processes and procedures to confirm the accuracy of provider directory information, including processes and procedures to ensure that changes are made when inaccuracies are verified. Carriers must provide the processes and procedures and any associated records, including the provider directories, to the commissioner upon request for review.~~

~~(5) Printed and online provider directories must include the following information for each provider:~~

~~(a) The provider's location and telephone number;~~

~~(b) The specialty area or areas for which the provider is licensed to practice and included in the network;~~

~~((b)) (c) Any in-network institutional affiliation of the provider, such as hospitals where the provider has admitting privileges or provider groups with which a provider is a member;~~

~~((e))~~ (d) Whether the provider may be accessed without referral;

~~((d))~~ (e) Any languages, other than English, spoken by the provider;

(f) If a provider offers mental health or substance use disorder treatment services, identify in the directory that the provider is contracted to deliver mental health or substance use disorder treatment services.

~~((3))~~ (6) A carrier must include in its ~~((electronic posting of a health plan's))~~ printed and online provider ~~((directory))~~ directories a notation of any primary care, chiropractor, women's health care provider, mental health provider, substance use disorder provider, or ~~((pediatrician))~~ pediatric provider whose practice is closed to new patients.

~~((4))~~ If an issuer maintains more than one provider network, its posted provider directory or directories must make it reasonably clear to an enrollee which network applies to which health plan.

~~((5))~~ (7) Printed and online provider directories must include information about any available telemedicine services ~~((must be included and specifically described.~~

~~((6))~~ and specifically describe the services and how to access those services.

(8) Printed and online provider directories must include information about any available interpreter services, communication and language assistance services, and accessibility of the physical facility ~~((must be identified in the directory)),~~ and the mechanism by which an enrollee may access such services.

~~((7))~~ (9) Printed and online provider directories must include information about the network status of emergency providers as required by WAC 284-170-370.

~~((8))~~ This section is effective for all plans, whether new or renewed, with effective dates on or after January 1, 2015.

## NEW SECTION

### **WAC 284-170-285 Mental health and substance use disorder web page model format and required content.**

(1) Not later than July 1, 2021, carriers must establish and maintain a web page entitled "Important Mental Health and Substance Use Disorder Treatment Information" that complies with the requirements in this section. By July 1, 2021, carriers must prominently post the information in subsections (4), (5), (6), (7), and (8) of this section on their website so that a member may easily locate it.

(2) A member must be able to link to the web page from their portal landing page if the carrier provides members with a portal. If the carrier does not provide members with a personal electronic portal, the carrier must place a link to the web page that is visually prominent and easily located on the health plan's network information page.

(3) A carrier's transparency tool(s) must include the information required in this section to the extent that it is required by RCW 48.43.007(2).

(4) The web page must contain a section that explains what to do if an enrollee or their dependent is experiencing a mental health or substance use disorder emergency or crisis. This section must specifically include, but is not limited to, links and information for the National Suicide Prevention

hotline, and identify resources for emergency or crisis intervention within an enrollee's service area and within Washington state that provide support and services for mental health or substance use disorder emergencies or crises. The content for this portion of the web page must emphasize the ways an enrollee or their personal representative can receive emergency or crisis services either from public health resources, private health resources or through the services offered by the carrier in nontechnical and consumer friendly language. This section must be above the fold and visually prominent on the mental health and substance use disorder web page.

(5) The web page must contain accurate information explaining the following information, based on the health plan network's access and adequacy standards for mental health and substance use disorder treatment and services:

(a) How an enrollee can find in-network mental health and substance use disorder treatment and services in their service area;

(b) What an enrollee may do if covered services are not available in their service area or the enrollee cannot obtain access to scheduling an appointment from an in-network provider within ten business days for mental health and substance use disorder services covered as primary care and fifteen business days for those covered as specialty care; and

(c) A description of access to services based on the applicable time frames, such as the following: "If the enrollee seeks covered mental health and substance use disorder treatment services for which the enrollee needs a referral or is covered as specialty care, an appointment must be made available to the enrollee within fifteen days of requesting one. If the requested service does not require a referral or is not specialty care, the appointment must be made available within ten business days of making a request for an appointment. If an enrollee is unable to schedule an appointment within the applicable number of business days, the carrier must assist with scheduling an appointment."

(6) By June 30th of each year, the commissioner shall post a report identifying, by carrier, the number of consumer complaints, asserting an inability to access mental health or substance use disorder services within ten business days for primary care and fifteen business days for specialty care, that were submitted to the commissioner during the prior calendar year. A carrier's "Important Mental Health and Substance Use Disorder Treatment Information" web page must include a link to this report, and must update the link to the office of the insurance commissioner's web page on which the report is posted.

(7) If the commissioner has disciplined the carrier for violating the network standards set forth in this chapter or Title 48.43 RCW, with regard to mental health or substance use disorder treatment and services, the carrier must post a link to each order of enforcement or disciplinary action posted on the commissioner's website within thirty days of the commissioner posting the order on the office of the insurance commissioner's website. An order may be removed from the carrier's website three years after the issue date of the order or completion of the corrective action plan associated with the order, whichever is later.

Carriers may indicate when a corrective action plan associated with the order is completed and carriers may

include an explanation of the actions it has taken to address the enforcement or disciplinary action.

(8) The web page must contain a section titled "How to File a Complaint with the Office of the Insurance Commissioner" and refer users to the OIC complaint form at <https://www.insurance.wa.gov/file-complaint-or-check-your-complaint-status.com> or the commissioner's toll-free insurance consumer hotline at 1-800-562-6900.

(9) The commissioner may review the web page for accuracy and conformance with the requirements of this section when an enrollee complaint is received about access to mental health or substance use disorder services, or at any time as the commissioner deems necessary to ensure the carrier is in compliance with the requirements of this chapter.

(10) Carriers may include its logo and identifying information on the web page.

## WSR 21-01-102

### PERMANENT RULES

#### EASTERN WASHINGTON UNIVERSITY

[Filed December 11, 2020, 2:20 p.m., effective January 11, 2021]

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

Purpose: The modifications to chapter 172-121 WAC are needed to address changes in practice, procedures, and new United States federal regulations.

Citation of Rules Affected by this Order: Amending WAC 172-121-020, 172-121-070, 172-121-100, 172-121-105, 172-121-122, and 172-121-140.

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

Adopted under notice filed as WSR 20-22-053 on October 29, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 6, 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 6, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 11, 2020.

Annika Scharosch  
Associate Vice President  
for Civil Rights, Compliance  
and Enterprise Risk Management

AMENDATORY SECTION (Amending WSR 20-19-046, filed 9/10/20, effective 10/11/20)

**WAC 172-121-020 Definitions.** For purposes of the student conduct code, chapter 172-121 WAC, the definitions in this section apply.

"Appeal authority" refers to the conduct review official presiding over an appeal under WAC 172-121-130.

"Appellant" refers to any respondent or complainant who appeals the decisions or sanctions of a hearing authority under WAC 172-121-130.

"Brief hearing" refers to a brief conduct review hearing before a conduct review officer for allegations that, if substantiated by a preponderance of evidence, would result in a sanction less than a suspension or expulsion, do not involve a Title IX complaint, and that do not involve felony-level crimes.

"Business days" refers to the days and hours the university is open for business. Business days are Monday through Friday, from 8:00 a.m. to 5:00 p.m., excluding holidays as set forth in the university holiday schedule.

"Complainant" means the person who was subjected to the alleged misconduct. The complainant may or may not be the reporting party. If the person who was subjected to the alleged misconduct does not wish to pursue a student conduct case, the university may initiate the student conduct process on its own behalf.

"Conduct review officer" or "CRO" refers to the person designated to serve as the decision maker for a brief hearing or the presiding officer for a full hearing.

"Council" or "the council" refers to the student disciplinary council as described in WAC 172-121-070.

"Council hearing" refers to a full conduct review hearing before the student disciplinary council.

"Dean of students" refers to the dean of students or designee.

"Director of SRR" or "director" refers to the director of student rights and responsibilities or designee.

"Filing" means to actually deliver documents. Documents required to be filed with a specific person under these rules shall be deemed filed upon actual receipt during office hours at EWU. Papers may be filed by delivering them to the dean of student's office, sending them via United States mail, properly addressed, postage prepaid, to 129 Showalter Hall, or emailing them to [srr@ewu.edu](mailto:srr@ewu.edu).

"Full hearing" refers to a full conduct reviewing hearing before the council for allegations that, if substantiated by a preponderance of the evidence, could result in a sanction of a suspension or expulsion, involve a Title IX complaint, or that could constitute felony-level crimes.

"Hearing authority" refers to the decision-maker in a conduct review hearing.

"Interpersonal violence" encompasses domestic violence, dating violence, and stalking.

"Notify" means to provide notice to a person. A person may be notified in person, by telephone, by sending notice to the person's university email account, by leaving a message on his or her personal telephone, or by sending the notice in the United States mail, properly addressed, postage prepaid, to the person's last known address.

"Off-campus" refers to any location or facility that is not owned, leased, rented, or operated by Eastern Washington University.

"Party/parties" refers to the complainant, respondent, and/or the university.

"Policies" or "university policy" refers to the written regulations of the university, including the standards of conduct for students, residence life handbook, housing contract, university policies, and graduate/undergraduate catalogs and handbooks.

"Recognized student organizations" refers to clubs, organizations, societies or similarly organized groups recognized by the university or the associated students of Eastern Washington University (ASEWU).

"Reporting party" means the person who notifies student rights and responsibilities of alleged misconduct by a student or student organization. The reporting party may also be the complainant, but need not be the complainant.

"Respondent" refers to any student or student organization accused of violating the student conduct code under this chapter.

"Serve" means to post a document in the United States mail, properly addressed, postage prepaid, to a person's last known address, personal service, or electronic service to the person's university email account. Service by mail is complete upon deposit in the United States mail.

"Session council" refers to the student disciplinary council members selected for a specific hearing or appeal.

"Sexual misconduct" encompasses sexual harassment or sexual assault, as defined in WAC 172-121-200.

"Student" includes all of the following:

(a) Any applicant who becomes enrolled, for violations of the code committed as part of the application process or committed following the applicant's submission of the application until the time of official enrollment;

(b) Any person currently enrolled at the university;

(c) Nonmatriculated, international students attending institutes or foreign study programs through the university; and

(d) Any person who was previously enrolled at the university for violations of the code committed while enrolled. A person who engaged in conduct in violation of the student conduct code while a student remains subject to action under this code even if the person has graduated, withdrawn, or is not currently enrolled for any reason.

"Title IX complaint" means a formal signed complaint from a current student, applicant, ~~((~~¶~~))~~ employee ~~((~~¶~~))~~, or person participating in or seeking to participate in a university program or activity, or by the Title IX coordinator, alleging sexual harassment, sexual assault, domestic violence, dating violence, or stalking for the conduct that occurred on university premises, during a university program or activity within the United States, or at a building owned or controlled by a student organization that is officially recognized by the university. A complaint of sexual misconduct or interpersonal violence will only be considered a Title IX complaint under this code if it meets this definition. Sexual misconduct or interpersonal violence may still be addressed under this code if it does not meet the definition of a Title IX complaint.

"Title IX coordinator" refers to the Title IX coordinator or designee.

"University" means Eastern Washington University.

"University official" includes any person employed or contracted by the university, performing assigned administrative or professional responsibilities.

"University premises" means buildings and/or property (including adjacent streets and sidewalks) which are owned, leased, rented or operated by the university, to include all satellite campuses affiliated with the university.

"University president" refers to the university president or designee.

"Vice president for student affairs" refers to the vice president for student affairs or designee.

**AMENDATORY SECTION** (Amending WSR 20-19-046, filed 9/10/20, effective 10/11/20)

**WAC 172-121-070 Conduct review officials.** (1) The director of SRR or designee shall:

(a) Serve as the primary point of contact for all matters relating to student conduct code violations and proceedings;

(b) Manage the proceedings as described in this chapter;

(c) Maintain all records of conduct review proceedings as described in WAC 172-121-080;

(d) Ensure complaints are promptly investigated and resolved as required by federal and state laws; and

(e) Review off-campus incidents of alleged misconduct and make determinations as to whether the conduct involved adversely affects the university community and/or the pursuit of its objectives and whether the conduct process should be initiated.

(2) Conduct review officer (CRO): The university president delegates to the vice president of student affairs the authority to designate one or more CRO(s). The director of SRR, dean of students, or any other qualified individual may be designated as a CRO. The CRO(s) shall preside over brief hearings and full conduct hearings under this chapter. For brief hearings, the CRO shall serve as the decision maker. For full hearings, the CRO shall serve as the presiding officer.

As the presiding officer, in full hearings the CRO has authority to:

(a) Determine the order of presentation of evidence;

(b) Administer oaths and affirmations;

(c) Issue subpoenas pursuant to RCW 34.05.446;

(d) Rule on procedural matters, objections, and motions;

(e) Rule on motions for summary judgment;

(f) Rule on offers of proof and receive relevant evidence;

(g) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;

(h) Question witnesses in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;

(i) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to each party's opportunity for cross-examination and rebuttal;

(j) Take official notice of facts pursuant to RCW 34.05.-452(5);

(k) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;

(l) Permit or require oral argument or briefs and determine the time limits for submission thereof;

(m) Issue an order of default;

(n) Hold prehearing conferences; and

(o) Take any other action necessary and authorized by any applicable statute or rule.

(3) Student disciplinary council: The council serves as the decision maker for full hearings with respect to a finding of responsibility. The CRO in full hearings serves as the decision maker with respect to determining appropriate sanction(s) and remedies, upon a finding of responsibility.

(a) Council pool: For each academic year, a pool of council members shall be established. All members of the council pool are appointed by the vice president for student affairs. Appointment of council pool members is as follows:

(i) Faculty and staff members are appointed for three-year terms. Student members are appointed for one-year terms;

(ii) Council chair: The dean of students or designee shall serve as the CRO and chair of council proceedings;

(iii) Vacancies: Council pool vacancies shall be filled as needed through appointment by the vice president for student affairs.

(b) Session council: When a student disciplinary council is needed for a full hearing, the dean of students shall select available members from the council pool to serve as the session council. Each session council must include three members. The council may consist of students, staff, or faculty members.

(4) Investigator: For all Title IX, sexual misconduct, and interpersonal violence complaints, and certain other cases at the director's discretion, the director may assign a complaint to an investigator to conduct an investigation. The investigator will provide a written investigative report to the director.

(5) Presenter in cases of a full hearing, a person will present a case against the respondent on behalf of the university. The presenter will call witnesses, ask questions, and offer evidence during the hearing. The presenter may be the director of SRR, designee, or an assistant attorney general appearing on behalf of the university.

AMENDATORY SECTION (Amending WSR 20-19-046, filed 9/10/20, effective 10/11/20)

**WAC 172-121-100 Complaints.** (1) Filing of complaints.

(a) Any person or the university may file a complaint against a student or student organization for violation of the student conduct code.

(b) A person wishing to file a complaint under the student conduct code must submit the complaint, in writing, to one of the following:

(i) Student rights and responsibilities;

(ii) Title IX coordinator; or

(iii) The office of the dean of students.

(c) Filing a complaint under the student conduct code does not prohibit or limit a person's right to file complaints or

charges with other civil and/or criminal authorities for violations of local, county, state, or federal law.

(d) All student conduct code complaints will be forwarded to the director of SRR for further review and action.

(e) In cases where the university is pursuing a student conduct case on its own behalf, an EWU employee shall initiate the complaint. For Title IX complaints, a complaint must either be filed by the person subject to the alleged misconduct or by the Title IX coordinator. If a complaint is filed by the Title IX coordinator, the Title IX coordinator will not be considered a complainant for the purposes of participating in the investigation and hearing process.

(2) Complaint review. Upon receipt of a complaint, the director of SRR shall review the complaint to determine whether it includes allegations of sexual misconduct or interpersonal violence, may lead to suspension or expulsion and/or felony level criminal conduct to determine which student conduct process applies and if appropriate law enforcement or other authorities should be notified. If a complaint falls within such categories, it shall be referred to a hearing under WAC 172-121-122.

(3) Sexual misconduct and interpersonal violence proceedings. Except where specifically stated, this section applies to all allegations the university receives of sexual misconduct or interpersonal violence regardless of the possible level of sanction or whether there is a formal Title IX complaint.

(a) Report to Title IX coordinator. The director of SRR shall report all complaints which may constitute any form of sexual misconduct or interpersonal violence to the university Title IX coordinator within twenty-four hours.

(b) Title IX complaints. The Title IX coordinator will determine whether or not the allegation of sexual misconduct or interpersonal violence constitutes a Title IX complaint under this code. Solely in cases of Title IX complaints, the university will not move forward with initiating a Title IX investigation or student conduct hearing unless SRR has received a formal complaint from the person alleged to have been subjected to sexual misconduct or interpersonal violence or a complaint from the Title IX coordinator requesting initiation of the student conduct process.

((If the alleged behaviors identified in a Title IX complaint would not constitute sexual misconduct or interpersonal violence as defined in this code, even if substantiated by a preponderance of the evidence, or if they meet the definition of a Title IX complaint, the university will dismiss the Title IX complaint. Dismissal decisions may be appealed as identified in WAC 172-121-100(6).)) The Title IX coordinator is responsible for determining whether or not the allegations constitute a formal Title IX complaint. If allegations do not meet the definition of a Title IX complaint, the Title IX coordinator will inform the complainant and the respondent that the complaint is not considered a Title IX complaint and the reasons it does not fit within the required elements of a formal Title IX complaint. If the complainant or respondent disagrees with the Title IX coordinator's decision, the party may file an appeal with the dean of students within three calendar days of the Title IX coordinator's decision. The dean of students can affirm, reverse, or remand the Title IX coordina-

tor's decision and such decision must be communicated in writing simultaneously to the parties.

SRR may proceed, however, with pursuing a student conduct case against the respondent for misconduct outside of Title IX including, but not limited to, sexual misconduct or interpersonal violence that does not fit the definition of a Title IX complaint.

(c) Prompt resolution. The university shall investigate any complaint alleging sexual misconduct or interpersonal violence when it is legally required to do so. The university's goal is to have complaints of sexual misconduct or interpersonal violence resolved within ninety days. If the university needs additional time, the investigator or director of SRR should provide written notice to the complainant and respondent of the delay and the reasons for the delay. Delays and extensions beyond the ninety days must be based on good cause.

(d) Investigations. The university will investigate all sexual misconduct and interpersonal violence allegations, including Title IX complaints, and may, at its discretion, ask for an investigation of other alleged misconduct. During the investigation, the investigator is responsible for gathering evidence relating to the complaint. The investigator will contact the complainant, respondent, and other witnesses to ask questions and gather relevant evidence. Parties may be assisted by an advisor during the investigative process. During the investigation, parties will be provided with an equal opportunity to identify witnesses and other evidence that supports their position. Prior to any investigatory interview regarding a Title IX complaint, the investigator will provide written notice of the meeting with the date, time, location, participants, and purpose with sufficient time for the person to prepare to participate in the interview.

Prior to the completion of the investigative report for a Title IX complaint, the investigator will send to each party the evidence obtained during the investigation that is directly related to the allegations raised, including the evidence upon which the university does not intend to rely in reaching a determination regarding responsibility and inculpatory and exculpatory evidence. Each party will then have at least ten calendar days to submit a written response for a Title IX complaint. The investigator will consider the written response prior to the completion of the investigative report. At the conclusion of the investigation, the investigator will prepare a final written report that fairly summarizes the relevant evidence. The investigative report, along with any evidence collected during the investigation, shall then be transmitted to the director of SRR at least ten days prior to any hearing or other determination of responsibility. In cases of sexual misconduct or interpersonal violence, a copy of the report must also be provided to the parties for their review and written response.

(e) Confidentiality. To facilitate the investigative process and protect the privacy of those involved, all information will be maintained in a confidential manner to the fullest extent permissible by law. During an investigation, complaint information will be disseminated on a need-to-know basis. If the complainant wishes to remain anonymous, the university will take all reasonable steps to investigate the allegation without disclosing the name of the complainant to the extent

allowed by state and federal law. If the complainant wishes to remain anonymous, the university shall inform them that its ability to investigate and respond to the allegation will be limited. The university cannot ensure confidentiality, as its legal obligations under federal or state law may require investigation of the allegation and possible disclosure of the complainant's name. Reports of crimes to the campus community shall not include the names of the complainants. Files subject to public disclosure will be released to the extent required by law.

(f) Right to file a criminal report. Once the university is notified of an allegation of sexual misconduct or interpersonal violence, it will notify the potential complainant of their right to file a criminal complaint with campus or local law enforcement. If the complainant in such circumstances wishes to report the conduct to local law enforcement, the university will assist them in doing so. The university will also notify the complainant that he or she is not required to file a report with local law enforcement. The university will report allegations of sexual misconduct or interpersonal violence to law enforcement or other authorities when it is required to do so under federal, state, and local law.

(4) Supportive measures and interim restrictions. During the complaint review, the director of SRR or Title IX coordinator will review whether any supportive measures or interim restrictions are needed. Supportive measures and interim restrictions are addressed in WAC 172-121-140.

(5) SRR will follow up with the parties as described below.

(a) The director of SRR will contact the respondent, and the complainant in cases of sexual misconduct or interpersonal violence, and provide them with the following information:

- (i) The respondent's and complainant's rights under the student conduct code;
- (ii) A summary of the allegations the complainant has against the respondent;
- (iii) The potential conduct code violations related to the allegations; and
- (iv) How to report any subsequent problems or retaliation, including intimidation, threats, coercion, or discrimination.

(b) In all cases alleging sexual misconduct or interpersonal violence, the director of SRR will, in addition to the information specified under (a) of this subsection, provide both parties with written information that will include, at a minimum:

- (i) The student's rights and options, including options to avoid contact with the other party; a list of available university and community resources for counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other academic and housing services at the university and in the community; and options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or protective measures;
- (ii) The importance of preserving evidence of the alleged incident and procedures to follow to preserve evidence of the alleged incident;
- (iii) Who will receive a report of the allegation;

(iv) Their right to file or not file a criminal complaint as detailed above and the ability to be assisted by campus authorities in notifying law enforcement authorities if the complainant wishes to do so;

(v) A list of resources for obtaining protective, no contact, restraining, or similar orders, if applicable;

(vi) The procedures the university will follow when determining if discipline is appropriate;

(vii) Steps the university will take to ensure confidentiality of complainants and other necessary parties and the limits this may place on the university's ability to investigate and respond, as set forth above; and

(viii) Information regarding the university's policy against retaliation, steps the university will take to prevent and respond to any retaliation, and how the student should report retaliation or new incidents.

(6) Following the complaint review, the director of SRR will either dismiss the matter or arrange a prehearing conference.

(a) Dismiss the matter. If the director of SRR determines the allegations, even if true, would not rise to the level of a conduct violation, he/she may dismiss the matter. In such cases, the director of SRR will prepare a written record of the dismissal. The director of SRR will also notify the complainant of their decision, if such notification is permissible under FERPA. The dismissal letter, along with the original complaint and any other related documents, will be maintained as described in WAC 172-121-080. In cases of sexual misconduct or interpersonal violence or for a Title IX complaint, the complainant may request a review of the dismissal by the dean of students by filing a request for review with the director of SRR within seven business days of receiving notice of the dismissal.

(b) Prehearing conference. If the director of SRR does not dismiss the matter he/she will arrange a prehearing conference as described in WAC 172-121-110.

AMENDATORY SECTION (Amending WSR 20-19-046, filed 9/10/20, effective 10/11/20)

**WAC 172-121-105 Conduct review proceedings. (1)**

General provisions:

(a) Conduct review proceedings in which the allegations do not involve a Title IX complaint, felony level crimes, or the potential sanction is less than suspension or expulsion, are brief hearings in accordance with WAC 172-108-050(3). Conduct review proceedings in which the allegations involve a Title IX complaint, felony level crimes, or the potential sanction is suspension or expulsion, are considered full hearings under the Administrative Procedure Act.

(b) Nonjudicial proceedings: Formal rules of process, procedure, and/or technical rules, such as are applied in criminal or civil courts, do not apply in student conduct code proceedings. All Title IX complaints shall follow the regulations prescribed under 34 C.F.R. Part 106.

(2) Notification for student organizations: When a charge is directed towards a student organization, the CRO will communicate all matters relative to conduct review proceedings with the president of the organization or their designee.

(3) Advisors: The complainant and the respondent may be assisted by one advisor of their choice, subject to the following provisions:

(a) Any fees or expenses associated with the services of an advisor are the responsibility of the complainant or the respondent that employed the advisor;

(b) The advisor may be an attorney or any other person of the student's choosing;

(c) The advisor must provide the CRO with a FERPA release signed by the student they are assisting;

(d) If a complainant or the respondent is represented by an attorney, the attorney shall provide the CRO and other parties with the attorney's name, address, telephone number, and email address. The attorney must file a notice of appearance when hired to represent a person and a notice of withdrawal upon withdrawal of representation. A notice of appearance must be filed at least two business days prior to any conduct review proceeding;

(e) If a complainant or respondent wishes to have an advisor for a Title IX complaint and is not able to identify one, the student may contact SRR for assistance in finding an advisor;

(f) In addition to an advisor, a complainant or respondent may bring a certified therapy animal with a handler for the hearing. The handler is not allowed to participate in the hearing process.

(4) Review of evidence:

(a) In brief hearings, the respondent, and, in cases of sexual misconduct or interpersonal violence, the complainant may request to view material related to their case prior to a scheduled hearing by contacting the CRO. To facilitate this process, the party should contact the CRO as early as possible prior to the scheduled hearing. The CRO shall make a reasonable effort to support the request to the extent allowable by state and federal law.

(b) In full hearings, the respondent, and, in cases of sexual misconduct or interpersonal violence, the complainant may request to view material related to the case prior to the scheduled hearing by contacting the director of SRR. To facilitate this process, the party should contact the director as early as possible prior to the scheduled hearing. The director of SRR shall make a reasonable effort to support the request to the extent allowable by state and federal law.

(5) Continuances: Continuances, extensions of time, and adjournments may be ordered by the CRO. A party may file a timely request for a continuance if the party shows good cause for the continuance. A request for a continuance may be oral or written. Before granting a motion for a continuance, the CRO shall allow any other party to object to the request. The CRO will make a decision on the request and will communicate his/her decision in writing to the parties along with the reasons for granting or denying the request.

AMENDATORY SECTION (Amending WSR 20-19-046, filed 9/10/20, effective 10/11/20)

**WAC 172-121-122 Full hearing procedures. (1)**

Scheduling and notification. Full hearings are used for allegations which, if substantiated by a preponderance of the evidence, could be a felony-level crime, involve a Title IX com-

plaint, or could result in a sanction of suspension or expulsion. Following provision of the notice of allegations to the respondent, as set forth in WAC 172-121-110, the SRR office shall arrange for a prehearing conference.

(2) General provisions.

(a) Hearing authority: The CRO exercises control over hearing proceedings. All procedural questions are subject to the final decision of the CRO. The CRO chairs the disciplinary council.

(b) Closed hearings: All conduct review hearings will be closed. Admission of any person to a conduct review hearing shall be at the discretion of the CRO.

(c) Consolidation of hearings: In the event that one or more students are charged with the same misconduct arising from the same occurrence, the council may conduct separate hearings for each student or consolidate the hearings as practical, as long as consolidation does not impinge on the rights of any student.

(3) Appearance.

(a) Failure to appear: In cases where proper notice has been given but the respondent fails to attend a conduct review hearing, the council shall decide the case based on the information available, without the respondent's input. The council may not make an inference about the determination regarding responsibility based solely on a party's or witness's failure to appear at the hearing. However, nonappearance by a party may impact the evidence available for the council to make a decision.

(b) Appearance: The parties will be provided options for reasonable alternative arrangements if they do not wish to be present in the same room as the other student during the hearing. The parties may appear at the conduct review hearing in person via a method that allows the council to hear the parties and physically observe them while testifying, subject to the limits set forth below in (e) of this subsection. If a party does not appear at the hearing, the council will decide the case based on the information available. Solely for Title IX complaints, if a party or witness does not appear at the hearing and submit to cross-examination, the council must not rely on any statement of that party or witness in reaching a determination regarding responsibility; additionally, the council cannot draw an inference regarding responsibility based on the failure to appear or refusal to answer cross-examination or other questions.

(c) Advisors: The complainant and the respondent may be assisted by one advisor during conduct review hearings as described in WAC 172-121-105. For Title IX complaints, the university will provide an advisor to a party upon request for the purposes of conducting cross-examination.

(d) Disruption of proceedings: Any person, including the respondent or advisor, who disrupts a hearing, may be excluded from the proceedings.

(e) Remote appearance. In the interest of fairness and expedience, the CRO may permit any person to appear by a method that allows the person to be seen and heard by the council.

(4) Standard of evidence. The council shall determine whether the respondent violated the student conduct code, as charged, based on a preponderance of the evidence. A preponderance means, based on the evidence admitted, whether

it is more probable than not that the respondent violated the student conduct code.

(5) Prehearing conference. The SRR office or designee will arrange for a prehearing conference with the parties to advise them about the student conduct process. During the prehearing conference, the SRR office or designee will:

(a) Review the written list of allegations;

(b) Inform the respondent who is bringing the complaint against them;

(c) Provide the respondent and complainant with a copy of the student conduct code and any other relevant university policies;

(d) Explain the respondent's and complainant's rights and responsibilities under the student code;

(e) Explain the conduct review procedures;

(f) Explain possible penalties under the student conduct code;

(g) Schedule a date for the full hearing; and

(h) Address any preliminary matters or motions.

(6) Notice of hearing. Following the prehearing conference, the director shall schedule the hearing and notify the respondent and complainant of the date, time, location, participants, and purpose of the hearing. The notices will include information about how to request accommodations or interpreters for any parties or witnesses. Any request for the presence of an emotional support animal or any other accommodation must be directed to disability support services and approved as a reasonable accommodation in advance of the hearing. A person may bring a certified therapy animal with a handler to a hearing. The notice of hearing must be served on the respondent and complainant at least seven business days prior to the hearing. The director may coordinate with the parties to facilitate scheduling, but is not required to do so.

(7) Evidence.

(a) Evidence: Pertinent records, exhibits and written statements may be accepted as information for consideration by the council in accordance with RCW 34.05.452. Any investigation conducted by the university will be admitted into evidence as long as the investigator testifies at the hearing. Evidence, including hearsay evidence, is admissible if in the judgment of the CRO it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs; however, solely for Title IX complaints, statements obtained from a person who does not testify at the hearing shall not be considered by the council. The CRO shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized by Washington courts. The CRO may exclude irrelevant material. If not inconsistent with this section, the CRO shall refer to the Washington rules of evidence as guidelines for evidentiary rulings. For Title IX complaints, prior to allowing a question to be answered during cross-examination, the CRO must determine that the question is relevant, and, if excluded, the CRO must explain on the record the reason for the exclusion.

(b) The respondent and complainant have the right to view all material presented during the course of the hearing, except a respondent's previous disciplinary history which shall be used solely for the purpose of determining the appropriate sanction.

(c) All testimony of parties and witnesses shall be made under oath or affirmation. Any interpreter shall be proscribed the oath set forth in WAC 10-08-160.

(d) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(e) Official notice may be taken of (i) any easily verifiable facts such as dates or weather conditions, (ii) technical or scientific facts within EWU's specialized knowledge, such as enrollment status or class schedules, and (iii) codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

(f) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of RCW 34.05.452, except for the additional restrictions on the admission of evidence required by Title IX.

(8) Discovery. Discovery is not permitted under the code, except for requests for documentary information from the university. Either party may request the university to produce relevant documents in the university's possession as long as such request is submitted at least five business days prior to the hearing, absent extenuating circumstances. If the CRO determines the request is not relevant to the present allegation, the CRO may deny the request. The university will provide the requested information prior to the hearing to the extent permitted by state and federal law.

(9) Subpoenas.

(a) Subpoenas ~~((shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446 and 5.56.010.~~

~~((b)) may be issued by the presiding officer or an attorney consistent with RCW 34.05.446. However, for the protection of both parties, a party cannot subpoena the other party. A party may request an exemption from this rule by filing a written request with the presiding officer at least ten days prior to the hearing. The presiding officer will provide a copy of the request to the other party and give them three days to respond. The presiding officer will then decide whether or not sufficient cause exists to grant an exemption to this rule and will inform the parties of the decision. Any subpoena issued must conform to EWU's subpoena form. Every subpoena shall identify the party causing issuance of the subpoena and shall state EWU's name and the title of the proceeding and shall ((command)) direct the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under his or her control.~~

~~((i)) A subpoena to a person to provide testimony at a hearing shall specify the time and place set for hearing.~~

~~((ii) A subpoena duces tecum requesting a person to produce designated books, documents, or things under his or her control shall specify a time and place for producing the books, documents, or things. That time and place may be the time and place set for the hearing, or another reasonably convenient time and place in advance of the hearing.~~

~~((c)) (b) A subpoena may be served by any suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of his or her abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit or declaration under penalty of perjury.~~

~~((d)) (c) The CRO, upon motion by a party or at his or her own discretion, may ((i)) quash or modify the subpoena if it is unreasonable ((and)) or oppressive ((or (ii) condition denial of the motion upon advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things)). Subpoenas may not be used to threaten or intimidate parties or witnesses.~~

(10) Summary judgment. A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A motion for summary judgment is not permitted for Title IX complaints.

(11) Witnesses.

(a) The complainant, respondent, and the university's presenter may call witnesses at full hearings.

(b) The person who wishes to call a witness is responsible for ensuring that the witness is available and present at the time of the hearing. An attorney may subpoena a witness to appear at the hearing. Nonattorneys may request the CRO to subpoena witnesses in accordance with subsection (4) of this section. The CRO has the discretion to deny a request to issue a subpoena or to quash a subpoena issued by an attorney if the subpoena is unreasonable, oppressive, or does not conform to EWU's subpoena form.

(c) The CRO may exclude witnesses from the hearing room when they are not testifying. The CRO is not required to take the testimony of all witnesses called by the parties if such testimony may be irrelevant. For Title IX complaints, any decision to exclude a witness shall be explained on the record.

(d) All parties have the right to hear all testimony provided by witnesses during the hearing.

(e) The parties should inform the CRO of any possible need for an interpreter or any accommodation requests at least five business days prior to the hearing. The CRO will comply with WAC 10-08-150.

(12) Questioning:

(a) The complainant's advisor, the respondent's advisor, and the university's presenter may ask questions of any witness, or party, including cross-examination questions. For cases that do not involve Title IX complaints, if the student does not have an advisor, the complainant and respondent may submit questions in writing to the CRO and the CRO may ask the questions. For Title IX complaints, if a party does not have an advisor, the university will provide the party with an advisor aligned with that party for the purposes of conducting cross-examination as long as the party requests such an advisor at least five business days in advance of the hearing. The CRO may also ask questions, but is not required to do so. The CRO may preclude any questions which they consider irrelevant, and for Title IX cases such decision must

be explained on the record. The CRO must exclude and the council shall not consider any questions or evidence pertaining to the complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The CRO will explain to the parties the reason for rejecting any questions and will maintain a record of the questions submitted and rulings made.

(b) The council may ask their own questions of any witness or party called before them.

(13) Remote appearance. The CRO may accommodate concerns for personal safety, well-being, or fears of confrontation of any person appearing at the hearing by providing separate facilities, or by permitting participation by video conferencing, or other means that allows the council and parties to see and hear the party answering questions, as determined appropriate, subject to subsection (3)(b) of this section.

(14) Deliberations and sanctions. Following the hearing, the council will determine in closed session whether, by a preponderance of the evidence, the respondent violated the student conduct code based on the evidence presented at the hearing. If a student fails to appear, the council shall make a decision based on the information available. If the council determines the respondent violated the student conduct code, the CRO shall then decide what sanctions and remedies shall be imposed. The CRO may review the respondent's previous disciplinary history solely for purposes of determining the appropriate sanction. In addition to sanctions under this code, if the student is also an employee of the university, the CRO's decision may be forwarded to the student's supervisor to determine whether any employment actions outside of this code should be taken in accordance with university policy.

The council shall issue a decision including their findings, conclusions, and rationale. The decision shall address credibility issues if credibility or witness demeanor was a substantial factor in the council's decision. Credibility determinations may not be based on a person's status as a complainant, respondent, or witness. The findings shall be based exclusively on the evidence provided at the hearing. If the council finds the respondent violated the code, the CRO shall add the decision regarding sanctions and remedies to the council's decision. Such decisions should be issued within ten business days from the date of the hearing. The written decision shall also:

(a) Be correctly captioned identifying EWU and the name of the proceeding;

(b) Designate all parties and representatives participating in the proceeding;

(c) Identify the allegations at issue;

(d) A description of the procedural steps taken, including notifications to the parties, interviews with the parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

(e) Contain appropriate numbered findings of fact meeting the requirements in RCW 34.05.461;

(f) Contain appropriately numbered conclusions regarding the application of university policies and this code to the facts;

(g) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed, and if any remedies are necessary to provide to the complainant in a Title IX complaint to restore or preserve equal access to the university's educational programs or activities;

(h) Contain a statement describing rights to appeal and the procedures for appealing.

(15) Finality. The council's and CRO's decision becomes final at either the conclusion or the appeal process under this code, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be timely.

(16) Notification to the respondent. The CRO shall serve the respondent with a copy of the decision and notice of the right to appeal.

(17) Notification to the complainant. In cases of sexual misconduct or interpersonal violence, simultaneous with notification of the decision to the respondent, the complainant shall be provided with written notice of:

(a) The university's determination as to whether sexual misconduct or interpersonal violence occurred;

(b) The complainant's right to appeal;

(c) Any change to the results that occurs prior to the time that such results become final and when such results become final (20 U.S.C. 1092(f));

(d) Information regarding the discipline of the respondent will not be released unless:

(i) The information contained in the record directly relates to the complainant, such as an order requiring the student harasser to not contact the complainant; or

(ii) The misconduct involves a crime of violence or a sexual assault, including rape, dating violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a).

(e) Any remedies provided to the complainant. For Title IX complaints, the complainant shall receive a copy of the decision provided to the respondent under subsection (14) of this section.

(18) **Notification to Title IX coordinator.** For Title IX complaints, the Title IX coordinator must be provided with notice of the decision as the Title IX coordinator is responsible for effective implementation of any remedies.

**AMENDATORY SECTION** (Amending WSR 20-19-046, filed 9/10/20, effective 10/11/20)

**WAC 172-121-140 Supportive measures and interim restrictions.** (1) Supportive measures. During the complaint review, the director of SRR, Title IX coordinator, or designee will evaluate the circumstances and determine if any supportive measures to assist or protect the parties during the conduct code process are needed. For sexual misconduct and interpersonal violence cases, supportive measures are available before or after the filing of a complaint or where no formal complaint is filed. Supportive measures are provided to students free of charge and may include, but are not limited to, safety planning with the university, mutual restrictions on contact between the parties, academic or workplace modifi-

cations, providing counseling for the complainant and/or respondent, or campus housing modifications (~~(, and/or an interim restriction for the respondent)~~). The purpose of a supportive measure is to provide an equitable process for both students that minimizes the possibility of a hostile environment on campus. For Title IX complaints, supportive measures are designed to restore or preserve equal access to the university's educational programs or activities without unreasonably burdening either party, including protecting the safety of all parties and the university's educational environment, or deterring sexual harassment. Supportive measures in cases of sexual misconduct and interpersonal violence are coordinated by the Title IX coordinator or designee.

(2) Interim restrictions. For Title IX complaints, in situations where there is cause to believe that a student or a student organization poses an immediate threat to the physical health or safety of any student or other individual, including themselves, the Title IX coordinator in conjunction with the director of SRR may take immediate action(s) against the student or student organization after conducting an individualized safety and risk analysis without prior notice or hearing.

Simultaneous with such action(s), the director of SRR will refer the allegations to the conduct review officer, who will process such allegations in accordance with the provisions of this student conduct code.

For all non-Title IX cases, the director may take immediate action(s) against the student or student organization after conducting an individualized safety and risk analysis without prior notice or hearing. Simultaneously, the director shall refer the allegations to the conduct review officer. For non-Title IX cases, interim restriction is subject to the following:

(a) Interim restriction actions may only be imposed in the following situations:

(i) When a student or student organization poses an immediate threat to:

(A) The physical health or safety of any student or any other individual;

(B) The student's own physical safety and well-being; or

(C) Any property of the university community; or

(ii) When it is believed that the student's or student organization's continued attendance or presence may cause disorder, substantially interfere with or impede the lawful activities of others, or imperil the physical or mental health and safety of members of the university community.

(b) During the interim restriction period, a student may be restricted by any or all of the following means:

(i) Denial of access including, but not limited to: Assignment to alternate university housing or removal from university housing, limitation of access to university facilities, or restriction of communication with specific individuals or groups;

(ii) Interim suspension, including temporary total removal from the university or restriction of access to campus. For Title IX complaints, a student may only be placed on interim suspension if, after conducting an individualized safety and risk analysis, the director determines the person poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual misconduct or interpersonal violence;

(iii) Mandatory medical/psychological assessment of the student's capability to remain in the university.

(3) The director of SRR will determine what restriction(s) will be placed on a student.

(4) The director of SRR will prepare a brief memorandum for record containing the reasons for the interim restriction. The director will serve the memorandum on the restricted student and notify all other persons or offices bound by it. At a minimum, the memorandum will state:

(a) The alleged act(s) or behavior(s) of the student or student organization which prompted the interim restriction;

(b) How those alleged act(s) or behavior(s) could constitute a violation of the student conduct code;

(c) How the circumstances of the case necessitated the interim restriction action(s); and

(d) An explanation of the process for emergency appeal reviews.

(5) Notice to complainant. In cases alleging sexual misconduct or interpersonal violence, the complainant will be provided with notice of any interim restrictions that relate directly to the complainant. If the respondent appeals such interim restrictions, the complainant will be given notice of the respondent's appeal and an opportunity to submit a statement within five business days of the notice as to why the interim restriction should or should not be modified.

(6) Emergency appeal review.

(a) If a student has been suspended on an interim basis, the student will automatically receive an emergency appeal review with the vice president for student affairs, or designee. If the interim restriction is something less than a suspension, the student or student organization subject to the interim restriction must file a written appeal with the vice president for student affairs within five business days after service of the interim restriction. In all cases, the student must submit any information the student wishes the vice president to consider submitted within ten business days after service of the interim restriction. The appealing party should outline the desired modification(s) to the interim restriction as well as the specific challenge(s) to the interim restriction decision. Challenges to interim restriction decisions are limited to the criteria identified in WAC 172-121-140(1) upon which the interim restriction was imposed (threat to health or safety of the university community, potential for creating campus disorder, impeding the lawful activity of others, etc.). Appealing parties are limited to submitting their own written statements. Any other evidence should be submitted to the investigator or provided to the CRO under the regular hearing process.

(b) The vice president for student affairs, or designee, will conduct an emergency appeal review after receiving the respondent's review and complainant's response, if any. Emergency appeal reviews will address only the interim restriction decision of the ~~((dean of students))~~ director and the basis on which the restriction modification or termination is requested by the appealing party. The emergency appeal review does not replace the regular hearing process. In the emergency appeal review, the vice president will only review materials available to and information considered by the dean of students at the time the interim restriction was imposed, written statements by the two parties, and information that

becomes available as a part of the university's investigation that the vice president deems relevant.

(c) In cases alleging sexual misconduct or interpersonal violence, if a complainant believes the interim restriction does not adequately protect their health and safety, the complainant may appeal the interim restriction using the process outlined in this subsection. If the complainant files an appeal, all parties shall be given notice of the appeal and shall be provided the opportunity to submit a written statement to the vice president within five business days of receiving notice of the complainant's appeal.

