

**WSR 15-24-037**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Long-Term Support Administration)  
[Filed November 20, 2015, 3:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-10-041.

Title of Rule and Other Identifying Information: The department is creating WAC 388-107-0945 Resident suicide and self-harm prevention; repealing WAC 388-107-0930 Nursing and nutrition station; and amending WAC 388-107-0001 Definitions, 388-107-0020 Department authority, 388-107-0080 Ongoing comprehensive assessments, 388-107-0100 Enhanced services facility team, 388-107-0110 Initial individual treatment plan, 388-107-0120 Comprehensive individual treatment plan, 388-107-0130 Ongoing comprehensive individual treatment plan, 388-107-0140 Implementation of the individual treatment plan, 388-107-0150 Comprehensive individual treatment plan sent to the state, 388-107-0160 Behavioral support plan, 388-107-0180 Self-determination and participation, 388-107-0190 Rights of residents, 388-107-0200 Quality of care, 388-107-0210 Care and services, 388-107-0240 Staffing ratios, 388-107-0280 Transfer and discharge, 388-107-0370 Treatment services, 388-107-0390 Use of routine psychopharmacologic medications, 388-107-0400 Use of as needed psychopharmacologic medications, 388-107-0410 Management of escalating behaviors, 388-107-0420 Physical restraints for medical purposes only, 388-107-0430 Food services, 388-107-0560 Resident records—Clinical records, 388-107-0770 Environment of care, 388-107-0810 Resident room, 388-107-0830 Resident bathing facilities, 388-107-0890 Outdoor recreation space and walkways, 388-107-0940 Resident safety and suicide prevention, 388-107-0960 Plumbing—Water supply, 388-107-1000 Mechanical—Ventilation systems, and 388-107-1190 Administrator responsibilities.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on January 26, 2016, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 27, 2016.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax (360) 664-6185, by 5:00 p.m., January 26, 2016.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by January 12, 2016, phone (360) 664-6092, TTY (360) 664-6178, or e-mail [KildaJA@dshs.wa.gov](mailto:KildaJA@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending sections of chapter 388-107 WAC in order to address concerns of the Center for Medicare/Medicaid Services (CMS) Home and Community Based Services (HCBS) and stakeholders with operationalization of the requirements stated therein.

Reasons Supporting Proposal: In order to qualify for federal matching funds, the enhanced services facilities (ESF) program must conform to federal CMS HCBS requirements. These federal requirements became effective after the initial ESF rules were adopted. In order to ensure that payments for ESF services will qualify for federal funding under the HCBS requirements, we support the proposed rule amendments.

Statutory Authority for Adoption: RCW 70.97.230.

Rule is necessary because of federal law, HCBS Final Rule 42 C.F.R.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Comments from operations review-statutory language. Comments were incorporated into the rule.

Name of Proponent: Department of social and health services, Penelope Rarick, policy program manager, AL TSA/RCS, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Penelope Rarick, Olympia, (360) 725-3210; and Enforcement: Bett Schlemmer, Olympia, (360) 725-2404.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule does not impact small businesses or small nonprofits.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Penelope Rarick, P.O. Box 45600, Olympia, WA 98504, phone (360) 725-3210, fax (360) 438-7903, e-mail [raricpp@dshs.wa.gov](mailto:raricpp@dshs.wa.gov).

November 12, 2015  
Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0001 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

**"Abandonment"** means action or inaction by a person with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

**"Abuse"** means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a resident. In instances of abuse of a resident who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a resident, which have the following meanings:

(1) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a resident from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing;

(2) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an

object, slapping, pinching, choking, kicking, showing, prodding, or the use of chemical restraints or physical restraints except as described in section 388-107-0420;

(3) **"Sexual abuse"** means any form of nonconsensual sexual contact, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual contact may include interactions that do not involve touching, including but not limited to sending a resident sexually explicit messages, or cuing or encouraging a resident to perform sexual acts. Sexual abuse includes any sexual contact between a staff person and a resident, whether or not it is consensual;

(4) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a resident causing the resident to act in a way that is inconsistent with relevant past behavior, or causing the resident to perform services for the benefit of another.

**"Activities of daily living"** means the following tasks related to basic personal care: Bathing; toileting; dressing; personal hygiene; mobility; transferring; and eating.

**"Administrative hearing"** is a formal hearing proceeding before a state administrative law judge that gives:

(1) A licensee an opportunity to be heard in disputes about licensing actions, including the imposition of remedies, taken by the department; or

(2) An individual an opportunity to appeal a finding of abandonment, abuse, neglect, financial exploitation of a resident, or misappropriation of a resident's funds.