(d) During the emergency appeal review, the vice president for student affairs will review available materials and statements. The vice president for student affairs will issue a written decision upholding, modifying, or terminating the interim restriction action. The written decision shall include a rationale for the basis of the decision and be issued within fifteen business days of the date of service of an interim restriction.

(e) The interim restriction does not replace the regular hearing process, which will proceed as quickly as feasible consistent with this chapter.

(f) Duration. An interim restriction will remain in effect until terminated, in writing, by the student disciplinary council, CRO, or the vice president for student affairs.

### WSR 21-01-103

#### PERMANENT RULES

#### EASTERN WASHINGTON UNIVERSITY

[Filed December 11, 2020, 2:27 p.m., effective January 11, 2021]

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

Purpose: The modifications are necessary to comply with updates to RCW 28B.10.293.

Citation of Rules Affected by this Order: Amending WAC 172-191-050.

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

Adopted under notice filed as WSR 20-22-051 on October 29, 2020.

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 the Request of a Non-governmental 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 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: December 11, 2020.

Annika Scharosch

Associate Vice President  
for Civil Rights, Compliance  
and Enterprise Risk Management

AMENDATORY SECTION (Amending WSR 09-19-064, filed 9/14/09, effective 10/15/09)

**WAC 172-191-050 Obtaining copies of records.** Students may obtain copies of their education records. The office of the registrar is the only office which may issue an official transcript of the student's academic record. Charges for copies shall not exceed the cost normally charged by the university copy center (except in cases where charges have previously been approved for certain specified services).

(1) The university may refuse to provide copies of education records including transcripts and diplomas in the following circumstances:

(a) If the record is a secure exam as determined by the department that maintains the exam, so that the integrity of such exams may be protected; and/or

(b) ~~((If the student has outstanding debts owed to the university, so that the university may facilitate collection of such debts; and/or~~

~~(e)))~~ If disciplinary action is pending or sanctions are not completed.

(2) The university must provide copies of education records, subject to the provisions of subsection (1) of this section, in the following circumstances:

(a) If failure to do so would effectively prevent the student from inspecting and reviewing a record;

(b) When records are released pursuant to a student's consent and the student requests copies; and/or

(c) When the records are transferred to another educational institution where the student seeks to attend or intends to enroll and the student requests copies.

### WSR 21-01-104

#### PERMANENT RULES

#### EASTERN WASHINGTON UNIVERSITY

[Filed December 11, 2020, 2:33 p.m., effective January 11, 2021]

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

Purpose: The modifications are necessary to reflect Eastern Washington University's current practices and procedures due to newly issued federal Title IX regulations.

Citation of Rules Affected by this Order: Amending WAC 172-108-040 and 172-108-050.

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

Adopted under notice filed as WSR 20-22-052 on October 29, 2020.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 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: December 11, 2020.

Annika Scharosch  
Associate Vice President  
for Civil Rights, Compliance  
and Enterprise Risk Management

AMENDATORY SECTION (Amending WSR 17-11-051, filed 5/15/17, effective 6/15/17)

**WAC 172-108-040 Formal adjudicative proceedings.**

(1) Eastern Washington University utilizes a formal adjudicative proceeding for certain student conduct proceedings as identified in chapter 172-121 WAC and certain academic integrity code proceedings as identified in chapter 172-90 WAC. The procedural rules for these formal adjudicative proceedings are contained in the Student conduct code, chapter 172-121 WAC, and the academic integrity code, chapter 172-90 WAC. In all other cases, Eastern Washington University only utilizes formal adjudicative proceedings when required by RCW 34.05.413 through 34.05.476. ~~(For such proceedings, excluding the student conduct process, Eastern Washington University adopts the model rules of procedure adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended, except for those rules which are in conflict with the provisions set forth in this chapter. The model rules are contained in chapter 10-08 WAC. In the case of a conflict between the model rules of procedure and these procedural rules, the procedural rules adopted by Eastern Washington University shall govern) or for the adjudication of formal Title IX complaints against employees as set forth in university policy.~~

(2) An application for a formal adjudicative proceeding shall be in writing. Application forms are available from: University Policy Administration; ~~((Office of the President;))~~ Eastern Washington University; ~~((Showalter 214))~~ Tawanka 211, Cheney, WA 99004-2496. Written application for a formal adjudicative proceeding in response to the institution's action must be submitted to the above address within twenty-one calendar days of the action, unless otherwise provided by statute or rule.

AMENDATORY SECTION (Amending WSR 17-11-051, filed 5/15/17, effective 6/15/17)

**WAC 172-108-050 Brief adjudicative proceedings.** In accordance with RCW 34.05.410 (1)(a), the procedures identified in RCW 34.05.482 through 34.05.494 apply to all brief adjudicative proceedings at Eastern Washington University. All applications for a brief adjudicative proceeding shall be in writing. Application forms are available from: University Policy Administration; ~~((Office of the President; Showalter~~

~~214))~~ Tawanka 211; Eastern Washington University; Cheney, WA 99004-2496. Written application for a brief adjudicative proceeding in response to the institution's action must be submitted to the university within twenty-one calendar days of the action, unless a different time frame is specified in the regulations identified below that apply to the type of decision being challenged. When required by law or constitutional right, brief adjudicative proceedings shall be used in all matters of appeal related to:

(1) Residency determinations made pursuant to RCW 28B.15.013 and chapter 250-18 WAC;

(2) Challenges to contents of education records, review of the denial to inspect such records, or challenges to the disclosure of such records. In addition to the rules identified below, these challenges are governed by chapter 172-191 WAC;

(3) Student conduct proceedings, if the potential sanction for the alleged misconduct does not include suspension, expulsion, formal Title IX complaints, or an allegation of felony-level sexual misconduct. In addition to the rules identified below, these proceedings are governed by chapter 172-121 WAC;

(4) Outstanding debts owed by students or employees, pursuant to chapters 172-124 and 172-144 WAC;

(5) Traffic and parking violations and revocations of any parking permit pursuant to chapter 172-100 WAC;

(6) Student academic integrity proceedings, if the potential sanction for the alleged misconduct does not include suspension or expulsion. In addition to the rules identified in this section, these proceedings are governed by chapter 172-90 WAC;

(7) Library fines and charges;

(8) Reduction, cancellation, or nonrenewal of institutional financial aid when based in any degree on athletics ability per National Collegiate Athletic Association rules;

(9) Administrative decisions regarding ~~((mandatory))~~ statutorily mandated tuition and/or fee waivers;

(10) ~~((Intellectual property ownership determinations in accordance with EWU Policy 302-04;~~

~~((11) Ethics in))~~ Research integrity violations in accordance with EWU Policy 302-05 when required by federal law;

~~((12) Matters subject to review by the academic appeals board in accordance with EWU Policy 303-21;~~

~~((13) Matters subject to review regarding graduate students in accordance with EWU Policy 303-22;~~

~~((14))~~ (11) Citations issued by university police regarding the use of golf carts and utility vehicles, in accordance with EWU Policy 603-06;

~~((15))~~ (12) Fines imposed for impermissible use of tobacco, electronic cigarettes, and related products in accordance with WAC 172-122-310;

~~((16))~~ (13) Financial aid appeals as provided for by federal law and in accordance with EWU policies for satisfactory academic progress for undergraduate, post-baccalaureate, and graduate students;

~~((17))~~ (14) Denial of work study or termination from a work study position when required by federal law;

~~((18))~~ (15) Notice against trespass issued per WAC 172-122-200;

~~((19))~~ (16) Denial of request to waive undergraduate housing requirement under chapter 172-130 WAC;

~~((20))~~ (17) Fines assessed under a university housing agreement; and

~~((21))~~ (18) Penalties imposed for violations of pet control regulations in accordance with chapter 172-115 WAC.

**WSR 21-01-122**  
**PERMANENT RULES**  
**STATE BOARD OF HEALTH**

[Filed December 15, 2020, 10:00 a.m., effective January 15, 2021]

Effective Date of Rule: WAC 246-215-01115, 246-215-03235, 246-215-06570, and 246-215-09100 through 246-215-09160 become effective on January 15, 2021. The remainder of the sections in the chapter become effective on March 1, 2022.

Purpose: Chapter 246-215 WAC, Food service. RCW 43.20.145 requires the state board of health (board) to consider the latest version of the Food and Drug Administration (FDA) Food Code in adopting Washington's state food safety rules. The previous rules were based on the 2009 FDA Food Code. Since then, the 2013 and 2017 FDA Food Code versions were published. The state rules have been revised to reflect these new standards and to: (1) Prevent foodborne illness by identifying food safety requirements for operators in restaurants, caterers, mobile units, farmers markets, community events, private homes, schools, hospitals, and others that provide food to the public; (2) Compile and incorporate lessons learned since the last rule update from knowledge acquired from illness outbreaks, academic partners, industry representatives and nationally-recognized food safety standards; (3) Reflect stakeholder process by using information from people affected by the rule to provide clear and consistent requirements regarding safe food preparation, storage, and handling for the state of Washington; and (4) Incorporate several recent statutory amendments made by the state legislature. Other provisions of the rules were revised to clarify the intent.

Citation of Rules Affected by this Order: New WAC 246-215-02107, 246-215-02406, 246-215-02500, 246-215-03526, 246-215-03527, 246-215-04350, 246-215-09126, 246-215-09127, 246-215-09406 and 246-215-09407; repealing WAC 246-215-04650, 246-215-09130 and 246-215-09180; and amending WAC 246-215-01100, 246-215-01105, 246-215-01110, 246-215-01115, 246-215-02100, 246-215-02105, 246-215-02107, 246-215-02110, 246-215-02115, 246-215-02200, 246-215-02205, 246-215-02210, 246-215-02220, 246-215-02225, 246-215-02235, 246-215-02240, 246-215-02245, 246-215-02250, 246-215-02255, 246-215-02300, 246-215-02305, 246-215-02310, 246-215-02315, 246-215-02320, 246-215-02325, 246-215-02330, 246-215-02335, 246-215-02400, 246-215-02405, 246-215-02410, 246-215-02415, 246-215-03100, 246-215-03200, 246-215-03205, 246-215-03210, 246-215-03215, 246-215-03220, 246-215-03225, 246-215-03230, 246-215-03235, 246-215-03240, 246-215-03245, 246-215-03250, 246-215-03255, 246-215-03260, 246-215-03265, 246-215-03270, 246-215-03275, 246-215-03280, 246-215-03285, 246-215-03290,

246-215-03300, 246-215-03303, 246-215-03306, 246-215-03309, 246-215-03312, 246-215-03315, 246-215-03318, 246-215-03321, 246-215-03324, 246-215-03327, 246-215-03330, 246-215-03333, 246-215-03336, 246-215-03339, 246-215-03342, 246-215-03345, 246-215-03348, 246-215-03351, 246-215-03354, 246-215-03357, 246-215-03360, 246-215-03363, 246-215-03366, 246-215-03369, 246-215-03372, 246-215-03375, 246-215-03400, 246-215-03405, 246-215-03410, 246-215-03415, 246-215-03425, 246-215-03430, 246-215-03435, 246-215-03440, 246-215-03445, 246-215-03500, 246-215-03505, 246-215-03510, 246-215-03515, 246-215-03520, 246-215-03525, 246-215-03530, 246-215-03535, 246-215-03540, 246-215-03600, 246-215-03605, 246-215-03610, 246-215-03615, 246-215-03620, 246-215-03700, 246-215-03705, 246-215-03800, 246-215-04100, 246-215-04105, 246-215-04110, 246-215-04115, 246-215-04120, 246-215-04125, 246-215-04130, 246-215-04135, 246-215-04140, 246-215-04145, 246-215-04200, 246-215-04202, 246-215-04204, 246-215-04206, 246-215-04208, 246-215-04210, 246-215-04212, 246-215-04214, 246-215-04216, 246-215-04218, 246-215-04220, 246-215-04222, 246-215-04224, 246-215-04226, 246-215-04228, 246-215-04230, 246-215-04232, 246-215-04234, 246-215-04236, 246-215-04238, 246-215-04240, 246-215-04242, 246-215-04244, 246-215-04246, 246-215-04248, 246-215-04250, 246-215-04252, 246-215-04254, 246-215-04256, 246-215-04258, 246-215-04260, 246-215-04262, 246-215-04264, 246-215-04266, 246-215-04268, 246-215-04270, 246-215-04272, 246-215-04300, 246-215-04305, 246-215-04310, 246-215-04315, 246-215-04320, 246-215-04330, 246-215-04335, 246-215-04340, 246-215-04345, 246-215-04400, 246-215-04405, 246-215-04410, 246-215-04500, 246-215-04505, 246-215-04510, 246-215-04515, 246-215-04520, 246-215-04525, 246-215-04530, 246-215-04535, 246-215-04540, 246-215-04545, 246-215-04550, 246-215-04555, 246-215-04560, 246-215-04565, 246-215-04570, 246-215-04575, 246-215-04580, 246-215-04585, 246-215-04590, 246-215-04595, 246-215-04600, 246-215-04605, 246-215-04610, 246-215-04615, 246-215-04620, 246-215-04625, 246-215-04630, 246-215-04635, 246-215-04640, 246-215-04645, 246-215-04700, 246-215-04705, 246-215-04710, 246-215-04800, 246-215-04805, 246-215-04810, 246-215-04815, 246-215-04820, 246-215-04900, 246-215-04905, 246-215-04910, 246-215-04915, 246-215-04920, 246-215-04930, 246-215-04935, 246-215-04940, 246-215-04945, 246-215-05100, 246-215-05105, 246-215-05110, 246-215-05115, 246-215-05120, 246-215-05125, 246-215-05130, 246-215-05135, 246-215-05140, 246-215-05145, 246-215-05150, 246-215-05200, 246-215-05205, 246-215-05210, 246-215-05215, 246-215-05220, 246-215-05225, 246-215-05230, 246-215-05235, 246-215-05240, 246-215-05245, 246-215-05250, 246-215-05255, 246-215-05260, 246-215-05270, 246-215-05275, 246-215-05280, 246-215-05285, 246-215-05290, 246-215-05300, 246-215-05305, 246-215-05310, 246-215-05315, 246-215-05320, 246-215-05325, 246-215-05330, 246-215-05335, 246-215-05340, 246-215-05345, 246-215-05350, 246-215-05355, 246-215-05360, 246-215-05365, 246-215-05400, 246-215-05405, 246-215-05410, 246-215-05415, 246-215-05420, 246-215-05425, 246-215-05430, 246-215-05435, 246-215-05440,

246-215-05500, 246-215-05505, 246-215-05510, 246-215-05515, 246-215-05520, 246-215-05525, 246-215-05530, 246-215-05535, 246-215-05540, 246-215-05545, 246-215-05550, 246-215-05555, 246-215-05560, 246-215-05565, 246-215-05570, 246-215-05575, 246-215-05580, 246-215-05585, 246-215-05590, 246-215-05595, 246-215-06100, 246-215-06105, 246-215-06200, 246-215-06205, 246-215-06210, 246-215-06215, 246-215-06220, 246-215-06225, 246-215-06230, 246-215-06235, 246-215-06240, 246-215-06245, 246-215-06250, 246-215-06255, 246-215-06260, 246-215-06265, 246-215-06270, 246-215-06275, 246-215-06280, 246-215-06285, 246-215-06290, 246-215-06295, 246-215-06300, 246-215-06305, 246-215-06310, 246-215-06315, 246-215-06320, 246-215-06325, 246-215-06330, 246-215-06335, 246-215-06340, 246-215-06345, 246-215-06350, 246-215-06355, 246-215-06400, 246-215-06405, 246-215-06410, 246-215-06415, 246-215-06420, 246-215-06500, 246-215-06505, 246-215-06510, 246-215-06515, 246-215-06520, 246-215-06525, 246-215-06530, 246-215-06535, 246-215-06540, 246-215-06545, 246-215-06550, 246-215-06555, 246-215-06560, 246-215-06565, 246-215-06570, 246-215-07100, 246-215-07105, 246-215-07200, 246-215-07205, 246-215-07210, 246-215-07215, 246-215-07220, 246-215-07225, 246-215-07230, 246-215-07235, 246-215-07240, 246-215-07245, 246-215-07250, 246-215-07255, 246-215-07260, 246-215-07265, 246-215-07270, 246-215-07275, 246-215-07300, 246-215-08100, 246-215-08105, 246-215-08110, 246-215-08115, 246-215-08120, 246-215-08200, 246-215-08205, 246-215-08210, 246-215-08215, 246-215-08220, 246-215-08225, 246-215-08300, 246-215-08305, 246-215-08310, 246-215-08315, 246-215-08320, 246-215-08325, 246-215-08330, 246-215-08335, 246-215-08340, 246-215-08345, 246-215-08350, 246-215-08355, 246-215-08400, 246-215-08405, 246-215-08410, 246-215-08415, 246-215-08420, 246-215-08425, 246-215-08430, 246-215-08435, 246-215-08440, 246-215-08445, 246-215-08450, 246-215-08455, 246-215-08460, 246-215-08500, 246-215-08505, 246-215-08510, 246-215-08515, 246-215-09100, 246-215-09110, 246-215-09115, 246-215-09120, 246-215-09125, 246-215-09155, 246-215-09160, 246-215-09210, 246-215-09215, 246-215-09300, 246-215-09400, 246-215-09405, 246-215-09410, 246-215-09415, 246-215-09420, 246-215-09425, 246-215-09430, 246-215-09435, and 246-215-09500.

Statutory Authority for Adoption: RCW 43.20.050 and 43.20.145.

Adopted under notice filed as WSR 20-15-157 on July 22, 2020.

Changes Other than Editing from Proposed to Adopted Version: Four non-substantial changes were made upon adoption:

(1) Amended WAC 246-215-03235(4) to clarify that freshly-made rice noodles may be served within 4 hours of production (and not only immediately reheated or cooled).

(2) Amended WAC 246-215-08350 to clarify that an amended operating permit issued by the regulatory authority may be used to meet the public notification of inspection report availability.

(3) Repealed WAC 246-215-06570 (4)(j) to remove the proposed requirement that food establishments post signage

that dogs are allowed in outdoor areas of the food establishment.

(4) Removed the clause "and nontime/temperature control for safety food" in WAC 246-215-03348(4). This term was unnecessary and potentially confusing.

A final cost-benefit analysis is available by contacting Joe Graham, P.O. Box 47825, Olympia, WA 98504, phone 360-236-3305, TTY 711, email joe.graham@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 6, Amended 376, Repealed 3; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 4, Amended 38, 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 10, Amended 414, Repealed 3.

Date Adopted: October 13, 2020.

Michelle A. Davis  
Executive Director

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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. This chapter adopts, with modification, the 2017 Food Code published by the United States Department of Health and Human Services, Public Health Service, Food and Drug Administration.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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)) (50).

(2) When a LOCAL BOARD OF HEALTH adopts rules with more stringent provisions than those contained in this chapter, the more stringent rules apply.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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))~~ 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))~~ ACCREDITED PROGRAM does not refer to training functions or educational programs.

(2) "ACTIVE MANAGERIAL CONTROL" means the purposeful use of specific policies and procedures in the FOOD ESTABLISHMENT to control foodborne illness risk factors. It embodies a preventive rather than reactive approach to food safety through a continuous system of training, monitoring, and verification.

(3) "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))~~ (4) "ADULTERATED" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, Section 402.

~~((4))~~ (5) "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))~~ (6) "ASIAN RICE-BASED NOODLES" means a rice-based pasta that contains rice powder, water, wheat starch, vegetable cooking oil, and optional ingredients to modify the pH or water activity, or to provide a preservative effect. The ingredients do not include products derived from animals. The rice-based pasta is prepared by using a traditional method that includes cooking by steaming at not less than one hundred thirty degrees Fahrenheit, for not less than four minutes.

(7) "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))~~ (8) "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))~~ (9) "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))~~ (10) "BED AND BREAKFAST OPERATION" means a private home or inn offering one or more lodging units on a temporary basis to travelers.

~~((9))~~ (11) "BEVERAGE" means a liquid for drinking, including water.

~~((10))~~ (12) "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))~~ (13) "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))~~ (14) "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))~~ (15) "CERTIFIED FOOD PROTECTION MANAGER" means an EMPLOYEE with the authority to implement food protection measures and who meets the certification requirements 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.

(16) "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))~~ (17) "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))~~ (18) "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))~~ (19) "COMMINUTED."

(a) COMMINUTED means reduced in size by methods ~~((that include))~~ including chopping, flaking, grinding, or mincing.

(b) COMMINUTED 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 sausages made from two or more MEATS.

~~((17))~~ (20) "COMMISSARY" means an APPROVED FOOD ESTABLISHMENT where FOOD is stored, prepared, portioned, or PACKAGED for service elsewhere.

~~((18))~~ (21) "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 FOOD EMPLOYEES who ~~((might))~~ may 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))~~ (22) "CONFIRMED DISEASE OUTBREAK" means a FOODBORNE 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))~~ (23) "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))~~ (24) "CORROSION-RESISTANT" means a material that maintains acceptable surface cleanability 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))~~ (25) "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))~~ (26) "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))~~ (27) "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))~~ (28) "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))~~ (29) "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))~~ (30) "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))~~ (31) "DONATED FOOD DISTRIBUTING ORGANIZATION" means a FOOD ESTABLISHMENT that is a charitable non-profit organization under Section 501(c) of the federal Internal Revenue Code that distributes FOOD free of charge to the needy.

~~((29))~~ (32) "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))~~ (33) "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))~~ (34) "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))~~ (35) "DRY STORAGE" means a room or area designated for the storage of PACKAGED or containerized bulk ~~((nonPOTENTIALLY HAZARDOUS))~~ FOOD that is not TIME/TEMPERATURE CONTROL FOR SAFETY FOOD and dry goods such as SINGLE-SERVICE ARTICLES.

~~((33))~~ (36) "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 stain-

less 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))~~ (37) "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))~~ (38) "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))~~ (39) "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)~~) proportion such as cake mixes.

~~((37))~~ (40) "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))~~ (41) "EPA" means the United States Environmental Protection Agency.

~~((40))~~ (42) "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))~~ (43) "EXCLUDE" means to prevent a PERSON from working as an EMPLOYEE in a FOOD ESTABLISHMENT or entering a FOOD ESTABLISHMENT as an EMPLOYEE.

~~((42))~~ (44) "FDA" means the United States Food and Drug Administration.

~~((43))~~ (45) "FISH."

(a) FISH means fresh or saltwater finfish, crustaceans, mollusks, 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))~~ (46) "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))~~ (47) "FOODBORNE DISEASE OUTBREAK" means the occurrence of two or more cases of a similar illness resulting from the ingestion of a common FOOD.

~~((46))~~ (48) "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))~~ (49) "FOOD EMPLOYEE" means an individual working with unPACKAGED FOOD, FOOD EQUIPMENT or UTENSILS, or FOOD-CONTACT SURFACES.

~~((48))~~ (50) "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; market; vending location; 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)~~) nonTIME/TEMPERATURE CONTROL FOR SAFETY FOOD prePACKAGED in a licensed FOOD ESTABLISHMENT or FOOD PROCESSING PLANT;

(ii) An establishment that offers only (~~(nonPOTENTIALLY HAZARDOUS)~~) nonTIME/TEMPERATURE CONTROL FOR SAFETY FOOD, 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)~~) nonTIME/TEMPERATURE CONTROL FOR SAFETY FOOD, READY-TO-EAT FOOD(~~(S)~~) 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 from the original package 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)~~) nonTIME/TEMPERATURE CONTROL FOR SAFETY FOOD, hot BEVERAGES (such as coffee, (~~(hot)~~) tea, or (~~(hot)~~) pasteurized apple cider) served directly into sanitary SINGLE-SERVICE ARTICLES;

(vi) An establishment that offers only dry (~~(nonPOTENTIALLY HAZARDOUS)~~) nonTIME/TEMPERATURE CONTROL FOR SAFETY FOOD, nonREADY-TO-EAT FOODS with no additional processing (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)~~) nonTIME/TEMPERATURE CONTROL FOR SAFETY FOOD 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)~~) (c)(viii) of this subsection are sold or offered for human consumption;

(x) A (~~(hotel/motel)~~) 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;

(xvi) A location, not including special events as defined in RCW 82.32.033, operating thirty or fewer days per calendar year, used by a PERSON under the age of eighteen for the sale of nonalcoholic beverages, such as lemonade, using nonTIME/TEMPERATURE CONTROL FOR SAFETY FOOD with no direct hand contact and served directly into SINGLE-SERVICE ARTICLES; and

(xvii) A BED AND BREAKFAST OPERATION that prepares and offers FOOD to guests if the home is owner occupied, the number of available guest bedrooms does not exceed two, breakfast is the only meal offered, and the CONSUMER is informed in published advertisements, mailed brochures, and placards posted at the registration area that the FOOD is prepared in a kitchen that is not regulated or inspected by the REGULATORY AUTHORITY.

~~((49))~~ (51) "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))~~ (52) "FOOD WORKER CARD" means a FOOD and BEVERAGE service worker's (~~(PERMIT)~~) permit as required under chapter 69.06 RCW.

~~((51))~~ (53) "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. 301.2 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))~~ (54) "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))~~ (55) "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))~~ (56) "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 the hands.

(b) HANDWASHING SINK includes an automatic hand-washing facility.

~~((56))~~ (57) "HAZARD" means a biological, chemical, or physical property that might cause an unacceptable CONSUMER health RISK.

~~((57))~~ (58) "HEALTH PRACTITIONER" means a physician licensed to practice medicine, or if allowed by LAW, a nurse practitioner, physician assistant or similar medical professional.

~~((58))~~ (59) "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))~~ (60) "HIGHLY SUSCEPTIBLE POPULATION" means ~~((persons))~~ people who are more likely than others ~~((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 services in a custodial care, health care, or assisted living~~((, nutritional services, or socialization services))~~ setting including, but not limited to, child or adult day care center, kidney dialysis center, hospital~~(;)~~ or nursing home, or nutritional or socialization services such as a senior center.

~~((60))~~ (61) "IMMEDIATE SERVICE" means service to the public within thirty minutes of preparation.

~~((61))~~ (62) "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))~~ (63) "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))~~ (64) "INTACT MEAT" means a cut of whole muscle(s) MEAT that has not undergone COMMINATION, INJECTION, MECHANICAL TENDERIZATION, or RECONSTRUCTION.

(65) "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))~~ (66) "KITCHENWARE" means FOOD preparation and storage UTENSILS.

~~((65))~~ (67) "LAW" means applicable local, state, and federal statutes, regulations, and ordinances.

~~((66))~~ (68) "LINENS" means fabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments including cloth gloves.

~~((67))~~ (69) "LOCAL BOARD OF HEALTH" means the county or district board of health.

~~((68))~~ (70) "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))~~ (71) "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))~~ (72) "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))~~ (73) "MECHANICALLY TENDERIZED."

(a) MECHANICALLY TENDERIZED means manipulating MEAT with deep penetration by processes which ~~((might))~~ may 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))~~ (74) "MG/L" means milligrams per liter, which is the metric equivalent of parts per million (ppm).

~~((73))~~ (75) "MOBILE FOOD UNIT" means a readily movable FOOD ESTABLISHMENT.

~~((74))~~ (76) "MOBILE PRIMARY PERMIT" means a PERMIT issued by a REGULATORY AUTHORITY to operate a MOBILE FOOD UNIT within the jurisdiction of the REGULATORY AUTHORITY where the business is primarily located.

(77) "MOBILE SECONDARY PERMIT" means a PERMIT issued by a REGULATORY AUTHORITY to an applicant holding a valid MOBILE PRIMARY PERMIT as detailed in RCW 43.20.149.

(78) "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))~~ (79) "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))~~ (80) "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))~~ by a FOOD EMPLOYEE to protect the FOOD during service or delivery to the CONSUMER:

~~((During service and receipt of the FOOD by the))~~ Upon CONSUMER request; or

~~((the))~~ (ii) During display at a staffed, self-service buffet line, or VENDING MACHINE on the PREMISES serving food prepared by the FOOD ESTABLISHMENT, such as at a school.

~~((77))~~ (81) "PERMIT" means the document issued by the REGULATORY AUTHORITY that authorizes a PERSON to operate a FOOD ESTABLISHMENT.

~~((78))~~ (82) "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))~~ PERSON; and

(b) When required, possesses a valid PERMIT to operate a FOOD ESTABLISHMENT.

~~((79))~~ (83) "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))~~ (84) "PERSON IN CHARGE" means the individual present at a FOOD ESTABLISHMENT who is responsible for the operation at the time.

~~((81))~~ (85) "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))~~ (86) "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))~~ (87) "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))~~ (88) "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))~~ (89) "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))~~ (90) "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  $A_w$  for Control of Spores in Food Heat treated to Destroy Vegetative Cells and Subsequently Packaged**

$A_w$ 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  $A_w$  for Control of Vegetative Cells and Spores in Food Not Heat-treated or Heat-treated but not PACKAGED.**

$A_w$ 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.

(e) ~~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  $A_w$  value, or interaction of  $A_w$  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 (e)(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)) (91) "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)) (92) "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)) (93) "PREMISES" means:~~

~~(a) The ((physical facility)) PHYSICAL FACILITY, its contents, and the contiguous land or property under the control of the PERMIT HOLDER; or~~

~~(b) The ((physical facility)) 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)) (94) "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)) (95) "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)) (96) "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 or advertised to the general public, and where FOOD is provided without compensation.~~

~~((95)) (97) "PUBLIC WATER SYSTEM" means a DRINKING WATER system that is operated in compliance with chapters 246-290 and 246-291 WAC.~~

~~((96)) (98) "RATITE" means a flightless bird such as an emu, ostrich, or rhea.~~

~~((97)) (99) "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 a 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)) May 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)) TIME/TEMPERATURE CONTROL FOR SAFETY 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))~~ 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))~~ 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))~~ (100) "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))~~ (101) "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))~~ 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;

(iii) 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))~~ vacuum packaged in an impermeable bag, cooked in the bag, rapidly chilled, and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens.

~~((100))~~ (102) "REFUSE" means solid waste not carried by water through a SEWAGE system.

~~((101))~~ (103) "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))~~ (104) "REMINDER" means a written statement concerning the health RISK of consuming animal FOODS raw, undercooked, or without otherwise being processed to eliminate pathogens.

~~((103))~~ (105) "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. RESERVICE does not include FOOD displayed on a self-service operation as described in WAC 246-215-03369.

~~((104))~~ (106) "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 ARTICLES, or unwrapped SINGLE-USE ARTICLES.

~~((105))~~ (107) "RESTRICTED EGG" means any check, dirty EGG, incubator reject, inedible, leaker, or loss as defined in 9 C.F.R. 590.

~~((106))~~ (108) "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))~~ applicator.

~~((107))~~ (109) "RISK" means the likelihood that an adverse health effect will occur within a population as a result of a HAZARD in a FOOD.

~~((108))~~ (110) "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))~~ (111) "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))~~ (112) "SEALED" means free of cracks or other openings that allow the entry or passage of moisture.

~~((111))~~ (113) "SERVICE ANIMAL" means any dog or miniature horse, meeting the requirements in RCW 49.60.040 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))~~). The work or tasks performed by the service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing nonviolent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.

The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks.

~~((114))~~ (114) "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))~~ (115) "SEWAGE" means liquid waste containing animal or vegetable matter in suspension or solution and ~~((might))~~ may include liquids containing chemicals in solution.

~~((114))~~ (116) "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))~~ (117) "SHELLSTOCK" means raw, in-shell MOLLUSCAN SHELLFISH.

~~((116))~~ (118) "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))~~. STEC infections can be asymptomatic or may result in a spectrum of illness ranging from mild nonbloody diarrhea, to hemorrhagic colitis (i.e., bloody diarrhea), to hemolytic uremic syndrome (HUS—a type of kidney failure). Examples include *E. coli* O157, *E. coli* O26, and *E. coli* O145.

(119) "SHUCKED SHELLFISH" means MOLLUSCAN SHELLFISH that have one or both shells removed.

~~((118))~~ (120) "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))~~ (121) "SINGLE-USE ARTICLES."

(a) SINGLE-USE ARTICLES means ~~((utensils))~~ 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))~~ (122) "SLACKING" means the process of moderating the temperature of a FOOD such as allowing a ~~((food))~~ 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))~~ (123) "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))~~ (124) "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))~~ (125) "TEMPERATURE MEASURING DEVICE" means a thermometer, thermocouple, thermistor, or other device that indicates the temperature of FOOD, air, or water.

~~((124))~~ (126) "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))~~ (127) "TIME/TEMPERATURE CONTROL FOR SAFETY FOOD" (TCS)~~(formerly "potentially hazardous food" (PHF)).~~

(a) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD means a FOOD that requires time/temperature control for safety to limit pathogenic microorganism growth or toxin formation.

(b) TIME/TEMPERATURE CONTROL FOR SAFETY 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 that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation; and

(ii) Except as specified in subsection (3)(d) of this definition, 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 definition:

**Table A. Interaction of pH and  $A_w$  for control of spores in FOOD heat-treated to destroy vegetative cells and subsequently PACKAGED**

<u><math>A_w</math> values</u>	<u>pH: 4.6 or less</u>	<u>pH: &gt;4.6 - 5.6</u>	<u>pH: &gt;5.6</u>
<u>≤0.92</u>	<u>non-TCS FOOD</u>	<u>non-TCS FOOD</u>	<u>non-TCS FOOD</u>
<u>&gt;0.92 - 0.95</u>	<u>non-TCS FOOD</u>	<u>non-TCS FOOD</u>	<u>PA</u>
<u>&gt;0.95</u>	<u>non-TCS FOOD</u>	<u>PA</u>	<u>PA</u>

**Table B. Interaction of pH and  $A_w$  for control of vegetative cells and spores in FOOD not heat-treated or heat-treated but not PACKAGED**

<u><math>A_w</math> values</u>	<u>pH: &lt;4.2</u>	<u>pH: 4.2 - 4.6</u>	<u>pH: &gt;4.6 - 5.0</u>	<u>pH: &gt;5.0</u>
<u>≤0.88</u>	<u>non-TCS FOOD</u>	<u>non-TCS FOOD</u>	<u>non-TCS FOOD</u>	<u>non-TCS FOOD</u>
<u>0.88 - 0.90</u>	<u>non-TCS FOOD</u>	<u>non-TCS FOOD</u>	<u>non-TCS FOOD</u>	<u>PA</u>
<u>&gt;0.90 - 0.92</u>	<u>non-TCS FOOD</u>	<u>non-TCS FOOD</u>	<u>PA</u>	<u>PA</u>
<u>&gt;0.92</u>	<u>non-TCS FOOD</u>	<u>PA</u>	<u>PA</u>	<u>PA</u>

(c) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD does not include:

(i) An air-cooled hard-boiled EGG with shell intact, or an EGG with 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  $A_w$  value, or interaction of  $A_w$  and pH values, is designated as a non-TCS 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) through (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.

(128) "USDA" means the United States Department of Agriculture.

((126)) (129) "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)) (130) "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)) (131) "VENDING MACHINE" means a self-service device that, upon insertion of a coin, paper currency, token, card, or key, or by electronic transaction or ((by)) optional manual operation, dispenses unit servings of FOOD in bulk or in ((packages)) PACKAGES without the necessity of replenishing the device between each vending operation.

((129)) (132) "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)) (133) "WAREWASHING" means the cleaning and SANITIZING of UTENSILS and FOOD-CONTACT SURFACES of EQUIPMENT.

((131)) (134) "WHOLE-MUSCLE, INTACT BEEF" means whole muscle beef that is not INJECTED, MECHANICALLY TENDERIZED, reconstructed, or scored and marinated, from which beef steaks may be cut.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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~~)) CERTIFIED FOOD PROTECTION MANAGER who has shown proficiency of required information through passing a test that is part of an ((~~accredited program~~)) 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~~)) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD and the prevention of foodborne illness;

(e) Explaining the ((~~hazards~~)) 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~~)) TIME/TEMPERATURE CONTROL FOR SAFETY 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~~)) TIME/TEMPERATURE CONTROL FOR SAFETY 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; and

(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 246-215-02107 Certified food protection manager (FDA Food Code 2-102.12).** (1) By March 1, 2023, FOOD ESTABLISHMENTS must have at least one CERTIFIED FOOD PROTECTION MANAGER on staff as evidenced by a valid certificate available from an ACCREDITED PROGRAM. The certificate must be available upon request. If the CERTIFIED FOOD PROTECTION MANAGER leaves employment for any reason, the FOOD ESTABLISHMENT must have another CERTIFIED FOOD PROTECTION MANAGER on staff within sixty days.

(2) This section does not apply to certain types of FOOD ESTABLISHMENTS deemed by the REGULATORY AUTHORITY to pose minimal risk of causing, or contributing to, foodborne illness based on the nature of the operation and extent of FOOD preparation.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 manager 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.))~~ CERTIFIED FOOD PROTECTION MANAGER responsibilities include training and implementing a program of food protection and education for each PERSON IN CHARGE, so each PERSON IN CHARGE is able to successfully demonstrate knowledge described in WAC 246-215-02105, and fulfill the duties as described in WAC 246-215-02115 to maintain ACTIVE MANAGERIAL CONTROL.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 verifying that FOODS delivered to the FOOD ESTABLISHMENT during nonoperating hours are from APPROVED sources and are placed into appropriate storage locations such that they are maintained at the required temperatures, protected from contamination, unADULTERATED and accurately presented;

(7) EMPLOYEES are properly cooking ~~((POTENTIALLY HAZARDOUS))~~ TIME/TEMPERATURE CONTROL FOR SAFETY 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))~~ (8) EMPLOYEES are using proper methods to rapidly cool ~~((POTENTIALLY HAZARDOUS))~~ TIME/TEMPERATURE CONTROL FOR SAFETY 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))~~ (9) EMPLOYEES are properly maintaining the temperatures of TIME/TEMPERATURE CONTROL FOR SAFETY FOOD during hot and cold holding through daily oversight of the EMPLOYEES' routine monitoring of FOOD temperatures;

(10) 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))~~ (11) EMPLOYEES are properly SANITIZING cleaned multiuse 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))~~ (12) 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))~~ (13) Except when approval is obtained from the REGULATORY AUTHORITY as specified under WAC 246-215-03300~~((4))~~ (5), 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))~~ (14) EMPLOYEES are properly trained in FOOD safety, including FOOD allergy awareness, as it relates to their assigned duties; ~~and~~

~~((13))~~ (15) FOOD EMPLOYEES and CONDITIONAL EMPLOYEES are informed in a verifiable manner 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; and

(16) Written procedures and plans, such as a clean-up plan for vomit and diarrhea, where specified by this chapter and as developed by the FOOD ESTABLISHMENT to ensure ACTIVE MANAGERIAL CONTROL, are maintained and implemented as required.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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, diagnosis, or exposure to illness.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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) Norovirus;

(ii) Hepatitis A virus;

~~((ii) Salmonella Typhi (Typhoid Fever);~~

~~(iii) Shigella; or~~

~~(iv) Enterohemorrhagic or) (iii) Shigella spp.;~~

~~(iv) SHIGA TOXIN-PRODUCING ESCHERICHIA COLI;~~

~~(v) Salmonella Typhi (Typhoid fever); or~~

~~(vi) Salmonella (nontyphoidal).~~

(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;

~~((e))~~ (b) Have attended or worked in a setting where there is a CONFIRMED DISEASE OUTBREAK;

~~((d))~~ (c) Live in the same household as someone who works at or attended a setting where there is a CONFIRMED DISEASE OUTBREAK; or

~~((e))~~ (d) 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 spp.;

(iii) Salmonella Typhi; ~~((e))~~

(iv) Hepatitis A virus or jaundice; or

(v) Norovirus.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 exhibits or reports symptoms or a diagnosed disease as described in WAC 246-215-02205(1) ~~((e-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))~~ (a) through ~~((e))~~ (d) 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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, Norovirus, 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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))~~ (a) through ~~((e))~~ (d) and works in a FOOD ESTABLISHMENT serving a HIGHLY SUSCEPTIBLE POPULATION; or

(3) A sore throat with fever.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 from a HEALTH PRACTITIONER to the REGULATORY AUTHORITY ~~((from a HEALTH PRACTITIONER))~~ or PERSON-IN-CHARGE that the symptom is due to a medical condition not transmissible through FOOD, such as Crohn's disease, irritable bowel syndrome, ulcerative colitis, ~~((e))~~ hepatitis C, cancer or pregnancy.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-02240 Employee health—Complying with ((LOCAL HEALTH OFFICER)) 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.

AMENDATORY SECTION (Amending WSR 15-05-014, filed 2/6/15, effective 3/9/15)

**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 Control of Communicable Diseases Manual, 20th edition, published by the American Public Health Association; or~~

(2) ~~Other~~) measures the LOCAL HEALTH OFFICER deems necessary ((based on his or her)) using professional judgment, current standards of practice, and the best available medical and scientific information.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 and REGULATORY AUTHORITY if not the same agency;

(3) Sore throat with fever: Remove EXCLUSION or RESTRICTION when ASYMPTOMATIC; or

(4) Uncovered infected wound or ((~~pustular~~)) pus-filled boil: Remove RESTRICTION when skin, wound, or ((~~pustular~~)) pus-filled boil is properly protected by an impermeable cover and, if on the hand or wrist, with a SINGLE-USE glove.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-02255 Employee health—Removal of exclusion or restriction based on exposure.** The PERSON IN CHARGE of a facility that serves a HIGHLY SUSCEPTIBLE POPULATION shall ((~~adhere to the following conditions when~~)) get approval from the LOCAL HEALTH OFFICER and the REGULATORY AUTHORITY before 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)) to any condition under WAC 246-215-02205(2).~~

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 HANDWASHING SINK that is equipped as specified under WAC 246-215-05210 and Part 6, Subpart C of this chapter.

(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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 ~~((ø))~~ for OTC Health-Care Antiseptic Drug Products as an antiseptic handwash; and

(b) ~~((Comply))~~ Consist only of components which the intended use of each complies 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))~~ A threshold of regulation exemption under 21 C.F.R. 170.39 - Threshold of Regulation for Substances Used in ~~((FOOD))~~ Food Contact Articles; or

(ii) ~~((Comply with and be listed in: ~~((A))~~ 21 C.F.R. 178 - Indirect ~~((FOOD ADDITIVES))~~ Food Additives: Adjuvants, Production Aids, and ~~((SANITIZERS))~~ Sanitizers as regulated for use as a FOOD ADDITIVE with conditions of safe use; or~~

~~((B))~~ (iii) A determination of generally recognized as safe (GRAS). Partial listings of substances with FOOD uses that are GRAS may be found in 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 in FDA's Inventory of GRAS Notices; or

(iv) A prior sanction listed under 21 C.F.R. 181 - Prior Sanctioned Food ingredients; or

(v) A FOOD Contact Notification that is effective; 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 including medical information jewelry on their arms or hands while preparing FOOD.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-02335 Outer clothing—Clean condition ~~((2009))~~ 17 FDA Food Code 2-304.11.** FOOD EMPLOYEES

EES shall wear clean outer clothing to prevent contamination of FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 only 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))~~ be contaminated.

(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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 246-215-02406 Food contamination prevention—Use of bandages, finger cots, or finger stalls (FDA Food Code 2-401.13).** If a FOOD EMPLOYEE working with exposed FOOD uses an impermeable cover such as a bandage, finger cot or finger stall located on the wrist, hand or finger, the FOOD EMPLOYEE shall cover the area with a single-use glove.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-02410 Hair restraints—Effectiveness ((2009) FDA Food Code 2-402.11).** (1) Except as provided in subsection (2) of this section, 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.

(2) This section does not apply to FOOD EMPLOYEES such as counter staff who only serve BEVERAGES and wrapped or

PACKAGED FOODS, hostesses, and wait staff if they present a minimal RISK of contaminating exposed FOOD, clean EQUIPMENT, UTENSILS, and LINENS; and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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))~~ 246-215-02310(3).

NEW SECTION

**WAC 246-215-02500 Responding to contamination events—Clean-up of vomiting and diarrheal events (FDA Food Code 2-501.11).** (1) A FOOD ESTABLISHMENT shall have written procedures for EMPLOYEES to follow when responding to vomiting or diarrheal events that involve the discharge of vomitus or fecal matter onto surfaces in the FOOD ESTABLISHMENT.

(2) The procedures shall address the specific actions EMPLOYEES must take to minimize the spread of contamination and the exposure of EMPLOYEES, consumers, FOOD, and surfaces to vomitus or fecal matter.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 except as otherwise provided in this chapter.

(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 Containers; 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)(a) through (f), 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((s)) 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).

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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)) Molluscan Shellfish.

(2) MOLLUSCAN SHELLFISH received in interstate commerce must be from sources that are listed in the Interstate Certified Shellfish Shippers List.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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. ostreaus*);

(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, email 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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; or
- (b) Under a voluntary inspection program administered by the ((USDA)) 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 and Horses; Voluntary Inspection ((øf)) or 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03235 Specifications for receiving—Temperature ((2009)) FDA Food Code 3-202.11.** (1) Except as specified in subsections (2) through (4) of this section, refrigerated, ((POTENTIALLY HAZARDOUS)) TIME/TEMPERATURE CONTROL FOR SAFETY 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)) TIME/TEMPERATURE CONTROL FOR

SAFETY 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)) Freshly made ASIAN RICE-BASED NOODLES received at ambient temperatures directly from a noodle processing facility licensed by Washington state department of agriculture must be served within four hours of production, immediately reheated in accordance with WAC 246-215-03440(3), or immediately cooled in accordance with WAC 246-215-03515(3).

(5) TIME/TEMPERATURE CONTROL FOR SAFETY 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.

((ø)) (6) A FOOD that is labeled frozen and shipped frozen by a FOOD PROCESSING PLANT must be received frozen.

((ø)) (7) Upon receipt, ((POTENTIALLY HAZARDOUS)) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD must be free of evidence of previous temperature abuse.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 intact container (~~for off-premises consumption~~) and not used as an ingredient.

(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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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)~~ **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)~~ **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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03280 Specifications for receiving—((Juice treated)) Commercially processed treated juice ((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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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)) through (5) 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)) repacked 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 range when the first and 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 last 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 with different CERTIFICATION NUMBERS; different harvest dates; or different growing areas as identified on the tag or label before being ordered by the CONSUMER.

**((Subsection)) Subpart C - Preventing Contamination After Receiving**

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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) Subsection (2) of this section does not apply to a FOOD EMPLOYEE that contacts exposed, READY-TO-EAT FOOD with bare hands when the READY-TO-EAT FOOD is to be cooked in the FOOD ESTABLISHMENT to heat all parts of the FOOD to a temperature of at least 145°F (63°C) prior to service.

(5) 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, 246-215-05270, 246-215-06305, 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 including:

(i) Documentation that FOOD EMPLOYEES and CONDITIONAL EMPLOYEES acknowledge that they are informed to report information about their health and activities as they relate to gastrointestinal symptoms and diseases that are transmittable through FOOD as specified in WAC 246-215-02200, including a written log of reportable EMPLOYEE illnesses maintained for ninety days;

(ii) Documentation that FOOD EMPLOYEES and CONDITIONAL EMPLOYEES acknowledge their responsibilities as specified in WAC 246-215-02205 and 246-215-02240; and

(iii) Documentation that the PERSON IN CHARGE acknowledges the responsibilities as specified in WAC 246-215-02215, 246-215-02220, 246-215-02255, and 246-215-08520.

(d) Documentation that FOOD EMPLOYEES acknowledge they have received training at least annually 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))~~ provided by the FOOD ESTABLISHMENT 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;

(h) If the allowance for a FOOD ESTABLISHMENT to contact READY-TO-EAT FOOD with bare hands is voluntarily or involuntarily discontinued, suspended or revoked, a FOOD ESTABLISHMENT may not reinstate bare hand contact with READY-TO-EAT FOOD without written approval from the REGULATORY AUTHORITY.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 ~~((iii))~~ (iv) 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) Fruits and vegetables before they are washed; and

(iv) Frozen, commercially processed and PACKAGED raw animal FOOD may be stored and displayed with or above frozen, 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))~~ 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.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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, egg-nog, 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).

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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) Except for grapes, serve or sell FOOD specified under (a) of this subsection that is treated with sulfiting agents before receipt by the FOOD ESTABLISHMENT.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 not in a READY-TO-EAT form 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) Devices used for on-site generation of chemicals meeting the requirements specified in 21 C.F.R. 173.315, Chemicals Used in the Washing or to Assist in the Peeling of Fruits and Vegetables, for the washing of raw, whole fruits and vegetables must be used in accordance with the manufacturer's instructions.

(4) For the purposes of this section, raw vegetables include fresh herbs and sprouts.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03321 Preventing food and ingredient contamination—~~((Pooling))~~ Combining of raw eggs in advance prohibited.** Except EGGS that are used in batters or ~~((POOLED))~~ mixed immediately before cooking, mixing four or more raw EGGS ~~((may not be POOLED))~~, EGG whites, or EGG yokes is prohibited.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 use~~((s))~~ 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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; or

(3) LINENS, such as cloth napkins, as specified under WAC 246-215-03336 that are laundered as specified under Part 4, Subpart B of this chapter.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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))~~ TIME/TEMPERATURE CONTROL FOR SAFETY FOOD 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))~~ UTENSILS, such as ice scoops, are used only with a FOOD that is not ~~((POTENTIALLY HAZARDOUS))~~ TIME/TEMPERATURE CONTROL FOR SAFETY 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 container is cleaned at a frequency specified under WAC 246-215-04605 (4)(g).

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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))~~, such as cloth 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

(7) Dry disposable towels used in conjunction with a spray bottle of chemical SANITIZER solution at a concentration specified under WAC 246-215-04565 must be discarded after each use.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 contact 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 con-

tainer, 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))~~ (4).

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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).) Except as specified in subsections (2) through (6) of this section, empty containers returned to a FOOD ESTABLISHMENT for cleaning and refilling with FOOD shall be cleaned and refilled in a regulated FOOD PROCESSING PLANT.~~

(2) A take-home FOOD container returned to a FOOD ESTABLISHMENT may be refilled at a FOOD ESTABLISHMENT with FOOD if the FOOD container is:

(a) Designed and constructed for reuse and in accordance with the requirements specified in Part 4, Subparts A and B of this chapter;

(b) One that was initially provided by the FOOD ESTABLISHMENT to the CONSUMER, either empty or filled with FOOD by the FOOD ESTABLISHMENT, for the purpose of being returned for reuse;

(c) Returned to the FOOD ESTABLISHMENT by the CONSUMER after use;

(d) Subject to the following steps before being refilled with FOOD:

(i) Cleaned as specified under Part 4, Subpart F of this chapter;

(ii) Sanitized as specified under Part 4, Subpart G of this chapter; and

(iii) Visually inspected by a FOOD EMPLOYEE to verify that the container, as returned, meets the requirements specified under Part 4, Subparts A and B of this chapter.

(3) A take-home FOOD container returned to a FOOD ESTABLISHMENT may be refilled at a FOOD ESTABLISHMENT with a BEVERAGE if:

(a) The BEVERAGE is not a TIME/TEMPERATURE CONTROL FOR SAFETY FOOD;

(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 as specified under WAC 246-215-04230 (1), (2), and (4) that cannot be bypassed by the container owner.

(4) Consumer-owned multiuse BEVERAGE containers may be refilled, including TIME/TEMPERATURE CONTROL FOR SAFETY FOOD beverages, by EMPLOYEES or the CONSUMER if refilling is a contamination-free process as specified in WAC 246-215-04230 (1), (2), and (4).

(5) CONSUMER-owned containers that are not FOOD-specific may be filled at a water VENDING MACHINE or system.

(6) A FOOD ESTABLISHMENT under an APPROVED plan may allow CONSUMERS to:

(a) Refill a visibly clean CONSUMER-owned container with nonREADY-TO-EAT FOOD, bulk FOOD, and PACKAGED FOOD;

(b) Refill a visibly clean CONSUMER-owned container with READY-TO-EAT FOOD when dispensed from equipment, such as a gravity-flow unit, meeting standards for liquid FOOD and ice in WAC 246-215-04230; and

(c) Request a FOOD EMPLOYEE of the FOOD ESTABLISHMENT to refill a visually clean CONSUMER-owned container with FOOD using a contamination-free process.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03357 Preventing contamination from the premises—Vended (~~(potentially hazardous)~~) time/temperature control for safety food, original container (((2009)) FDA Food Code 3-305.13).** (~~POTENTIALLY HAZARDOUS~~) TIME/TEMPERATURE CONTROL FOR SAFETY 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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, POULTRY, 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)~~) at least 30 inches above floor level, except for APPROVED containers of liquids.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 subsections (2) and (3) 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~~) TIME/TEMPERATURE CONTROL FOR SAFETY 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.

(3) Surplus previously served FOOD, such as whole uncut produce that complies with WAC 246-215-03318, unopened bags of sliced fruit, unopened containers of TIME/TEMPERATURE CONTROL FOR SAFETY FOOD that are immediately placed in a temperature-controlled environment, and other APPROVED FOODS may be re-served to a PERSON or DONATED FOOD DISTRIBUTING ORGANIZATION under an APPROVED plan.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 in this chapter.

#### **Subpart D - Destruction of Organisms of Public Health Concern**

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 INTACT 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)~~) 158°F (70°C) or above for <1 second (instantaneous) or a temperature and time combination specified in (~~(the following chart)~~) Table 3-1, 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
<del>((158 (70)))</del> 155 (68)	<del>((&lt;1 second (instantaneous)))</del> 17 seconds

(c) 165°F (74°C) or above for ~~((15 seconds))~~ <1 second (instantaneous) for POULTRY; BALUTS; wild GAME ANIMALS; stuffed FISH; stuffed MEAT; stuffed pasta; stuffed POULTRY; 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>†</sup>	250°F (121°C) or less	250°F (121°C) or less

<sup>†</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))~~ Table 3-2, to heat all parts of the FOOD to a temperature and for the holding time that corresponds to that temperature:

**Table 3-((3)) 2: 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.

(b) In an oven that is preheated to the temperature specified for the roast's weight in Table 3-3 and that is held at that temperature; and

**Table 3-3: 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 percent 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 percent humidity.

(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.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03410 Cooking—Plant food cooking for hot holding ~~((2009))~~ FDA Food Code 3-401.13.** ~~((Fruits and vegetables))~~ Plant FOODS that are cooked for hot holding must be cooked to a temperature of at least 135°F (57°C).

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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))~~ TIME/TEMPERATURE CONTROL FOR SAFETY FOOD under WAC 246-215-03515(1);
- (3) After cooling, held frozen or cold, as specified for ~~((POTENTIALLY HAZARDOUS))~~ TIME/TEMPERATURE CONTROL FOR SAFETY 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))~~ and time specified under WAC 246-215-03400 (1) through (3);
- (5) Cooled according to the time and temperature parameters specified for cooked ~~((POTENTIALLY HAZARDOUS))~~ TIME/TEMPERATURE CONTROL FOR SAFETY 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).~~

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 a minimum of 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) or below for a minimum of 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) A scallop product consisting only of the shucked adductor muscle;
  - (c) Tuna of the species *Thunnus alalunga*, *Thunnus* ~~((albacores))~~ *albacares* (Yellowfin tuna), *Thunnus atlanticus*, *Thunnus maccoyii* (Bluefin tuna, Southern), *Thunnus obesus* (Bigeye tuna), or *Thunnus thynnus* (Bluefin tuna, Northern); or
  - ~~((e))~~ (d) 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.
  - ~~((f))~~ (e) FISH EGGS that have been removed from the skein and rinsed.
  - (f) Fresh unfrozen finfish, such as halibut or salmon, which are partially cooked only upon consumer request and served in accordance with WAC 246-215-03620 (2) and (3)(d).

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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)) WAC 246-215-03425 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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)) TIME/TEMPERATURE CONTROL FOR SAFETY 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)) TIME/TEMPERATURE CONTROL FOR SAFETY 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 TIME/TEMPERATURE CONTROL FOR SAFETY FOOD ((taken from a) that has been commercially processed((, HERMETICALLY SEALED CONTAINER, or from an intact package from)) and PACKAGED in a FOOD PROCESSING PLANT that is inspected by the FOOD REGULATORY AUTHOR-

ITY 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).

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.*"

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03500 Temperature and time control—Frozen food ((2009) FDA Food Code 3-501.11).** Stored frozen FOODS must be maintained frozen.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03505 Temperature and time control—((Potentially hazardous)) Time/temperature control for safety food, slacking ((2009) FDA Food Code 3-501.12).** Frozen ((POTENTIALLY HAZARDOUS)) TIME/TEMPERATURE CONTROL FOR SAFETY 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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))~~ TIME/TEMPERATURE CONTROL FOR SAFETY 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; or

(5) REDUCED OXYGEN PACKAGED FISH that bears a label indicating that it is to be kept frozen until time of use must be removed from the reduced oxygen environment:

(a) Prior to thawing under refrigeration as specified in subsection (1) of this section; or

(b) Prior to, or immediately upon completion of, thawing using procedures specified in subsection (2) of this section.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03515 Temperature and time control—Cooling ~~((2009))~~ FDA Food Code 3-501.14.** (1) Cooked ~~((POTENTIALLY HAZARDOUS FOOD must be cooled))~~ TIME/TEMPERATURE CONTROL FOR SAFETY FOOD must be cooled, uncovered, protected from contamination, in EQUIPMENT that maintains an ambient air temperature of 41°F (5°C) or less and:

(a) In a shallow, uncovered, layer of two inches or less; or

(b) Up to four inches thick in one dimension and not touching other pieces of FOOD for INTACT MEAT.

(2) As an alternative to the cooling provisions of subsection (1) of this section, cooling methods identified in WAC 246-215-03520 that meet the following time and temperature criteria are allowed:

(a) Within two hours from 135°F (57°C) to 70°F (21°C); and

(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)).~~

(3) TIME/TEMPERATURE CONTROL FOR SAFETY 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))~~ (4) Except as specified in subsection ~~((4))~~ (5) of this section, a ~~((POTENTIALLY HAZARDOUS))~~ TIME/TEMPERATURE CONTROL FOR SAFETY 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))~~ (5) 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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))~~ and 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; or

(c) Loosely covered if using the cooling methods in WAC 246-215-03515(2).

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03525 Temperature and time control—(~~Potentially hazardous~~) Time/temperature control for safety 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~~) TIME/TEMPERATURE CONTROL FOR SAFETY 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~~) TIME/TEMPERATURE CONTROL FOR SAFETY 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 246-215-03526 Temperature and time control—Ready-to-eat, time/temperature control for safety food, date marking (FDA Food Code 3-501.17).** (1) Except when PACKAGING FOOD using a REDUCED OXYGEN PACKAGING method as specified under WAC 246-215-03540, and except as specified in subsections (5) and (6) of this section, refrigerated, READY-TO-EAT, TIME/TEMPERATURE CONTROL FOR SAFETY FOOD prepared and held in a FOOD ESTABLISHMENT for more than twenty-four hours must be clearly marked to indicate the date or day by which the FOOD must be consumed on the PREMISES, sold, or discarded when held at a temperature of 41°F (5°C) or less for a maximum of seven days. The day of preparation must be counted as day one.

(2) Except as specified in subsections (5) through (7) of this section, refrigerated, READY-TO-EAT, TIME/TEMPERATURE CONTROL FOR SAFETY FOOD prepared and PACKAGED by a FOOD PROCESSING PLANT must be clearly marked, at the time the original container is opened in a FOOD ESTABLISHMENT and if the FOOD is held for more than twenty-four hours, to indicate the date or day by which the FOOD must be consumed on the PREMISES, sold, or discarded, based on the temperature and time requirements specified in subsection (1) of this section and:

(a) The day the original container is opened in the FOOD ESTABLISHMENT is counted as day one; and

(b) The day or date marked by the FOOD ESTABLISHMENT may not exceed a manufacturer's use-by date if the manufacturer determined the use-by date based on FOOD safety.

(3) A refrigerated, READY-TO-EAT, TIME/TEMPERATURE CONTROL FOR SAFETY FOOD ingredient or a portion of a

refrigerated, READY-TO-EAT, TIME/TEMPERATURE CONTROL FOR SAFETY FOOD that is combined with additional ingredients or portions of FOOD must retain the date marking of the earliest-prepared or first-prepared ingredient.

(4) A date marking system that meets the criteria stated in subsections (1) and (2) of this section may include:

(a) Using a method APPROVED by the REGULATORY AUTHORITY for refrigerated, READY-TO-EAT, TIME/TEMPERATURE CONTROL FOR SAFETY FOOD that is frequently rewrapped, such as lunchmeat or a roast, or for which date marking is impractical, such as soft-serve mix or milk in a dispensing machine;

(b) Marking the date or day of preparation, with a procedure to discard the FOOD on or before the last date or day by which the FOOD must be consumed on the premises, sold, or discarded as specified under subsection (1) of this section;

(c) Marking the date or day the original container is opened in a FOOD ESTABLISHMENT, with a procedure to discard the FOOD on or before the last date or day by which the FOOD must be consumed on the premises, sold, or discarded as specified under subsection (2) of this section; or

(d) Using calendar dates, days of the week, color-coded marks, or other effective marking methods, provided that the marking system is disclosed to the REGULATORY AUTHORITY upon request.

(5) Subsections (1) and (2) of this section do not apply to individual meal portions served or rePACKAGED for sale from a bulk container upon a consumer's request.

(6) Subsections (1) and (2) of this section do not apply to SHELLSTOCK.

(7) Subsection (2) of this section does not apply to the following FOODS prepared and PACKAGED by a FOOD PROCESSING PLANT inspected by a REGULATORY AUTHORITY:

(a) Deli salads, such as ham salad, seafood salad, chicken salad, egg salad, pasta salad, potato salad, and macaroni salad, manufactured in accordance with 21 C.F.R. 110 Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food;

(b) Hard cheeses containing not more than thirty-nine percent moisture as defined in 21 C.F.R. 133 Cheeses and Related Cheese Products, such as cheddar, gruyere, parmesan and reggiano, and romano;

(c) Semi-soft cheeses containing more than thirty-nine percent moisture, but not more than fifty percent moisture, as defined in 21 C.F.R. 133 Cheeses and Related Cheese Products, such as blue, edam, gorgonzola, gouda, and monterey jack;

(d) Cultured dairy products as defined in 21 C.F.R. 131 Milk and Cream, such as yogurt, sour cream, and buttermilk;

(e) Preserved FISH products, such as pickled herring and dried or salted cod, and other acidified FISH products defined in 21 C.F.R. 114 Acidified Foods;

(f) Shelf stable, dry fermented sausages, such as pepperoni and genoa; and

(g) Shelf stable salt-cured products such as prosciutto and parma ham.

NEW SECTION

**WAC 246-215-03527 Temperature and time control—Ready-to-eat, time/temperature control for safety food, disposition (FDA Food Code 3-501.18).** (1) A FOOD specified in WAC 246-215-03526 (1) and (2) must be discarded unless it is cooked or reheated to 165°F (74°C) prior to service, if it:

(a) Exceeds the temperature and time requirements specified in WAC 246-215-03526, except time that the product is frozen;

(b) Is in a container or PACKAGE that does not bear a date or day and no ability to validate the opening date; or

(c) Is inappropriately marked with a date or day that exceeds a temperature and time combination as specified in WAC 246-215-03526(1).

(2) Refrigerated, READY-TO-EAT, TIME/TEMPERATURE CONTROL FOR SAFETY FOOD prepared in a FOOD ESTABLISHMENT and dispensed through a VENDING MACHINE with an automatic shutoff control must be discarded if it exceeds a temperature and time requirement as specified in WAC 246-215-03526(1).

(3) A FOOD ESTABLISHMENT that serves a HIGHLY SUSCEPTIBLE POPULATION may not reheat improperly marked FOOD as specified under subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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~~) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD before cooking, or for READY-TO-EAT (~~POTENTIALLY HAZARDOUS~~) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD that is displayed or held for sale or service for immediate consumption:

(a) Written procedures must be prepared in advance, maintained in the 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 may have an initial temperature of 70°F (21°C) or less if:

(i) It is a READY-TO-EAT fruit or vegetable that upon cutting is rendered a TIME/TEMPERATURE CONTROL FOR SAFETY FOOD; or

(ii) It is a READY-TO-EAT hermetically sealed FOOD that upon opening is rendered a TIME/TEMPERATURE CONTROL FOR SAFETY FOOD;

(iii) The FOOD temperature does not exceed 70°F (21°C) within a maximum time period of four hours from the time it was rendered a TIME/TEMPERATURE CONTROL FOR SAFETY FOOD; and

(iv) The FOOD is marked or otherwise identified to indicate the time that is four hours past the point in time when the FOOD is rendered a TIME/TEMPERATURE CONTROL FOR SAFETY FOOD.

(c) 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;

~~((e))~~ (d) 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

~~((f))~~ (e) 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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~~) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD;

(4) Packaging TIME/TEMPERATURE CONTROL FOR SAFETY 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03540 Specialized processing methods—Reduced oxygen packaging without a variance, cri-**

**teria ((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~~)) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD using a REDUCED OXYGEN PACKAGING method shall control the growth and toxin formation of *Clostridium botulinum* and the growth of *Listeria monocytogenes*.

(2) Except as specified under subsection (6) of this section, a FOOD ESTABLISHMENT that packages ((~~POTENTIALLY HAZARDOUS~~)) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD using a REDUCED OXYGEN PACKAGING method shall have a HACCP PLAN that contains the information specified under WAC 246-215-08215 (3) and (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~~)) 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~~)) 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~~)) thirty 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~~)) thirty 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~~))

(ii) Procedures specified under (e) of this subsection and WAC 246-215-08215 (3) and (4); and

(g) Is provided to the REGULATORY AUTHORITY prior to implementation as specified under WAC 246-215-08210(2).

(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 subsections (3) and (6) of this section, a FOOD ESTABLISHMENT that PACKAGES FOOD using a cook-chill or sous vide process shall:

(a) ((~~Implement~~)) Provide to the REGULATORY AUTHORITY prior to implementation a HACCP PLAN that contains the information as specified under WAC 246-215-08215 (3) and (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 (1) through (3);

(iii) Protected from contamination before and after cooking as specified under Part 3, Subparts C and D of this chapter;

(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~~)) 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 at 41°F (5°C) or less for no more than seven days, at which time the FOOD must be consumed or discarded;~~

or

(C) 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) Except as specified under subsection (6) of this section, a FOOD ESTABLISHMENT that PACKAGES cheese using a REDUCED OXYGEN PACKAGING method (~~shall~~) must:

(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 (3) and (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~~) REDUCED OXYGEN PACKAGED cheese if it is not sold for off-PREMISES consumption or consumed within thirty calendar days of its packaging.

(6) A HACCP PLAN is not required when a FOOD ESTABLISHMENT uses a REDUCED OXYGEN PACKAGING method to PACKAGE raw or READY-TO-EAT TIME/TEMPERATURE CONTROL FOR SAFETY FOOD that is always:

(a) Labeled with the production time and date;

(b) Held at 41°F (5°C) or less during refrigerated storage; and

(c) Removed from its PACKAGE in the FOOD ESTABLISHMENT within forty-eight hours after PACKAGING.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 general requirements in 21 C.F.R. 130 - Food Standards: General and 9 C.F.R. 319 Subpart A - General.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 chapters 69.04 and 15.130 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~~) an 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)~~) (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 or astaxanthin 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 or astaxanthin.

(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)~~) (f) 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 or 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)," "fresh fish (can be cooked to order)." "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((§))**";

(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((§))**"; or

(d) "**Regarding the safety of consuming fresh partially cooked fish, information is available upon request.**"

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 the FOOD;
- (b) Serving the FOOD; or
- (c) ~~((Moving))~~ Removing 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))~~ Subpart H - Special Requirements for Highly Susceptible Populations**

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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))~~ subsection (1) of this section, 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) UnPACKAGED 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).
- (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))~~ Enteritidis growth is controlled before and after cooking; and
    - (B) *Salmonella* ~~((Enteritidis))~~ 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.

(9) Reheating, as specified under WAC 246-215-03527 (1), may not be used for improperly marked FOOD.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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; servicing surfaces; 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04135 Multiuse—Nonstick coatings, use limitation (((2009)) FDA Food Code 4-101.18).** Multi-use 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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~~)) TIME/TEMPERATURE CONTROL FOR SAFETY 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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~~)) TIME/TEMPERATURE CONTROL FOR SAFETY 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04246 Functionality—Vending machines, automatic shutoff ((2009) FDA Food Code 4-204.111).** (1) A machine vending (~~(POTENTIALLY HAZARDOUS)~~) TIME/TEMPERATURE CONTROL FOR SAFETY 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)~~) TIME/TEMPERATURE CONTROL FOR SAFETY 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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)~~) TIME/TEMPERATURE CONTROL FOR SAFETY 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04254 Functionality—Warewashing machines, temperature measuring devices ((2009) FDA Food Code 4-204.115).** A (~~(warewashing)~~) 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 over-wrapped lot, must be designed to be moved by hand or by conveniently available apparatuses such as hand trucks and forklifts.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 sealants, clamps, or grommets so that the openings are no larger than one-sixteenth inch (1.5 mm).

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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)~~ in conformance with a recognized American National Standards Institute (ANSI) - Accredited

certification program is deemed to comply with Subparts A and B of this part.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 small-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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04340 Utensils, temperature measuring devices, and testing devices—Temperature measuring**

**devices, manual warewashing ((2009)) FDA Food Code 4-302.13).** (1) In manual WAREWASHING operations, a TEMPERATURE MEASURING DEVICE must be provided and readily accessible for frequently measuring the washing and SANITIZING temperatures.

(2) In hot water mechanical WAREWASHING operations, an irreversible registering temperature indicator must be provided and readily accessible for measuring the UTENSIL surface temperature.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

NEW SECTION

**WAC 246-215-04350 Cleaning agents and sanitizers—Cleaning agents and sanitizers availability (FDA Food Code 4-303.11).** (1) Cleaning agents that are used to clean EQUIPMENT and UTENSILS as specified under Part 4, Subpart F of this chapter, must be provided and available for use during all hours of operation.

(2) Except for those that are generated on-site at the time of use, chemical SANITIZERS that are used to sanitize EQUIPMENT and UTENSILS as specified under Part 4, Subpart G of this chapter, must be provided and available for use during all hours of FOOD preparation.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 of this chapter.

(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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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).

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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).

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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)
mg/L 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; or

(6) If a chemical SANITIZER is generated by a device located on-site at the FOOD ESTABLISHMENT, it must be used as specified in subsections (1) through (4) of this section and must be produced by a device that:

(a) Complies with regulation as specified in sections 2(q)(1) and (12) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA);

(b) Complies with 40 C.F.R. 152.500 Requirement for Devices and 40 C.F.R. 156.10 Labeling Requirements;

(c) Displays the EPA device manufacturing facility registration number on the device; and

(d) Is operated and maintained in accordance with manufacturer's instructions.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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) F and ((7) G of this chapter 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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))~~ **Subpart F - Cleaning of Equipment and Utensils**

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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))~~ TIME/TEMPERATURE CONTROL FOR SAFETY 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))~~ types of raw MEAT and POULTRY 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))~~ type.

(3) Except as specified in subsection (4) of this section, if used with ~~((POTENTIALLY HAZARDOUS))~~ TIME/TEMPERATURE CONTROL FOR SAFETY 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))~~ TIME/TEMPERATURE CONTROL FOR SAFETY FOOD may be cleaned less frequently than every four hours if:

(a) In storage, containers of ~~((POTENTIALLY HAZARDOUS))~~ TIME/TEMPERATURE CONTROL FOR SAFETY 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 (5.0°C or less)	24 hours
> 41°F - 45°F (> 5.0°C - 7.2°C)	20 hours
> 45°F - 50°F (> 7.2°C - 10.0°C)	16 hours
> 50°F - 55°F (> 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~~)) TIME/TEMPERATURE CONTROL FOR SAFETY 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~~)) TIME/TEMPERATURE CONTROL FOR SAFETY 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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~~)) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD.

(2) Cleaning EQUIPMENT used in dry cleaning FOOD-CONTACT SURFACES may not be used for any other purpose.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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).

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 Tolerance 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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, pallets, racks, and skids that are designed as specified under WAC 246-215-04268.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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)))~~ DRINKING WATER supply inlet and the flood level rim of the PLUMBING FIXTURES ~~(((;)))~~ or 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)))~~) meet the definition of an APPROVED air gap in WAC 246-290-010.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 in accordance with WAC 246-290-490 and 51-56-0600.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05235 ~~(((Restrooms)))~~ Numbers and capacities—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) Except as specified under WAC 246-215-09150, 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05240 Numbers and capacities—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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05245 Numbers and capacities—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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05250 Numbers and capacities—Backflow prevention, carbonator**. Backflow prevention systems for carbonators must be installed as specified under WAC 51-56-0600, Chapter 6—Water supply and distribution.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05255 Location and placement** ~~(((2009)))~~ **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)))~~ twenty-five feet, or as APPROVED, of FOOD preparation, FOOD dispensing, and WAREWASHING areas; and

(3) In, or immediately adjacent to, toilet rooms.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05260 Location and placement** ~~(((2009)))~~ **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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05265 Location and placement** ~~(((2009)))~~ **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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05280 Operation and maintenance—Scheduling inspection, testing, 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, testing, and service, in accordance with manufacturer's instructions and WAC 51-56-0600 and as necessary to prevent device failure based on local water conditions, and records demonstrating inspection, testing, and service must be maintained by the PERSON IN CHARGE.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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).

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 landfill or incinerator which is sized, constructed, maintained, and operated according to LAW.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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))~~ methods to 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 UNITS 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 construc-

tion must be finished and SEALED to provide a SMOOTH, non-absorbent, EASILY CLEANABLE surface.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 sec-

tion, 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 separated from rooms and areas used for FOOD ESTABLISHMENT operations by complete partitioning and solid self-closing doors.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06300 Handwashing ((facilities)) sinks—Minimum number (((2009)) FDA Food Code 6-301.10).** Handwashing ((facilities)) sinks must be provided as specified under WAC 246-215-05230.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06305 Handwashing ((facilities)) sinks—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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06310 Handwashing ((facilities)) sinks—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)) an air-knife system that delivers high velocity, pressurized air at ambient temperatures.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06315 Handwashing ((facilities)) sinks—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).

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06320 Handwashing ((facilities)) sinks—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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06325 Handwashing ((facilities)) sinks—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).

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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))~~ designated 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06400 Handwashing ((facilities)) sinks—Conveniently located ((2009)) FDA Food Code 6-401.10).** HANDWASHING SINKS must be conveniently located as specified under WAC 246-215-05255.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06500 Methods—Repairing ((2009)) FDA Food Code 6-501.11).** PHYSICAL FACILITIES must be maintained in good repair.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 18-01-081, filed 12/15/17, effective 1/15/18)

**WAC 246-215-06570 Methods—Prohibiting animals ((2009)) FDA Food Code 6-501.115.** (1) Except as specified in subsections (2) ~~((and (3)))~~ through (5) 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 an employee or individual with a disability in areas not used for FOOD preparation and usually open for customers, such as dining and sales areas, 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.

(4) Effective March 1, 2022, dogs, under the control of the dog owner, may be allowed in an outdoor area on the PREMISES if all of the following conditions are satisfied:

(a) The PERMIT HOLDER has an APPROVED plan to allow dogs in its outdoor PREMISES.

(b) Dogs are on a leash and under the control of the dog owner or confined in a pet carrier.

(c) Dogs do not go through the FOOD ESTABLISHMENT to reach the outdoor area.

(d) Dogs are not allowed on tables, chairs, benches, seats, or other fixtures in the FOOD ESTABLISHMENT.

(e) The outdoor area is not used for FOOD or drink preparation or the storage of UTENSILS.

(f) If the FOOD ESTABLISHMENT provides FOOD and water containers for dogs, EMPLOYEES shall not wash containers in the FOOD ESTABLISHMENT.

(g) FOOD EMPLOYEES do not have direct contact with dogs.

(h) The outdoor area is maintained clean of animal waste.

(i) The PERMIT HOLDER ensures compliance with local ordinances related to sidewalks, public nuisance, and sanitation.

(5) Dogs, under the control of the dog owner, may be allowed in an indoor area on the PREMISES if all of the following conditions are satisfied:

(a) The PERMIT HOLDER has notified the REGULATORY AUTHORITY in advance.

(b) The FOOD ESTABLISHMENT only pours BEVERAGES produced by a FOOD PROCESSING PLANT and is limited to only nonTIME/TEMPERATURE CONTROL FOR SAFETY FOOD, READY-TO-EAT FOOD 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 from the original package without direct hand contact directly onto or into a container.

(c) Dogs are not allowed on tables, chairs, benches, seats, or other fixtures in the FOOD ESTABLISHMENT.

(d) If the FOOD ESTABLISHMENT provides FOOD and water containers for dogs, EMPLOYEES shall not wash containers in the FOOD ESTABLISHMENT.

(e) FOOD EMPLOYEES do not have direct contact with dogs.

(f) The PREMISES is maintained clean of animal waste.

(g) The PERMIT HOLDER ensures compliance with local ordinances related to sidewalks, public nuisance, and sanitation.

(h) The PERMIT HOLDER provides signage to notify customers that the facility allows dogs in its indoor PREMISES.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-07220 Chemicals—Sanitizers, criteria ((2009)) FDA Food Code 7-204.11).** Chemical SANITIZERS, including chemical sanitizing solutions generated on-site, and other chemical antimicrobials applied to FOOD-CONTACT SURFACES must:

(1) 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~~) food contact surface sanitizing solutions; or

(2) Meet the requirements as specified in 40 C.F.R. 180.2020 Pesticide Chemicals Not Requiring a Tolerance or Exemption from Tolerance Non-food Determinations.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-07225 Chemicals—Chemicals for washing, treatment, storage, and processing fruits and vegetables, criteria ((2009)) FDA Food Code 7-204.12).** ~~((H))~~ Chemicals, including those generated on-site, 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~~) or used in the treatment, storage, and processing of fruits and vegetables must:

(1) Be an APPROVED FOOD ADDITIVE listed for this intended use in 21 C.F.R. 173 - Secondary Direct Food Additives Permitted in Food for Human Consumption; or

(2) Be generally recognized as safe (GRAS) for this intended use; or

(3) Be the subject of an effective food contact notification for this intended use (only effective for the manufacturer or supplier identified in the notification); and

(4) Meet the requirements in 40 C.F.R. 156 Labeling Requirements for Pesticide and Devices.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 (GRAS) 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 (GRAS) for the intended use as specified in 21 C.F.R. 186 - Indirect Food Substances Affirmed as Generally Recognized as Safe;

(c) Generally recognized as safe (GRAS) for the intended use as determined by experts qualified in scientific training and experience to evaluate the safety of substances added, directly or indirectly, to FOOD as described in 21 C.F.R. 170.30 - Eligibility for Classification as Generally Recognized as Safe (GRAS);

(d) Subject of an effective Food Contact Notification as described in the Federal Food Drug and Cosmetic Act (FFDCA) Section 409(h);

(e) APPROVED for use as a drying agent under a prior sanction specified in 21 C.F.R. 181 - Prior Sanctioned Food Ingredients;

((~~e~~)) (f) 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~~)) (g) 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)((~~e~~)) (e) or ((~~e~~)) (g) of this section or the regulation as an indirect FOOD ADDITIVE required under subsection (1)((~~e~~)) (f) of this section, must be specifically for use with chemical SANITIZING solutions.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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).

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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).

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08105 Additional requirements—Preventing health hazards, provision for conditions not addressed (((2009)) FDA Food Code 8-102.10).** (1) If nec-

essary 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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) Maintain the APPROVED VARIANCE at the FOOD ESTABLISHMENT; and

(2) 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))~~ (3) 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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)) PERMIT applicant or PERMIT HOLDER shall submit to the REGULATORY AUTHORITY a properly prepared HACCP PLAN that includes:

(1) General information such as the name of the PERMIT applicant or PERMIT HOLDER, the FOOD ESTABLISHMENT address, and contact information;

(2) A categorization of the types of ((POTENTIALLY HAZARDOUS)) TIME/TEMPERATURE CONTROL FOR SAFETY 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)) to be controlled under the HACCP PLAN;

((2)) (3) A flow diagram ((by)) or chart for each specific FOOD or category type ((identifying CRITICAL CONTROL POINTS and providing information on the following)) that identifies:

- (a) Each step in the process;
- (b) The HAZARDS and controls for each step in the flow diagram or chart;

(c) The steps that are CRITICAL CONTROL POINTS;  
(d) The ingredients, materials, and EQUIPMENT used in the preparation of that FOOD; and

((b)) (e) 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);

(4) A CRITICAL CONTROL POINT summary for each specific FOOD or category type that clearly identifies:

- (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 designated FOOD EMPLOYEE (~~(designated by)~~) or 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 designated FOOD EMPLOYEE or 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~~) Supporting documents such as:

(a) FOOD EMPLOYEE and supervisory training plan that addresses the FOOD safety issues of concern;

(b) Copies of blank records forms that are necessary to implement the HACCP PLAN; and

(c) Additional scientific data or other information, as required by the REGULATORY AUTHORITY, supporting the determination that FOOD safety is not compromised by the proposal.

(6) Any other information(~~(-as)~~) required by the REGULATORY AUTHORITY(~~(-supporting the determination that FOOD safety is not compromised by the proposal)~~).

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08305 Exempt from permit** (~~((2009) FDA Food Code 8-301.12))~~) **with approval**.

(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 nonAPPROVED 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) Individual samples of nonTIME/TEMPERATURE CONTROL FOR SAFETY FOOD sliced fruits and vegetables;

(b) Popcorn and flavored popcorn prepared from commercially PACKAGED (~~(nonPOTENTIALLY HAZARDOUS)~~) NON-TIME/TEMPERATURE CONTROL FOR SAFETY FOOD ingredients; (~~((b) Cotton candy;))~~)

(c) Dried herbs and spices processed in an APPROVED facility;

(d) Crushed ice drinks containing only (~~(nonPOTENTIALLY HAZARDOUS)~~) nonTIME/TEMPERATURE CONTROL FOR SAFETY FOOD ingredients and dispensed from a self-contained machine that makes its own ice. Drinks with (~~(POTENTIALLY HAZARDOUS)~~) TIME/TEMPERATURE CONTROL FOR SAFETY 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))~~) peppers;

(g) Roasted nuts, roasted peanuts, and roasted candy-coated nuts;

(h) Chocolate-dipped ice cream bars prepared from prePACKAGED 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))~~) Cotton candy.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 or Unified Business Identifier, 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~~)) TIME/TEMPERATURE CONTROL FOR SAFETY 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~~)) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD in advance using a

FOOD preparation method that involves two or more steps which may include combining ((~~POTENTIALLY HAZARDOUS~~)) TIME/TEMPERATURE CONTROL FOR SAFETY 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~~)) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD; or

(vi) Does not prepare, but offers for sale only prePACKAGED FOOD that is not ((~~POTENTIALLY HAZARDOUS~~)) TIME/TEMPERATURE CONTROL FOR SAFETY 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.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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; and

(11) Notify customers that the most recent establishment inspection report or summary provided by the REGULATORY AUTHORITY is available for review by posting a sign or placard, or a modified operating permit provided by a REGULATORY AUTHORITY, in a location in the FOOD ESTABLISHMENT that is conspicuous to customers or by another method acceptable to the REGULATORY AUTHORITY.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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~~)) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD such as carbonated BEVERAGES 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08410 Frequency—Competency of inspectors ((~~2009~~) FDA Food Code 8-402.10).** (1) An authorized representative of the REGULATORY AUTHORITY who inspects a FOOD ESTABLISHMENT or conducts plan review for compliance with this chapter shall have the knowl-

edge, skills, and ability to adequately perform the required duties.

(2) The REGULATORY AUTHORITY shall ensure that authorized representatives who inspect a FOOD ESTABLISHMENT or conduct plan review for compliance with this chapter have access to training and continuing education as needed to properly identify violations and apply the chapter.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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~~)) refuse access, the REGULATORY AUTHORITY shall provide details of the denial of access on an inspection report form.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08455 Imminent health hazard—Ceasing operations and reporting (((2009)) FDA Food Code 8-404.11).** (1) Except as specified in subsections (2) and (3) 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.

(3) Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the REGULATORY AUTHORITY may agree to continuing operations in the event of an extended interruption of electrical or water service if:

(a) A written emergency operating plan has been APPROVED;

(b) Immediate corrective action is taken to eliminate, prevent, or control any FOOD safety risk and IMMINENT HEALTH HAZARD associated with the electrical or water service interruption; and

(c) The REGULATORY AUTHORITY is informed upon implementation of the written emergency operating plan.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 unless they meet the exemption criteria in RCW 43.20.148 and shall return to such location for supplies, thorough cleaning, and other servicing activities, as APPROVED in a plan of operation.

(4) When not in operation, a MOBILE FOOD UNIT must be stored at an APPROVED SERVICING AREA or other APPROVED location.

(5) If a REGULATORY AUTHORITY suspends a MOBILE FOOD UNIT'S MOBILE PRIMARY PERMIT or MOBILE SECONDARY PERMIT, the PERMIT HOLDER shall immediately notify each REGULATORY AUTHORITY that issued the MOBILE FOOD UNIT a permit about the suspension.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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) Beginning a construction or remodeling ~~((begins))~~ project;

(2) Changing the menu, processes, or preparation procedures of the MOBILE FOOD UNIT ~~((is changed))~~;

(3) ~~((The method of FOOD preparation is changed;~~

~~((4))~~ Changing the vehicle ~~((is changed))~~; or

~~((5))~~ (4) Changing the COMMISSARY ~~((is changed))~~.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-09115 Plan approval—Plan contents.**

(1) To apply for a PRIMARY MOBILE PERMIT, the owner of a MOBILE FOOD UNIT shall include in the plan required by WAC 246-215-09110:

- ~~((1))~~ (a) Menu and FOOD preparation steps;
- ~~((2))~~ (b) Floor plan;
- ~~((3))~~ (c) EQUIPMENT specifications and location;
- ~~((4))~~ (d) Finish schedule;
- ~~((5))~~ ~~Proposed itinerary or sites to be served;~~
- ~~((6))~~ (e) Source of water and specifications of the on-board plumbing;
- ~~((7))~~ (f) Site used for SEWAGE disposal;
- ~~((8))~~ (g) Availability of restrooms for EMPLOYEES;
- ~~((9))~~ (h) Operating procedures; and
- ~~((10))~~ (i) Cleaning schedule.

(2) To apply for a MOBILE SECONDARY PERMIT, the owner of a MOBILE FOOD UNIT shall provide the following information to the REGULATORY AUTHORITY issuing the secondary permit:

(a) A copy of the current MOBILE PRIMARY PERMIT from the original REGULATORY AUTHORITY;

(b) A copy of the complete APPROVED plan review from the original REGULATORY AUTHORITY;

(c) The most recent inspection report of the MOBILE FOOD UNIT from the original REGULATORY AUTHORITY that demonstrates compliance with food safety standards; and

(d) Any COMMISSARY agreements that the applicant is required to maintain under the permit from the original REGULATORY AUTHORITY.

(3) Except as provided in (a) and (b) of this subsection, the REGULATORY AUTHORITY may not require an applicant to submit additional documents or inspections to obtain a MOBILE SECONDARY PERMIT to operate the MOBILE FOOD UNIT.