**"Administrator"** means an enhanced services facility administrator who must be in active administrative charge of the enhanced services facility as required in this chapter. Unless exempt under RCW 18.88B.041, the administrator must complete long-term care worker training and home care aide certification.

**"Advance directive,"** as used in this chapter, means any document indicating a resident's choice with regard to a specific service, treatment, medication or medical procedure option that may be implemented in the future such as power of attorney health care directive, limited or restricted treatment cardiopulmonary resuscitation (CPR), do not resuscitate (DNR), and organ tissue donation.

**"Aggressive behavior"** means actions by the individual that constitute a threat to the individual's health and safety or the health and safety of others in the environment.

**"Antipsychotic medications"** means that class of medications primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes but is not limited to atypical antipsychotic medications.

**"Applicant"** means the individual or entity, as defined in this section, that has submitted, or is in the process of submitting, an application for an enhanced services facility license.

**"Capacity"** means the maximum amount an enhanced services facility can serve is sixteen residents.

**"Caregiver"** means the same as "long-term care worker" as defined in RCW 74.39A.009, as follows: "Long-term care workers" include all persons who provide paid, hands-on personal care services for the elderly or persons

with disabilities, including but not limited to individual providers of home care services, direct care workers employed by home care agencies, providers of home care agencies to persons with developmental disabilities under Title 71A RCW, all direct care workers in state-licensed enhanced services facilities, assisted living facilities, and adult family homes, respite care providers, direct care workers employed by community residential service businesses, and any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

**"Challenging behavior"** means a persistent pattern of behaviors that inhibit the individual's functioning in public places, in the facility and integration within the community, or uncontrolled symptoms of a physical or mental condition. These behaviors may have been present for long periods of time or have manifested as an acute onset.

**"Chemical dependency"** means alcoholism, medication addiction, or dependence on alcohol and one or more other psychoactive chemicals, as the context requires and as those terms are defined in chapter 70.96A RCW.

**"Chemical dependency professional"** means a person certified as a chemical dependency professional by the department of health under chapter 18.205 RCW.

**"Deficiency"** is an enhanced services facility's failed practice, action, or inaction that violates any or all of the requirements of chapters 70.97 RCW or the requirements of this chapter.

**"Department"** means the department of social and health services.

**"Direct supervision"** means oversight by a person on behalf of the enhanced services facility who has met training requirements, demonstrated competency in core areas, or has been fully exempted from the training requirements, is on the premises, and is quickly and easily available to the caregiver.

**"Enhanced services facility"** means a facility that provides treatment and services to persons for whom acute inpatient treatment is not medically necessary and who have been determined by the department to be inappropriate for placement in other licensed facilities due to the complex needs that result in behavioral and security issues. For the purposes of this chapter, an enhanced services facility is not an evaluation and treatment facility certified under chapter 71.05 RCW.

**"Facility"** means an enhanced services facility.

**"Financial exploitation"** means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34-020(6).

**"Holding technique"** means using the least amount of force necessary to manually hold all or part of a person's body in a way that restricts the person's free movement; also includes any approved controlling maneuvers identified in the ~~((individual treatment))~~ person-centered service plan. Examples include holds taught in approved training for deescalation techniques and control of self-harm or aggressive behavior. This definition does not apply to briefly holding, without force, a person in order to calm the person, or holding

a person's hand to escort the person safely from one area to another.

**"Infectious"** means capable of causing infection or disease by entrance of organisms into the body, which grow and multiply there, including, but not limited to, bacteria, viruses, protozoans, and fungi.

**"Inspection"** means the process by which department staff evaluates the enhanced services facility licensee's compliance with applicable statutes and regulations.

**"License suspension"** is an action taken by the department to temporarily revoke an enhanced services facility license in accordance with RCW 70.97.120 and this chapter.

**"Licensee"** means the individual or entity, as defined in this chapter, to whom the department issues the enhanced services facility license.

**"Licensed physician"** means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington.

**"Likelihood of serious harm"** means a substantial risk that:

(1) Physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself;

(2) Physical harm will be inflicted by an individual upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm; or

(3) Physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others.

**"Long-term care worker"** as defined in RCW 74.39A.009, has the same meaning as the term "caregiver."

**"Management agreement"** means a written, executed agreement between the licensee and the manager regarding the provision of certain services on behalf of the licensee.