(a) The REGULATORY AUTHORITY may require an applicant to submit any restroom agreements the REGULATORY AUTHORITY determines are necessary to comply with this chapter;

(b) The REGULATORY AUTHORITY may require an applicant to submit additional COMMISSARY agreements as required by this chapter unless:

(i) A MOBILE FOOD UNIT is exempt from the use of a COMMISSARY under RCW 43.20.148; or

(ii) A MOBILE FOOD UNIT returns to its APPROVED COMMISSARY after each day of service as described in the APPROVED plan.

(4) A REGULATORY AUTHORITY granting a MOBILE SECONDARY PERMIT may charge the applicant an annual PERMIT fee, but may not charge a plan review or inspection fee.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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))~~ nonTIME/TEMPERATURE CONTROL FOR SAFETY FOOD;

(3) All FOODS, including ice, are from an APPROVED source or COMMISSARY;

(4) ~~((POTENTIALLY HAZARDOUS))~~ TIME/TEMPERATURE CONTROL FOR SAFETY 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-09125 ~~((Potentially hazardous))~~ Time/temperature control for safety food(s)—Temperature control.** The PERSON IN CHARGE of a MOBILE FOOD UNIT shall ensure that ~~((POTENTIALLY HAZARDOUS))~~ TIME/TEMPERATURE CONTROL FOR SAFETY FOODS are:

(1) Not cooled on the MOBILE FOOD UNIT unless APPROVED;

(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; and

(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 246-215-09126 Commissary usage.** (1) The PERSON IN CHARGE of a MOBILE FOOD UNIT shall use a COMMISSARY APPROVED by the REGULATORY AUTHORITY issuing the primary permit unless exempted under RCW 43.20.148.

(2) The PERMIT HOLDER shall obtain a written, signed COMMISSARY agreement from the COMMISSARY operator that must be renewed annually. Any changes to the agreement shall be submitted to the REGULATORY AUTHORITY issuing

the MOBILE PRIMARY PERMIT before implementing the changes.

(3) The PERSON IN CHARGE shall return the MOBILE FOOD UNIT to the COMMISSARY at a regular frequency, as determined and APPROVED by the REGULATORY AUTHORITY issuing the primary permit.

(4) The PERSON IN CHARGE shall document presence at the COMMISSARY on a log, maintain records for one year, and shall make the records available for inspection by the REGULATORY AUTHORITY upon request.

(5) Depending on the menu and plan of operation, the MOBILE FOOD UNIT operator must have access at the COMMISSARY to:

(a) A three-compartment sink and other APPROVED WAREWASHING equipment;

(b) Adequate hot and cold holding equipment as necessary for proper food storage;

(c) A service sink with hot and cold water under pressure;

(d) At least one HANDWASHING SINK with pressurized hot and cold water that is conveniently located and used exclusively for handwashing;

(e) A conveniently located toilet room;

(f) APPROVED methods and equipment to clean and sanitize FOOD and nonFOOD contact surfaces within the MOBILE FOOD UNIT; and

(g) Adequate space for the sanitary storage of FOOD, EQUIPMENT, UTENSILS, LINENS, and single-service, or single-use articles.

#### NEW SECTION

##### **WAC 246-215-09127 Commissary exemption.** (1)

The PERSON IN CHARGE of a MOBILE FOOD UNIT shall use the COMMISSARY APPROVED by the REGULATORY AUTHORITY issuing the MOBILE PRIMARY PERMIT unless exempted under RCW 43.20.148.

(2) The REGULATORY AUTHORITY must approve a request for a MOBILE FOOD UNIT to be exempt from this chapter or REGULATORY AUTHORITY requirements to operate from an APPROVED COMMISSARY or SERVICING AREA if:

(a) The MOBILE FOOD UNIT contains all EQUIPMENT and UTENSILS needed for complete onboard preparation of an APPROVED menu;

(b) The MOBILE FOOD UNIT is protected from environmental contamination when not in use;

(c) The MOBILE FOOD UNIT can maintain required food storage temperatures during storage, preparation, service, and transit;

(d) The MOBILE FOOD UNIT has a dedicated HANDWASHING SINK to allow frequent handwashing at all times;

(e) The MOBILE FOOD UNIT has adequate water capacity and WAREWASHING facilities to clean all multiuse utensils used on the MOBILE FOOD UNIT at a frequency specified in this chapter;

(f) The MOBILE FOOD UNIT is able to store tools onboard needed for cleaning and sanitizing;

(g) All FOOD, water, and ice used on the MOBILE FOOD UNIT are prepared onboard or otherwise obtained from APPROVED sources;

(h) Wastewater and garbage will be sanitarily removed from the MOBILE FOOD UNIT following an APPROVED written plan or by a licensed service provider; and

(i) The LOCAL HEALTH OFFICER approves the menu and plan of operations for the MOBILE FOOD UNIT.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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) The REGULATORY AUTHORITY may waive or modify this requirement ((may be waived or modified by the REGULATORY AUTHORITY when)) in subsection (1) of this section when a MOBILE FOOD UNIT demonstrates the operation:

(a) Includes limited FOOD preparation ((occurs; or)); and

(b) Has additional clean UTENSILS ((are)) available and UTENSIL washing takes place at an APPROVED COMMISSARY or SERVICING AREA.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-09160 Required postings—Business name and operating locations.** The PERMIT HOLDER shall:

(1) Provide the REGULATORY AUTHORITY a designated business name and ((ensure that name is posted on the MOBILE FOOD UNIT)) permanently display the business name on the exterior of the MOBILE FOOD UNIT in printed letters at least four inches in height in a manner easily visible ((to customers)) during operation; and

(2) Inform the REGULATORY AUTHORITY of the days, hours and locations intended to vend in a manner acceptable to the REGULATORY AUTHORITY, such as by telephone, electronic mail, written correspondence or social media link.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-09210 ((Potentially hazardous)) Time/temperature control for safety food—Temperature control.** The PERSON IN CHARGE of a TEMPORARY FOOD ESTABLISHMENT shall ensure that ((POTENTIALLY HAZARDOUS)) TIME/TEMPERATURE CONTROL FOR SAFETY 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-09215 Thawing thickness—Thawing (~~(potentially hazardous)~~) time/temperature control for safety foods.** The PERSON IN CHARGE of a TEMPORARY FOOD ESTABLISHMENT shall ensure (~~(POTENTIALLY HAZARDOUS)~~) TIME/TEMPERATURE CONTROL FOR SAFETY FOODS that are thawed as part of a continuous cooking process are not greater than four inches thick.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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)~~) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD may be prepared and served at any time of day;

(d) (~~(POTENTIALLY HAZARDOUS)~~) TIME/TEMPERATURE CONTROL FOR SAFETY FOODS are prepared for IMMEDIATE SERVICE only; and

(e) (~~(POTENTIALLY HAZARDOUS)~~) TIME/TEMPERATURE CONTROL FOR SAFETY 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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)~~) Initially regarding the nature of its FOOD service activities, including (~~(types of FOOD served or distributed)~~) information specified in WAC 246-215-08325; and

~~((b) Whenever there is a significant change in its FOOD service activities:)~~

(i) A valid 501(c) IRS determination letter; or

(ii) A letter of sponsorship from a 501(c) organization with a copy of its current 501(c) IRS determination letter.

(b) Annually of the nature of its FOOD service activities, including types of FOOD served and distributed; and

(c) Whenever the IRS determination letter is revoked or 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)) of this chapter, except as otherwise provided in this subpart.~~

(5) The REGULATORY AUTHORITY may impose additional requirements to protect against health hazards related to the operation of a DONATED FOOD DISTRIBUTING ORGANIZATION 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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)) (2) The PREMISES are maintained to control insects, rodents, and other pests;~~

~~((7)) (3) Children under age ten and animals are kept out of FOOD preparation areas during the preparation of FOODS; ((and~~

~~(8)) (4) Toxic chemicals are stored in accurately labeled containers away from all FOODS and FOOD service supplies; and~~

~~(5) EQUIPMENT and FOOD CONTACT SURFACES are maintained in good repair and condition.~~

#### NEW SECTION

**WAC 246-215-09406 Standard operating procedures—Food handling.** The PERSON IN CHARGE of a DONATED FOOD DISTRIBUTING ORGANIZATION shall ensure:

(1) Compliance with the food safety requirements outlined in Part 3 of this chapter;

(2) FOOD CONTACT SURFACES are thoroughly cleaned and SANITIZED before each use;

(3) Cooled TIME/TEMPERATURE CONTROL FOR SAFETY FOOD received from a DONOR KITCHEN is reheated to at least 165°F (74°C) within two hours;

(4) Cooled TIME/TEMPERATURE CONTROL FOR SAFETY FOOD rescued from a FOOD ESTABLISHMENT is reheated to at least 165°F (74°C) within two hours; and

(5) MEAT received from licensed hunters is cooked to at least 165°F (74°C).

#### NEW SECTION

**WAC 246-215-09407 Standard operating procedures—Transportation.** The PERSON IN CHARGE of a DONATED FOOD DISTRIBUTING ORGANIZATION shall ensure:

(1) Vehicles owned and operated by the DONATED FOOD DISTRIBUTING ORGANIZATION for transporting FOOD are cleaned at a frequency necessary to prevent accumulation of soil residues. The interior of the vehicle where food containers are stored must be clean and free of insects, dirt, animals, leakage, and other potential contaminants;

(2) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD is maintained hot or cold during transport using EQUIPMENT that is not packed beyond capacity to maintain cold FOODS at 41°F (5°C) or below and hot FOODS at 135°F (57°C) or above; and

(3) FOOD is handled and transported in separate containers as needed to prevent potential cross contamination.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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;));~~

(1) A HANDWASHING SINK accessible and convenient for use by EMPLOYEES during all times of FOOD preparation and service of unwrapped FOODS.

(2) Each sink used for handwashing is provided with a supply of hand soap and SINGLE-USE towels or other APPROVED hand-drying device.

(3) A HANDWASHING SINK must be provided in the restroom and food preparation areas. A HANDWASHING SINK in a toilet room is not a replacement for HANDWASHING SINKS in food preparation areas.

(4) If unpackaged food is handled on-site, the DONATED FOOD DISTRIBUTING ORGANIZATION shall have at least the following facilities available for cleaning of FOOD-contact UTENSILS and EQUIPMENT:

(a) A three-compartment sink;

(b) A two-compartment sink as specified in WAC 246-215-04305 (4) and (5);

(c) A two-compartment sink plus a home-style dishwasher with a SANITIZING cycle providing 155°F (68°C) or hotter water; or

(d) As otherwise APPROVED.

(5) If produce is washed on-site, the DONATED FOOD DISTRIBUTING ORGANIZATION must either have:

(a) A separate FOOD preparation sink as specified in WAC 246-215-04325; or

(b) An APPROVED alternative produce washing procedure (e.g., the use of a colander) that ensures produce is not directly placed in WAREWASHING or HANDWASHING SINKS.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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)) APPROVED SOURCES as listed in Part 3, Subpart B of this chapter;~~

(2) FOOD from a FOOD ESTABLISHMENT or FOOD PROCESSING PLANT;

(3) Previously served FOODS from a FOOD ESTABLISHMENT operating under a plan APPROVED by the REGULATORY AUTHORITY;

(4) FOOD from a DONOR KITCHEN that is:

(a) Properly stored and handled to prevent contamination;

(b) Prepared on-site at the DONOR KITCHEN and not in a residential kitchen in a private home; and

(c) Maintained at proper temperatures during storage, preparation and transport.

(5) FOOD from a residential kitchen in a private home that is properly stored and handled to prevent contamination;

(a) NonTIME/TEMPERATURE CONTROL FOR SAFETY FOOD, nonREADY-TO-EAT FOOD;

(b) NonTIME/TEMPERATURE CONTROL FOR SAFETY FOOD and READY-TO-EAT FOODS in an intact commercial package; or

(c) Commercially PACKAGED frozen FOOD.

(6) NonTIME/TEMPERATURE CONTROL FOR SAFETY FOOD baked goods from a residential kitchen in a private home that is properly prepared to prevent contamination.

(7) 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) Field dressed to remove the viscera with or without skin present;

(c) Accompanied by a written statement identifying:

(i) The name and address of the person who harvested the game;

(ii) The license, permit or tag number and kind of animal provided;

(iii) The date killed, the county and area where the animal was taken; and

(iv) The hunter's signature as required by WAC 220-200-120.

(d) Stored and handled to prevent temperature abuse and contamination during transport to the processing facility;

(e) Processed by an APPROVED MEAT cutter; and

~~((e))~~ (f) Labeled "*Uninspected wild game meat, thoroughly cook to 165°F (74°C) internal temperature*";

~~((3))~~ (8) 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~~) Slaughtered in a USDA-inspected slaughter facility;

(b) Stored and handled to prevent temperature abuse and contamination during transport between slaughter and processing facilities;

(c) Processed by a FOOD ESTABLISHMENT permitted by the REGULATORY AUTHORITY; and

(d) Labeled "~~((Uninspected wild game meat, thoroughly cook to 165°F (74°C) internal temperature))~~ *This product was prepared from inspected and passed meat. Some food products may contain bacteria that could cause illness if the product is mishandled or cooked improperly*";

~~((4))~~ FOODS properly handled, stored, or prepared in a DONOR KITCHEN;

(5) NONPOTENTIALLY HAZARDOUS)) (9) Fresh FISH:

(a) Received from a recreational or commercial fisher licensed by the Washington state department of fish and wildlife;

(b) Received whole or minimally processed to remove the head, viscera or head and viscera; and

(c) Stored and handled to prevent temperature abuse and contamination during transport.

(10) NonTIME/TEMPERATURE CONTROL FOR SAFETY FOOD, nonREADY-TO-EAT FOODS handled, stored, or prepared in a residential kitchen in a private home.

~~((6))~~ (11) Baked goods that are not (~~POTENTIALLY HAZARDOUS~~) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD handled, stored, or prepared in a residential kitchen in a private home;

~~((7) NONPOTENTIALLY HAZARDOUS))~~ (12) NonTIME/TEMPERATURE CONTROL FOR SAFETY FOOD, READY-TO-EAT FOODS in an intact commercial package stored in a residential kitchen in a private home; and

~~((8))~~ (13) Commercially PACKAGED frozen FOOD.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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 rescued from a FOOD ESTABLISHMENT that have not been previously served to a person, unless as specified in WAC 246-215-09415;

(3) ~~((POTENTIALLY HAZARDOUS))~~ TIME/TEMPERATURE CONTROL FOR SAFETY 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; and

(6) FOODS were transported in the interior of a vehicle that is clean and free of insects, dirt, animals, leakage, and other potential contaminants.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-09425 Prohibited food—Restrictions.** The PERSON IN CHARGE of a DONATED FOOD DISTRIBUTING ORGANIZATION may not accept, serve or distribute:

(1) Home-canned FOODS;

(2) FOOD from a residential kitchen in a private home, other than those specified in WAC 246-215-09415;

(3) FOOD from a donor kitchen prepared using specialized processing methods as described in WAC 246-215-03535;

(4) Canned FOODS in containers that are rusty or severely damaged;

~~((3))~~ (5) Distressed FOODS (such as from a fire, flood, or prolonged storage) unless the FOODS have been evaluated and APPROVED for charitable distribution; ~~((or~~  
 (4)) (6) Infant formula that is past the original expiration date set by the processor; or  
 (7) Raw, unpasteurized milk.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-09430 Food labels—Alternative labeling.** ~~((The PERSON IN CHARGE of a DONATED FOOD DISTRIBUTING ORGANIZATION may distribute PACKAGED FOODS))~~ FOOD that is rePACKAGED at the DONATED FOOD DISTRIBUTING ORGANIZATION may be distributed without complete label information on each individual container, provided that:

(1) Each container is labeled with the common name of the FOOD;

(2) The name and place of business of the manufacturer, packer, or distributor; and

~~((2))~~ (3) The complete label information, according to the provisions of chapter 69.04 RCW, including complete ingredient and allergen disclosure information, 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.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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))~~ TIME/TEMPERATURE CONTROL FOR SAFETY FOODS or non-TIME/TEMPERATURE CONTROL FOR SAFETY FOODS, READY-TO-EAT FOODS not prePACKAGED in a FOOD PROCESSING PLANT shall keep records for ~~((30))~~ ninety days documenting the source, quantity, type, and receiving date of the FOODS.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**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, 246-215-04250, 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))~~ TIME/TEMPERATURE CONTROL FOR SAFETY FOOD is prepared for IMMEDIATE SERVICE; and

(c) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD is cooked, reheated, or hot held ~~((POTENTIALLY HAZARDOUS FOODS are))~~ and not cooled for future service. ~~((They))~~ TIME/TEMPERATURE CONTROL FOR SAFETY FOOD 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.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-215-04650 Methods—Returnables, cleaning for refilling (2009 FDA Food Code 4-603.17).

WAC 246-215-09130 Cooking thickness—Cooking raw meats.

WAC 246-215-09180 Movable buildings—Lack of permanent plumbing.

**WSR 21-01-125**

**PERMANENT RULES**

**BUILDING CODE COUNCIL**

[Filed December 15, 2020, 2:09 p.m., effective January 15, 2021]

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

Purpose: Moving into permanent rule making CR-102, WSR 19-16-137 [20-17-049] as amended and adopted by the state building code council on November 6, 2020.

Citation of Rules Affected by this Order: Amending 2.

Statutory Authority for Adoption: RCW 19.27.035.

Other Authority: RCW 19.27.074.

Adopted under notice filed as WSR 20-17-049 on August 11, 2020.

Changes Other than Editing from Proposed to Adopted Version: **408.2.5 Tub Spout and Showerhead Tub Spout Diverter Combinations.** - Deleted.

**411.2.3 Flushometer Valve Activation Water Closet.** 1.6 Gallons replaced with 1.28 Gallons maximum flush volume.

**412.1 Application.** Standards ASME A112.19.19, or CSA B45.5/IAPMO Z124. - Added.

**501.1.2 Consumer Electric Storage Water Heater Requirements.** Exception 2 - Added.

A final cost-benefit analysis is available by contacting Richard Brown, 1500 Jefferson Street S.E., Olympia, WA 98504, phone 360-407-9277, email Richard.Brown@DES.wa.gov, website SBCC.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 2, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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: November 6, 2020.

Diane Glenn  
Chair

**Chapter 51-56 WAC**

**STATE BUILDING CODE ADOPTION AND AMENDMENT OF THE ((2015)) 2018 EDITION OF THE UNIFORM PLUMBING CODE**

AMENDATORY SECTION (Amending WSR 20-02-072, filed 12/26/19, effective 7/1/20)

**WAC 51-56-0400 Chapter 4—Plumbing fixtures and fixture fittings.**

**402.5 Setting.** Fixtures shall be set level and in proper alignment with reference to adjacent walls. No water closet or bidet shall be set closer than fifteen (15) inches (381 mm) from its center to any side wall or obstruction nor closer than thirty (30) inches (762 mm) center to center to any similar fixture. The clear space in front of any water closet or bidet shall be not less than twenty-four (24) inches (610 mm). No urinal shall be set closer than twelve (12) inches (305 mm) from its center to any side wall or partition nor closer than twenty-four (24) inches (610 mm) center to center.

- EXCEPTIONS:
1. The clear space in front of a water closet, lavatory or bidet in dwelling units and sleeping units shall be not less than 21 inches (533 mm).
  2. The installation of paper dispensers or accessibility grab bars shall not be considered obstructions.

**405.4 Application.** No individual, public or private corporation, firm, political subdivision, government agency, or other legal entity, may, for purposes of use in the state of Washington, distribute, sell, offer for sale, import, install, or approve for installation any plumbing fixtures or fittings unless the fixtures or fittings meet the standards as provided for in this chapter.

**407.2 Water Consumption.** The maximum water ((use allowed in gallons per minute (gpm) or liters per minute (lpm) for any of the following faucets and replacement aerators is the following:

Lavatory faucets	2.2 gpm/9.5 lpm
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Kitchen faucets	2.2 gpm/9.5 lpm
Replacement aerators	2.2 gpm/9.5 lpm
Public lavatory faucets other than metering	0.5 gpm/1.9 lpm))

flow rate of faucets shall comply with Section 407.2.1 through 407.2.2.

**407.2.1 Maximum Flow Rate.** The maximum flow rate for public lavatory faucets shall not exceed 0.5 gpm at 60 psi (1.9 L/m at 414 kPa).

**407.2.1.1 Residential Lavatory Faucets.** The maximum flow rate of residential lavatory faucets shall not exceed 1.2 gallons (4.54 L) per minute at 60 psi. The minimum flow rate of residential lavatory faucets shall not be less than 0.8 gallons (3.03 L) per minute at 20 psi.

**407.2.1.2 Lavatory Faucets in Common and Public Use Areas.** The maximum flow rate of lavatory faucets, installed in common and public use areas (outside of dwellings or sleeping units) in residential buildings, shall not exceed 0.5 gallons (1.89 L) per minute at 60 psi.

**407.2.2 Metering Faucets.** Metered faucets shall deliver a maximum of 0.25 gallons (1.0 L) per metering cycle in accordance with ASME A112.18.1/CSA B125.1.

**407.4 Metering Valves.** Lavatory faucets located in restrooms intended for use by the general public shall be equipped with a metering valve designed to close by spring or water pressure when left unattended (self-closing).

- EXCEPTIONS:
1. Where designed and installed for use by persons with a disability.
  2. Where installed in day care centers, for use primarily by children under 6 years of age.

**408.2 Water Consumption.** Showerheads shall ((have a maximum flow rate of not more than 2.5 gpm at 80 psi (9.5 L/m at 552 kPa), in accordance with ASME A112.18.1/CSA B125.1.

EXCEPTION: Emergency use showers shall be exempt from the maximum water usage rates.))

meet the maximum flow rate of 1.8 gallons (6.81 L) per minute measured at 80 psi. Showerheads shall be certified to the performance criteria of the U.S. EPA WaterSense Specification for Showerheads.

EXCEPTION: Emergency use showers shall be exempt from the maximum water usage rates.

**408.2.1 Multiple Showerheads Serving One Shower.** When a shower is served by more than one showerhead, including handheld showerheads, the combined flow rate of all showerheads and/or other shower outlets controlled by a single valve shall not exceed 1.8 gallons (6.81 L) per minute at 80 psi, or the shower shall be designed to allow only one shower outlet to be in operation at a time.

**408.4 Waste Outlet.** Showers shall have a waste outlet and fixture tailpiece not less than two (2) inches (50 mm) in diameter. Fixture tailpieces shall be constructed from the materials specified in Section 701.1 for drainage piping. Strainers serv-

ing shower drains shall have a waterway at least equivalent to the area of the tailpiece.

**EXCEPTION:** In a residential dwelling unit where a 2 inch waste is not readily available and approval of the AHJ has been granted, the waste outlet, fixture tailpiece, trap and trap arm may be 1-1/2 inch when an existing tub is being replaced by a shower sized per Section 408.6(2). This exception only applies where one shower head rated at 2.5 gpm is installed.

**408.6 Shower Compartments.** Shower compartments, regardless of shape, shall have a minimum finished interior of nine hundred (900) square inches (0.58 m<sup>2</sup>) and shall also be capable of encompassing a thirty (30) inch (762 mm) circle. The minimum required area and dimensions shall be measured at a height equal to the top of the threshold and at a point tangent to its centerline. The area and dimensions shall be maintained to a point of not less than seventy (70) inches (1,778 mm) above the shower drain outlet with no protrusions other than the fixture valve or valves, shower head, soap dishes, shelves, and safety grab bars or rails. Fold-down seats in accessible shower stalls shall be permitted to protrude into the thirty (30) inch (762 mm) circle.

**EXCEPTIONS:**

1. Showers that are designed to comply with ICC/ANSI A117.1.
2. The minimum required area and dimension shall not apply for a shower receptor having overall dimensions of not less than thirty (30) inches (762 mm) in width and sixty (60) inches (1,524 mm) in length.

**411.2 Water Consumption.** ~~((Water closets shall have a maximum consumption not to exceed 1.6 gallons (6.0 L) of water per flush in accordance with ASME A112.19.2/CSA B45.1. No water closet that operates on a continuous flow or continuous flush basis shall be permitted.~~

**EXCEPTIONS:**

1. Water closets located in day care centers, intended for use by young children may have a maximum water use of 3.5 gallons per flush or 13.25 liters per flush.
2. Water closets with bed pan washers may have a maximum water use of 3.5 gallons per flush or 13.25 liters per flush.
3. Blow out bowls, as defined in ANSI/ASME A112.19.2M, Section 5.1.2.3 may have a maximum water use of 3.5 gallons per flush or 13.25 liters per flush.))

The effective flush volume of all water closets shall not exceed 1.28 gallons (4.8 L) per flush when tested in accordance with ASME A112.19.2/CSA B45.1.

**EXCEPTIONS:**

1. Water closets located in day care centers, intended for use by young children may have a maximum water use of 3.5 gallons per flush or 13.25 liters per flush.
2. Water closets with bed pan washers may have a maximum water use of 3.5 gallons per flush or 13.25 liters per flush.
3. Blow out bowls, as defined in ANSI/ASME A112.19.2M, Section 5.1.2.3 may have a maximum water use of 3.5 gallons per flush or 13.25 liters per flush.

**411.2.1 Dual Flush Water Closets.** Dual flush water closets shall comply with ASME A112.19.14. The effective flush volume for dual flush water closets shall be defined as the

composite, average flush volume of two reduced flushes and one full flush.

**411.2.2 Performance.** Water closets installed shall meet or exceed the minimum performance criteria developed for certification of high-efficiency toilets under the WaterSense program sponsored by the U.S. Environmental Protection Agency (EPA).

**411.2.3 Flushometer Valve Activated Water Closets.** Flushometer valve activated water closets shall have a maximum flush volume of 1.28 gallons (4.8 Lpf) of water per flush in accordance with ASME A112.19.2/CSA B45.1.

**412.1 Application.** Urinals shall comply with ASME A112.19.2/CSA B45.1, ASME A112.19.19, or CSA B45.5/IAPMO Z124. Wall-mounted urinals shall have an average water consumption not to exceed ((1 gallon (3.8 L) of water)) 0.125 gallons (0.47 L) per flush. ((No urinal that operates on a continuous flow or continuous flush basis shall be permitted)) Other urinals shall have an average water consumption not to exceed 0.5 gallons (1.89 L) per flush.

**414.3 Drainage Connection.** Domestic dishwashing machines shall discharge indirectly through an air gap fitting in accordance with Section 807.3 into a waste receptor, a wye branch fitting on the tailpiece of a kitchen sink, or dishwasher connection of a food waste disposer. Commercial dishwashing machines shall discharge indirectly through an air gap.

**415.2 Drinking Fountain Alternatives.** This section is not adopted. See Building Code chapter 29.

**418.3 Location of Floor Drains.** Floor drains shall be installed in the following areas:

1. Toilet rooms containing two (2) or more water closets or a combination of one (1) water closet and one (1) urinal, except in a dwelling unit. The floor shall slope toward the floor drains.

2. Laundry rooms in commercial buildings and common laundry facilities in multifamily dwelling buildings.

## 420.0 Sinks

**420.1 Application.** Sinks shall comply with ASME A112.19.1/CSA B45.2, ASME A112.19.2/CSA B45.1, ASME A112.19.3/CSA B45.4, or CSA B45.5/IAPMO Z124. Moveable sink systems shall comply with ASME A112.19.12.

**420.2 Water Consumption.** Sink faucets shall have a maximum flow rate of not more than 2.2 gpm at 60 psi (8.3 L/m at 414 kPa) in accordance with ASME A112.18.1/CSA B125.1.

**EXCEPTION:** Clinical sinks, laundry trays, service sinks.

**420.2.1 Kitchen Faucets.** Kitchen faucets shall have a maximum flow rate of not more than 1.8 gallons (6.81 L) per minute at 60 psi. Kitchen faucets may temporarily increase the flow above the maximum rate, but not to exceed 2.2 gallons (8.3 L) per minute at 60 psi, and must default to a maximum flow rate of 1.8 gallons (6.81 L) per minute at 60 psi.

**EXCEPTION:** Where faucets meeting the maximum flow rate of 1.8 gpm (6.81 L) are unavailable, aerators or other means may be used to achieve reduction.

**420.3 Prerinse Spray Valve.** Commercial food service prerinse spray valves shall have a maximum flow rate of 1.6 gal-

lons per minute (gpm) at 60 pounds-force per square inch (psi) (6.0 L/m at 414 kPa) in accordance with ASME A112.18.1/CSA B125.1 and shall be equipped with an integral automatic shutoff.

**422.0 Minimum Number of Required Fixtures.** For minimum number of plumbing fixtures required, see Building Code Chapter 29 and Table 2902.1.

**423.0 Landscape Irrigation.**

**423.1 Spray Sprinkler Body.** Spray sprinkler bodies must include an integral pressure regulator and must meet the

water efficiency and performance criteria and other requirements of environmental protection agency water sense program product specification for spray sprinkler bodies.

EXCEPTION: Spray sprinkler bodies specifically excluded from the scope of the environmental protection agency water sense program product specification for spray sprinkler bodies.

Sections 422.1 through 422.5 and Table 422.1 are not adopted.

AMENDATORY SECTION (Amending WSR 20-02-072, filed 12/26/19, effective 7/1/20)

**WAC 51-56-0500 Chapter 5—Water heaters.**

**501.1 Applicability.** The regulations of this chapter shall govern the construction, location, and installation of fuel burning and other types of water heaters heating potable water. The minimum capacity for water heaters shall be in accordance with the first hour rating listed in Table 501.1(2). See the Mechanical Code for combustion air and installation of all vents and their connectors. No water heater shall be hereinafter installed that does not comply with the manufacturer's installation instructions and the type and model of each size thereof approved by the authority having jurisdiction. A list of accepted water heater appliance standards is referenced in Table 501(2). Listed appliances shall be installed in accordance with the manufacturer's installation instructions. Unlisted water heaters shall be permitted in accordance with Section 504.3.2.

TABLE 501.1(2)<sup>1,3</sup>

Number of Bath-rooms	1 to 1.5			2 to 2.5				3 to 3.5			
	1	2	3	2	3	4	5	3	4	5	6
Number of Bedrooms	1	2	3	2	3	4	5	3	4	5	6
First Hour Rating <sup>2</sup> , Gallons	38	49	49	49	62	62	74	62	74	74	74

Notes: <sup>1</sup>The first hour rating is found on the "Energy Guide" label.

<sup>2</sup>Nonstorage and solar water heaters shall be sized to meet the appropriate first hour rating as shown in the table, and shall be capable of delivering hot water at the maximum system demand flow, as calculated in Section 610.0 or Appendix A, as applicable.

<sup>3</sup>For replacement water heaters, see Section 102.4.

**501.1.2 Consumer Electric Storage Water Heater Requirements.** Consumer electric storage water heaters must have a modular demand response communications port compliant with the March 2018 version of the ANSI/CTA-2045-A communication interface standard, or equivalent and the March 2018 version of the ANSI/CTA-2045-A application layer requirements. The interface standard and application layer requirements required in this subsection are the versions established on March 16, 2018.

EXCEPTIONS: 1. Water heaters manufactured prior to January 1, 2021.  
2. Electric storage water heaters other than heat pump type water heaters manufactured prior to January 1, 2022.

**501.1.3 Mini-tank Electric Water Heaters.** The standby energy consumption of hot water dispensers and mini-tank electric water heaters manufactured on or after January 1, 2010, shall be not greater than 35 watts. Mini-tank electric water heaters shall be tested in accordance with the method specified in the California Code of 39 Regulations, Title 20, section 1604 in effect as of July 26, 2009.

**504.1 Location.** Water heater installation in bedrooms and bathrooms shall comply with one of the following:

(1) Fuel-burning water heaters may be installed in a closet located in the bedroom or bathroom provided the closet is equipped with a listed, gasketed door assembly and a listed self-closing device. The self-closing door assembly shall meet the requirements of Section 505.1.1. The door assembly shall be installed with a threshold and bottom door seal and shall meet the requirements of Section 505.1.2. All combustion air for such installations shall be obtained from the outdoors in accordance with the International Mechanical Code. The closet shall be for the exclusive use of the water heater.

(2) Water heater shall be of the direct vent type.

**505.2 Safety Devices.** All storage-type water heaters deriving heat from fuels or types of energy other than gas, shall be provided with, in addition to the primary temperature controls, an over-temperature safety protection device constructed, listed, and installed in accordance with nationally recognized applicable standards for such devices and a combination temperature and pressure relief valve.

**506.0 Combustion Air.** For issues relating to combustion air, see the Mechanical Code.

Sections 506.1 through 506.9 are not adopted.

Sections 507.6 through 507.9 are not adopted.

Damon Monroe  
Rules Coordinator

**507.2 Seismic Provisions.** Water heaters shall be anchored or strapped to resist horizontal displacement due to earthquake motion. Strappings shall be at points within the upper one-third and lower one-third of its vertical dimensions. At the lower point, a distance of not less than four (4) inches (102 mm) shall be maintained from the controls to the strapping.

**507.13 Installation in Garages.** Appliances in garages and in adjacent spaces that open to the garage and are not part of the living space of a dwelling unit shall be installed so that burners, burner-ignition devices and ignition sources are located not less than eighteen (18) inches above the floor unless listed as flammable vapor ignition resistant.

**507.16 Venting of Flue Gases - Delete entire section.**

Sections 507.18 through 507.22 are not adopted.

**509.0 Venting of Equipment.** Delete entire section.

**510.0 Sizing of Category I Venting Systems.** Delete entire section.

**511.0 Direct Vent Equipment.** Delete entire section.

## WSR 21-01-127

### PERMANENT RULES

#### DEPARTMENT OF LICENSING

[Filed December 15, 2020, 5:19 p.m., effective January 15, 2021]

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

Purpose: To streamline the application process for licensees and applicants; and fulfill system requirements necessary to apply online. To align the signature requirements, including electronic, with the other design programs regulated by the regulatory boards section.

Citation of Rules Affected by this Order: Repealing WAC 308-12-280 and 308-12-355; and amending chapter 308-12 WAC.

Statutory Authority for Adoption: RCW 18.08.340.

Adopted under notice filed as WSR 20-22-072 on November 2, 2020.

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 4, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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 12, Repealed 2; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 15, 2020.

AMENDATORY SECTION (Amending WSR 11-11-019, filed 5/9/11, effective 7/1/11)

**WAC 308-12-005 Definitions.** (1) "Architect of record" is the architect whose ~~((name appears on the building permit))~~ stamp or seal appears on the technical submission.

(2) "ARE" or "examination" means the architect registration examination written and administered by NCARB.

(3) "AXP" means the Architecture Experience Program established by NCARB, which is the structured training program currently recognized by the Washington state board for architects.

(4) "Building" means "structure" as defined in RCW 18.08.320.

~~((4))~~ (5) "Direct supervision," as in the phrase "under the direct supervision of an architect," as used in connection with architectural work experience for qualification and eligibility for the examination shall refer to any of the following conditions or situations:

(a) The supervising architect is an employer who is knowledgeable of the performance and competence of the applicant.

(b) The supervising architect works for the same employer as the applicant, and is either the direct superior of the applicant, or a co-worker knowledgeable and responsible for the efforts of the applicant.

(c) The supervising architect is licensed in an NCARB-recognized jurisdiction.

~~((5))~~ (6) "Entire examination" as referred to in RCW 18.08.360(3) means all divisions of the ARE.

~~((6))~~ (7) "Institution of higher education" as used in RCW 18.08.320 means a college or school recognized by the National Architectural Accreditation Board (NAAB) as having accredited programs in architecture.

~~((7) "Intern development program" or "IDP" is a structured internship training program designed to provide a profession-wide, comprehensive program that contributes to the development of competent architects.))~~

(8) "IPAL" means the Integrated Path to Architectural Licensure established by NCARB and is a structured path to earning an architectural license that gives students the opportunity to complete all core licensure requirements while earning a degree.

(9) "NAAB" means National Architectural Accreditation Board.

(10) "NCARB" means the National Council of Architectural Registration Boards, of which the Washington board is a member.

~~((9))~~ (11) "Practical architectural work experience" means performing activities involved in the practice of architecture, as defined in RCW 18.08.320 and meeting the criteria in RCW 18.08.350.

~~((10) Professional development equivalents:~~

~~(a) One professional development hour (PDH) is equal to no less than fifty minutes of instruction.~~

~~(b) For professional development through an institution of higher education:~~

(i) One semester hour equals forty-five PDH.

(ii) One quarter hour equals thirty PDH.

(11)) (12) "Technical submission" means designs, drawings, specifications, studies, and other technical documents prepared ~~((in the course of practicing architecture))~~ for the submission to public authorities.

AMENDATORY SECTION (Amending WSR 11-11-019, filed 5/9/11, effective 7/1/11)

**WAC 308-12-010 How does the state board function?**

The Washington state board for architects, hereafter called the board, shall hold quarterly regular public meetings each year. Additional ~~((public))~~ special meetings may be held at such times and places as the board may deem necessary. At its regular meeting during the second quarter of the calendar year, the board will elect a chair, a vice chair and a secretary for the upcoming year.

AMENDATORY SECTION (Amending WSR 11-11-019, filed 5/9/11, effective 7/1/11)

**WAC 308-12-016 What are the board member rules of conduct?**

(1) When a member of the board either owns a beneficial interest in or is an officer, agent, employee, or member of an entity; or ~~((individual which is engaged in a transaction involving the board))~~ has a close relationship with an individual or organization who is the subject of a board action, the member shall:

(a) Recuse ~~((him or herself))~~ themselves from the board discussion regarding the specific ~~((transaction))~~ action;

(b) Recuse ~~((him or herself))~~ themselves from the board vote on the specific ~~((transaction))~~ action; and

(c) Refrain from attempting to influence the remaining board members in their discussion and vote regarding the specific ~~((transaction))~~ action.

(2) The prohibition against discussion and voting set forth in subsection (1)(a) and (c) of this section shall not prohibit the member of the board from using ~~((his or her))~~ general expertise to educate and provide general information on the subject area to the other members.

(3) ~~((("Transaction involving the board":~~

~~((a) Means a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter that the member in question believes, or has reason to believe:~~

~~((i) Is, or will be, the subject of board action; or~~

~~((ii) Is one to which the board is or will be a party; or~~

~~((iii) Is one in which the board has a direct and substantial proprietary interest.~~

~~((b) Does not include the following:~~

~~((Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by a member; or a claim, case, lawsuit, or similar matter if the member did not participate in the underlying transaction involving the board that is the basis for the claim, case, or lawsuit. Rule making is not a "transaction involving the board."~~

(4)) "Board action" means any action on the part of the board, including, but not limited to:

(a) A decision, deliberation, determination, finding, ruling, or order; ~~((and))~~ or

(b) A grant, payment, award, license, contract, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.

~~((5) The following are examples of possible scenarios related to board member rules of conduct.~~

~~((a) EXAMPLE 1:~~

~~The state board for architects disciplines licensed architects in Washington. The board is conducting an investigation involving the services provided by a licensed architect. One of the members of the board is currently serving a subcontractor to that architect on a large project. The board member must recuse himself or herself from any board investigation, discussion, deliberation and vote with respect to disciplinary actions arising from licensed architect services.~~

~~((b) EXAMPLE 2:~~

~~The state board for architects makes licensing decisions on applications for licensure. An applicant for licensure owns a school construction business which employs licensed architects, including one of the board members. The board member must recuse himself or herself from any board investigation, discussion, deliberation and vote with respect to his employer's application for licensure.~~

~~((c) EXAMPLE 3:~~

~~The state board for architects makes licensing decisions on applications from registered architects in another state or territory of the United States, the District of Columbia, or another country. The board can grant licensure if that individual's qualifications and experience are equivalent to the qualifications and experience required of a person registered under Washington law. An out-of-state applicant is employed as an architect by a multinational corporation that is planning to build its world headquarters in Washington and has hired a board member's firm as the architect for the project. The board member must recuse himself or herself from any board investigation, discussion, deliberation and vote with respect to the sufficiency of the out-of-state architect's qualifications and experience.~~

(6) Recusal disclosure. If recusal occurs pursuant to this rule, the member of the board shall disclose to the public the reasons for his or her recusal from any board action whenever recusal occurs. The board staff shall record each recusal and the basis for the recusal.)

AMENDATORY SECTION (Amending WSR 11-11-019, filed 5/9/11, effective 7/1/11)

**WAC 308-12-023 How do I become a licensed architect?** You need to fulfill three general requirements before getting your license: Education, examination, and experience. If you are already licensed in another NCARB-recognized jurisdiction, you will need to verify you have met these

requirements before being licensed in Washington. The board may request additional information ~~((or an oral interview, if))~~ as necessary. You must also satisfactorily complete

~~((a review of laws related to the practice of architecture as determined by the board))~~ the Washington state law review exam.

**AMENDATORY SECTION** (Amending WSR 11-11-019, filed 5/9/11, effective 7/1/11)

**WAC 308-12-025 What qualifications do I need to meet ~~((if I am not already licensed))~~ for initial licensure?** If you are not licensed in another jurisdiction, your combination of education and experience will determine what you need to do to get your license (see the chart below). To become licensed, register through NCARB and they will guide you through both the AXP and the ARE.

<b>(Education type)</b>	<b>Accredited professional degree</b> (typically five-year bachelor of architecture or six-year master of architecture)	<b>An equivalent degree, awarded by EESA</b> (education evaluation services for architects) for candidates from a nonaccredited U.S. architectural school or a foreign architectural school	<b>A preprofessional degree in architecture</b> (typically four years) from a program offering an accredited degree	<b>Postsecondary study in architecture or related fields</b> , with passing grades, in increments of one year, will receive up to three years credit	<b>A degree in architectural technology</b> (typically a two-year community college or trade school degree)	<b>High school diploma</b> or equivalent
<b>Practical architectural work experience</b>	Gained during IDP		Two years under the direct supervision of an architect	Three or more years depending on your education credit Three of these years must be under the direct supervision of an architect	Four years	Six years
<b>IDP</b>	Contact NCARB to find out when you can enroll in IDP		You can't enroll in IDP until you complete the practical architectural work experience			
<b>When to apply to take the ARE</b>	You can start taking the ARE through NCARB while enrolled in IDP	Apply to the board after you have completed the practical architectural work experience and IDP				
<b>When can you get your license</b>	Apply to the board after you have completed your IDP and ARE		Apply to the board after you have completed the ARE			
<b>Additional materials</b>	All candidates must complete the Washington law review))					

(1) If you have an NAAB accredited architectural degree, or are enrolled in an IPAL program, you ~~((need to))~~ must complete ~~((IDP))~~ the AXP and the ARE. ~~((If you choose, you can take the exams while you are completing IDP. NCARB will register and guide you through both IDP and the ARE.))~~ The board also requires a review of Washington's laws and rules relating to the practice of architecture.

(2) If you do not have an NAAB accredited architectural degree, you must have:

(a) A high school diploma or equivalent ~~((and at least nine years' practical architectural work experience.))~~

~~((1))~~;

(b) You must complete the ARE; and

(c) You must have at least ~~((six years of))~~ eight years' practical architectural work experience ~~((before enrolling in IDP.))~~

~~((a))~~ that includes the completion of the AXP.

(i) At least three of these years of work experience must be under the direct supervision of a licensed architect and be completed outside of the experience reported in the AXP.

~~((b))~~ (ii) The remaining three years can be any combination of the following as approved by the board:

~~((i))~~ (A) Postsecondary education courses in architecture, architectural technology or a related field(~~(-~~

~~((A))~~ Related fields may include the following:

~~((B))~~ including, but not limited to, environmental design; ~~((H))~~ urban planning; ~~((HH))~~ landscape architecture; ~~((HV))~~ construction management; ~~((V))~~ civil engineering; ~~((VI))~~ naval architecture; ~~((VII))~~ interior architecture; ~~((VIII))~~ other fields as determined by the board.

(B) ~~((With a passing grade, thirty semester credit hours or forty five quarter hours are considered to be one year. Any fraction, one half year or greater, will be counted one half year, and less than one half year will not be counted.))~~

(ii) Practical architectural work experience may be accrued simultaneously while educational credit is being accrued and will receive credit if it is as follows:

(A) At least thirty five hours per week for at least ten consecutive weeks — One hundred percent.

(B) At least twenty hours per week for at least six continuous months — Fifty percent.

(2) After you complete IDP, apply to the board to take the ARE. When your application is approved, board staff will register you to take the ARE. You will pay the fees for examination and reexamination directly to NCARB.

(3) The board also requires a review of Washington's laws and rules relating to the practice of architecture.) A year consists of three quarters (45 credit hours), or two

semesters (30 credit hours), or as otherwise defined by the postsecondary school attended. You may earn a partial year of experience as follows: Each quarter (15 credits) completed equals four months of experience; each semester (15 credits) completed equals six months of experience. Experience will not be awarded for increments less than 15 credits or its equivalent.

(iii) Practical architectural work experience may be accrued simultaneously while earning postsecondary educational credit.

Part-time work will accrue on a prorated basis.

(3) The board also requires satisfactory completion of the Washington state law review exam.

**Architect - Draft rule changes**

<b>Education type</b>	<u>Accredited professional degree (B.Arch or M.Arch) Or Enrolled in IPAL</u>	<u>An equivalent degree, awarded by EESA (education evaluation services for architects) for candidates from a nonaccredited U.S. architectural school or a foreign architectural school</u>	<u>A preprofessional degree in architecture (typically four-years) from a program offering an accredited degree</u>	<u>Postsecondary study in architecture or related fields, with passing grades, in increments of one year, will receive up to three years credit</u>	<u>A degree in architectural technology (typically a two-year community college or trade school degree)</u>	<u>High school diploma or equivalent</u>
<b>Practical architectural work experience</b>	Gained during AXP		AXP PLUS Two additional years under the direct supervision of an architect	AXP PLUS Three or more additional years depending on your education credit  Three of these additional years must be under the direct supervision of an architect	AXP PLUS Four additional years	AXP PLUS Six additional years
<b>AXP</b>	After graduating high school, contact NCARB to enroll in AXP and begin reporting experience					
<b>When to apply to take the ARE</b>	You can start taking the ARE through NCARB while enrolled in AXP or actively participating in an NCARB-accepted Integrated Path to Architectural Licensure (IPAL) option within a NAAB-accredited professional degree program in architecture while enrolled in AXP	After completing and submitting the board's official application form with payment contact NCARB to register for the ARE				
<b>When can you get your license</b>	Apply to the board after you have completed your AXP and ARE	Apply to the board after you have met the education and/or experience requirements and have completed the AXP and ARE				
<b>Additional materials</b>	All candidates must complete the Washington law review					

AMENDATORY SECTION (Amending WSR 11-11-019, filed 5/9/11, effective 7/1/11)

**WAC 308-12-028 What is the application process ((if I am not already licensed)) for initial licensure as an architect?** (1) If you have an NAAB accredited architectural degree, or are enrolled in an IPAL program:

(a) Contact NCARB to register for ((~~HDP~~)) the AXP and the ARE. You will pay the fees for examination and reexamination directly to NCARB.

(b) When you have finished ((~~HDP~~)) the AXP and the ARE:

(i) Have NCARB transmit your council record directly to the board office, showing evidence of your qualifications, ((experience)) and successful completion of the ((ARE, as shown by your council record, directly to the Washington board office)) AXP and the ARE.

(ii) Complete the board's official application form with the application fee and initial license fee and submit it to the board office. The application fee is not refundable.

(iii) ((~~Complete a review of Washington's laws and rules relating to the practice of architecture.~~)) Satisfactorily complete the Washington state law review exam.

(2) If you do not have an accredited architectural degree:

(a) Complete the board's official application form with the application fee and submit it to the board office. The application fee is not refundable.

(b) Contact NCARB to register for the AXP and the ARE. You will pay the fees for examination and reexamination directly to NCARB.

(c) Using the board's application forms, have the licensed architects who have reviewed your practical work experience provide verification of your experience directly to the board office.

~~((e) Once your application is approved, contact NCARB to register for IDP.~~

~~(d) Complete IDP and have NCARB transmit your council record directly to the Washington board office. Board staff will register you for the ARE. You will pay the fees for examination and reexamination directly to NCARB.~~

~~(e) Successfully complete the ARE.~~

~~(f) Submit the initial license fee to the board office.~~

~~(g) Complete a review of Washington's laws and rules relating to the practice of architecture.)~~ (d) If applicable, have your college or university submit, directly to the board office, official sealed transcript(s) showing any applicable courses you have taken.

(e) Once you successfully complete all education/experience requirements, the AXP and the ARE have NCARB transmit your council record directly to the board office.

(f) Submit the initial license fee to the board office.

(g) Satisfactorily complete the Washington state law review exam.

AMENDATORY SECTION (Amending WSR 11-11-019, filed 5/9/11, effective 7/1/11)

**WAC 308-12-031 Who manages the ~~((required intern training program and examination))~~ AXP and administers the ARE examination? ~~((The National Council of Architectural Registration Boards (NCARB)))~~ NCARB maintains and validates the continuing, comprehensive record of ~~((internship))~~ training and the board has adopted NCARB's ~~((Intern Development Program (IDP)))~~ AXP as the board-approved structured ~~((intern))~~ training program. The board has adopted the NCARB ~~((Architect Registration Examination (ARE)))~~ ARE and grading procedure prepared by NCARB as the state examination for licensure. NCARB administers the entire examination for Washington candidates, and collects examination and reexamination fees accordingly. Candidates ~~((with an accredited architectural degree))~~ may take portions of the examination concurrently while enrolled in ~~((IDP))~~ the AXP. No review or appeal of failed examinations is accepted by the department or the board.**

AMENDATORY SECTION (Amending WSR 11-11-019, filed 5/9/11, effective 7/1/11)

**WAC 308-12-050 What qualifications do I need to meet if I am already licensed?** (1) If you hold an active architect license in good standing in any jurisdiction recognized by NCARB, you can apply for a Washington license if your qualifications and experience meet one of the following:

~~((H))~~ (a) You have an NCARB certificate. The board recognizes NCARB certification to include certification through the broadly experienced architect and/or broadly experienced foreign architect programs;

~~((Z))~~ (b) You do not have an NCARB certificate, but you have satisfactorily completed the ARE or an examination as approved by the board ~~((, including a test component or licensing requirement addressing seismic structure as determined by the board;))~~ and;

~~((A))~~ (i) Have been licensed as an architect ~~((nine))~~ eight or more years; or

~~((B))~~ ~~Have an NAAB degree and have completed IDP.)~~ (ii) Have met the educational and experience requirements of WAC 308-12-025, and have completed the AXP.

(2) If your architect license is from a jurisdiction not recognized by NCARB, you will need to apply for initial licensure as described in WAC 308-12-028.

AMENDATORY SECTION (Amending WSR 11-11-019, filed 5/9/11, effective 7/1/11)

**WAC 308-12-055 What is the application process if I am already licensed in an NCARB recognized jurisdiction?** (1) If you are currently licensed and have an NCARB certificate:

(a) Complete the board's official application form and submit it to the board office with the reciprocity application fee and the initial license fee. The application fee is not refundable.

(b) Have NCARB transmit evidence of your certification directly to the Washington board office.

~~((Complete a review of Washington's laws and rules relating to the practice of architecture.))~~ Satisfactorily complete the Washington state law review exam.

(2) If you are licensed in an NCARB-recognized jurisdiction and ~~((don't))~~ do not have an NCARB certificate:

(a) Complete the board's official application form and submit it to the board office with the reciprocity application fee and the initial license fee. The application fee is not refundable.

(b) Request certification be sent directly from the issuing jurisdiction to the ~~((Washington))~~ board office, verifying you have successfully passed the ARE, and:

(i) Have held an active license for ~~((nine))~~ eight or more years; or

(ii) Have held an active license for less than ~~((nine))~~ eight years and have ~~((one or more of the following))~~ either:

(A) An ~~((NAAB degree and have completed IDP))~~ NAAB accredited architectural degree, as shown by ~~((your IDP record))~~ an official sealed transcript sent directly to the board office by the college or university and have completed the AXP as shown by your AXP record sent directly to the ~~((Washington))~~ board office from NCARB;

(B) A combination of education and experience, including completion of the AXP, totaling eight years, as shown by:

(I) An official sealed transcript showing any applicable courses you have taken from a community college, technical college, or university. The transcript must be sent directly from the college or university to the board office; ~~((and))~~

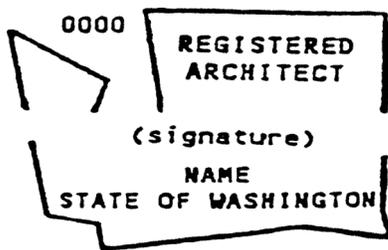
(II) Verification of practical architectural work experience, on the board's application forms, ~~((completely))~~ completed by licensed architects who have reviewed your practical work experience and sent directly to the board office; and

(III) Your AXP record sent directly to the board office from NCARB.

(3) Satisfactorily complete a review of ((Washington's laws and rules relating to the practice of architecture)) Washington state law review exam.

AMENDATORY SECTION (Amending WSR 11-11-019, filed 5/9/11, effective 7/1/11)

**WAC 308-12-081 Do I need a stamp or seal?** Every architect licensed in the state of Washington must have a seal of design authorized by the board, bearing the registrant's name, license number and the legend "Registered architect, state of Washington." An example of the board-authorized seal appears below. Deviations are not allowed.



You must sign and seal all technical submissions required for building permits or regulatory approvals that are filed with authorities having jurisdiction.

(1) Drawings prepared by you must be signed and sealed on each sheet.

(2) Specifications and other technical submissions need only be sealed on the cover, title page, and all pages of the table of contents.

(3) The seal may be electronic.

You may only sign and seal drawings prepared by you, or in one of the following ways:

((\*) (a) By your regularly employed subordinates and reviewed by you;

((\*) (b) By an individual or firm under direct subcontract with you, if the signing and sealing architect has reviewed and coordinated the preparation of the work, or has integrated the work into their own technical submissions;

((\*) (c) In collaboration with an architect licensed in a jurisdiction recognized by the board provided there is a contractual agreement between you and that architect, if the signing and sealing architect has reviewed and coordinated the preparation of the work, or has integrated the work into their own technical submission.

By signing and sealing ~~((drawings or specifications))~~ technical submissions, you become the architect of record and are responsible to the same extent as if you prepared the ~~((drawings or specifications))~~ technical submissions yourself.

Without exception, these stamping requirements apply to all work filed with public authorities you prepare or review, or that is prepared under your personal supervision

by persons under your direction and control, regardless whether the work is exempt from the licensing requirements found in RCW 18.08.410.

~~((2))~~ (4) The term "signature" or "signed" as used in chapters 18.08 RCW and/or 308-12 WAC, means the following:

(a) A handwritten identification or a digital representation of your handwritten identification that represents the act of putting your name on a document to attest to its validity. The handwritten or digital identification must be:

(i) Original and written by hand, or a scanned image of an original, handwritten identification;

(ii) Permanently affixed to the document(s) being certified;

(iii) Applied to the document by the identified licensee or by their designee under the direction of the licensee;

(iv) Placed across the seal/stamp of the licensee.

(b) A digital identification that is an electronic authentication process attached to or logically associated with an electronic document. The digital identification may include a scanned or digitized signature. The digital identification must be:

(i) Unique to the licensee using it;

(ii) Capable of independent verification;

(iii) Under the exclusive control of the licensee using it; and

(iv) Linked to a document in such a manner that a digital identification is invalidated if any data in the document is changed.

AMENDATORY SECTION (Amending WSR 15-15-034, filed 7/8/15, effective 8/8/15)

**WAC 308-12-205 Architect fees.** ~~((1) Suspension of fees. Effective July 1, 2015, the listed fees shown in subsection (2) of this section are suspended and replaced with the following:~~

<b>Title of Fee</b>	<b>Fee</b>
<b>Individuals:</b>	
Examination application	\$50.00
Reciprocity application	250.00
Initial licensure	75.00
License renewal (2 years)	75.00
Late renewal penalty	25.00
Duplicate license	15.00
<b>Business entities:</b>	
Certificate of authorization	100.00
Certificate of authorization renewal	50.00

~~The fees set forth in this section shall revert back to the fee amounts shown in subsection (2) of this section on July 1, 2017.~~

~~((2))~~ The following fees shall be charged by the business and professions division of the department of licensing:

Title of Fee	Fee
Examination application	\$100.00
Reciprocity application	390.00
Initial licensure	99.00
License renewal (2 years)	99.00
Late renewal ( <del>(penalty)</del> ) fee	33.00
Duplicate license	15.00
Business entities:	
Certificate of authorization	278.00
Certificate of authorization renewal	139.00

**AMENDATORY SECTION** (Amending WSR 11-11-019, filed 5/9/11, effective 7/1/11)

**WAC 308-12-215 How do I renew my license?** The architect license renewal period is two years. Your expiration date is your birthday. You must notify the board in writing of any address changes.

You are responsible for renewing your license regardless of receiving a renewal notice from the department. If you fail to renew your license, your license is delinquent and you are prohibited from offering and/or providing professional architectural services until your license is reinstated.

(1) If your license has been delinquent less than two years, send to the department:

(a) A letter requesting reinstatement, including certification of having met current professional development requirements; and

(b) The current renewal fee plus the late (~~(penalty)~~) fee.

(2) If your license has been delinquent over two years but less than five years, send to the department:

(a) A letter requesting reinstatement, including certification of having met current professional development requirements; and

(b) Payment from the previous renewal cycle, the current renewal fee, and the late (~~(penalty)~~) fee.

(3) If your license has been delinquent five or more years, send to the department:

(a) A letter of application requesting reinstatement;

(b) Payment from all previous renewal cycles, the current renewal fee, and the late (~~(penalty)~~) fee;

(c) A review of Washington's laws and rules relating to the practice of architecture; and

(d) Evidence of completion of thirty-six PDH within the previous three years. See WAC 308-12-260 for qualifying activities.

(4) If your license has been delinquent five or more years, the board will review all of your reinstatement materials. They may request additional information if necessary.

**AMENDATORY SECTION** (Amending WSR 11-11-019, filed 5/9/11, effective 7/1/11)

**WAC 308-12-240 How do I reactivate my inactive license?** (1) If you are returning to active status from less than five years of inactive status, send to the department:

(a) A letter of application requesting reactivation;

(b) The current renewal fee;

(c) Evidence of completion of twenty-four PDH within the previous two years. See WAC 308-12-260 for qualifying activities.

(2) If you are returning to active status after five years of inactive status, send to the department:

(a) A letter of application requesting reinstatement;

(b) The current renewal fee plus the late (~~(penalty)~~) fee;

(c) A review of Washington's laws and rules relating to the practice of architecture;

(d) Evidence of completion of thirty-six PDH within the previous three years. See WAC 308-12-260 for qualifying activities.

**AMENDATORY SECTION** (Amending WSR 11-11-019, filed 5/9/11, effective 7/1/11)

**WAC 308-12-250 Do I need ongoing professional development to maintain my license?** (1) To maintain active practice, you must accumulate twenty-four professional development hours (PDH) for the upcoming two-year renewal period.

(2) The PDH you accumulate are subject to audit by the board.

(3) Up to twelve PDH over the required hours can be carried forward from the second year of your previous renewal period.

(4) Professional development equivalents:

(a) One professional development hour (PDH) is equal to no less than fifty minutes of instruction.

(b) For professional development through an institution of higher education:

(i) One semester hour equals forty-five PDH.

(ii) One quarter hour equals thirty PDH.

**AMENDATORY SECTION** (Amending WSR 11-11-019, filed 5/9/11, effective 7/1/11)

**WAC 308-12-270 How do I record and report my professional development activities?** In order to renew your license, you must attest to having completed the required professional development hours for that renewal period.

(1) You must maintain the records of your professional development activities. The records must include the date of the activity, the provider's name (if any), a description of activity and its location and the number of PDH.

~~(2) (You must keep your records for the cumulative time in the current renewal period plus the three years before the last renewal (five years total).)~~

~~(3) By renewing your professional architect license, you attest you have completed the required professional development for that renewal period.)~~ The board will audit a random sample of licensees applying for renewal. If you are selected for an audit, the board will provide instructions about how to respond.

(3) You may face disciplinary action for failing to complete your professional development requirement or falsifying your records.

(4) If an audit disqualifies credits that you reported to the board and results in you failing to complete the PDH require-

ments, the board may require the shortage to be made up over a period of time established by the board.

(5) It is recommended that you keep your records for a period of ten years.

AMENDATORY SECTION (Amending WSR 11-11-019, filed 5/9/11, effective 7/1/11)

**WAC 308-12-330 What are the standards of professional practice? (1) Competence.**

(a) When practicing architecture, you must act with reasonable care and competence, and must apply the technical knowledge and skill which is ordinarily applied by architects of good standing, practicing in the same locality and similar type projects.

(b) When designing a project, you must take into account all applicable state and municipal building laws and regulations. You may rely on the advice of other professionals (e.g., attorneys, engineers, and other qualified persons) as to the intent and meaning of such regulations. You must not knowingly design a project in violation of such laws and regulations.

(c) You must perform professional services only when you, together with those you may engage as consultants, are qualified by education, training, and experience in the specific technical areas involved.

~~((d) You will not be permitted to practice architecture if, in the board's judgment, your professional competence is substantially impaired by physical or mental disabilities.))~~

**(2) Conflict of interest.**

(a) You must not accept compensation for services from more than one party on a project unless the circumstances are fully disclosed and agreed to in writing by all interested parties.

(b) You must fully disclose in writing to your client or employer the nature of any business association or direct or indirect financial interest which is substantial enough to influence your judgment in connection with the performance of professional services. If your client or employer objects to such association or financial interest, you must either terminate such association or interest or offer to give up the commission or employment.

(c) You must not solicit or accept compensation from material or equipment suppliers in return for specifying or endorsing their products.

(d) When acting as the interpreter of building contract documents and the judge of contract performance, you must render decisions impartially, favoring neither party to the contract.

**(3) Full disclosure.**

(a) You must disclose any compensation received for making public statements on architectural questions.

(b) You must accurately represent qualifications and scope of responsibility to prospective or existing clients or employers for work for which you are claiming credit.

(c) In the course of work on a project, if you become aware of a decision made by your employer or client, against your advice, which violates applicable state or municipal building laws and regulations and which will, in your judgment,

materially and adversely affect the safety to the public of the finished project:

(i) You must report the decision to the local building inspector or other public official charged with the enforcement of the applicable state or municipal building laws and regulations, refuse to consent to the decision, and terminate services on the project when you reasonably believe decisions will be made against your objection. ~~((In the case of a termination in accordance with (e)(i) of this subsection, you shall have no liability to your client or employer because of such termination.))~~

(ii) You must not deliberately make a materially false statement or deliberately fail to disclose a material fact in connection with your application for registration or renewal.

(iii) You must not assist a person in applying for registration when you know the applicant is unqualified in education, training, experience, or character.

(iv) If you possess knowledge of a violation of these rules by another architect, you must report such knowledge to the board.

**(4) Compliance with laws.**

(a) You must not, in the conduct of architectural practice, knowingly violate any state or federal criminal law.

(b) You must not offer or make any payment or gift to a government official (whether elected or appointed) with the intent of influencing the official's judgment in connection with a prospective or existing project in which you are interested.

(c) You must comply with the registration laws and regulations governing your professional practice.

**(5) Professional conduct.**

(a) An office maintained for the purpose of providing architectural services must have an architect resident regularly employed in that office with direct knowledge and supervisory control of such work.

~~(b) ((You must not offer or provide any gifts, other than gifts of nominal value (including, for example, reasonable entertainment and hospitality), with the intent of influencing the judgment of an existing or prospective client in connection with a project in which you are interested.~~

~~(e)) You must not engage in conduct involving fraud or wanton disregard of the rights of others.~~

AMENDATORY SECTION (Amending WSR 18-21-028, filed 10/5/18, effective 11/5/18)

**WAC 308-12-345 Brief adjudicative proceedings. (1)**

The board will conduct brief adjudicative proceedings as provided for in RCW 34.05.482 through 34.05.494 of the Administrative Procedure Act. ~~((Brief adjudicative proceedings may be used whenever a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleges violations of chapters 18.08 and 18.235 RCW, administrative rules in Title 308 WAC or any statutes or rules that specifically govern the defined practices of architects. Brief adjudicative proceedings may also be used in place of formal adjudicative hearings whenever the board issues a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleging that an applicant or licensee's conduct, act(s), or con-~~

~~dition(s) constitute unlicensed practice or unprofessional conduct as that term is defined under chapter 18.235 RCW, the Uniform Regulation of Business and Professions Act.)~~

(2) Brief adjudicative proceedings may be used to determine the following issues~~(s)~~ including, but not limited to:

(a) Whether an applicant has satisfied terms for reinstatement of a license after a period of license restriction, suspension, or revocation;

(b) Whether an applicant is eligible to sit for a professional licensing examination;

(c) Whether a sanction proposed by the board is appropriate based on the stipulated facts;

(d) Whether an applicant meets minimum requirements for an initial or renewal application;

~~(e) ((Whether an applicant has failed the professional licensing examination;~~

~~(f))~~ (f) Whether an applicant or licensee failed to cooperate in an investigation by the department;

~~((g))~~ (g) Whether an applicant or licensee was convicted of a crime that disqualifies the applicant or licensee from holding the specific license sought or held;

~~((h))~~ (h) Whether an applicant or licensee has violated the terms of a final order issued by the board or the board's designee;

~~((i))~~ (i) Whether a person has engaged in false, deceptive, or misleading advertising; or

~~((j))~~ (j) Whether a person has engaged in unlicensed practice.

~~((3) In addition to the situations enumerated in subsection (2) of this section, the board may conduct brief adjudicative proceedings instead of formal adjudicative hearings whenever the parties have stipulated to the facts and the only issues presented are issues of law, or whenever issues of fact exist but witness testimony is unnecessary to prove or disprove the relevant facts.)~~

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-12-280 How does the board verify I have completed my professional development?

WAC 308-12-355 Conduct of brief adjudicative proceedings.

#### WSR 21-01-130

#### PERMANENT RULES

#### DEPARTMENT OF REVENUE

[Filed December 16, 2020, 9:27 a.m., effective January 16, 2021]

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

Purpose: This proposal corrects typographical errors in subsection (5)(a). The two instances where the subsection states "\$2,000" should state "20 percent."

Citation of Rules Affected by this Order: Amending WAC 458-20-17802.

Statutory Authority for Adoption: RCW 82.01.060(2), 82.32.300, and 82.12.045.

Adopted under notice filed as WSR 20-20-006 on September 24, 2020.

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

Number of Sections Adopted at the Request of a Non-governmental 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 0, Repealed 0.

Date Adopted: December 16, 2020.

Atif Aziz

Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-14-064, filed 6/26/20, effective 10/1/20)

#### WAC 458-20-17802 Collection of use tax by county auditors and department of licensing—Measure of tax.

(1) **Introduction.** The department of revenue (department) has authorized county auditors and the department of licensing to collect the use tax imposed by chapter 82.12 RCW when a person applies to transfer the certificate of title of a vehicle acquired without the payment of sales tax. See RCW 82.12.045. This rule explains how county auditors, their sub-agents, and the department of licensing determine the measure of the use tax. This rule does not relieve a seller registered with the department of the statutory requirement to collect sales tax when selling tangible personal property, including vehicles. RCW 82.08.020 and 82.08.0251. The use tax reporting responsibilities of Washington residents in other situations and the general nature of the use tax are addressed in WAC 458-20-178 (Use tax). The application of tax to vehicles acquired by Indians and Indian tribes is discussed in WAC 458-20-192 (Indians—Indian country).

Vehicle licensing locations and information about vehicle titles and registration are available from the department of licensing on their website at: [dol.wa.gov](http://dol.wa.gov). This information is also available by contacting the local county auditor's office listed in the government pages of a telephone directory.

(2) **What is use tax based on?** For purposes of computing the amount of use tax due, the value of the article used is the measure of tax. The value of the article used is generally the purchase price. If the purchase price does not represent the true value of the article used, the value must be determined as nearly as possible according to the retail selling price at place of use of similar vehicles of like quality and character. RCW 82.12.010.

(3) **Use of automated system to verify measure of tax.** When a person applies to transfer the certificate of title of a

vehicle, county auditors, their subagents, or the department of licensing must verify that the purchase price represents the true value. In doing so, county auditors, their subagents, or the department of licensing compare the vehicle's purchase price to the average retail value of comparable vehicles using an automated valuing system. The automated valuing system identifies the average retail value using a database that is provided by a regional industry standard source specializing in providing valuation services to local, state, and federal governments, and the private sector.

In limited situations, the automated valuing system's database may not provide the average retail value for a vehicle. For example, the automated valuing system's database does not provide average retail value information for collectible vehicles or vehicles that are over twenty years of age. In the absence of an average retail value, county auditors, their subagents, or the department of licensing will determine the true value as nearly as possible according to the retail selling price at place of use of similar vehicles of like character and quality. To assist in this process, the department of revenue and the department of licensing may approve the use of alternative valuing authorities as necessary.

**(4) What happens when the purchase price is presumed to represent the true value?** County auditors, their subagents, or the department of licensing will use the purchase price to compute the amount of use tax due when the purchase price represents the vehicle's true value. County auditors, their subagents, or department of licensing will presume the purchase price represents the vehicle's true value if one of the following conditions is met:

(a) The vehicle's average retail value, as provided by the automated valuing system, is less than \$7,500.

For example, a person buys a vehicle for \$2,800. The automated valuing system indicates that the vehicle's average retail value is \$4,900. The purchase price is presumed to represent the vehicle's true value because the average retail value is less than \$7,500.

(b) The vehicle's purchase price is not more than 20 percent below the average retail value as provided by the automated valuing system.

For example, a person buys a used vehicle for \$17,000. The automated valuing system indicates the vehicle's average retail value is \$20,000. When compared to the average retail value, the purchase price is not more than 20 percent (\$4,000) below the average retail value. Consequently, the purchase price is presumed to represent the vehicle's true value.

**(5) What happens when the purchase price is not presumed to represent the true value?** If the vehicle's purchase price is not presumed to be the true value as explained in subsection (4) of this rule, a person may remit use tax based on the average retail value as indicated by the automated valuing system or substantiate the true value of the vehicle using any one of the following methods.

(a) **Industry-accepted pricing guide.** A person applying to transfer a certificate of title may provide the county auditor, a subagent, or the department of licensing with documentation from one of the various industry-accepted pricing guides. The value from the industry-accepted pricing guide must represent the retail value of a similarly equipped vehicle of the same make, model, and year in a comparable condi-

tion. The purchase price is presumed to represent the vehicle's true value if the purchase price is not more than (~~(\$2,000)~~) 20 percent below the retail value.

For example, a person buys a vehicle for \$6,500. The automated valuing system indicates that the vehicle's average retail value is \$8,700. An industry-accepted pricing guide shows that the retail value of a similarly-equipped vehicle in a comparable condition of the same make, model, and year is \$8,000. When compared to the retail value established by the industry-accepted pricing guide, the purchase price is not more than (~~(\$2,000)~~) 20 percent (\$1,600 in this case) below the retail value. Consequently, the purchase price is presumed to represent the vehicle's true value.

(b) **Declaration of buyer and seller.** A person applying to transfer a certificate of title may provide to the county auditor, a subagent, or the department of licensing a Declaration of Buyer and Seller Regarding Value of Used Vehicle Sale (REV 32 2501) to substantiate that the purchase price is the true value of the vehicle. The declaration must be signed by both the buyer and the seller and must certify to the purchase price and the vehicle's condition under penalty of perjury. The department may review a declaration and assess additional tax, interest, and penalties. A person may seek review of an assessment to the department as provided in WAC 458-20-100 (Informal administrative reviews).

The declaration is available on the department's website at [dor.wa.gov](http://dor.wa.gov). It is also available at all vehicle licensing locations, department's field offices, or by writing:

Department of Revenue  
Taxpayer Services  
P.O. Box 47478  
Olympia, WA 98504-7478

(c) **Written appraisal.** A person applying to transfer a certificate of title may present to the county auditor, a subagent, or the department of licensing a written appraisal from an automobile dealer, insurance or other vehicle appraiser to substantiate the true value of the vehicle. If an automobile dealer performs the appraisal, the dealer must be currently licensed with the department of licensing dealer services division or be a licensed vehicle dealer in another jurisdiction.

The written appraisal must appear on company stationery or have the business card attached and include the vehicle description, including the vehicle make, model, and identification number (VIN). The person performing the appraisal must certify that the stated value represents the retail selling price of a similarly equipped vehicle of the same make, model, and year in a comparable condition. The department may review an appraisal and assess additional tax, interest, and penalties. A person may seek review of an assessment to the department as provided in WAC 458-20-100 (Informal administrative reviews).

(d) **Declaration of use tax.** A person applying to transfer a certificate of title may present to the county auditor, a subagent, or the department of licensing a Declaration of Use Tax (REV 32 2486e) to substantiate the true value of the vehicle. An authorized employee of the department must complete the declaration. Determining the true value may

require a visual inspection that is not available at all department locations.

(e) **Repair estimate.** A person applying to transfer a certificate of title may present to the county auditor, a subagent, or the department of licensing a written repair estimate, prepared by an auto repair or auto body repair business. This estimate will then be used to assist with determining the true value of the vehicle. The written estimate must appear on company stationery or have the business card attached. In addition, the written estimate must include the vehicle description, including the vehicle make, model, and identification number (VIN), and an itemized list of repairs. The department may review an appraisal and assess additional tax, interest, and penalties. A person may seek review of an assessment to the department as provided in WAC 458-20-100 (Informal administrative reviews).

The purchase price is presumed to represent the true value if the total of the purchase price and the repair estimate is not more than 20 percent below the average retail value. For example, a person purchases a vehicle with extensive bumper damage for \$13,700. The automated valuing system indicates that the vehicle's average retail value is \$18,000. An estimate from an auto body repair business indicates a cost of \$2,500 to repair the bumper damage. The purchase price is presumed to represent the vehicle's true value because when the total of the purchase price and the repair estimate (\$13,700 + \$2,500 = \$16,200) is compared to the average retail value, the total is not more than 20 percent below the average retail value (\$18,000).

**WSR 21-01-142**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 20-260—Filed December 17, 2020, 8:18 a.m., effective January 17, 2021]

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

Purpose: Amendments to WAC 220-500-140 clarifies the Washington department of fish and wildlife definition of recreational target shooting; distinguishes between department designated target shooting areas and dispersed target shooting; distinguishes between shooting single projectiles (i.e. rifle bullets and shotgun slugs) and shooting shot (i.e. bird shot); describes when a backstop is required when discharging specific types of firearms/implements; lists specific locations where recreational target shooting would be prohibited (e.g. from or across roads, designated trails, water body, etc. or w/in 500' of buildings, campgrounds, etc.); restricts allowable targets to those commercially or privately manufactured specifically for target shooting; restricts recreational target shooting to thirty minutes before sunrise until thirty minutes after sunset; and requires recreational target shooters to remove shell casings, shotgun hulls, ammunition packaging, targets, and target debris.

Citation of Rules Affected by this Order: Amending WAC 220-500-140 Firearm and target practicing.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, and 77.12.047.

Adopted under notice filed as WSR 20-15-068 [20-17-132] on July 13, 2020.

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

Number of Sections Adopted at the Request of a Non-governmental 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 0, Repealed 0.

Date Adopted: October 23, 2020.

Larry Carpenter  
Chair

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

**WAC 220-500-140 Firearms and target practicing.**

~~((1)(a) It is unlawful to discharge tracer or incendiary ammunition on department lands.~~

~~(b) It is unlawful to discharge firearms in those portions of department lands where or when such discharge is prohibited by department posted notice or from or within five hundred feet of a department designated campground. Violating this subsection is a gross misdemeanor if the violation creates a substantial risk of death or serious physical injury to another person, pursuant to RCW 9A.36.050.~~

~~(c) It is unlawful to fail to remove expended shell casings, ammunition packaging, or other related target debris, excluding clay pigeons, when target practicing on department lands at the conclusion of the target practice session and prior to departure from the area. Failure to remove debris constitutes littering.~~

~~(d) The use of glass, signs, appliances, mattresses, TVs, furniture, and exploding items as targets in target practicing is prohibited.~~

~~(2) The department may designate locations and times for target practicing consistent with resource management or public safety concerns.)~~ (1) The department may designate or restrict locations, times, and manner for recreational target shooting upon department land, consistent with resource management concerns, management agreements or requirements, recreational use compatibility, or public safety concerns.

(2) Persons must not recreationally target shoot on department land except as provided by this section.

(3) Department land is open to recreational target shooting under the conditions set forth in this section, unless closed or otherwise restricted by this section or by any department-posted signage or notice.

(a) Notwithstanding the allowances by this section, recreational target shooting is only permitted where a reasonable

person, in consideration of all attendant circumstances, would believe the area between the person and the target, and the area beyond the target, is free of risk to person, animals, or property.

(b) Unless otherwise posted, recreational target shooting is only allowed one-half hour before sunrise to one-half hour after sunset.

(c) Recreational target shooting using:

- Firearms firing single projectile ammunition of .17 caliber or greater or shot equal to or greater than BB; or
- Compressed gas or air guns capable of shooting any projectile at over eight hundred feet per second, is permitted only:

(i) On department-designated recreational target shooting areas and in compliance with posted regulations; or

(ii) In other areas containing an earthen backstop, as defined (reference to definitions), which must be utilized while target shooting. A backstop is not required while using shotguns discharging shot smaller than size BB. Targets must be placed in front of and within eight feet of the backstop, and the person must be shooting at the lower half of the backstop.

(d) Recreational target shooting using:

- Archery equipment, crossbows, air bows; or
- Shotguns discharging shot smaller than size BB, is permitted:

(i) On department-designated recreational target shooting areas and in compliance with posted regulations; or

(ii) In other areas consistent with (a) of this subsection.

(e) Recreational target shooting is specifically prohibited:

(i) On, from, at, along, across, or down:

(A) Any department-designated or department-developed water access site or boat launch, and associated parking area;

(B) Any road as defined in WAC 220-500-020;

(C) Any utility line, utility poles, or light posts;

(D) Any department-designated trail;

(E) Any water body or stream.

(ii) Within five hundred feet of the following (when not utilizing a department-designated recreational target shooting area):

(A) Residences, businesses, and/or other buildings or structures, including port-a-potties, etc.;

(B) Power stations, cell phone towers, utility poles, light posts, wind turbines, or other public utility structures;

(C) Campgrounds;

(D) Viewing platforms or structures;

(iii) In other areas posted by the department as restricted from shooting.

(4) Authorized targets for use on department lands are restricted to items, other than exploding targets, that are commercially manufactured for the specific purpose of target shooting, or similar targets privately manufactured that are consistent with this section, and as further restricted below.

(a) Steel targets that are manufactured for the specific purpose of target shooting are allowed subject to the following restrictions:

(i) When used on a department-designated recreational target shooting area, steel targets that are manufactured for

the specific purpose of target shooting are allowed year round.

(ii) When used outside a department-designated recreational target shooting area, steel targets that are manufactured for the specific purpose of target shooting are allowed from October 1 to May 31, unless otherwise posted.

(b) Clay targets, when used, must be biodegradable clay targets.

(c) Items prohibited to be used as targets or to hold or post targets include, but are not limited to:

(i) Buildings;

(ii) Power stations, cell phone towers, utility poles, light posts, wind turbines, or other public utility structures;

(iii) Gates, fence posts or rails;

(iv) Vehicles, or parts thereof;

(v) Machinery, or parts thereof;

(vi) Signs, kiosks, or informational panels of any kind;

(vii) Appliances or electronics;

(viii) Furniture;

(ix) Pallets;

(x) Glass;

(xi) Explosive and incendiary items, including binary exploding targets (i.e., Tannerite);

(xii) Containers of liquids, chemicals, paints, or compressed gas;

(xiii) Standing or moving water;

(xiv) Live or dead trees or other vegetation;

(xv) Animals or animal carcasses.

(5) The discharge of tracer bullets or shells or incendiary ammunition is specifically prohibited on all department lands.

(6) At all times, it is unlawful for a person to discharge a firearm, crossbow, bow, or any other projectile shooting implement on department lands in a reckless or negligent manner. A violation of this subsection may be punishable under RCW 77.15.230, 77.15.460, 9A.36.050, 9A.36.031, 9A.36.021, 9A.32.070, 9A.32.060, or other relevant statute depending on the circumstances of the violation.

(7) It is unlawful for persons recreationally target shooting to fail to remove and transport from department lands for proper disposal all shell casings, shotgun hulls, ammunition packaging, and targets or target debris. Failure to remove any such item is prohibited and constitutes littering.

(8) Persons who recreationally target shoot are responsible for knowing other state, local, or federal laws that may govern their shooting activity, and compliance with this rule does not guarantee compliance with other applicable laws.

(9) Definitions.

(a) "Backstop" means an unobstructed earthen mound or bank at least eight feet in height which must stop the progress of and contain all projectiles, fragments, and ricochets in a safe manner.

(b) "Biodegradable clay target" means any clay target labeled by the manufacturer as biodegradable.

(c) "Clay targets," for purposes of this chapter, refers to those targets that are commonly referred to as clay pigeons and often saucer-shaped, which are:

(i) Designed to be thrown by hand or machine, such as in skeet or trap shooting, but may also be used as stationary targets; and

(ii) Designed to be easily and permanently broken by projectiles.

(d) "Department-designated recreational target shooting area" means an area designated and posted by the department for the purpose of recreational target shooting.

(e) "Department-designated trail" means any trail designated and posted by the department.

(f) "Recreational target shooting" is defined for purposes of this chapter as the act of shooting projectiles for practice, sighting in, or other reasons, and involves the discharging of firearms, compressed gas or air guns, air bows, crossbows, or archery equipment. Recreational target shooting does not include the activity of lawful hunting or hunting dog training.

### WSR 21-01-145

#### PERMANENT RULES

#### LOWER COLUMBIA COLLEGE

[Filed December 17, 2020, 8:55 a.m., effective January 17, 2021]

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

Purpose: Chapter 132M-125 WAC, Code of student conduct, repeal and replace with new chapter 132M-126 WAC, Code of student conduct, that complies with new federal regulations for Title IX of the Education Amendments of 1972 (Title IX) by adding new sections on Supplemental Title IX Student Conduct Procedures; reorganizes the student conduct code; uses consistent terminology throughout the code and revises some definitions; revises the jurisdiction section of the code; removes the section of the code applying to students studying abroad; adds a clause that academic consequences for academic dishonesty may be addressed outside of the code through failing grades and other academic consequences; revises subsections on prohibited student conduct; removes a section addressing trespass; revises the section on sanctions, initiation of disciplinary action, brief adjudicative proceedings, appeals to the student conduct committee, conduct committee hearings, initial orders, appeals from initial orders, recordkeeping, and summary suspension; removes the section on supplemental sexual misconduct procedures and imbeds those procedures within the rest of the code. Chapter 132M-300 WAC, Discrimination and harassment, rules repeal and replace with college policy and procedures that are in compliance with new federal regulations for Title IX of the Education Amendments of 1972 (Title IX).

Citation of Rules Affected by this Order: New WAC 132M-126-005, 132M-126-010, 132M-126-015, 132M-126-020, 132M-126-025, 132M-126-030, 132M-126-035, 132M-126-040, 132M-126-045, 132M-126-050, 132M-126-055, 132M-126-060, 132M-126-065, 132M-126-070, 132M-126-075, 132M-126-080, 132M-126-085, 132M-126-090, 132M-126-095, 132M-126-100, 132M-126-105, 132M-126-110, 132M-126-115, 132M-126-120, 132M-126-125, 132M-126-130, 132M-126-135, 132M-126-140, 132M-126-145, 132M-126-150 and 132M-126-155; and repealing WAC 132M-125-005, 132M-125-010, 132M-125-015, 132M-125-020, 132M-125-025, 132M-125-030, 132M-125-035, 132M-125-040, 132M-125-045, 132M-125-100, 132M-125-105, 132M-125-110, 132M-125-115, 132M-125-120, 132M-125-125, 132M-125-130, 132M-125-135, 132M-125-140, 132M-125-

145, 132M-125-150, 132M-125-200, 132M-125-205, 132M-125-210, 132M-125-215, 132M-125-220, 132M-125-225, 132M-300-001, and 132M-300-010.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 20-22-094 on November 3, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 31, Amended 0, Repealed 26; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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 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: December 17, 2020.

Kendra Sprague  
Vice President of Foundation  
HR and Legal Affairs

#### REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132M-125-005	Student responsibilities.
WAC 132M-125-010	Authority.
WAC 132M-125-015	Definitions.
WAC 132M-125-020	Statement of jurisdiction.
WAC 132M-125-025	Students studying abroad.
WAC 132M-125-030	Statement of student rights.
WAC 132M-125-035	Prohibited student conduct.
WAC 132M-125-040	Trespass.
WAC 132M-125-045	Disciplinary sanctions and terms and conditions.
WAC 132M-125-100	Initiation of disciplinary action.
WAC 132M-125-105	Appeal from disciplinary action.
WAC 132M-125-110	Brief adjudicative proceedings—Initial hearing.
WAC 132M-125-115	Brief adjudicative proceedings—Review of an initial decision.
WAC 132M-125-120	Student conduct committee.
WAC 132M-125-125	Appeal—Student conduct committee.
WAC 132M-125-130	Student conduct committee hearings—Presentations of evidence.

WAC 132M-125-135	Student conduct committee—Initial decision.
WAC 132M-125-140	Appeal from student conduct committee initial decision.
WAC 132M-125-145	Summary suspension.
WAC 132M-125-150	Classroom misconduct and authority to suspend for no more than one day.
WAC 132M-125-200	Supplemental sexual misconduct procedures.
WAC 132M-125-205	Supplemental definitions.
WAC 132M-125-210	Supplemental complaint process.
WAC 132M-125-215	Supplemental appeal rights.
WAC 132M-125-220	Brief adjudicative proceedings—College record.
WAC 132M-125-225	Recordkeeping.

### Chapter 132M-126 WAC

#### CODE OF STUDENT CONDUCT

##### NEW SECTION

**WAC 132M-126-005 Preamble.** Lower Columbia College is a diverse and dynamic learning community. As such, the college maintains a strong commitment to providing a learning environment that is civil and free from disruptive behavior. All members of the college community share in the responsibility to promote a positive learning environment, demonstrate mutual respect and dignity, and avoid adversarial relationships. Thus, students are expected to act as responsible members of this community, maintain a high degree of honesty and integrity, comply with the rules and regulations of the college, and respect the rights, privileges, and property of the college community.

##### NEW SECTION

**WAC 132M-126-010 Authority.** The board of trustees of Washington State Community College District No. 13, acting pursuant to RCW 28B.50.140(13), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice president of student services or their designee. Unless otherwise specified, the student conduct officer or designee shall serve as the principal investigator and administrator for alleged violations of this code.

##### NEW SECTION

**WAC 132M-126-015 Definitions.** The following definitions shall apply for purposes of this student conduct code:

- (1) "ASLCC" means the associated students of Lower Columbia College as defined in the constitution of that body.
- (2) "Assembly" means any overt activity engaged in by one or more persons, the object of which is to gain publicity, advocate a view, petition for a cause, or disseminate information to any person, persons, or group of persons.

(3) "Business day" means a weekday, excluding weekends, college holidays, and college closure days.

(4) "College" means Lower Columbia College and any other college centers or premises established within Washington State Community College District No. 13.

(5) "College community" means trustees, students, staff, faculty, and visitors in college facilities and college premises.

(6) "College official" includes any person employed by the college performing assigned duties.

(7) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(8) A "complainant" is an alleged victim of sexual misconduct.

(9) "Conduct review officer" is the vice president of student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code.