**"Mandated reporter":**

(1) Is an employee of the department, law enforcement officer, social worker, professional school personnel, individual provider, an employee of a facility, an operator of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW; and

(2) For the purpose of the definition of mandated reporter, "facility" means a residence licensed or required to be licensed under chapter 18.20 RCW, Assisted living facility; chapter 18.51 RCW, Nursing homes; chapter 70.128 RCW, Adult family homes; chapter 72.36 RCW, Soldiers' homes; chapter 71A.20 RCW, Residential habilitation centers; chapter 70.97 RCW, Enhanced services facility or any other facility licensed by the department.

**"Medically fragile"** means a chronic and complex physical condition which results in prolonged dependency on specialized medical care that requires frequent daily skilled nursing interventions. If these medically necessary interventions are interrupted or denied, the resident may experience irreversible damage or death. Examples of specialized medical care and treatment for medically fragile residents include but are not limited to: IV therapies requiring monitoring of

vital signs and dose titration dependent on lab values; wound care requiring external vacuum or other mechanical devices for debridement; complicated wound care requiring other specialized or extensive interventions and treatment; ventilator or other respiratory device dependence and monitoring; dependence on licensed staff for complex respiratory support; and peritoneal or hemodialysis (on-site).

**"Medication administration"** means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the body of the resident by an individual legally authorized to do so.

**"Medication service"** means any service provided either directly or indirectly by an enhanced services facility related to medication administration medication assistance, or resident self-administration of medication.

**"Mental disorder"** means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

**"Mental health professional"** means a psychiatrist, psychologist, psychiatric nurse, licensed mental health counselor, licensed mental health counselor-associate, licensed marriage and family therapist, licensed marriage and family therapist-associate, licensed independent clinical social worker, licensed independent clinical social worker-associate, licensed advanced social worker, or licensed advanced social worker-associate and such other mental health professionals as may be defined by rules adopted by the secretary under the authority of chapter 71.05 RCW.

**"Misappropriation of resident property"** means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money.

**"Neglect"** means:

(1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a resident, or that fails to avoid or prevent physical or mental harm or pain to a resident; or

(2) An act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the resident's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

**"Permanent restraining order"** means a restraining order or order of protection issued either following a hearing, or by stipulation of the parties. A "permanent" order may be in force for a specific time period (e.g. 5 years), after which it expires.

**"Prescriber"** means a health care practitioner authorized by Washington state law to prescribe medications.

**"Professional person"** means a mental health professional and also means a physician, registered nurse, and such others as may be defined in rules adopted by the secretary pursuant to the provisions of this chapter.

**"Psychopharmacologic medications"** means the class of prescription medications, which includes but is not limited to antipsychotics, antianxiety medications, and antidepressants, capable of affecting the mind, emotions, and behavior.

**"Reasonable accommodation"** and **"reasonably accommodate"** have the meaning given in federal and state

antidiscrimination laws and regulations which include, but are not limited to, the following:

(1) Reasonable accommodation means that the enhanced services facility must:

(a) Not impose an admission criterion that excludes individuals unless the criterion is necessary for the provision of enhanced services facility services;

(b) Make reasonable modification to its policies, practices or procedures if the modifications are necessary to accommodate the needs of the resident;

(c) Provide additional aids and services to the resident.

(2) Reasonable accommodations are not required if:

(a) The resident or individual applying for admission presents a significant risk to the health or safety of others that cannot be eliminated by the reasonable accommodation;

(b) The reasonable accommodations would fundamentally alter the nature of the services provided by the enhanced services facility; or

(c) The reasonable accommodations would cause an undue burden, meaning a significant financial or administrative burden.

"**RCW**" means Revised Code of Washington.

"**Records**" means:

(1) "**Active records**" means the current, relevant documentation regarding residents necessary to provide care and services to residents; or

(2) "**Inactive records**" means historical documentation regarding the provision of care and services to residents that is no longer relevant to the current delivery of services and has been thinned from the active record.

"**Registration records**" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify individuals who are receiving or who at any time have received services for mental illness.

"**Resident**" means a person admitted to an enhanced services facility.

"**Resident's representative**" means:

(1) The legal representative who is the person or persons identified in RCW 7.70.065 and who may act on behalf of the resident pursuant to the scope of their legal authority. The legal representative shall not be affiliated with the licensee, enhanced services facility, or management company, unless the affiliated person is a family member of the resident; or

(2) If there is no legal representative, a person designated voluntarily by a competent resident in writing, to act in the resident's behalf concerning the care and services provided by the enhanced services facility and to receive information from the enhanced services facility if there is no legal representative. The resident's representative may not be affiliated with the licensee, enhanced services facility, or management company, unless the affiliated person is a family member of the resident. The resident's representative under this subsection shall not have authority to act on behalf of the resident once the resident is no longer competent. The resident's competence shall be determined using the criteria in RCW 11.88-010 (1)(e).