(10) "Controlled substance" means and includes any drug or substance as defined in chapter 69.50 RCW as now law or hereafter amended.

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

(12) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or an expulsion are heard by the student conduct committee. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(13) "Faculty member" and "instructor" mean any employee of Washington State Community College District No. 13 who is employed on a full-time or part-time basis as a teacher, instructor, counselor or librarian.

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

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

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

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(15) "The president" is the president of the college. The president is authorized to:

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

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

(16) "RCW" means Revised Code of Washington which can be accessed at <http://apps.leg.wa.gov/rcw/>.

(17) "Respondent" is the student against whom disciplinary action is initiated.

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

- (a) Hand delivery of the document to the party; or
- (b) By sending the document by email and by certified mail or first-class mail to the party's last known address.

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

(19) "Sexual misconduct" has the meaning ascribed to this term in WAC 132M-126-030(13).

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

(21) "Student conduct officer" is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code.

(22) "Student organization" means any number of students who have met the formal requirements of clubs and organizations.

#### NEW SECTION

##### **WAC 132M-126-020 Statement of jurisdiction.** (1)

The student conduct code shall apply to student conduct that occurs:

- (a) On college premises;
  - (b) At or in connection with college-sponsored activities;
- or
- (c) Off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives.

(2) Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities.

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

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The student conduct officer has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off campus.

#### NEW SECTION

**WAC 132M-126-025 Statement of student rights.** As members of the academic community, students are encour-

aged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy, which are deemed necessary to achieve the educational goals of the college:

##### (1) **Academic freedom.**

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college premises that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3) (b).

(c) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

##### (2) **Due process.**

(a) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

#### NEW SECTION

##### **WAC 132M-126-030 Prohibited student conduct.**

The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

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

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

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

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

(d) Academic consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course. Students should refer to each of their faculty's course syllabus and program handbook. Further academic consequences may follow consistent with the provisions in any program handbook including, but not limited to, dismissal from an academic program. Incidents of academic dishonesty may also be referred to the student conduct officer for disciplinary action consistent with this chapter in addition to the academic consequences identified above.

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

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

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

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

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

(a) Instruction, research, administration, disciplinary proceeding(s), or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

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

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

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

(6) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonac-

cidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(7) **Failure to comply with directive.** Failure to comply with the directive of a college officer or employee who is acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so.

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

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

(b) A student with a valid concealed weapons permit may store a pistol in their vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

(d) This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.

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

(10) **Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** The use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

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

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

(d) **Tobacco, electronic cigarettes and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, exits, windows

that open, and ventilation intakes of any building owned, leased or operated by the college. This includes all college sidewalks, parking lots, landscaped areas, sports fields and college buildings. Use of tobacco is also prohibited at events on college premises, or in college-owned, rented or leased vehicles. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff.

(11) **Lewd conduct.** Conduct which is lewd or obscene that is not otherwise protected under the law.

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

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures in this code. See WAC 132M-126-115 through 132M-126-155.

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

- (i) Deny or limit the ability of a student to participate in or benefit from the college's educational program;
- (ii) Alter the terms or conditions of employment for a college employee(s); and/or
- (iii) Create an intimidating, hostile, or offensive environment for other campus community members.

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

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

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

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

(iii) **Incest.** Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or

illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren, and adopted children under the ages of eighteen.

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

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

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

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

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

- (I) The length of the relationship;
- (II) The type of relationship; and
- (III) The frequency of interactions between the persons involved in the relationship.

(vii) **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (A) Fear for their safety or the safety of others; or
- (B) Suffer substantial emotional distress.

(d) For purposes of this code, "consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual word or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program, that changes the terms or conditions of employment for a college employee, or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service

animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications.

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

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

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

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

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

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

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

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

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

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

(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(18) **Safety violations.** Nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

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

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

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

whether the underlying conduct is subject to civil or criminal prosecution.

#### NEW SECTION

**WAC 132M-126-035 Disciplinary sanctions and terms and conditions.** (1) The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code.

(a) **Disciplinary warning.** A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(b) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(c) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(d) **Disciplinary suspension.** Dismissal from the college and from student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

(e) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled premises without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

(2) Disciplinary terms and conditions that may be imposed alone or in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(b) **Educational sanction.** The college may require the student to complete an educational activity or experience directly related to the violation committed, at the student's expense.

(c) **Professional evaluation.** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recom-

recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(d) **Not in good standing.** A student may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(e) **No trespass order.** A student may be restricted from college property based on their misconduct.

(f) **No contact order.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

#### NEW SECTION

##### **WAC 132M-126-040 Initiation of disciplinary action.**

(1) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing them to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.

(3) The student conduct officer, prior to taking disciplinary action in a case involving allegations of sexual misconduct, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(4) Within ten days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting their decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

(5) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s), as described in WAC 132M-126-035.

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

(6) In cases involving allegations of sexual misconduct, the student conduct officer on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure that prompt notice of the protective disciplinary sanctions and/or conditions occurs.

#### NEW SECTION

##### **WAC 132M-126-045 Appeal from disciplinary action.**

(1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ten days of the student conduct officer's decision. Failure to file a notice of appeal timely constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent and the conduct review officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

(7) The student conduct committee shall hear appeals from:

(a) The imposition of disciplinary suspensions in excess of ten instructional days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

- (a) Suspensions of ten instructional days or less;
- (b) Disciplinary probation;
- (c) Written reprimands; and
- (d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final and are not subject to appeal.

(10) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:

- (a) The dismissal of a sexual misconduct complaint; or
- (b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(11) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(12) Except as otherwise specified in this chapter, a complainant who timely appeals a disciplinary decision or who intervenes as a party to the respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as afforded the respondent.

#### NEW SECTION

**WAC 132M-126-050 Brief adjudicative proceedings authorization.** Brief adjudicative proceedings shall be used for student conduct appeals involving the following disciplinary actions:

- (1) Suspension of ten instructional days or less;
- (2) Disciplinary probation;
- (3) Written reprimands;
- (4) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions; and
- (5) Appeals by a complainant in student disciplinary proceeding involving allegations of sexual misconduct in which the student conduct officer:

(a) Dismisses disciplinary proceedings based upon a finding that the allegations of sexual misconduct have no merit; or

- (b) Issues a verbal warning to the respondent.

#### NEW SECTION

**WAC 132M-126-055 Brief adjudicative proceedings—Initial hearing.** (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent, the student conduct officer, and in cases involving sexual misconduct, the complainant. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

- (a) An opportunity to be informed of the agency's view of the matter; and
- (b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon the respondent and the student conduct officer within ten days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within ten days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of their appeal rights.

(5) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

#### NEW SECTION

**WAC 132M-126-060 Brief adjudicative proceedings—Review of an initial decision.** (1) An initial decision is subject to review by the president or designee, provided the party files a written request for review with the conduct review officer within ten days of service of the initial decision.

(2) The president or designee shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president or designee shall give all parties an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within twenty days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president or designee does not make a disposition of the matter within twenty days after the request is submitted.

(5) If the president or designee upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

(6) In cases involving allegations of sexual misconduct, the president, on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.

#### NEW SECTION

**WAC 132M-126-065 Brief adjudicative proceedings—College record.** The college record for brief adjudicative proceedings shall consist of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. These records shall be maintained according to the college's record retention schedule as the official record of the proceedings.

#### NEW SECTION

**WAC 132M-126-070 Student conduct committee.** (1) The student conduct committee shall consist of five members:

- (a) Two full-time students appointed by the student government (ASLCC);
- (b) Two faculty members appointed by the faculty association;
- (c) One administrative staff member (other than an administrator serving as a student conduct or conduct review officer), or other impartial hearing chair, appointed by the president.

(2) The administrative staff member or other impartial hearing officer shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition the committee for disqualification of a committee member.

#### NEW SECTION

**WAC 132M-126-075 Appeal—Student conduct committee.** (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW and by the model rules of procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven days in advance of the hearing date. The chair may shorten this notice period if both parties agree, and also may continue the hearing at a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of (a) the conduct officer's notification of imposition of discipline (or referral to the committee) and (b) the notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent and complainant in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper ex parte communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) In cases heard by the committee, each party may be accompanied at the hearing by a nonattorney assistant of their choice. The respondent in all appeals before the committee, or a complainant in an appeal involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at their own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent and/or complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

#### NEW SECTION

**WAC 132M-126-080 Student conduct committee hearings—Presentations of evidence.** (1) Upon the failure

of any party to attend or participate in a hearing, the student conduct committee may either:

- (a) Proceed with the hearing and issuance of its decision;
- or
- (b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that they select, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer (unless represented by an assistant attorney general) shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) In cases involving allegations of sexual misconduct, no party shall directly question or cross-examine one another. Attorneys for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be directed to the committee chair who, in their discretion, shall pose the questions on the party's behalf.

#### NEW SECTION

**WAC 132M-126-085 Student conduct committee—Initial decision.** (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty days following the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student code.

If the matter is an appeal by a party, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

(5) In cases involving allegations of sexual misconduct, the chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including the suspension or dismissal of the respondent. The complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of their appeal rights.

#### NEW SECTION

**WAC 132M-126-090 Appeal from student conduct committee initial decision.** (1) A party who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president or designee by filing a notice of appeal with the president's office within ten days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. If necessary to aid review, the president or designee may ask for additional briefing from the parties on issues raised on appeal. The president's or designee's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The president or designee shall provide a written decision to the party and the student conduct officer within twenty days after receipt of the notice of appeal. The president's or designee's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) In cases involving allegations of sexual misconduct, the president or designee, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

(5) The president or designee shall not engage in an ex parte communication with any of the parties regarding an appeal.

#### NEW SECTION

**WAC 132M-126-095 Recordkeeping.** (1) Student conduct code records are maintained in accordance with the college's records retention schedule.

(2) The disciplinary record is confidential, and is released only as authorized under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

#### NEW SECTION

**WAC 132M-126-100 Summary suspension.** (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety, or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "notice of summary suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included warning the respondent that their privilege to enter into or remain on college premises has been withdrawn, and that the respondent shall be considered trespassing and subject to arrest for criminal trespass if they enter the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5)(a) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(b) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable

cause to believe that the summary suspension should be continued, pending the conclusion of disciplinary proceedings, and/or whether the summary suspension should be less restrictive in scope.

(c) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(d) If the respondent fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(e) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(f) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or officers who may be bound or protected by it.

(6) In cases involving allegations of sexual misconduct, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

#### NEW SECTION

**WAC 132M-126-105 Classroom misconduct and authority to suspend for no more than one day.** (1) Faculty members have the authority to take appropriate action to maintain order and proper conduct in the classroom and to maintain the effective cooperation of students in fulfilling the objectives of the course.

(2) Bringing any person, thing, or object to a teaching and learning environment that may disrupt the environment or cause a safety or health hazard, without the express approval of the faculty member, is expressly prohibited.

(3) Faculty members or college administrators have the right to suspend any student from any single class or related activity for no more than one day, if the student's misconduct creates disruption to the point that it is difficult or impossible to maintain the decorum of the class, related activity or the learning and teaching environment. The faculty member or college administrator shall report this suspension to the student conduct officer or designee on the same day of the suspension. In consultation with the faculty member, the student conduct officer may set conditions for the student upon return to the class or activity.

#### NEW SECTION

**WAC 132M-126-110 Sexual misconduct procedures.** Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

**SUPPLEMENTAL TITLE IX STUDENT CONDUCT  
PROCEDURES**

NEW SECTION

**WAC 132M-126-115 Order of precedence.** This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the college's standard disciplinary procedures, WAC 132M-126-005 through 132M-126-110, these supplemental procedures shall take precedence.

NEW SECTION

**WAC 132M-126-120 Prohibited conduct under Title IX.** Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

For purposes of this supplemental procedure, "sexual harassment" encompasses the following conduct:

(1) **Quid pro quo harassment.** A college employee conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct.

(2) **Hostile environment.** Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the college's educational programs or activities, or employment.

(3) **Sexual assault.** Sexual assault includes the following conduct:

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

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

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

(d) **Statutory rape.** Consensual sexual intercourse between someone who is eighteen years of age or older and someone who is under the age of sixteen.

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

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

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

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

(i) The length of the relationship;

(ii) The type of relationship; and

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

(6) **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

NEW SECTION

**WAC 132M-126-125 Title IX jurisdiction.** (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a college educational program or activity; and

(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the college exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the college.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, WAC 132M-126-005 through 132M-126-110.

(4) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

NEW SECTION

**WAC 132M-126-130 Initiation of discipline.** (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct committee and serve the notice on the respondent, the complainant, and their respective advisors. The notice must:

- (a) Set forth the basis for Title IX jurisdiction;
  - (b) Identify the alleged Title IX violation(s);
  - (c) Set forth the facts underlying the allegation(s);
  - (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); and
  - (e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:
    - (i) The advisors will be responsible for questioning all witnesses on the party's behalf;
    - (ii) An advisor may be an attorney; and
    - (iii) The college will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so; and
- (3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

NEW SECTION

**WAC 132M-126-135 Prehearing procedure.** (1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 132M-126-075. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties including the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the college intends to offer the evidence at the hearing.

NEW SECTION

**WAC 132M-126-140 Rights of parties.** (1) The college's student conduct procedures, WAC 132M-126-040 through 132M-126-100, and this supplemental procedure shall apply equally to all parties.

(2) The college bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

NEW SECTION

**WAC 132M-126-145 Evidence.** The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) **Relevance:** The committee chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) **Relevance means** that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

- (a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or
- (b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(4) **Cross-examination required:** If a party or witness does not submit to cross-examination during the live hearing, the committee must not rely on any statement by that party or witness in reaching a determination of responsibility.

(5) **No negative inference:** The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(6) **Privileged evidence:** The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

- (a) Spousal/domestic partner privilege;
- (b) Attorney-client and attorney work product privileges;
- (c) Privileges applicable to members of the clergy and priests;
- (d) Privileges applicable to medical providers, mental health therapists, and counselors;
- (e) Privileges applicable to sexual assault and domestic violence advocates; and
- (f) Other legal privileges identified in RCW 5.60.060.

NEW SECTION

**WAC 132M-126-150 Initial order.** (1) In addition to complying with WAC 132M-126-085, the student conduct committee will be responsible for conferring and drafting an initial order that:

- (a) Identifies the allegations of sexual harassment;
- (b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, inter-

views with witnesses and parties, site visits, methods used to gather evidence, and hearings held;

(c) Makes findings of fact supporting the determination of responsibility;

(d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;

(e) Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;

(f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;

(g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to the college's educational programs or activities; and

(h) Describes the process for appealing the initial order to the college president.

(2) The committee chair will serve the initial order on the parties simultaneously.

#### NEW SECTION

**WAC 132M-126-155 Appeals.** (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132M-126-090.

(2) The president or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

(3) The president's office shall serve the final decision on the parties simultaneously.

#### REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132M-300-001 Nondiscrimination and antiharassment policy.

WAC 132M-300-010 Discrimination and harassment complaint procedure.

**WSR 21-01-163  
PERMANENT RULES  
OFFICE OF THE  
INSURANCE COMMISSIONER**

[Filed December 18, 2020, 3:38 p.m., effective January 18, 2021]

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

Purpose: The commissioner is adopting rules regarding adding new WAC 284-43-6590 to chapter 284-43 WAC, necessary to implement HB 2554, chapter 283, Laws of 2020, concerning mandatory benefits, notices and fees related to

mandatory benefits. The rule has also been developed to ensure that the office of insurance commissioner's process for collecting the fee and the fee-waiver process described by the bill is detailed.

Citation of Rules Affected by this Order: New WAC 284-43-6590.

Statutory Authority for Adoption: HB 2554 (chapter 283, Laws of 2020); RCW 48.02.060, 48.43.072, 48.43.073.

Adopted under notice filed as WSR 20-22-104 on November 3, 2020.

Changes Other than Editing from Proposed to Adopted Version: A technical change was made to correct a numbering error in WAC 284-43-6590 (3)(c)(iii).

A final cost-benefit analysis is available by contacting Tabba Alam, 302 Sid Snyder Avenue S.W., Olympia, WA 98504, phone 360-725-7170, email rulescoordinator@oic.wa.gov, website www.insurance.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 1, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: December 18, 2020.

Mike Kreidler  
Insurance Commissioner

#### NEW SECTION

**WAC 284-43-6590 Requirements for mitigating inequity in the health insurance market.** For the purposes of mitigating inequity in the health insurance market, unless waived by the commissioner pursuant to RCW 48.43.725 and subsection (3) of this section, the commissioner must assess a fee on any health carrier offering a health plan or student health plan that excludes, under state or federal law, any benefit mandated or required by Title 48 RCW or rules adopted by the commissioner. Such health carrier must:

(1) Notify each enrollee in writing of the following:

(a) Which benefits the health plan or student health plan does not cover; and

(b) Alternate ways in which the enrollees may access excluded benefits in a timely manner.

(2) As part of its form filing:

(a) Provide a sample notification to enrollees as required in subsection (1) of this section;

(b) Include in the benefit description alternate ways enrollees may access excluded benefits in a timely manner; and

(c) Describe how enrollees have prompt access to the information required under subsection (1) of this section.

(3) As part of its rate filing:

(a) Include a cover letter and as a separate supporting document, a description of excluded benefits and the specific state or federal law permitting the benefit exclusion;

(b) Submit the health carrier's supporting documentation for calculating the amount of estimated fee, per member per month and in total. The estimated fee in total must be the actuarial equivalent of costs attributed to the provision and administration of the excluded benefit for members in the rating group or rating pool. The carrier must include a certification by a member of the American Academy of Actuaries that the estimated fee in total is the actuarial equivalent of costs attributed to the provision and administration of the excluded benefit; and

(c) If a health carrier intends to request the commissioner's approval to waive the fee calculated in this subsection, the health carrier must submit:

(i) A separate document requesting a fee waiver;

(ii) A description of any excluded mandated or required benefit and the specific state or federal law permitting the benefit exclusion; and

(iii) A detailed description of alternative access provided by the carrier to any excluded mandated or required benefit. The description should include sufficient information for the commissioner to determine whether a carrier excluding a mandated or required benefit has provided enrollees alternative access to such benefit. In making a fee-waiver determination, the commissioner may take into account timely access, cost, ease of use, and provider access.

The commissioner may request from the carrier additional information or documents necessary to evaluate the fee-waiver request.

(4) The commissioner's determination whether to grant the fee waiver requested by the carrier will be part of the rate filing records.

(5) If a fee waiver is not requested or granted based upon a request in the rate filing, fees calculated and assessed by the commissioner under RCW 48.43.725(2) and subsection (3) of this section, must be paid by the health carrier to the OIC within sixty days after the rate filing is approved.

### WSR 21-01-178

#### PERMANENT RULES

#### DEPARTMENT OF TRANSPORTATION

[Filed December 21, 2020, 11:09 a.m., effective March 8, 2021]

Effective Date of Rule: March 8, 2021.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: At the request of the transportation commission, the definition of the transportation commission has been edited in WAC 468-305-001 reflecting its statutory authority.

Purpose: The effective date for this rule making is changed to March 8, 2021.

Rules are needed to define customer requirements to use toll facilities and Washington state department of transportation procedures for processing transactions and penalties.

This rule making is required to update specific requirements and procedures that will change when a new toll back office system becomes operational.

Citation of Rules Affected by this Order: Amending WAC 468-305-001, 468-305-100, 468-305-105, 468-305-125, 468-305-131, 468-305-133, 468-305-150, 468-305-160, 468-305-210, 468-305-220, 468-305-300, 468-305-315, 468-305-316, 468-305-320, 468-305-330, 468-305-340, 468-305-400, 468-305-526, 468-305-527, 468-305-528, 468-305-529, 468-305-540, 468-305-570, and 468-305-580.

Statutory Authority for Adoption: RCW 46.63.160(5), 47.01.101(5), 47.56.030(1), and 47.56.795.

Adopted under notice filed as WSR 19-09-069 on April 16, 2019.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 24, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 24, Repealed 0.

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

Date Adopted: December 21, 2020.

Shannon Gill  
Interim Director  
Risk Management  
and Legal Services

### WSR 21-01-180

#### PERMANENT RULES

#### DEPARTMENT OF

#### CHILDREN, YOUTH, AND FAMILIES

[Filed December 21, 2020, 2:47 p.m., effective January 21, 2021]

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

Purpose: Institute a cap of \$115 for copayments paid by families who participate in working connections and seasonal child care programs.

Citation of Rules Affected by this Order: Amending WAC 110-15-0075.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070.

Other Authority: Chapter 43.215 RCW.

Adopted under notice filed as WSR 20-22-040 on October 27, 2020.

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

Number of Sections Adopted at the Request of a Non-governmental 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 0, Repealed 0.

Date Adopted: December 21, 2020.

Brenda Villarreal  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-15-0075 Determining income eligibility and copayment amounts.** (1) ~~((DSHS))~~ DCYF takes the following steps to determine a consumer's eligibility and copayment, whether care is provided under a WCCC voucher or contract:

(a) Determine the consumer's family size (under WAC ~~((170-290-0015))~~ 110-15-0015); and

(b) Determine the consumer's countable income (under WAC ~~((170-290-0065))~~ 110-15-0065).

(2) ~~((DSHS))~~ DCYF calculates the consumer's copayment as follows:

IF A CONSUMER'S INCOME IS:	THEN THE CONSUMER'S COPAYMENT IS:
(a) At or below 82% of the federal poverty guidelines (FPG).	\$15
(b) Above 82% of the FPG up to 137.5% of the FPG.	\$65
(c) Above 137.5% of the FPG through 200% of the FPG.	The dollar amount equal to subtracting 137.5% of the FPG from countable income, multiplying by 50%, then adding \$65, up to a maximum of \$115.

(3) ~~((DSHS))~~ DCYF does not prorate the copayment when a consumer uses care for part of a month.

(4) The FPG is updated every year. The WCCC eligibility level is updated at the same time every year to remain current with the FPG.

**WSR 21-01-181**

**PERMANENT RULES  
DEPARTMENT OF**

**CHILDREN, YOUTH, AND FAMILIES**

[Filed December 21, 2020, 2:53 p.m., effective January 21, 2021]

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

Purpose: Allow licensed early learning providers who were licensed before August 1, 2019, until August 1, 2026, to comply with child care licensing rules that require a provider

to hold an early childhood education initial certificate, an early childhood education short certificate, or the equivalent.

Citation of Rules Affected by this Order: Amending WAC 110-300-0100.

Statutory Authority for Adoption: RCW 43.216.065.

Adopted under notice filed as WSR 20-22-005 on October 21, 2020.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: December 21, 2020.

Brenda Villarreal  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-11-026, filed 5/13/20, effective 6/13/20)

**WAC 110-300-0100 General staff qualifications.** All early learning providers must meet the following requirements prior to working:

(1) **Family home early learning program licensees** work from their private residence to provide early learning programming to a group of no more than twelve children present at one time.

(a) A family home licensee must meet the following qualifications upon application:

- (i) Be at least eighteen years old;
- (ii) Have a high school diploma or equivalent; and
- (iii) Complete the applicable preservice requirements pursuant to WAC 110-300-0105.

(b) A family home licensee must meet the following qualifications:

~~(i) ((Family home licensees must have an ECE initial certificate, or equivalent as approved and verified in the electronic workforce registry by the department as follows:~~

~~(A) A family home licensee licensed prior to August 1, 2019, must complete an ECE initial certificate or equivalent within five years of the date this section becomes effective;~~

~~(B) A family home licensee licensed August 1, 2019, or later must complete an ECE initial certificate or equivalent within five years of licensure; and~~

~~(ii) Upon completion of the ECE initial certificate or equivalent, family home licensees must complete an ECE short certificate or equivalent within two years, as approved and verified in the electronic workforce registry by the department.~~

~~(A) If a family home licensee already has an existing ECE initial certificate or equivalent, the licensee must complete an ECE short certificate or equivalent within five years of licensure by the department.~~

~~(B) Beginning August 1, 2024, the family home licensee must complete an ECE short certificate or equivalent within three years.~~

~~(iii) Have their continued professional development progress documented annually.~~

~~(e)) Have an ECE initial certificate or equivalent by August 1, 2026, or within five years of being licensed by the department, whichever occurs later;~~

~~(ii) Have an ECE short certificate or equivalent by August 1, 2028, or within two years of receiving an ECE initial certificate; and~~

~~(iii) Beginning August 1, 2026, a family home licensee must:~~

~~(A) Have an ECE initial certificate or equivalent within five years of being licensed by the department; and~~

~~(B) Have an ECE short certificate or equivalent within two years of receiving an ECE initial certificate.~~

~~(c) Family home licensees must have all ECE certificates or equivalent qualifications approved and verified in the department's electronic workforce registry;~~

~~(d) Family home licensees must have their professional development progress documented annually;~~

~~(e) Family home licensees must provide the following services:~~

~~(i) Be on-site for the daily operation of the early learning program fifty percent or more of weekly operating hours, or designate a person with the qualifications of a family home licensee to be on-site when not present;~~

~~(ii) Comply with these foundational quality standards;~~

~~(iii) Develop a curriculum philosophy, communicate the philosophy to all early learning program staff and parents, and train staff to ensure the philosophy serves all children in the early learning program;~~

~~(iv) Have knowledge of community resources available to families, including resources for children with special needs and the ability to share these resources with families; and~~

~~(v) Oversee early learning program staff and support staff in creating and maintaining staff records.~~

~~(2) **Center early learning program licensees** must meet the requirements of a center director, listed in subsection (3) of this section, or hire a center director who meets the qualifications prior to being granted an initial license. Center licensees who fulfill the role of center director in their early learning program must complete all trainings and requirements for center directors.~~

~~(3) **Center directors or assistant directors** manage the early learning program and set appropriate program and staff expectations.~~

~~(a) A center director must meet the following qualifications:~~

~~(i) Be at least eighteen years old;~~

~~(ii) Have an ECE state certificate or equivalent as approved and verified in the electronic workforce registry by the department as follows:~~

~~(A) A center director (~~(working at the time this chapter becomes effective)~~) must complete an ECE state certificate or equivalent (~~(within five years of the date this section becomes effective)~~) by August 1, 2026;~~

~~(B) A center director hired or promoted after this chapter becomes effective must have an ECE state certificate or equivalent within five years of the time of hire.~~

~~(iii) Have two years of experience as a teacher of children in any age group enrolled in the early learning program and at least six months of experience in administration or management or a department approved plan;~~

~~(iv) Complete the applicable preservice requirements, pursuant to WAC 110-300-0105;~~

~~(v) If a center director does not meet the minimum qualification requirements, the center early learning program must employ an assistant director or program supervisor who meets the minimum qualifications of these positions;~~

~~(vi) Have their continued professional development progress documented annually.~~

~~(b) An assistant director must meet the following qualifications:~~

~~(i) Be at least eighteen years old;~~

~~(ii) Have an ECE state certificate or equivalent as approved and verified in the electronic workforce registry by the department as follows:~~

~~(A) An assistant director (~~(working at the time this chapter becomes effective)~~) must complete an ECE state certificate or equivalent (~~(within five years of the date this section becomes effective)~~) by August 1, 2026;~~

~~(B) An assistant director hired or promoted after this chapter becomes effective must have an ECE state certificate or equivalent within five years of the time of hire.~~

~~(iii) Have two years of experience as a teacher of children in any age group enrolled in the early learning program or two years of experience in administration or management, or a department approved plan;~~

~~(iv) Complete the applicable preservice requirements, pursuant to WAC 110-300-0105;~~

~~(v) Have their continued professional development progress documented annually.~~

~~(c) A center director or assistant director or equivalent must provide the following services:~~

~~(i) Be on-site for the daily operation of the early learning program fifty percent or more of weekly operating hours up to forty hours per week, or designate a person with the qualifications of an assistant director, program supervisor, or equivalent. A center director may act as a substitute teacher if acting as a substitute does not interfere with management or supervisory responsibilities;~~

~~(ii) Comply with foundational quality standards;~~

~~(iii) Develop a curriculum philosophy, communicate the philosophy to all early learning program staff and parents, and train staff to ensure the philosophy serves all children in the early learning program (or designate a program supervisor with this responsibility);~~

~~(iv) Have knowledge of community resources available to families, including resources for children with special needs and be able to share these resources with families; and~~

~~(v) Oversee professional development plans for early learning program staff including, but not limited to:~~

(A) Providing support to staff for creating and maintaining staff records;

(B) Setting educational goals with staff and locating or coordinating state-approved training opportunities for staff; and

(C) Observing and mentoring staff.

(4) **Center program supervisors** plan the early learning program services under the oversight of a center director or assistant director.

(a) A program supervisor must meet the following qualifications:

(i) Be at least eighteen years old;

(ii) Have an ECE state certificate or equivalent (~~within five years of the date this section becomes effective or from the time of hire or promotion, if a director or assistant director does not have an ECE state certificate or equivalent as required by this section~~) by August 1, 2026;

(iii) Have two years of experience as a teacher of children in any age group enrolled in any early learning program;

(iv) Complete the applicable preservice requirements, pursuant to WAC 110-300-0105; and

(v) Have their continued professional development progress documented annually.

(b) A program supervisor performs the following duties:

(i) Guide the planning of curriculum philosophy, implementation, and environmental design of the early learning program;

(ii) Comply with foundational quality standards;

(iii) Act as a teacher or director as long as it does not interfere with the program supervisor's primary responsibilities; and

(iv) Manage the professional development plans and requirements for staff as needed.

(c) One person may be the center director, assistant director, and the program supervisor when qualified for all positions, provided that all requirements of subsection (3)(a) and (b) of this section are met.

(5) Any individual hired or promoted into a position detailed in subsections (2), (3), and (4) of this section who does not have an ECE state certificate or equivalent as required under subsections (3)(a)(ii), (b)(ii), and (4)(a)(ii) of this section must instead meet the following requirement as approved and verified in the electronic workforce registry by the department:

If a center is licensed for this number of children:	Then the director, assistant director, or program supervisor must have completed at least this number of college quarter credits in early childhood education core competencies:
(a) 12 or fewer	10
(b) 13 to 24	25
(c) 25 or more	45

(6) **Lead teachers** are responsible for implementing the center or family home early learning program. Lead teachers develop and provide a nurturing and responsive learning environment that meets the needs of enrolled children.

(a) A lead teacher must meet the following qualifications:

(i) Be at least eighteen years old;

(ii) Have a high school diploma or equivalent; and

(iii) Complete the applicable preservice requirements, pursuant to WAC 110-300-0105.

(b) A center lead teacher must meet the following requirements:

(i) ~~(Have an ECE initial certificate or equivalent as approved and verified in the electronic workforce registry by the department within five years of the date this section becomes effective, or five years from being employed or promoted into this position at any licensed early learning program;~~

(ii) ~~Progress towards an ECE short certificate or equivalent. A center lead teacher hired after this chapter becomes effective must have an ECE short certificate within two years of receiving an ECE initial certificate, or seven years from being employed or promoted into this position at any licensed early learning program; and~~

(iii) ~~Have their professional development progress documented annually.~~

(c) A family home lead teacher must meet the following requirements:

(i) ~~Have an ECE initial certificate or equivalent as approved and verified in the electronic workforce registry by the department within five years of the date this section becomes effective, or from being employed or promoted into this position at any licensed early learning program;~~

(ii) ~~Prior to being in charge of their early learning program fifty percent or more of the time, a family home lead teacher must meet the qualifications of the family home licensee and complete or be registered in orientation training required in WAC 110-300-0105(1); and~~

(iii) ~~Have their professional development progress documented annually.)~~ Have an ECE initial certificate or equivalent by August 1, 2026, or within five years of being hired or promoted into the position, whichever occurs later;

(ii) Have an ECE short certificate or equivalent by August 1, 2028, or within two years of receiving an ECE initial certificate; and

(iii) Beginning August 1, 2026, a center lead teacher must:

(A) Have an ECE initial certificate or equivalent within five years of being hired or promoted into this position; and

(B) Have an ECE short certificate or equivalent within two years of receiving an ECE initial certificate.

(c) Have all ECE certificates or equivalent qualifications approved and verified in the department's electronic workforce registry;

(d) Have their professional development progress documented annually; and

(e) A family home lead teacher must meet the following requirements:

(i) Have an ECE initial certificate or equivalent by August 1, 2026, or within five years of being hired or promoted into the position, whichever occurs later;

(ii) Beginning August 1, 2026, a family home lead teacher must have an ECE initial certificate or equivalent within five years of being hired or promoted into the position;

(iii) Have all ECE certificates or equivalent qualifications approved and verified in the department's electronic workforce registry; and

(iv) Have their professional development progress documented annually.

(7) **Assistant teachers** help a lead teacher or licensee provide instructional support to children and implement developmentally appropriate programs in center or family home early learning programs.

(a) An assistant teacher must meet the following qualifications:

(i) Be at least eighteen years old;

(ii) Have a high school diploma or equivalent; ~~((and))~~

~~(iii) Have ((a minimum of an ECE initial certificate or equivalent as approved and verified in the electronic workforce registry by the department within five years of the date this section becomes effective, or from being employed or promoted to this position at any licensed early learning program;~~

~~((iv))) an ECE initial certificate or equivalent by August 1, 2026, or within five years of being hired or promoted into this position, whichever occurs later;~~

(iv) Beginning August 1, 2026, an assistant teacher must have an ECE initial certificate or equivalent within five years of being hired or promoted into the position;

(v) Complete the applicable preservice requirements, pursuant to WAC 110-300-0105; and

~~((v))) (vi) Have their professional development progress documented annually.~~

(b) Assistant teachers may work alone with children with regular, scheduled, and documented oversight and on-the-job classroom training from the classroom's assigned lead teacher who is primarily responsible for the care of the same group of children for the majority of their day.

(c) For continuity of care, assistant teachers can act as a substitute lead teacher up to two weeks. If longer than two weeks, the provider must notify the department with a plan to manage the classroom.

(8) **Aides** provide classroom support to an assistant teacher, lead teacher, program supervisor, center director, assistant director, or family home licensee. Aides must meet the following qualifications:

(a) Be at least fourteen years old;

(b) Have a high school diploma or equivalent, or be currently enrolled in high school or an equivalent education program;

(c) Complete the applicable preservice requirements, pursuant to WAC 110-300-0105;

(d) Have their professional development progress documented annually; and

(e) Aides may be counted in the staff-to-child ratio if they are working under the continuous oversight of a lead teacher, program supervisor, center director, assistant director, assistant teacher, or family home licensee.

(i) Aides working nineteen or fewer hours per month can be counted towards staff-to-child ratio with applicable preservice requirements pursuant to WAC 110-300-0105 but without in-service training requirements pursuant to WAC 110-300-0107 (1)(a).

(ii) Aides who work more than nineteen hours per month and who have a cumulative twelve months of employment must complete applicable preservice requirements detailed in WAC 110-300-0105 and the in-service training detailed in WAC 110-300-0107 (1)(a).

(9) **Other personnel** who do not directly care for children and are not listed in subsections (1) through (8) of this section must meet the following qualifications:

(a) Complete and pass a background check, pursuant to chapter 110-06 WAC;

(b) Have a negative TB test, pursuant to WAC 110-300-0105; and

(c) Complete program based staff policies and training, pursuant to WAC 110-300-0110.

(10) **Volunteers** help at early learning programs. Volunteers must meet the following qualifications:

(a) Be at least fourteen years old (volunteers must have written permission to volunteer from their parent or guardian if they are under eighteen years old);

(b) Work under the continuous oversight of a lead teacher, program supervisor, center director, assistant director, assistant teacher, or family home licensee;

(c) Regular, ongoing volunteers may count in staff-to-child ratio if they:

(i) Complete and pass a background check, pursuant to chapter 110-06 WAC;

(ii) Complete a TB test, pursuant to WAC 110-300-0105;

(iii) Complete the training requirements, pursuant to WAC 110-300-0106;

(iv) Complete program based staff policies and training, pursuant to WAC 110-300-0110; and

(v) Have their professional development progress documented annually.

(d) Occasional volunteers must comply with (a) and (b) of this subsection and cannot count in staff-to-child ratio. Occasional volunteers may include, but are not limited to, a parent or guardian helping on a field trip, special guest presenters, or a parent or guardian, family member, or community member helping with a cultural celebration.

## WSR 21-01-195

### PERMANENT RULES

### BATES TECHNICAL COLLEGE

[Filed December 22, 2020, 10:14 a.m., effective January 22, 2021]

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

Purpose: New chapter 495A-115 WAC, Title IX Student Conduct Procedures, to be in compliance with federal laws regarding Title IX and add to Bates Technical College's WAC 495A series, as well as align with Bates Technical College's practices.

Citation of Rules Affected by this Order: New chapter 495A-115 WAC.

Statutory Authority for Adoption: Chapter 34.05 RCW; RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Adopted under notice filed as WSR 20-21-076 on October 19, 2020.

Changes Other than Editing from Proposed to Adopted Version: New WAC so all sections are new.

Number of Sections Adopted in Order to Comply with Federal Statute: New 10, Amended 0, Repealed 0; Federal Rules or Standards: New 10, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 10, Amended 0, Repealed 0.

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

Date Adopted: December 22, 2020.

Dr. Jean Hernandez  
Special Assistant  
to the President

## Chapter 495A-115 WAC

### TITLE IX STUDENT CONDUCT PROCEDURES

#### NEW SECTION

**WAC 495A-115-005 Authority.** The board of trustees, acting pursuant to RCW 28B.50.140(13), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice president of student services or designee. Unless otherwise specified, the student conduct officer or designee shall serve as the principal investigator and administrator for alleged violations of this code.

#### NEW SECTION

**WAC 495A-115-010 Order of precedence.** This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with Bates Technical College's standard disciplinary procedures, WAC 495A-121-010 through 495A-121-094, these supplemental procedures shall take precedence.

#### NEW SECTION

**WAC 495A-115-020 Prohibited conduct under Title IX.** Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, Bates Technical College may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

For purposes of this supplemental procedure, "sexual harassment" encompasses the following conduct:

(1) Quid pro quo harassment. A college employee conditioning the provision of an aid, benefit, or service of Bates Technical College on an individual's participation in unwelcome sexual conduct.

(2) Hostile environment. Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Bates Technical College's educational programs or activities, or employment.

(3) Sexual assault. Sexual assault includes the following conduct:

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

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

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

(d) Statutory rape. Consensual sexual intercourse between someone who is eighteen years of age or older and someone who is under the age of sixteen.

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

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

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

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

(i) The length of the relationship;

(ii) The type of relationship; and

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

(6) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.

NEW SECTION

**WAC 495A-115-030 Title IX jurisdiction.** (1) This supplemental procedure applies only if the alleged misconduct:

- (a) Occurred in the United States;
- (b) Occurred during a Bates Technical College's educational program or activity; and
- (c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which Bates Technical College exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the college.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this Title IX supplemental procedure does not prohibit the college from pursuing other disciplinary action based on situations where the allegations against the respondent, if true, would constitute violations of other provisions of the college's student conduct code, chapter 495A-121 WAC.

(4) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX complaints have been dismissed.

NEW SECTION

**WAC 495A-115-040 Initiation of discipline.** (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student/faculty disciplinary committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

- (a) Set forth the basis for Title IX jurisdiction;
- (b) Identify the alleged Title IX violation(s);
- (c) Set forth the facts underlying the allegation(s);
- (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s);
- (e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:
  - (i) The advisors will be responsible for questioning all witnesses on the party's behalf;
  - (ii) An advisor may be an attorney; and

(iii) The college will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so.

(3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

NEW SECTION

**WAC 495A-115-050 Prehearing procedure.** (1) Upon receiving the disciplinary notice, the chair of the student/faculty disciplinary committee will send a hearing notice to all parties, in compliance with WAC 495A-121-065. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the college intends to offer the evidence at the hearing.

NEW SECTION

**WAC 495A-115-060 Rights of parties.** (1) Bates Technical College's student conduct procedures, chapter 495A-121 WAC, and this supplemental procedure shall apply equally to all parties.

(2) The college bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the student conduct officer will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

NEW SECTION

**WAC 495A-115-070 Evidence.** The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) **Relevance:** The chair of the student/faculty disciplinary committee shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) **Relevance** means that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

- (a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(4) Cross-examination required: If a party or witness does not submit to cross-examination during the live hearing, the committee must not rely on any statement by that party or witness in reaching a determination of responsibility.

(5) No negative inference: The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(6) Privileged evidence: The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

- (a) Spousal/domestic partner privilege;
- (b) Attorney-client and attorney work product privileges;
- (c) Privileges applicable to members of the clergy and priests;
- (d) Privileges applicable to medical providers, mental health therapists, and counselors;
- (e) Privileges applicable to sexual assault and domestic violence advocates; and
- (f) Other legal privileges identified in RCW 5.60.060.

#### NEW SECTION

**WAC 495A-115-080 Initial order.** (1) In addition to complying with chapter 495A-121 WAC, the student/faculty disciplinary committee will be responsible for conferring and drafting an initial order that:

- (a) Identifies the allegations of sexual harassment;
- (b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;
- (c) Makes findings of fact supporting the determination of responsibility;
- (d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;
- (e) Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;
- (f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;
- (g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to Bates Technical College's educational programs or activities; and
- (h) Describes the process for appealing the initial order to the college president.

(2) The chair of the student/faculty disciplinary committee will serve the initial order on the parties simultaneously.

#### NEW SECTION

**WAC 495A-115-090 Appeals.** (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual

harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 495A-121-066.

(2) The president or designee will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

(3) President's office shall serve the final decision on the parties simultaneously.

#### **WSR 21-01-196**

#### **PERMANENT RULES**

#### **BATES TECHNICAL COLLEGE**

[Filed December 22, 2020, 10:27 a.m., effective January 22, 2021]

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

Purpose: Amending chapter 495A-300 WAC, Title IX Grievance Procedures, to be in compliance with and reflect changes in federal law regarding Title IX, as well as align with Bates Technical College's practices.

Citation of Rules Affected by this Order: Chapter 495A-300 WAC.

Statutory Authority for Adoption: Chapter 34.05 RCW; RCW 28B.50.140(13); and 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Adopted under notice filed as WSR 20-21-077 on October 19, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 12, Amended 1, Repealed 0; Federal Rules or Standards: New 12, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 12, Amended 1, Repealed 3.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 12, Amended 1, Repealed 3.

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

Date Adopted: December 22, 2020.

Dr. Jean Hernandez  
Special Assistant  
to the President

## Chapter 495A-300 WAC

TITLE IX—GRIEVANCE ((~~RULES—TITLE IX~~))  
PROCEDURES

AMENDATORY SECTION (Amending WSR 92-12-017, filed 5/26/92, effective 6/26/92)

**WAC 495A-300-010 Preamble.** Bates Technical College, District 28, is covered by Title IX of the Civil Rights Act of 1964 (~~((prohibiting sex))~~) and Education Amendments Act of 1972. Title IX is a federal law that prohibits gender-based discrimination in ((education)) educational institutions that receive federal funds.

Any (~~((applicant for admission, enrolled student, applicant for employment or))~~) employee, student, or visitor of Bates Technical College, District No. 28, who believes (~~((she/he has been discriminated against on the basis of sex may lodge an institutional grievance by following the procedures below))~~) they have been the subject of a Title IX violation should report the incident(s) to the college's Title IX coordinator or designee.

Bates Technical College  
Title IX Coordinator  
Human Resources Office  
1101 South Yakima Avenue  
Tacoma, WA 98405-4895  
For students: 253-680-7102  
For employees: 253-680-7180

NEW SECTION

**WAC 495A-300-015 Purpose.** Bates Technical College recognizes its responsibility to investigate, resolve, implement corrective measures, and monitor the educational environment and workplace to stop, remediate, and prevent discrimination on the basis of sex, as required by Title IX of the Education Amendments Act of 1972, Title VII of the Civil Rights Act of 1964, the Violence Against Women Reauthorization Act, and Washington state's law against discrimination, and their implementing regulations. To this end, Bates Technical College has enacted the following college policies and the Washington Administrative Code (WAC): CP5920 - Employee disciplinary hearing, CP5920PR - Employee disciplinary hearing procedure, chapter 495A-115 WAC, Title IX student conduct procedures, and chapter 495A-121 WAC, Student rights and responsibilities and adopted this chapter, Title IX grievance procedures for receiving and investigating sexual harassment allegations arising during educational programs and activities. Any individual found responsible for violating Bates Technical College's Title IX rules and policies is subject to disciplinary action up to and including dismissal from Bates Technical College's educational programs and activities and/or termination of employment.

Application of this chapter, Title IX grievance procedures is restricted to allegations of sexual harassment as that term is defined in 34 C.F.R. Part 106.30. Nothing in this procedure limits or otherwise restricts Bates Technical College's ability to investigate and pursue discipline based on alleged

violations of other federal, state, and local laws, their implementing regulations, and other college policies prohibiting gender discrimination through processes set forth in the college's code of student conduct, employment contracts, employee handbooks, and collective bargaining agreements.

NEW SECTION

**WAC 495A-300-025 Definitions.** For purposes of this chapter, Title IX grievance procedures, the following terms are defined as follows:

(1) "Consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(2) "Complainant" means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

(3) "Respondent" means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

(4) "Formal complaint" means a writing submitted by the complainant or signed by the Title IX coordinator alleging sexual harassment against a respondent and requesting that Bates Technical College conduct an investigation.

(5) "Education program or activity" includes locations, events, or circumstances over which Bates Technical College exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. It also includes any building owned or controlled by a student organization officially recognized by Bates Technical College.

(6) "Grievance procedure" is the process Bates Technical College uses to initiate, informally resolve, and/or investigate allegations that an employee or student has violated Title IX provisions prohibiting sexual harassment.

(7) "Supportive measures" are nondisciplinary, nonpunitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or respondent regardless of whether the complainant or the Title IX coordinator has filed a formal complaint. Supportive measures restore or preserve a party's access to Bates Technical College's educational programs and activities without unreasonably burdening the other party, as determined through an interactive process between the Title IX coordinator and the party. Supportive measures include measures designed to protect the safety of all parties and/or the col-

lege's educational environment and/or to deter sexual harassment or retaliation. Supportive measures may include, but are not limited to:

- (a) Counseling and other medical assistance;
- (b) Extensions of deadlines or other course-related adjustments;
- (c) Modifications of work or class schedules;
- (d) Leaves of absence;
- (e) Increased security or monitoring of certain areas of campus; and
- (f) Imposition of orders prohibiting the parties from contacting one another in housing or work situations.

Determinations about whether to impose a one-way no contact order must be made on a case-by-case basis. If supportive measures are not provided, the Title IX coordinator must document in writing why this was clearly reasonable under the circumstances.

(8) "Summary suspension" means an emergency suspension of a student respondent pending investigation and resolution of disciplinary proceedings pursuant to the procedure and standards set forth in WAC 495A-121-062.

(9) "Sexual harassment," for purposes of this chapter, Title IX grievance procedures, occurs when a respondent engages in the following discriminatory conduct on the basis of sex:

(a) Quid pro quo harassment. A Bates Technical College employee conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct.

(b) Hostile environment. Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Bates Technical College's educational programs or activities or Bates Technical College employment.

(c) Sexual assault. Sexual assault includes the following conduct:

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

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

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

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

(v) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sex-

ual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

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

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

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

(I) The length of the relationship;

(II) The type of relationship; and

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

(vii) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) Fear for their safety or the safety of others; or

(B) Suffer substantial emotional distress.

(10) "Title IX administrators" are the Title IX coordinator, Title IX investigators, the student conduct officer, student/faculty disciplinary committee members, human resources disciplinary officer, hearing panel and/or neutral decision maker, and Bates Technical College-provided advisors assigned to the parties by the college during Title IX disciplinary proceedings.

(11) "Title IX coordinator" is responsible for processing Title IX complaints and conducting and/or overseeing formal investigations and informal resolution processes under this grievance procedure. Among other things, the Title IX coordinator is responsible for:

(a) Accepting and processing all Title IX reports, referrals, and formal complaints.

(b) Executing and submitting a formal complaint when appropriate and necessary.

(c) Handling requests for confidentiality.

(d) Determining during the grievance procedure:

(i) Whether a formal complaint should be dismissed either in whole or in part, and if so;

(ii) Providing notice to both parties about why dismissal was necessary or desirable; and

(iii) Referring the claim to the appropriate disciplinary authority for proceedings outside the jurisdiction of Title IX.

(e) Maintaining accurate records of all claims, reports, and referrals, and retaining investigation files, claims, reports, and referrals in compliance with the applicable records retention schedules or federal or state law, whichever is longer.

(f) Conducting investigations or assigning and overseeing investigations.

(g) Engaging in an interactive process with both parties to identify and provide supportive measures that ensure during the investigation and disciplinary processes that the parties have equitable access to educational programs and

activities and are protected from further discrimination or retaliation.

(h) Upon completion of an investigation, issuing or overseeing the issuance of a final investigation report to the parties and the appropriate disciplinary authority in compliance with this grievance procedure.

(i) Recommending nondisciplinary corrective measures to stop, remediate, and/or prevent recurrence of discriminatory conduct to disciplinary authorities and other college administrators.

#### NEW SECTION

**WAC 495A-300-035 Principles for Title IX grievance procedure.** (1) Respondent shall be presumed not responsible for the alleged conduct unless or until a determination of responsibility is reached after completion of the grievance and disciplinary processes.

(2) Before imposing discipline, the college is responsible for gathering and presenting evidence to a neutral and unbiased decision maker establishing responsibility for a Title IX violation by a preponderance of the evidence.

(3) The college shall treat both the complainant and respondent equitably by providing complainant with remedies against respondent who has been found responsible for sexual harassment through application of the institution's Title IX grievance and applicable Title IX disciplinary procedures and by providing respondent with Title IX procedural safeguards contained in this chapter, Title IX grievance procedures and in the applicable CP5920 - Title IX employee disciplinary hearing, CP5920PR - Title IX employee disciplinary hearing procedure, and chapter 495A-121 WAC, Student rights and responsibilities.

(4) The investigator shall base investigation results on all relevant evidence, including both exculpatory and inculpatory evidence.

(5) Formal and informal resolutions will be pursued within reasonably prompt time frames with allowances for temporary delays and extensions for good cause shown. Grounds for temporary delay include, but are not limited to, quarter breaks or medical leave. Good cause supporting a request for an extension includes, but is not limited to, a party, a party's advisor, or a witness being unavailable, concurrent law enforcement activity, and the need for language assistance or accommodation of disabilities. Both parties will receive written notice of any temporary delay or extension for good cause with an explanation of why the action was necessary.

(6) A respondent found responsible for engaging in sexual harassment may receive discipline up to and including dismissal from the college. A description of other possible disciplinary sanctions and conditions that may be imposed against students can be found in WAC 495A-121-044.

An employee found responsible for sexual harassment may receive discipline up to and including dismissal from employment. A description of possible disciplinary sanctions and conditions that may be imposed against employees can be found in the respective collective bargaining agreements and for the exempt employees under CP5920PR - Title IX employee disciplinary hearing procedure.

(7) In proceedings against a student respondent, the parties may appeal the student/faculty disciplinary committee's ruling to the president pursuant to WAC 495A-121-063 and Title IX student conduct procedures, WAC 495A-115-090.

In proceedings against an employee respondent, the parties may appeal the employee disciplinary decision to the president or designee pursuant to CP5920 - Title IX employee disciplinary hearing and CP5920PR - Title IX employee disciplinary hearing procedures.

(8) Title IX administrators may not require, allow, rely upon, or otherwise use questions or evidence that seeks disclosure of privileged communications, unless the privilege has been effectively waived by the holder. This provision applies, but is not limited to, information subject to the following:

- (a) Spousal or domestic partner privilege;
- (b) Attorney-client and attorney work product privileges;
- (c) Privileges applicable to members of the clergy and priests;
- (d) Privileges applicable to medical providers, mental health therapists, and counselors;
- (e) Privileges applicable to sexual assault and domestic violence advocates; and
- (f) Other legal privileges identified in RCW 5.60.060.

#### NEW SECTION

**WAC 495A-300-045 Title IX administrators—Free from bias—Training requirements.** (1) Title IX administrators shall perform their duties free from bias or conflicts.

(2) Title IX administrators shall undergo training on the following topics:

- (a) The definition of sexual harassment under these procedures;
- (b) The scope of the college's educational programs and activities;
- (c) How to conduct an investigation;
- (d) How to serve impartially without prejudgment of facts, conflicts of interest, or bias;
- (e) Use of technology used during an investigation or hearing;
- (f) The relevance of evidence and questions; and
- (g) Effective report writing.

(3) All Title IX administrator training materials shall be available on the Bates Technical College's Title IX web page.

#### NEW SECTION

**WAC 495A-300-050 Filing a complaint.** Any employee, student, applicant, or visitor who believes that they have been the subject of sexual harassment should report the incident or incidents to the college's Title IX coordinator identified below. If the claim is against the Title IX coordinator, the complainant should report the matter to the president's office for referral to an alternate designee. For assistance contact the Title IX coordinator or designee via mail or telephone:

Title IX Coordinator  
Human Resources Office  
1101 South Yakima Avenue

Tacoma, WA 98405-4895

For students: 253-680-7102

For employees: 253-680-7180

#### NEW SECTION

**WAC 495A-300-055 Confidentiality.** (1) The college will seek to protect the privacy of the complainant to the fullest extent possible, consistent with the legal obligation to investigate, take appropriate remedial and/or disciplinary action, and comply with the federal and state law, as well as Bates Technical College's policies and procedures. Although the college will attempt to honor complainant's requests for confidentiality, it cannot guarantee complete confidentiality. Determinations regarding how to handle requests for confidentiality will be made by the Title IX coordinator.

(2) The Title IX coordinator will inform and attempt to obtain consent from the complainant before commencing an investigation of alleged sexual harassment. If a complainant asks that their name not be revealed to the respondent or that the college not investigate the allegation, the Title IX coordinator will inform the complainant that maintaining confidentiality may limit the college's ability to fully respond to the allegations and that retaliation by the respondent and/or others is prohibited. If the complainant still insists that their name not be disclosed or that the college not investigate, the Title IX coordinator will determine whether the college can honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of the college community, including the complainant. Factors to be weighed during this determination may include, but are not limited to:

- (a) The seriousness of the alleged sexual harassment;
- (b) The age of the complainant;
- (c) Whether the sexual harassment was perpetrated with a weapon;
- (d) Whether the respondent has a history of committing acts of sexual harassment or violence or has been the subject of other sexual harassment or violence complaints or findings;
- (e) Whether the respondent threatened to commit additional acts of sexual harassment or violence against the complainant or others; and
- (f) Whether relevant evidence about the alleged incident can be obtained through other means such as security cameras, other witnesses, physical evidence.

(3) If the college is unable to honor a complainant's request for confidentiality, the Title IX coordinator will notify the complainant of the decision and ensure that complainant's identity is disclosed only to the extent reasonably necessary to effectively conduct and complete the investigation in compliance with this grievance procedure.

(4) If the college decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the Title IX coordinator will evaluate whether other measures are available to address the circumstances giving rise to the complaint and prevent their recurrence and implement such measures if reasonably feasible.

#### NEW SECTION

**WAC 495A-300-060 Complaint resolution.** The Title IX resolution processes are initiated when the Title IX coordinator's office receives a written complaint alleging that a respondent(s) sexually harassed a complainant and requesting that the college initiate an investigation (a formal complaint). A formal complaint must be either submitted by the complainant or signed by the Title IX coordinator on behalf of the complainant. Formal complaints submitted to the Title IX coordinator may be resolved through either informal or formal resolution processes. The college will not proceed with either resolution process without a formal complaint.

For purposes of this Title IX grievance procedure, the complainant must be participating in or attempting to participate in a Bates Technical College educational program or activity at the time the formal complaint is filed.

(1) Informal resolution. Under appropriate circumstances and if the impacted and responding parties agree, they may voluntarily pursue informal resolution during the investigation of a concern. Informal resolution is not appropriate when the allegations involve a mandatory reporting situation; an immediate threat to the health, safety or welfare of a member of the college community; or in cases where an employee is alleged to have sexually harassed a student.

If an informal resolution is appropriate, the impacted party and the responding party may explore remedies or resolution through:

- (a) Guided conversations or communications conducted by the Title IX coordinator, designee, or a mutually agreed upon third party;
- (b) Structured resolution process conducted by a trained mediator; or
- (c) Voluntarily agreed on alterations to either or both of the parties' work or class schedules.

If the parties agree to an informal resolution process, the college will commence the process within ten workdays after the parties agree to this option and conclude within thirty workdays of beginning that process; subject to reasonable delays and extensions for good cause shown. The informal process is voluntary. Either the impacted or responding party may withdraw from the informal resolution process at any time, at which point the formal investigation process will resume.

If the impacted and responding party voluntarily resolve a report, the college will record the terms of the resolution in a written agreement signed by both parties and provide written notice to both parties that the report has been closed.

(2) Formal resolution. Formal resolution means that the complainant's allegations of sexual harassment will be subjected to a formal investigation by an impartial and unbiased investigator. The investigator will issue a report of the investigation findings. Upon completion of the investigation, the investigator will submit the final investigation report to the appropriate disciplinary authority to determine whether disciplinary proceedings are warranted.

#### NEW SECTION

**WAC 495A-300-065 Emergency removal.** If a student respondent poses an immediate threat to the health and safety

of the college community or an immediate threat of significant disruption to Bates Technical College's operations, the college's student conduct officer may summarily suspend a respondent pursuant to WAC 495A-121-062, pending final resolution of the allegations. Nothing in this grievance procedure prohibits the college from placing nonstudent employees on administrative leave pending final resolution of the allegations.

#### NEW SECTION

**WAC 495A-300-070 Investigation notices.** Upon receiving a formal complaint and determining that allegations comport with Title IX complaints, the college will provide the parties with the following notices containing the following information:

(1) Notice of formal and informal resolution processes. A description of the college's grievance resolution procedures, including the informal resolution procedure.

(2) The investigator will serve the respondent and the complainant with a notice of investigation in advance of the initial interview with the respondent to allow the respondent sufficient time to prepare a response to the allegations and to inform the complainant that the college has commenced an investigation. The investigation notice will:

(a) Include the identities of the parties if known, a description of the conduct alleged constituting Title IX sexual harassment, and the time and location of the incident if known.

(b) Confirm that the respondent is presumed not responsible for the alleged conduct and that the college will not make a final determination of responsibility until after the grievance and disciplinary processes have been completed.

(c) Inform parties that they are both entitled to have an advisor of their own choosing, who may be an attorney.

(d) Inform parties they have a right to review and inspect evidence.

(e) Inform parties about student conduct code provisions and employment policies that prohibit students and employees from knowingly submitting false information during the grievance and disciplinary processes.

(3) Amended investigation notice. If during the course of the investigation, the college decides to investigate Title IX sexual harassment allegations about the complainant or respondent that are not included in the investigation notice, the college will issue an amended notice of investigation to both parties that includes this additional information.

(4) Interview and meeting notices. Before any interviewing or meeting with a party about Title IX allegations, the college shall provide the party at least forty-eight hours in advance with a written notice identifying the date, time, location, participants, and purpose of the interview or meeting with sufficient time for the party to prepare for the interview or meeting.

#### NEW SECTION

**WAC 495A-300-075 Investigation process—Dismissal.** (1) Mandatory dismissal. The Title IX coordinator will dismiss the Title IX allegations, if during the course of a formal investigation under the Title IX grievance procedures,

the investigator determines that the alleged misconduct in the formal complaint:

(a) Does not meet the definition of sexual harassment under Title IX, even if proved; or

(b) Did not occur in the context of a college education program or activity; or

(c) Occurred outside the United States.

(2) Discretionary dismissal. The college may dismiss a Title IX complaint in whole or in part, if:

(a) The complainant notifies the Title IX coordinator in writing that they would like to withdraw the formal complaint in whole or in part;

(b) The respondent is no longer enrolled with or employed by the college; or

(c) Specific circumstances prevent the college from gathering evidence sufficient to complete the investigation of the Title IX allegations in whole or in part.

(3) The Title IX coordinator will provide both parties written notice if Title IX allegations are dismissed with an explanation for the dismissal.

(4) Mandatory or discretionary dismissal of a Title IX complaint does not preclude the college from investigating and pursuing discipline based on allegations that a respondent violated other federal or state laws and regulations, Bates Technical College's conduct policies, and/or other codes and contractual provisions governing student and employee conduct.

#### NEW SECTION

**WAC 495A-300-080 Investigation process—Consolidation of formal complaints.** When multiple sexual harassment allegations by or against different parties arise out of the same facts or circumstances, the college may consolidate the investigation of formal complaints, provided consolidation can be accomplished in compliance with confidentiality protections imposed by the Family Educational Rights and Privacy Act (FERPA). This includes instances in which complainant and respondent have lodged formal complaints against one another or when allegations of sexual assault are lodged by a single complainant against multiple respondents, or when multiple complainants lodge sexual assault complaints against single or multiple respondents.

#### NEW SECTION

**WAC 495A-300-085 Investigation process—Required procedures.** During the investigation, the investigator:

(1) Will provide the parties with equal opportunity to present relevant statements, and other evidence in the form of fact or expert witnesses and inculpatory or exculpatory evidence.

(2) Will not restrict the ability of either party to discuss the allegations under investigation or gather and present relevant evidence, except when a no contact order has been imposed based on an individualized and fact specific determination that a party poses a threat to the health, safety, or welfare of another party and/or witness(es) or when contact with a party and/or witness(es) is prohibited by court order. A college-imposed no contact shall be no broader than is neces-

sary to protect the threatened party or witness(es) and must provide the impacted party or their advisor with alternative means of gathering and presenting relevant evidence from the protected witness(es) and/or party.

(3) Will allow each party to be accompanied by an advisor of their choosing, who may be an attorney, to any grievance related meeting or interview. Advisors' roles during the investigation meetings or interviews will be limited to providing support and advice to the party. Advisors will not represent or otherwise advocate on behalf of the parties during the investigation process. An attorney representing a party must enter a notice of appearance with the Title IX coordinator and the investigator at least five workdays before the initial interview or meeting they plan to attend, so that the college can secure its own legal representation, if necessary.

(4) The investigator will provide both parties and their respective advisors with an equal opportunity to review the draft investigation report and to inspect and review any evidence obtained during the investigation that is directly related to the allegations raised in the formal complaint, including inculpatory or exculpatory evidence, regardless of its source, as well as evidence upon which the investigator does not intend to rely in the final investigation report. After disclosure, each party will receive ten workdays in which to submit a written response, which the investigator will consider prior to completion of the investigation report. If a party fails to submit a written response within ten workdays, the party will be deemed to have waived their right to submit comments, and the investigator will finalize the report without this information.

(5) The investigator will forward the final report to the Title IX coordinator, who will distribute the report and evidence to the parties, as well as the disciplinary authority responsible for determining whether pursuing disciplinary action is warranted.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 495A-300-020 Informal procedure.
- WAC 495A-300-030 Formal procedure.
- WAC 495A-300-040 Other remedies.

### WSR 21-01-207

#### PERMANENT RULES

#### HEALTH CARE AUTHORITY

[Filed December 23, 2020, 9:04 a.m., effective January 23, 2021]

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

Purpose: The agency is amending WAC 182-505-0215 to expand the children's health insurance program to include coverage for eligible children of public employees.

Citation of Rules Affected by this Order: Amending WAC 182-505-0215.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 20-23-047 on November 12, 2020.

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

Number of Sections Adopted at the Request of a Non-governmental 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: December 23, 2020.

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-21-103, filed 10/16/19, effective 1/1/20)

**WAC 182-505-0215 Children's Washington apple health with premiums.** (1) A child is eligible for Washington apple health with premiums if the child:

- (a) Meets the requirements in WAC 182-505-0210(1);
- (b) Has countable income below the standard in WAC 182-505-0100 (6)(b); and
- (c) Pays the required premium under WAC 182-505-0225, unless the child is exempt under WAC 182-505-0225 (2)(c).

(2) A child is not eligible for Washington apple health with premiums if the child:

- (a) Is eligible for no-cost Washington apple health; or
- (b) Has creditable health insurance coverage as defined in WAC 182-500-0020(~~;~~ ~~(e))~~).

(3) A child with creditable health insurance coverage may be eligible for Washington apple health with premiums if the child:

- (a) Is eligible for either:
  - (i) Public employees benefits board (PEBB) health insurance coverage based on a family member's employment with a Washington state agency, or a Washington state university, community college, or technical college; or
  - ~~((d) Is eligible for)~~ (ii) School employees benefits board (SEBB) health insurance coverage based on a family member's employment with a Washington school district, charter school, or educational service district; and

(b) Meets the requirements in subsection (1) of this section.

**WSR 21-01-209**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**

[Filed December 23, 2020, 9:51 a.m., effective January 23, 2021]

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

Purpose: To describe the process for periodic reviews to assess continued eligibility for law enforcement officers' and firefighters' Plan 2 catastrophic duty disability benefits.

Citation of Rules Affected by this Order: Amending WAC 415-104-480.

Statutory Authority for Adoption: RCW 41.50.050.

Adopted under notice filed as WSR 20-23-117 on November 18, 2020.

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

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

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

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

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

Date Adopted: December 23, 2020.

Tracy Guerin  
Director

AMENDATORY SECTION (Amending WSR 18-13-078, filed 6/15/18, effective 7/16/18)

**WAC 415-104-480 Does my disability qualify me for a LEOFF Plan 2 catastrophic duty disability benefit?** (1) If the department determines you are disabled and you became disabled in the line of duty, you qualify for a catastrophic duty disability if:

(a) The disability or disabilities that qualified you for a LEOFF Plan 2 duty disability benefit are so severe that considering your age, education, work experience, and transferable skills, you cannot engage in any other kind of substantial gainful activity in the labor market; and

(b) Your disability or disabilities have lasted or are expected to last at least twelve months, or are expected to result in your death.

(2) A person with multiple injuries/conditions, some duty-related and some not, could qualify for a catastrophic duty disability but only if the duty injury or injuries, standing on their own, are catastrophically disabling.

**Examples:**

• Totally disabled, but not from duty injury - Not eligible for catastrophic disability benefit.

A LEOFF Plan 2 member suffers a knee injury on duty, leaving ~~(them)~~ the member disabled from LEOFF employ-

ment. The knee injury, ~~((standing alone))~~ by itself, is not totally disabling. The member also suffers from amyotrophic lateral sclerosis (ALS) or Lou Gehrig's disease, a progressive neurodegenerative disease that ultimately leaves the member totally disabled. Pursuant to the ALS diagnosis the member is granted a full disability from the Social Security Administration. In this case the member would qualify for a duty disability, but not for a catastrophic disability ~~((since))~~ because the fully disabling condition, ALS, is not duty related.

• Totally disabled, duty injury totally disabling - Eligible for catastrophic disability benefits.

A LEOFF Plan 2 member suffers a knee injury while fishing. The knee injury, ~~((standing alone))~~ by itself, is neither duty related nor catastrophically disabling. The member also suffers severe burns while fighting a fire, leaving ~~((him/her))~~ the member fully disabled. The Social Security Administration grants the member a full disability based on ~~((his/her))~~ the member's total condition. The member qualifies for a LEOFF plan 2 catastrophic disability benefit because the burn injuries, ~~((standing alone))~~ by themselves, render ~~((him/her))~~ the member totally disabled.

(3) Medical insurance premium reimbursement is an additional benefit for a member who is catastrophically disabled in the line of duty (RCW 41.26.470). However, if you choose to withdraw one hundred fifty percent of your accumulated contributions pursuant to RCW 41.26.470(6) you are not entitled to the medical insurance premium reimbursement.

(4) If you receive catastrophic duty disability benefits, the department will periodically review your continued eligibility. If it is determined that you are no longer eligible, or if you fail to provide required documentation or cooperate with the review, your catastrophic duty disability benefit may be discontinued or converted to a different retirement status.

(a) Income review: At least annually, you must submit documentation to verify that your income from earnings is below the defined income threshold as defined in subsection (5)(c) of this section. The documentation must include a signed copy of your filed tax return showing income from all sources for the prior year. You must also notify the department within thirty calendar days of any changes in your income that could impact your eligibility including, but not limited to, wages and earnings from self-employment. (See subsection (5)(c), (d) and (f) of this section.)

(b) Medical review: The department will conduct a continuing disability review (CDR) at least once every three years until you reach age sixty-five. The department may increase the frequency of your CDRs if your condition is expected to improve, and reserves the right to require a CDR at any time at its discretion. The department may also waive the CDR if your disability is determined to be terminal.

(5) Definitions. As used in this section:

(a) **Catastrophically disabled** means the same as "totally disabled" as defined under RCW 41.26.470(9).

(b) **Continuing disability review (CDR)** means an assessment of your current medical condition to determine if it continues to be catastrophically disabling. The department's medical professional will review recent documentation, with supplemental assessment by external medical experts at the department's discretion.

(c) Defined income threshold means any substantial gainful activity that produces average earnings, as defined in (d) of this subsection, in excess of the federal Social Security disability standards, adjusted annually for inflation. Wages count toward earnings when they are earned, not when you receive them. Self-employment income counts when you receive it, not when you earn it.

(d) Earnings are any income or wages received, which are reportable as wages or self-employment income to the IRS.

~~((e))~~ (e) Labor market is the geographic area within reasonable commuting distance of where you were last gainfully employed or where you currently live, whichever provides the greatest opportunity for gainful employment.

~~((f))~~ (f) Substantial gainful activity describes a level of work activity and earnings. Substantial gainful activity is work activity that is both substantial and gainful, and it may be, but is not required to be, from work or self-employment. Earnings as defined in this section includes compensated work activity that meets or exceeds the defined income threshold:

(i) Work activity is substantial if it involves doing significant physical or mental activities. Your work activity may be substantial even if it is done on a part-time basis or if you do less, or get paid less, or have less responsibility than when you worked in your LEOFF position.

(ii) Work activity is gainful if it is work activity that you do for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized.

(iii) Generally, activities like taking care of yourself, household tasks, profits from rental income, hobbies, therapy, school attendance, club activities, or social programs are not substantial gainful activity.

~~((e) Defined income threshold~~ means any substantial gainful activity that produces average earnings, as defined in (a) of this subsection, in excess of the federal Social Security disability standards, adjusted annually for inflation. Wages count toward earnings when they are earned, not when you receive them. Self-employment income counts when you receive it, not when you earn it.

~~((f))~~ (g) Transferable skills are any combination of learned or demonstrated behavior, education, training, work traits, and skills that you can readily apply. They are skills that are interchangeable among different jobs and workplaces.

- WAC 458-18-220 to provide the rate of interest for treasury bill auction year 2020, which is used when refunding property taxes paid in 2021, as required by RCW 84.69.100.
- WAC 458-30-262 to provide the interest rate and property tax component used when valuing classified farm and agricultural land during the 2021 assessment year, as required by RCW 84.34.065.
- WAC 458-30-590 to provide the rate of inflation published in 2020, which is used in calculating interest for deferred special benefit assessments of land removed or withdrawn from classification during 2021, as required by RCW 84.34.310.

Citation of Rules Affected by this Order: Amending WAC 458-18-220 Refunds—Rate of interest, 458-30-262 Agricultural land valuation—Interest rate—Property tax component, and 458-30-590 Rate of inflation—Publication—Interest rate—Calculation.

Statutory Authority for Adoption: RCW 84.34.065, 84.34.141, 84.34.360, and 84.69.100.

Adopted under notice filed as WSR 20-21-078 on October 19, 2020.

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

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

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

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

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

Date Adopted: December 23, 2020.

Atif Aziz

Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-02-056, filed 12/24/19, effective 1/1/20)

**WAC 458-18-220 Refunds—Rate of interest.** ~~((The following rates of interest apply))~~ **(1) Introduction.** Interest applies to refunds of taxes made pursuant to RCW 84.69.010 through 84.69.090 in accordance with RCW 84.69.100. ~~((The following rates))~~ Interest also ~~((apply))~~ applies to judgments entered in favor of the plaintiff pursuant to RCW 84.68.030.

**(2) Calculation of interest rate.** The interest rate is ~~((derived))~~ calculated from the equivalent coupon issue yield of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted after June 30th of the calendar year preceding the date the taxes were paid.

## WSR 21-01-210

### PERMANENT RULES

### DEPARTMENT OF REVENUE

[Filed December 23, 2020, 10:00 a.m., effective January 1, 2021]

Effective Date of Rule: January 1, 2021.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The department is adopting these rules with an effective date of January 1 because, per statute, these rules provide rates used for refunds and property valuations during 2021.

Purpose: The department is amending:

(3) **Interest rates.** The ~~((rate is))~~ following rates are applied to the amount of the judgment or the amount of the refund, until paid:

Year tax paid	Auction Year	Rate
1984	1983	9.29%
1985	1984	11.27%
1986	1985	7.36%
1987	1986	6.11%
1988	1987	5.95%
1989	1988	7.04%
1990	1989	8.05%
1991	1990	8.01%
1992	1991	5.98%
1993	1992	3.42%
1994	1993	3.19%
1995	1994	4.92%
1996	1995	5.71%
1997	1996	5.22%
1998	1997	5.14%
1999	1998	5.06%
2000	1999	4.96%
2001	2000	5.98%
2002	2001	3.50%
2003	2002	1.73%
2004	2003	0.95%
2005	2004	1.73%
2006	2005	3.33%
2007	2006	5.09%
2008	2007	4.81%
2009	2008	2.14%
2010	2009	0.29%
2011	2010	0.21%
2012	2011	0.08%
2013	2012	0.15%
2014	2013	0.085%
2015	2014	0.060%
2016	2015	0.085%
2017	2016	0.340%
2018	2017	1.130%
2019	2018	2.085%
2020	2019	2.040%
<u>2021</u>	<u>2020</u>	<u>0.165%</u>

**AMENDATORY SECTION** (Amending WSR 20-02-056, filed 12/24/19, effective 1/1/20)

**WAC 458-30-262 Agricultural land valuation—Interest rate—Property tax component.** For assessment year ~~((2020))~~ 2021, the interest rate and the property tax component that are used to value classified farm and agricultural lands are as follows:

(1) The interest rate is ~~((5.47))~~ 5.70 percent; and

(2) The property tax component for each county is:

COUNTY	PERCENT	COUNTY	PERCENT
Adams	<del>((1.22))</del> <u>1.24</u>	Lewis	1.09
Asotin	<del>((1.02))</del> <u>1.07</u>	Lincoln	<del>((1.09))</del> <u>1.15</u>
Benton	<del>((1.09))</del> <u>1.15</u>	Mason	<del>((1.05))</del> <u>1.15</u>
Chelan	<del>((0.98))</del> <u>0.99</u>	Okanogan	<del>((1.08))</del> <u>1.15</u>
Clallam	<del>((0.96))</del> <u>1.01</u>	Pacific	1.20
Clark	<del>((1.01))</del> <u>1.08</u>	Pend Oreille	<del>((0.96))</del> <u>1.01</u>
Columbia	<del>((1.18))</del> <u>1.19</u>	Pierce	<del>((1.19))</del> <u>1.27</u>
Cowlitz	1.05	San Juan	0.73
Douglas	<del>((1.02))</del> <u>1.09</u>	Skagit	<del>((1.00))</del> <u>1.08</u>
Ferry	<del>((0.98))</del> <u>1.02</u>	Skamania	<del>((0.98))</del> <u>1.07</u>
Franklin	<del>((0.98))</del> <u>0.99</u>	Snohomish	<del>((1.01))</del> <u>1.03</u>
Garfield	<del>((0.90))</del> <u>1.02</u>	Spokane	<del>((1.17))</del> <u>1.21</u>
Grant	<del>((1.12))</del> <u>1.15</u>	Stevens	<del>((0.96))</del> <u>0.95</u>
Grays Harbor	<del>((1.17))</del> <u>1.22</u>	Thurston	<del>((1.14))</del> <u>1.26</u>
Island	<del>((0.88))</del> <u>0.90</u>	Wahkiakum	<del>((0.78))</del> <u>0.82</u>
Jefferson	<del>((0.96))</del> <u>1.00</u>	Walla Walla	<del>((1.15))</del> <u>1.24</u>
King	<del>((0.96))</del> <u>0.99</u>	Whatcom	<del>((1.01))</del> <u>1.05</u>
Kitsap	<del>((1.01))</del> <u>1.03</u>	Whitman	<del>((1.33))</del> <u>1.41</u>
Kittitas	<del>((0.92))</del> <u>0.90</u>	Yakima	<del>((1.11))</del> <u>1.20</u>
Klickitat	<del>((0.94))</del> <u>1.01</u>		

AMENDATORY SECTION (Amending WSR 20-02-056, filed 12/24/19, effective 1/1/20)

WAC 458-30-590 Rate of inflation—Publication—Interest rate—Calculation. (1) Introduction. This rule provides the rates of inflation discussed in RCW 84.34.330 and WAC 458-30-550 Exemption—Removal or withdrawal. It also explains the department of revenue's (department) obligation to annually publish a rate of inflation and the manner in which this rate is determined.

(2) General duty of department - Basis for inflation rate. Each year the department determines and publishes a rule establishing an annual rate of inflation. This rate of inflation is used in computing the interest that is assessed when farm and agricultural or timber land, which are exempt from special benefit assessments, is withdrawn or removed from current use classification.

(a) The rate of inflation is based on the implicit price deflator for personal consumption expenditures calculated by the United States Department of Commerce. This rate is used to calculate the rate of interest collected on exempt special benefit assessments.

(b) The rate is published by December 31st of each year and applies to all withdrawals or removals from the farm and agricultural or timber land classifications that occur the following year.

(3) Assessment of rate of interest. An owner of classified farm and agricultural or timber land is liable for interest on the exempt special benefit assessment. Interest accrues from the date the local improvement district is created until the land is withdrawn or removed from classification. Interest accrues and is assessed in accordance with WAC 458-30-550.

(a) Interest is assessed only for the time (years and months) the land remains classified under RCW 84.34.020 (2) or (3).

(b) If the classified land is exempt from the special benefit assessment for more than one year, the annual inflation rates are used to calculate an average rate of interest. This average is determined by adding the inflation rate for each year the classified land was exempt from the special benefit assessment after the local improvement district was created. The sum of the inflation rates is then divided by the number of years involved to determine the applicable rate of interest.

(c) Example. A local improvement district for a domestic water supply system was created in January ((1990)) 2010 and the owner used the statutory exemption provided in RCW 84.34.320. On July 1, ((1997)) 2017, the land was removed from the farm and agricultural classification. An average interest rate was calculated using the inflation rates for ((1990)) 2010 through ((1997)) 2017. The owner was then notified of the amount of previously exempt special benefit assessment, plus the average interest rate.

(4) Rates of inflation. The rates of inflation used to calculate the interest as required by WAC 458-30-550 are as follows:

YEAR	PERCENT	YEAR	PERCENT
1976	5.6	1977	6.5
1978	7.6	1979	11.3

YEAR	PERCENT	YEAR	PERCENT
1980	13.5	1981	10.3
1982	6.2	1983	3.2
1984	4.3	1985	3.5
1986	1.9	1987	3.7
1988	4.1	1989	4.8
1990	5.4	1991	4.2
1992	3.3	1993	2.7
1994	2.2	1995	2.3
1996	2.2	1997	2.1
1998	0.85	1999	1.42
2000	2.61	2001	1.89
2002	1.16	2003	1.84
2004	2.39	2005	2.54
2006	3.42	2007	2.08
2008	4.527	2009	-0.85 (negative)
2010	1.539	2011	2.755
2012	1.295	2013	1.314
2014	1.591	2015	0.251
2016	0.953	2017	1.553
2018	2.169	2019	1.396
<u>2020</u>	<u>0.602</u>		

WSR 21-01-214 PERMANENT RULES DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed December 23, 2020, 10:51 a.m., effective January 23, 2021]

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

Purpose: WAC 246-817-601 through 246-817-660, dental infection control requirements. The dental quality assurance commission (commission) adopted rule amendments and new sections to incorporate many of the Centers for Disease Control and Prevention (CDC) recommendations for dental infection control standards to ensure patient safety including: (1) Written policies and procedures with annual staff training; (2) sterilization of low-speed hand piece motors; (3) sterilization of single use items when appropriate; (4) storage and wrapped packages, container, or cassette requirements; (5) identification of appropriate disinfectants; (6) high volume evacuation; and (7) water line testing.

The commission evaluated the CDC Guidelines for Infection Control in Dental Health-Care Settings - 2003 and the 2016 Summary of Infection Prevention Practices in Dental Setting - Basic Expectation for Safe Care guidelines as the basis for the adopted amendments and new sections. Case reports and public health events regarding the transmission of diseases from patient to patient, dental health care provider to patient, and patient to dental health care provider have been published that demonstrate risk that was either unrecognized

in the past or new. A CNN October 11, 2016, article reported a pediatric dental office in California in 2016 had a plumbing change that created a dead end. Thirty children became severely ill due to *Mycobacterium abscessum*, out of several hundred patients treated that had been exposed. It was traced to that office and a biofilm in a pipe. Two children were permanently and severely injured. The evidence that biofilms were a hazard had been present for many years but the direct causation is difficult because there is often long latency. A strong educational component is necessary to prevent disease transmission.

These rule amendments are necessary to ensure the safety of the citizens of Washington. Bacteria resistant to all antibiotics and persistent on surfaces or skin are becoming more common and more dangerous. The adopted rule amendments and new sections are based on science, research, and best industry practice. As of 2019, thirty state dental boards already require that dental health care providers follow the CDC guidelines, it is reasonable for Washington state licensed dentists and dental health care providers to follow these well-tested guidelines for infection control and prevention in the dental practice setting.

A petition for rule making was received on July 5, 2016, requesting sterilizations of low-speed hand piece motors in WAC 246-817-620. The commission evaluated the request and determined the petition for rule-making recommendation would be considered during the collaborative rule-making process already in process. Sterilization of low-speed hand piece motors is included in the adopted rule.

Citation of Rules Affected by this Order: New WAC 246-817-615, 246-817-625, 246-817-635, 246-817-640, 246-817-645, 246-817-650, 246-817-655 and 246-817-660; repealing WAC 246-817-620 and 246-817-630; and amending WAC 246-817-601 and 246-817-610.

Statutory Authority for Adoption: RCW 18.32.002 and 18.32.0365.

Adopted under notice filed as WSR 20-18-031 on August 27, 2020.

A final cost-benefit analysis is available by contacting Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504, phone 360-236-4893, fax 360-236-2901, TTY 711, email jennifer.santiago@doh.wa.gov, website www.doh.wa.gov/dental, dental@doh.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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 8, Amended 2, 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 8, Amended 2, Repealed 2.

Date Adopted: October 23, 2020.

Aaron Stevens, DMD, Chairperson  
Dental Quality Assurance Commission

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

**WAC 246-817-601 Purpose.** The purpose of WAC 246-817-601 through ~~((246-817-630))~~ 246-817-660 is to establish requirements for infection control ~~((in dental offices))~~ where dentistry is provided in the state of Washington to protect the health and well-being of the people ~~((of the state of Washington. For purposes of infection control, all dental staff members and all patients shall be considered potential carriers of communicable diseases. Infection control procedures are required to prevent disease transmission from patient to doctor and staff, doctor and staff to patient, and from patient to patient. Every dentist is required to comply with the applicable standard of care in effect at the time of treatment. At a minimum, the dentist must comply with the requirements defined in WAC 246-817-620 and 246-817-630)).~~ The Centers for Disease Control and Prevention *Guidelines for Infection Control in Dental Health-Care Settings* 2003, MMWR Vol. 52, No. RR-17, and the *Summary of Infection Prevention Practices in Dental Settings: Basic Expectations for Safe Care*, March 2016, are the basis for these rules. Case reports and public health events regarding the transmission of diseases from patient to patient, practitioner to patient, and patient to practitioner have been published that demonstrate risks that were either unrecognized in the past or new. This includes people accompanying patients and visitors. A strong educational component for practitioners is necessary to prevent disease transmission from patient to practitioner, practitioner to patient, and patient to patient.

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

**WAC 246-817-610 Definitions.** The following definitions ~~((pertain to))~~ apply throughout WAC 246-817-601 through 246-817-660 ~~((which supersede WAC 246-816-701 through 246-816-740 which became effective May 15, 1992.~~

**"Communicable diseases"** means an illness caused by an infectious agent which can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission via an intermediate host or vector, food, water or air.

**"Decontamination"** means the use of physical or chemical means to remove, inactivate, or destroy bloodborne pathogens on a surface or item to the point where they are no longer capable of transmitting infectious particles and the surface or item is rendered safe for handling, use, or disposal.

**"Direct care staff"** are the dental staff who directly provide dental care to patients.

**"Sterilize"** means the use of a physical or chemical procedure to destroy all microbial life including highly resistant bacterial endospores) unless the context clearly requires otherwise.

(1) "Hand hygiene" means the use of soap and water when hands are visibly soiled; or use of an alcohol-based hand rub.

(2) "Practitioner" means a licensed dentist under chapter 18.32 RCW, licensed dental hygienist under chapter 18.29 RCW, a licensed expanded function dental auxiliary under chapter 18.260 RCW, a certified dental anesthesia assistant, or a registered dental assistant under chapter 18.260 RCW.

(3) "The Centers for Disease Control and Prevention" or "CDC" means a federal agency that conducts and supports health promotion, prevention and preparedness activities in the United States.

#### NEW SECTION

**WAC 246-817-615 Administrative, education, and training.** (1) A licensed dentist shall develop and maintain written infection prevention policies and procedures appropriate for the dental services provided by the facility.

(2) A licensed dentist shall review with all practitioners the current office infection prevention policies and procedures annually. A licensed dentist shall maintain documentation of the annual review with all practitioners for five years.

(3) A practitioner shall complete one hour of current infection prevention standards education annually provided by a qualified individual or organization.

(4) Infection prevention standards education must include:

- (a) Standard precautions and prevention of disease transmission;
- (b) Prevention of cross-contamination;
- (c) Practitioner safety and personal protection equipment;
- (d) Hand hygiene;
- (e) Respiratory hygiene and cough etiquette;
- (f) Sharps safety and safe injection practices;
- (g) Sterilization and disinfection of patient care items and devices;
- (h) Environmental infection prevention and control;
- (i) Dental unit water quality; and
- (j) The requirements in WAC 246-817-601 through 246-817-660.

(5) A practitioner shall maintain their personal documentation of infection control prevention standards education for a period of five years.

(6) For the purposes of this section, a qualified individual or organization means a person or entity that has verifiable training, expertise, or experience in all aspects of infection control.

#### NEW SECTION

**WAC 246-817-625 Personnel safety.** A practitioner shall comply with the applicable requirements of the Washington Industrial Safety and Health Act under chapter 49.17 RCW.

#### NEW SECTION

**WAC 246-817-635 Hand hygiene.** A practitioner shall perform hand hygiene as defined in WAC 246-817-610 in any of these situations:

- (1) When hands are visibly soiled;

(2) In the event of barehanded touching of instruments, equipment, materials, and other objects likely to be contaminated by blood, saliva, or respiratory secretions; or

- (3) Before and after treating each patient.

#### NEW SECTION

##### **WAC 246-817-640 Personal protective equipment.**

(1) A practitioner shall wear gloves whenever there is a potential for contact with blood, body fluids, mucous membranes, nonintact skin, or contaminated equipment.

- (a) New gloves are required for each patient.

- (b) Gloves must not be washed or reused.

(c) Gloves selection must be based on the performance characteristics of the glove in relation to the task to be performed as applicable in WAC 296-800-16065 and 296-823-15010.

(2) A practitioner shall wear mouth, nose, and eye protection during procedures that are likely to generate aerosols or splashes or splattering of blood or other body fluids.

(3) A practitioner shall comply with Washington state occupational exposure to bloodborne pathogens WAC 296-823-150.

#### NEW SECTION

##### **WAC 246-817-645 Respiratory hygiene and cough etiquette.**

(1) A licensed dentist shall post signs in a place visible to individuals receiving services in the premises with instructions to patients with symptoms of respiratory infection to:

- (a) Cover their mouth/nose when coughing or sneezing;
- (b) Use and dispose of tissues;
- (c) Perform hand hygiene after hands have been in contact with respiratory secretions.

(2) A licensed dentist shall provide tissues and no-touch receptacles for disposal of tissues in the dental office.

(3) A licensed dentist shall offer masks to coughing patients and accompanying individuals in the dental office.

#### NEW SECTION

##### **WAC 246-817-650 Safe injection and sharps safety.**

(1) A practitioner shall follow the CDC *Summary of Infection Prevention Practices in Dental Settings: Basic Expectations for Safe Care*, March 2016, guidelines for safe injection practices in dental settings.

(2) A practitioner shall use either a one-handed scoop technique or mechanical device designed for holding the needle cap when recapping needles. A practitioner shall not recap used needles by using both hands or any other technique that involves directing the point of a needle toward any part of the body.

(3) A practitioner shall place used disposable syringes and needles, scalpel blades, and other sharp items in appropriate puncture-resistant containers in each operatory.

NEW SECTION

**WAC 246-817-655 Sterilization and disinfection, environmental infection prevention and control.** A practitioner shall:

(1) Follow the CDC *Guidelines for Infection Control in Dental Health-Care Settings* 2003, MMWR Vol. 52, No. RR-17, Appendix C for Methods for Sterilizing and Disinfecting Patient-Care Items and Environmental Surfaces, including:

(a) Clean and reprocess through disinfection or sterilization reusable critical, semicritical, and noncritical dental equipment and devices according to manufacturer instructions before use on another patient.

(i) Effective August 31, 2022, sterilization of low-speed hand piece motors after use on a patient is required.

(ii) Sterilization is not required for those sections of a battery operated hand piece system that cannot be sterilized according to manufacturer's instructions. However, battery operated hand piece systems that have specific engineering controls to isolate the sections that cannot be sterilized, render those sections "noncritical," must be used if commercially available; those sections that cannot be sterilized must be processed according to manufacturer's instructions between patient uses.

(b) Clean and reprocess through disinfection or sterilization reusable critical, semicritical, and noncritical dental equipment and devices according to manufacturer instructions.

(c) Clean and reprocess reusable dental equipment according to the manufacturer instructions.

(d) All disposable and single-use items, as labeled by the United State Food and Drug Administration, must be discarded after use on a single patient.

(i) Single-use items that need to be tested for size are not considered used unless cemented in the mouth. Single-use items can be cleaned or reprocessed (disinfected or sterilized) when following manufacturer's instructions.

(ii) If a single-use item is not used, but is contaminated or exposed to aerosols during the appointment by being placed on a surface ready to use, it may only be sterilized if the process of doing so does not compromise the efficacy of the item including, but not limited to, anesthetic carpules.

(2) Bag or wrap contaminated instruments in packages, containers, or cassettes in preparation for sterilization.

(a) Store sterile instruments and supplies in a covered or closed area.

(b) Wrapped packages, containers, or cassettes of sterilized instruments must be inspected before opening and use to ensure the packaging material has not been compromised.

(c) Wrapped packages, containers, or cassettes of sterilized instruments must be opened as close to the time of the procedure as possible. Opening in the presence of the patient is preferred.

(d) Instruments sterilized for immediate use do not mandate the use of a bag or a wrap. If the instrument is not used immediately, it must be bagged or wrapped.

(3) Use all mechanical, chemical, and biological monitors according to manufacturer instructions to ensure the effectiveness of the sterilization process.

(4) Test sterilizers by biological spore test method as recommended by the manufacturer on at least a weekly basis when scheduled patients are treated.

(a) In the event of a positive biological spore test, the licensed dentist shall take immediate remedial action as recommended by the manufacturer.

(b) A licensed dentist shall record biological spore tests and results either in the form of a log reflecting dates and person or persons conducting the testing or copies of reports from an independent testing entity. A licensed dentist shall maintain this documentation for a period of five years.

(5) Thoroughly rinse items such as impressions contaminated with blood or saliva. Place and transport items such as impressions to a dental laboratory off-site in a case containment device that is sealed and labeled.

(6) Disinfect all work surfaces after each patient.

(7) Disinfect using an intermediate-level disinfectant having, but not limited to, a tuberculocidal claim, when a surface is visibly contaminated with blood.

(8) Use only United States Environmental Protection Agency registered disinfectants or detergents/disinfectants with label claims for use in health care setting, following the manufacturer's instructions.

(9) Use high volume evacuation (HVE) whenever possible in all clinical situations expected to produce aerosol or spatter, such as, but not limited to, ultrasonics, high-speed hand pieces and air polishing devices. HVE equipment must be installed and maintained to manufacturer's specifications to ensure proper evacuation at the treatment site. HVE devices must be used as intended for HVE. A saliva ejector does not qualify as an HVE device.

(10) The following definitions apply to WAC 246-817-655.

(a) "Critical," "semicritical," and "noncritical" means categories given to patient care items including, but not limited to, dental instruments, devices, and equipment depending on the potential risk of infection associated with intended use.

(i) "Critical items" means those items used to penetrate soft tissue, contact bone, enter into or contact the bloodstream or other normally sterile tissue. Critical items must be sterilized by heat.

(ii) "Noncritical items" means those items used to contact intact skin. Noncritical items must be disinfected with United States Environmental Protection Agency registered hospital disinfectant or detergent.

(iii) "Semicritical items" means those items used to contact mucous membranes or noncontact skin. Semicritical items must be sterilized by heat if heat-tolerant, or by high-level disinfection if a semicritical item is heat-sensitive.

(b) "Disinfect" or "disinfection" means use of a chemical agent on inanimate objects, such as floors, walls, or sinks, to destroy virtually all recognized pathogenic microorganisms, but not necessarily all microbial forms such as bacterial endospores.

(c) "High-level disinfection" means disinfection that inactivates vegetative bacteria, mycobacteria, fungi, and viruses but not necessarily high numbers of bacterial spores.

(d) "High volume evacuation" or "HVE" means the equipment used to remove debris, aerosols, and liquids.

(e) "Remedial action" means manufacturer recommended action necessary to obtain a negative spore test result.

(f) "Sterilize" or "sterilization" means the use of heat, chemical, or other nonchemical procedure to destroy all microorganisms.

#### NEW SECTION

**WAC 246-817-660 Dental unit water quality.** (1) A licensed dentist shall use water for nonsurgical procedures that meets United States Environmental Protection Agency regulatory standards for drinking water of five hundred or less colony-forming units or CFUs/mL.

(2) A licensed dentist shall follow dental equipment manufacturer's instructions when testing the water delivery system for acceptable water quality. If manufacturer's instructions are unavailable, a licensed dentist shall test the water delivery system for acceptable water quality quarterly. A licensed dentist shall test the water delivery system five to ten days after repair or changes in the plumbing system and again at twenty-one to twenty-eight days later.

(a) Effective December 1, 2021, all water lines must be tested.

(i) All water lines for each operatory or dental unit can be pooled as one single sample.

(A) A pooled sample must use an equal amount of water from each water line.

(B) A pooled sample can have up to ten water lines included.

(C) The number of water lines pooled into one sample must be documented.

(ii) All water lines for each operatory or dental unit can be tested individually.

(b) In the event of an unacceptable level of colony-forming units or CFUs, a licensed dentist shall take immediate remedial action. For the purposes of this section, remedial action means any action necessary to reduce the CFUs to five hundred or a lesser number currently recognized by the United States Environmental Protection Agency as acceptable for drinking water.

(c) A licensed dentist shall record the water delivery system testing and maintenance either in the form of a log reflecting dates and person or persons conducting the test or maintenance or copies of reports from an independent testing entity. A licensed dentist shall maintain this documentation for a period of five years.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-817-620 Use of barriers and sterilization techniques.

WAC 246-817-630 Management of single use items.

### WSR 21-01-215 PERMANENT RULES DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed December 23, 2020, 11:10 a.m., effective January 23, 2021]

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

Purpose: Chapter 246-817 WAC, Dental quality assurance commission, the adopted amendments repeal AIDS education and training requirements from dental registration, certification and licensure rules to implement ESHB 1551 (chapter 76, Laws of 2020). ESHB 1551 repealed AIDS education and training requirements for health professionals obtaining registration, certification, and licensure to reduce stigma towards people living with HIV/AIDS.

The rule subsections include WAC 246-817-010 Definitions (two definitions), 246-817-110(6) Dental licensure—Initial eligibility and application requirements, 246-817-135(6) Dental licensure without examination—Eligibility and application requirements, 246-817-190(3) Dental assistant registration, 246-817-195(6) Licensure requirements for expanded function dental auxiliaries (EFDAs), 246-817-200(4) Licensure without examination for expanded function dental auxiliary (EFDA), 246-817-205 (3)(e) Dental anesthesia assistant certification requirements, and 246-817-220 (5)(h) Inactive license.

Citation of Rules Affected by this Order: Amending WAC 246-817-010, 246-817-110, 246-817-135, 246-817-190, 246-817-195, 246-817-200, 246-817-205, and 246-817-220.

Statutory Authority for Adoption: RCW 18.32.002 and 18.32.0365.

Other Authority: ESHB 1551 repeal of RCW 70.24.270.

Adopted under notice filed as WSR 20-17-036 on August 10, 2020.

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 8, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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 8, Repealed 0.

Date Adopted: October 23, 2020.

Aaron Stevens, DMD, Chairperson  
Dental Quality Assurance Commission

AMENDATORY SECTION (Amending WSR 08-23-019, filed 11/6/08, effective 12/7/08)

**WAC 246-817-010 Definitions.** The following general terms are defined within the context used in this chapter.

~~("Acquired immunodeficiency syndrome" or "AIDS" means the clinical syndrome of HIV-related illness as defined by the board of health by rule.)~~

"Clinics" are locations situated away from the School of Dentistry on the University of Washington campus, as recommended by the dean in writing and approved by the DQAC.

"CITA" means Council of Interstate Testing Agencies, a regional dental testing agency that provides clinical dental testing services.

"CRDTS" means Central Regional Dental Testing Services, a regional testing agency that provides clinical dental testing services.

"Department" means the department of health.

"DQAC" means the dental quality assurance commission as established by RCW 18.32.0351.

"Facility" is defined as the building housing the School of Dentistry on the University of Washington campus, and other buildings, designated by the dean of the dental school and approved by the DQAC.

"NERB" means the Northeast Regional Board, a regional testing agency that provides clinical dental testing services.

~~("Office on AIDS" means that section within the department of health or any successor department with jurisdiction over public health matters as defined in chapter 70.24 RCW.)~~

"Secretary" means the secretary of the department of health or the secretary's designee.

"SRTA" means the Southern Regional Testing Agency, a regional testing agency that provides clinical dental testing services.

"WREB" means the Western Regional Examining Board, a national testing agency that provides clinical dental testing services.

AMENDATORY SECTION (Amending WSR 19-15-094, filed 7/22/19, effective 8/22/19)

**WAC 246-817-110 Dental licensure—Initial eligibility and application requirements.** To be eligible for Washington state dental licensure, the applicant must provide:

(1) A completed application and fee. The applicant must submit a signed application and required fee as defined in WAC 246-817-990;

(2) Proof of graduation from a dental school approved by the DQAC:

(a) DQAC recognizes only those applicants who are students or graduates of dental schools in the United States or Canada, approved, conditionally or provisionally, by the Commission on Dental Accreditation of the American Dental Association. The applicant must have received, or will receive, a Doctor of Dental Surgery (DDS) or Doctor of Dental Medicine (DMD) degree from that school;

(b) Other dental schools which apply for DQAC approval and which meet these adopted standards to the DQAC's satisfaction may be approved, but it is the responsibility of a school to apply for approval and of a student to ascertain whether or not a school has been approved;

(3) Proof of successful completion of the Integrated National Board Dental Examination, Parts I and II of the National Board Dental Examination, or the Canadian National Dental Examining Board Examination. An original scorecard or a certified copy of the scorecard shall be accepted. Exception: Dentists who obtained initial licensure in a state prior to that state's requirement for successful completion of the national boards, may be licensed in Washington, provided that the applicant provide proof that their original state of licensure did not require passage of the national boards at the time they were initially licensed. Applicants need to meet all other requirements for licensure;

(4) Proof of graduation from an approved dental school. The only acceptable proof is an official, posted transcript sent directly from such school, or in the case of recent graduates, a verified list of graduating students submitted directly from the dean of the dental school. Graduates of nonaccredited dental schools must also meet the requirements outlined in WAC 246-817-160;

(5) A complete listing of professional education and experience including college or university (pre dental), and a complete chronology of practice history from the date of dental school graduation to present, whether or not engaged in activities related to dentistry;

~~(6) ((Proof of completion of seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8;~~

~~(7))~~ Proof of malpractice insurance if available, including dates of coverage and any claims history;

~~((8))~~ (7) Written certification of any licenses held, submitted directly from another licensing entity, and including license number, issue date, expiration date and whether applicant has been the subject of final or pending disciplinary action;

~~((9))~~ (8) Proof of successful completion of:

(a) An approved practical/clinical examination under WAC 246-817-120; or

(b) A qualifying residency program under RCW 18.32.-040 (3)(c);

~~((10))~~ (9) Proof of successful completion of an approved written jurisprudence examination;

~~((11))~~ (10) A recent 2" x 2" photograph, signed, dated, and attached to the application;

~~((12))~~ (11) Authorization for background inquiries to other sources may be conducted as determined by the DQAC including, but not limited to, the national practitioner data bank and drug enforcement agency. Applicants are responsible for any fees incurred in obtaining verification of requirements;

~~((13))~~ (12) Any other information for each license type as determined by the DQAC.

AMENDATORY SECTION (Amending WSR 16-16-039, filed 7/26/16, effective 8/26/16)

**WAC 246-817-135 Dental licensure without examination—Eligibility and application requirements.** For individuals holding a dentist credential in another U.S. state or territory, to be eligible for Washington state dental license without examination, the applicant must provide:

(1) A completed application on forms provided by the secretary;

(2) Applicable fees under WAC 246-817-990;

(3) A verification by a U.S. state or territory board of dentistry (or equivalent authority) of an active credential to practice dentistry, without restrictions, and whether the applicant has been the subject of final or pending disciplinary action;

(4) Proof of graduation from an approved dental school under WAC 246-817-110 (2)(a):

(a) The only acceptable proof is an official, posted transcript sent directly from such school;

(b) Graduates of nonapproved dental schools must meet the requirements under RCW 18.32.215 (1)(b).

(5) Proof that the applicant is currently engaged in the practice of dentistry:

(a) Dentists serving in the United States federal services as described in RCW 18.32.030(2) must provide documentation from their commanding officer regarding length of service, duties and responsibilities, and any adverse actions or restrictions;

(b) Dentists employed by a dental school approved under WAC 246-817-110 (2)(a) must provide documentation from the dean or appropriate administrator of the institution regarding the length and terms of employment, duties and responsibilities, and any adverse actions or restrictions;

(c) Dentists in a dental residency program must provide documentation from the director or appropriate administrator of the residency program regarding length of residency, duties and responsibilities, and any adverse actions or restrictions; or

(d) Dentists practicing dentistry for a minimum of twenty hours per week for the four consecutive years preceding application, in another U.S. state or territory must provide:

(i) Address of practice location(s);

(ii) Length of time at the location(s);

(iii) A letter from all malpractice insurance carrier(s) defining years when insured and any claims history;

(iv) Federal or state tax numbers; and

(v) DEA numbers if any.

(6) ~~(Proof of seven clock hours of AIDS education and training as required by chapter 246-12 WAC, Part 8;~~

~~(7))~~ Proof of successful completion of a commission approved written jurisprudence examination;

~~((8))~~ (7) A recent 2" x 2" photograph, signed, dated, and attached to the application; and

~~((9))~~ (8) Authorization for background inquiries to other sources may include, but are not limited to, the national practitioner data bank and drug enforcement agency.

AMENDATORY SECTION (Amending WSR 08-14-010, filed 6/19/08, effective 7/1/08)

**WAC 246-817-190 Dental assistant registration.** To be eligible for registration as a dental assistant you must:

(1) Provide a completed application on forms provided by the secretary;

(2) Pay applicable fees as defined in WAC 246-817-99005; and

~~(3) ((Provide evidence of completion of seven clock hours of AIDS education and training as required by chapter 246-12 WAC Part 8; and~~

~~(4))~~ Provide any other information determined by the secretary.

AMENDATORY SECTION (Amending WSR 08-14-010, filed 6/19/08, effective 7/1/08)

**WAC 246-817-195 Licensure requirements for expanded function dental auxiliaries (EFDAs).** To be eligible for licensure as an EFDA in Washington an applicant must:

(1) Provide a completed application on forms provided by the secretary;

(2) Pay applicable fees as defined in WAC 246-817-99005;

(3) Provide evidence of:

(a) Completion of a dental assisting education program accredited by the Commission on Dental Accreditation (CODA); or

(b) Obtain the Dental Assisting National Board (DANB) certified dental assistant credential, earned through pathway II, which includes:

(i) A minimum of three thousand five hundred hours of experience as a dental assistant within a continuous twenty-four through forty-eight month period;

(ii) Employer-verified knowledge in areas as specified by DANB;

(iii) Passage of DANB certified dental assistant examination; and

(iv) An additional dental assisting review course, which may be provided online, in person or through self-study; or

(c) A Washington limited license to practice dental hygiene; or

(d) A Washington full dental hygiene license and completion of a course in taking final impressions affiliated with or provided by a CODA accredited dental assisting program, dental hygiene school or dental school.

(4) Except for applicants qualified under subsection (3)(d) of this section, provide evidence of completing an EFDA education program approved by the commission where training includes:

(a) In a didactic, clinical and laboratory model to the clinically competent level required for close supervision:

(i) In placing and finishing composite restorations on a typodont and on clinical patients; and

(ii) In placing and finishing amalgam restorations on a typodont and on clinical patients; and

(iii) In taking final impressions on a typodont; and

(b) In a didactic, clinical and laboratory model to the clinically competent level required for general supervision:

(i) In performing coronal polish, fluoride treatment, and sealants on a typodont and on clinical patients; and

(ii) In providing patient oral health instructions; and

(iii) In placing, exposing, processing, and mounting dental radiographs; and

(c) The basic curriculum shall require didactic, laboratory, and clinical competency for the following:

(i) Tooth morphology and anatomy;

(ii) Health and safety (current knowledge in dental materials, infection control, ergonomics, mercury safety, handling);

(iii) Placement and completion of an acceptable quality reproduction of restored tooth surfaces—Laboratory and clinic only;

(iv) Radiographs (covered in path II)—Laboratory and clinic only;

(v) Ethics and professional knowledge of law as it pertains to dentistry, dental hygiene, dental assisting, and EFDA;

(vi) Current practices in infection control;

(vii) Health history alerts;

(viii) Final impression;

(ix) Matrix and wedge;

(x) Rubber dam;

(xi) Acid etch and bonding;

(xii) Occlusion and bite registration;

(xiii) Temporary restorations;

(xiv) Dental emergencies;

(xv) Risk management and charting;

(xvi) Intra-oral anatomy;

(xvii) Pharmacology; and

(xviii) Bases, cements, liners and sealers.

(5) Except for applicants qualified under subsection (3)(d) of this section, attain a passing score on:

(a) A written restorations examination approved by the commission; and

(b) A clinical restorations examination approved by the commission.

(6) ~~((Provide evidence of completion of seven clock hours of AIDS education and training as required by chapter 246-12 WAC Part 8.~~

(7)) Provide any other information determined by the secretary.

AMENDATORY SECTION (Amending WSR 08-14-010, filed 6/19/08, effective 7/1/08)

**WAC 246-817-200 Licensure without examination for expanded function dental auxiliary (EFDA).** To be eligible for a license as an EFDA without examination you must:

(1) Provide a completed application on forms provided by the secretary;

(2) Pay applicable fees as defined in WAC 246-817-990;

(3) Provide evidence of:

(a) A current license in another state with substantially equivalent licensing standards as determined by the commission; or

(b) A Washington full dental hygiene license and completion of a course in taking final impressions affiliated with or provided by a CODA accredited dental assisting program, dental hygiene school or dental school((-)); and

(4) ~~((Provide evidence of completion of seven clock hours of AIDS education and training as required by chapter 246-12 WAC Part 8; and~~

(5)) Provide any other information determined by the secretary.

AMENDATORY SECTION (Amending WSR 13-15-144, filed 7/23/13, effective 8/23/13)

**WAC 246-817-205 Dental anesthesia assistant certification requirements.** An applicant for certification as a dental anesthesia assistant must submit to the department:

(1) A completed application on forms provided by the secretary;

(2) Applicable fees as defined in WAC 246-817-99005;

(3) Evidence of:

(a) Completion of a commission approved dental anesthesia assistant education and training. Approved education and training includes:

(i) Completion of the "Dental Anesthesia Assistant National Certification Examination (DAANCE)" or predecessor program, provided by the American Association of Oral and Maxillofacial Surgeons (AAOMS); or

(ii) Completion of the "Oral and Maxillofacial Surgery Assistants Course" course provided by the California Association of Oral and Maxillofacial Surgeons (CALAOMS); or

(iii) Completion of substantially equivalent education and training approved by the commission.

(b) Completion of training in intravenous access or phlebotomy. Training must include:

(i) Eight hours of didactic training that must include:

(A) Intravenous access;

(B) Anatomy;

(C) Technique;

(D) Risks and complications; and

(ii) Hands on experience starting and maintaining intravenous lines with at least ten successful intravenous starts on a human or simulator/manikin; or

(iii) Completion of substantially equivalent education and training approved by the commission;

(c) A current and valid certification for health care provider basic life support (BLS), advanced cardiac life support (ACLS), or pediatric advanced life support (PALS);

(d) A valid Washington state general anesthesia permit of the oral and maxillofacial surgeon or dental anesthesiologist where the dental anesthesia assistant will be performing his or her services(;

~~(e) Completion of seven clock hours of AIDS education and training as required by chapter 246-12 WAC, Part 8); and~~

(4) Any other information determined by the commission.

AMENDATORY SECTION (Amending WSR 18-01-106, filed 12/19/17, effective 1/19/18)

**WAC 246-817-220 Inactive license.** (1) A dentist may obtain an inactive license by meeting the requirements of WAC 246-12-090 and RCW 18.32.185.

(2) An inactive license must be renewed every year on or before the practitioner's birthday according to WAC 246-12-100 and 246-817-990.

(3) If a license is inactive for three years or less, to return to active status a dentist must meet the requirements of WAC 246-12-110, 246-817-440, and 246-817-990.

(4) If a license is inactive for more than three years, and the dentist has been actively practicing in another United States jurisdiction, to return to active status the dentist must:

(a) Provide certification of an active dentist license, submitted directly from another licensing entity. The certification shall include the license number, issue date, expiration date and whether the applicant has been the subject of final or pending disciplinary action;

(b) Provide verification of active practice in another United States jurisdiction within the last three years; and

(c) Meet the requirements of WAC 246-12-110, 246-817-440, and 246-817-990.

(5) If a license is inactive for more than three years, and the dentist has not been actively practicing in another United States jurisdiction, to return to active status the dentist must provide:

(a) A written request to change licensure status;

(b) The applicable fees according to WAC 246-817-990;

(c) Proof of successful completion of:

(i) An approved practical/practice examination under WAC 246-817-120; or

(ii) A qualifying residency program under RCW 18.32.-040 (3)(c);

(d) Written certification of all dental or health care licenses held, submitted directly from the licensing entity. The certification shall include the license number, issue date, expiration date and whether the applicant has been the subject of final or pending disciplinary action;

(e) Written declaration that continuing education and competency requirements for the two most recent years have been met according to WAC 246-817-440;

(f) Proof of successful completion of an approved written jurisprudence examination within the past year; and

(g) Proof of malpractice insurance if available, including dates of coverage and any claims history(;

(h) Proof of AIDS education according to WAC 246-817-110, if not previously provided).

### WSR 21-01-216

#### PERMANENT RULES DEPARTMENT OF

#### FISH AND WILDLIFE

[Order 20-264—Filed December 23, 2020, 11:10 a.m., effective multiple dates]

Effective Date of Rule: **Effective January 23, 2021:** WAC 220-460-010, 220-460-030, 220-460-040, 220-460-050, 220-460-060, 220-460-070, 220-460-080, 220-460-090, 220-460-100, 220-460-110, 220-460-120, 220-460-130, 220-460-150, and 220-460-160. **Effective March 1, 2021:** WAC 220-460-020. **Effective May 1, 2021:** WAC 220-460-140.

Purpose: The purpose of the rule is to reduce the daily and cumulative impacts of commercial whale watching on southern resident orca whales and consider the economic viability of license holders. This rule creates and populates new chapter 220-460 WAC that defines commercial whale watching licensing processes and rules for holders of commercial whale watching licenses.

Citation of Rules Affected by this Order: New WAC 220-460-010, 220-460-020, 220-460-030, 220-360-040, 220-360-050, 220-360-060, 220-360-070, 220-360-080, 220-460-090, 220-460-100, 220-360-110, 220-460-120, 220-460-130, 220-460-140, 220-460-150, and 220-460-160.

Statutory Authority for Adoption: RCW 77.12.047, 77.65.615, 77.65.620, 77.15.020, 77.15.160, 77.04.012, 77.04.55 [74.05.055].

Adopted under notice filed as WSR 20-21-111 on October 21, 2020.

Changes Other than Editing from Proposed to Adopted Version: Two options (A and B) were put forward in the proposed rule. The final rule adopts Option A with the following revisions:

- Added a subsection (10) to WAC 220-460-010 defining "Inland waters of Washington."
- Removed "—Exception" from the title of WAC 220-460-020.
- Removed from WAC 220-460-020(1): "(Note: This provision will go into effect February 1, 2021)."
- Changed the title of WAC 220-460-090 from [""]Commercial whale watching general provisions" to "Commercial whale watching of southern resident killer whales—General."
- Added a subsection (3) to WAC 220-460-090. "(3) The rules and requirements outlined in this chapter regarding southern resident killer whales apply to commercial whale watching activity in the inland waters of Washington."
- Changed "the hours of" to "these time periods:" in WAC 220-460-120(2).
- Removed "on Fridays, Saturdays, Sundays, and Mondays" from WAC 220-460-120(2).
- Changed "between 3:00 p.m. and 5:00 p.m." to "after 12:00 p.m." in WAC 220-460-120(3).
- Added "Immediately" to WAC 220-460-120 (4)(b).
- Removed "(Note: This provision will go into effect January 1, 2022)" from WAC 220-460-140(1).
- Revised "on the water" to "on a commercial whale watching tour" in WAC 220-460-140(1).
- Removed "(Note: This provision will go into effect May 1, 2021)" from WAC 220-460-140(2).
- Removed "(Note: This provision will go into effect May 1, 2021)" from WAC 220-460-140(3).
- Changed phrasing of WAC 220-460-140 (3)(b)(iv) and specified that this subsection applies to motorized commercial whale watching vessels. Change from: "(iv) Vicinity instances that happen outside of the permitted hours and days described in WAC 220-460-120 must be submitted within twenty-four hours." to "(iv) Operators of motorized commercial whale watching vessels must report vicinity instances that happen outside of the permitted hours and days described in WAC 220-460-120 within twenty-four hours."
- Addition of WAC 220-460-140 (3)(b)(v). [""](v) Operators of nonmotorized whale watching vessels must report vicinity instances that happen October through June within one week.[""]
- Added "immediately" to WAC 220-460-140(4).

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

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

Number of Sections Adopted on the Agency's own Initiative: New 16, Amended 0, Repealed 0.

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

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

Date Adopted: December 18, 2020.

Larry M. Carpenter, Chair  
Fish and Wildlife Commission

## OPTION A

### Commercial whale watching license and restrictions on commercial viewing of southern resident killer whales

#### Chapter 220-460 WAC

#### COMMERCIAL WHALE WATCHING

##### NEW SECTION

**WAC 220-460-010 Definitions.** For the purposes of this chapter, the following definitions apply:

**(1) Commercial whale watching.**

"Commercial whale watching" shall be defined as the act of taking, or offering to take, passengers aboard a vessel in order to view marine mammals in their natural habitat for a fee.

**(2) Commercial whale watching designated primary operator.**

"Commercial whale watching designated primary operator" shall be defined as the person identified on the application to operate the commercial whale watching vessel on behalf of the whale watching business.

**(3) Commercial whale watching alternate operator.**

"Alternate operators" shall be defined as individuals besides the designated primary operator who are designated to operate the vessel on behalf of the whale watching business.

**(4) Commercial whale watching vessel operators.**

"Commercial whale watching vessel operators" shall be defined to include operators of commercial vessels and kayak rentals that are engaged in the business of commercial whale watching. The term "operators" shall be used to identify primary operators and alternate operators who conduct commercial whale watching tours, including operators who direct the movement or positioning of any nonmotorized commercial whale watching vessels involved in a tour.

**(5) Commercial whale watching vessel.**

"Commercial whale watching vessel" shall be defined as any vessel that is being used as a means of transportation for individuals to engage in commercial whale watching.

"Vessel" includes aircraft while on the surface of the water, and every description of watercraft on the water that is used or capable of being used as a means of transportation on the water.

"Motorized commercial whale watching vessel" shall be defined as any vessel with an engine being used as a means of transportation for individuals to engage in commercial whale watching, regardless of whether the engine is in use. This definition includes sailboats with inboard or outboard motors.

"Nonmotorized commercial whale watching vessel" shall be defined as any vessel without an engine being used as a means of transportation for individuals to engage in commercial whale watching. This definition includes human-powered watercraft such as kayaks and paddleboards.

**(6) Group of southern resident killer whales.**

"Group of southern resident killer whales" is defined as a single southern resident killer whale or an assemblage of southern resident killer whales wherein each member is within one nautical mile of at least one other southern resident killer whale. Any individual(s) farther than one nautical mile constitutes a separate group.

**(7) Vicinity.**

"Vicinity" is defined as one-half nautical mile from all southern resident killer whales in the group. References to "vicinity" in this chapter do not permit operators to approach a southern resident killer whale closer than the statutorily defined distances in RCW 77.15.740.

**(8) Vicinity instance.** Each time any commercial whale watching vessel operating under a license enters within one-half nautical mile of a southern resident killer whale will count as one vicinity instance associated with that license.

**(9) Automatic identification system (AIS).** AIS refers to a maritime navigation safety communications system standardized by the International Telecommunication Union, adopted by the International Maritime Organization, that:

(a) Provides vessel information, including the vessel's identity, type, position, course, speed, navigational status and other safety-related information automatically to appropriately equipped shore stations, other ships, and aircraft;

(b) Receives automatically such information from similarly fitted ships, monitors and tracks ships; and

(c) Exchanges data with shore-based facilities.

**(10) Inland waters of Washington.**

"Inland waters of Washington" means Puget Sound and related inland marine waters, including all salt waters of the state of Washington inside the international boundary line between Washington and British Columbia, and lying east of the junction of the Pacific Ocean and the Strait of Juan de Fuca, and the rivers and streams draining to Puget Sound as mapped by water resource inventory areas 1 through 19 in WAC 173-500-040 as it exists on July 1, 2007.

##### NEW SECTION

**WAC 220-460-020 Commercial whale watching licenses—Application process and deadline.** (1) A com-

mercial whale watching license is required for commercial whale watching motorized vessel, sailboat, and kayak operators.

(2) Applicants must be at least sixteen years of age and possess a driver's license or other government-issued identification number and jurisdiction of issuance.

(3) Applicants must be authorized to conduct business within the state of Washington.

(4) The commercial whale watching license application must include the following information regarding the whale watching business:

(a) The applicant must identify the whale watching business: Business name, type of business (i.e., sole proprietor, partnership, corporation), all associated business owner(s), full name(s), physical address, mailing address, email address, telephone number, and Social Security numbers of all business owners.

(b) The applicant must identify and confirm the whale watching business is registered to conduct business within the state by providing the unified business identifier (UBI) number.

(5) The commercial whale watching license applicant must also designate an operator for each motorized or sailing vessel or kayak engaging in whale watching activity. The applicant must identify the operator's name of the associated business, full name, date of birth, Social Security number, gender, hair, eyes, weight, height, physical address, mailing address, email address, and telephone number.

(6) On the commercial whale watching license application, the applicant must designate all commercial whale watching vessels to be used while engaging in commercial whale watching. The applicant must indicate either motorized or sailing vessels or kayaks on the application.

(a) If motorized or sailing vessels are selected, then the applicant must select the appropriate option for the passenger capacity on the designated vessel.

(b) If kayak is selected, then the applicant must select the appropriate option for the number of kayaks engaging in whale watching activities.

(7) The applicant may designate alternate operators to be listed on the whale watching license.

(8) An application submitted to the department shall contain the applicant's declaration under penalty of perjury that the information on the application is true and correct.

(9) Applications must be completed and submitted online through the commercial licensing system, or by mailing the application to:

Washington Department of Fish and Wildlife  
Attn: Commercial License Sales  
P.O. Box 43154  
Olympia, WA 98504-3154

(10) If the required fields are blank or omitted from the application, then the department will consider the application to be incomplete, and it will not be processed.

#### NEW SECTION

**WAC 220-460-030 Commercial whale watching license cards—Replacements.** (1) Upon lawful application,

a commercial whale watching license in the form of a license card will be issued by the department.

(2) The fee to replace a license that has been lost or destroyed is twenty dollars.

#### NEW SECTION

**WAC 220-460-040 Commercial whale watching licensing business organizations—Operator designation.**

(1) Any person that holds a commercial whale watching license and is a business organization may designate other persons associated with the business to act on behalf of the license holder to update the business information within the organization's account and/or operate a designated vessel.

(2) In addition to the designated operator, a license holder that is a business organization may designate an unlimited number of alternate operators.

(3) A license holder that is a business organization may substitute the designated operator by surrendering the whale watching license card, redesignating the operator under the criteria provided in this section and paying the replacement license fee provided in RCW 77.65.050.

#### NEW SECTION

**WAC 220-460-050 Whale watching vessel designation requirements.** (1) RCW 77.65.615 requires commercial whale watching operators to designate the vessel(s) to be used for whale watching tours. It is unlawful to engage in commercial whale watching activities unless:

(a) The licensee has designated all commercial whale watching vessels to be used, regardless if using a motorized or sailing vessel, or kayak to guide tours;

(b) The department has issued a commercial license to the licensee showing the vessel so designated;

(c) The vessel operator has the commercial license for the current calendar year in physical possession.

(2) The licensee does not have to own the vessel being designated on the license.

(3) For motorized or sailing vessels, the licensee must provide current United States Coast Guard certification inspection documentation which allows the designated vessel to carry more than six passengers.

#### NEW SECTION

**WAC 220-460-060 Whale watching vessel substitutions—Fees.** The holder of a commercial whale watching license may substitute the vessel designated on the license or designate a vessel if none has previously been designated if the license holder:

(1) Surrenders the previously issued license to the department;

(2) Submits to the department a substitution application and application fee that identifies the currently assigned vessel, and the vessel proposed to be designated;

(3) Submits vessel substitution fees corresponding to the size of the vessel.

NEW SECTION

**WAC 220-460-070 Whale watching alternate operator license requirements.** (1) A person who is not the license holder may operate a motorized or sailing vessel designated on the commercial whale watching license only if:

(a) The person holds a commercial whale watching alternate operator license issued from the department; and

(b) The alternate operator is designated on the underlying license.

(2) Only an individual at least sixteen years of age may hold an alternate operator license.

(3) Commercial whale watching license holders must maintain an accurate record with the department of designated alternate operators. The commercial whale watching license holder must confirm the utilization of a whale watching alternate operator and identify the alternate by entering the alternate's full name and date of birth in the business account through the commercial licensing system.

(4) An individual may hold only one alternate operator license. Holders of an alternate operator license may be designated on an unlimited number of commercial whale watching licenses.

NEW SECTION

**WAC 220-460-080 Expiration and renewal of licenses.** Commercial whale watching licenses expire at midnight on December 31st of the calendar year for which they are issued. Licenses may be renewed annually upon application and payment of the prescribed license fees.

NEW SECTION

**WAC 220-460-090 Commercial whale watching of southern resident killer whales—General.** (1) It is unlawful for an operator of a commercial whale watching vessel to violate any of the restrictions in RCW 77.15.740.

(2) A commercial whale watching license is not an exemption under RCW 77.15.740 (2)(c).

(3) The rules and requirements outlined in this chapter regarding southern resident killer whales apply to commercial whale watching activity in the inland waters of Washington.

NEW SECTION

**WAC 220-460-100 Areas closed to commercial whale watching.** (1) It is unlawful for operators of motorized commercial whale watching vessels to operate one-quarter mile from shore from Mitchell Point to Cattle Point on the west side of San Juan Island or within one-half mile of Lime Kiln Point State Park. Operators of nonmotorized commercial whale watching vessels must stay within one hundred yards of shore within this zone except when safety conditions preclude it.

(2) Modifications or additions to closed areas may be issued by the department by rule. Violation of such rules shall be unlawful.

NEW SECTION

**WAC 220-460-110 Limits on number of vessels in the vicinity of southern resident killer whales at once.** (1) It is unlawful for more than three motorized commercial whale watching vessels at a time to be within the vicinity of any group of southern resident killer whales.

(2) It is unlawful for an operator of a motorized commercial whale watching vessel to enter the vicinity of a group of southern resident killer whales that contains a calf of under one year of age or a whale designated as sick or vulnerable by emergency rule from the department.

NEW SECTION

**WAC 220-460-120 Time limitations on watching southern resident killer whales.** (1) It is unlawful for an operator of a motorized commercial whale watching vessel to approach within one-half nautical mile of a southern resident killer whale between October 1st and June 30th.

(2) It is unlawful for an operator of a motorized commercial whale watching vessel to approach within one-half nautical mile of a southern resident killer whale outside these time periods: 10:00 a.m. to 12:00 p.m. and 3:00 p.m. to 5:00 p.m. from July 1st through September 30th.

(3) If any motorized commercial whale watching vessel designated under a commercial whale watching license enters within the vicinity of a southern resident killer whale between 10:00 a.m. and 12:00 p.m., no vessels operating under that license may enter the vicinity of a southern resident killer whale after 12:00 p.m. on the same day.

(4) If an operator enters within one-half mile of a group of killer whales outside of the provisions in this section, after taking reasonable measures to determine whether the killer whales were southern resident killer whales, and then identifies the whales as southern resident killer whales, the operator must:

(a) Immediately safely reposition the vessel to be one-half nautical mile or farther from the southern resident killer whales.

(b) Immediately report the location of the southern resident killer whale(s) to the whale report alert system (WRAS) or a successor transboundary notification system that is adopted by the international shipping community in the Salish Sea.

(c) Accurately log the incident, including measures taken to determine whether the whales were southern resident killer whales, following the provisions of WAC 220-460-140 and submit the log to the department within twenty-four hours of the incident.

NEW SECTION

**WAC 220-460-130 Nonmotorized commercial whale watching vessels.** (1) Tours involving any nonmotorized watercraft used for the purposes of commercial whale watching, such as kayaks, are subject to these requirements. Such watercraft constitute commercial whale watching vessels and are referred to as "vessels" in this chapter.

(2) Operators must prevent all vessels in their tour group from disturbing southern resident killer whales. All vessels in the tour group must adhere to the following requirements:

(a) It is unlawful to launch if southern resident killer whales are within one-half nautical mile of the launch location.

(b) Vessels are prohibited from being paddled, positioned, or waiting in the path of a southern resident killer whale. If a southern resident killer whale is moving towards a vessel, the vessel must immediately be moved out of the path of the whale.

(c) If a vessel or vessels inadvertently encounter a southern resident killer whale, they must immediately be moved as close to shore as possible and secured, or be rafted up close to shore or in a kelp bed, and paddling shall cease until any and all killer whales have moved to at least four hundred yards away from the vessels. Rafting up is defined as manually holding vessels close together, maintaining a tight grouping.

#### NEW SECTION

**WAC 220-460-140 Commercial whale watching compliance and reporting.** (1) An automatic identification system (AIS) must be fitted aboard all motorized commercial whale watching vessels. The AIS must be capable of providing information about the vessel (including the vessel's identity, type, position, course, speed, and navigational status) to state and federal authorities automatically. Operators must maintain the AIS in operation at all times that the vessel is on a commercial whale watching tour.

(2) All motorized and nonmotorized commercial whale watching license holders and alternate operators must complete annual training from the department on marine mammals, distances on the water, impacts of whale watching on marine mammals, and southern resident killer whale-related rules and reporting.

(a) At completion of training, license holders must demonstrate adequate understanding of course materials.

(b) It is unlawful for an operator to operate a commercial whale watching vessel without completing the training for the current calendar year.

(c) Naturalists and others who work upon commercial whale watching vessels but are not license holders are encouraged to attend.

(3) All motorized and nonmotorized commercial whale watching license holders shall maintain accurate logs on each instance a vessel operating under a license enters within one-half nautical mile vicinity of southern resident killer whales and submit copies of the logs to the department.

(a) Logs must include license holder name; vessel operator and staff names and roles; vessel name; port(s) of departure; departure time(s); return time(s); number of passengers; location(s) (Lat/Long) of southern resident killer whales encountered; time(s) entering and departing the one-half nautical mile vicinity of southern resident killer whales; time(s) entering and departing within four hundred yards of southern resident killer whales; and qualitative details of southern resident killer whale encounters including whale identification, whale behavior and health, other vessel behavior, and any

operator behavior, including contact with other boaters or government entities, and resulting outcomes.

(b) Information from the logs shall be submitted to the department on the following schedule:

(i) All vicinity instances in July must be reported by August 15th.

(ii) All vicinity instances in August must be reported by September 15th.

(iii) All vicinity instances in September must be reported by October 15th.

(iv) Operators of motorized commercial whale watching vessels must report vicinity instances that happen outside of the permitted hours and days described in WAC 220-460-120 within twenty-four hours.

(v) Operators of nonmotorized whale watching vessels must report vicinity instances that happen October through June within one week.

(c) It is unlawful to fail to report a vicinity instance or to fraudulently report the details of a vicinity instance.

(d) Logs must be provided for inspection on request of department law enforcement.

(4) All motorized commercial whale watching license holders must log accurate, complete sighting information to the whale report alert system (WRAS) or a successor transboundary notification system that is adopted by the international shipping community in the Salish Sea immediately upon entering within one-half nautical mile of a southern resident killer whale.

#### NEW SECTION

**WAC 220-460-150 Penalties.** (1) Commercial operators in violation of WAC 220-460-090 may be issued a notice of infraction punishable under chapter 7.84 RCW that carries a fine of five hundred dollars, not including statutory assessments added pursuant to RCW 3.62.090.

(2) Operators out of compliance with WAC 220-460-100, 220-460-110, 220-460-120, 220-460-130, or 220-460-140 may be issued a notice of infraction that carries a fine of up to five hundred dollars, not including statutory assessments added pursuant to RCW 3.62.090.

(3) Nothing in this chapter prohibits the filing of criminal charges for violations of RCW 77.15.815 in lieu of issuance of a notice of infraction.

#### NEW SECTION

**WAC 220-460-160 Severability.** If any provision of the chapter or its application to any covered party, person, or circumstance is held invalid, the remainder of the chapter or application of the provision to other covered parties, persons, or circumstances is not affected.