"**Secretary**" means the secretary of the department or the secretary's designee.

"**Significant change**" means:

(1) A deterioration in a resident's physical, mental, or psychosocial condition that has caused or is likely to cause clinical complications or life-threatening conditions; or

(2) An improvement in the resident's physical, mental, or psychosocial condition that may make the resident eligible for discharge or for treatment in a less intensive or less secure setting.

"**Significant medication error**" includes any failure to administer or receive a medication according to an authorized health care provider's order, or according to the manufacturer's directions for nonprescription medications, that results in an error involving the wrong medication, wrong dose, wrong patient, wrong time, wrong rate, wrong preparation, or wrong route of administration.

"**Social worker**" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320-010.

"**Staff**" or "**staff person**" means any person who:

(1) Is employed or used by an enhanced services facility, directly or by contract, to provide care and services to any resident.

(2) Staff must meet all of the requirements of chapter 388-112 WAC.

"**Stop placement**" or "**stop placement order**" is an action taken by the department prohibiting enhanced services facility admissions, readmissions, and transfers of patients into the enhanced services facility from the outside.

"**Temporary restraining order**" means restraining order or order of protection that expired without a hearing, was terminated following an initial hearing, or was terminated by stipulation of the parties in lieu of an initial hearing.

"**Treatment**" means the broad range of emergency, detoxification, residential, inpatient, and outpatient services and care, including diagnostic evaluation, mental health or chemical dependency education and counseling, medical, physical therapy, restorative nursing, psychiatric, psychological, and social service care, vocational rehabilitation, and career counseling.

"**Violation**" ~~((is an enhanced services facility failed practice, action or inaction that violates any or all of the following:~~

~~(1) Requirements of chapters 18.51 or 74.42 RCW, or the requirements of this chapter; and~~

~~(2) In the case of a medicare and medicaid contractor, participation requirements under Title XVIII and XIX of the Social Security Act and federal medicare and medicaid regulations)) means the same as "**deficiency**" as defined in this section.~~

"**Volunteer**" means an individual who interacts with residents without reimbursement.

"**Vulnerable adult**" includes a person:

(1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(2) Found incapacitated under chapter 11.88 RCW; or

(3) Who has a developmental disability as defined under RCW 71A.10.020; or

(4) Admitted to any facility, including any enhanced services facility; or

(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(6) Receiving services from an individual provider.

(7) Who self-directs his or her own care and receives services from a personal aide under chapter 74.39 RCW.

(8) For the purposes of requesting and receiving background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

"WAC" means Washington Administrative Code.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0020 Department authority.** (1) Chapter 70.97 RCW authorizes the department to develop rules to implement the chapter, and to license enhanced services facilities. At a minimum the rules are to be written to promote safe treatment and necessary care of individuals residing in each facility, to provide for safe and clean conditions and to establish licensee qualifications, licensing and enforcement standards, and license fees sufficient to cover the cost of licensing and enforcement.

(2) The department, in its sole discretion and after taking into consideration the circumstances of a particular facility such as size or location, may approve alternate staffing, administration, physical plant, or other arrangements that have been proposed in writing by an ESF applicant or licensee. An ESF's failure to comply with a department-approved alternate plan is a violation of this chapter and may result in enforcement actions under WAC 388-107-1430.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0080 Ongoing comprehensive assessments.** The enhanced services facility must:

(1) Complete a comprehensive assessment, addressing the elements set forth in WAC 388-107-0070, upon a significant change in the resident's condition or at least every 180 days if there is no significant change in condition;

(2) Complete an assessment specifically focused on a resident's identified strengths, preferences, limitations and related issues:

(a) Consistent with the resident's change of condition as specified in WAC 388-107-0060;

(b) When the resident's ~~((individual treatment))~~ person-centered service plan no longer addresses the resident's current needs and preferences;

(c) When the resident has an injury requiring the intervention of a practitioner.

(3) Review each resident's needs to evaluate discharge or transfer options when the resident:

(a) No longer needs the level of behavioral support provided by the facility; or

(b) Expresses the desire to move to a different type of community based setting.

(4) Ensure that the person-centered service planning team discusses all available placement options.

(5) Ensure the staff person performing the ongoing assessments is a qualified ~~((to perform them))~~ assessor.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0100 ~~((Enhanced services facility))~~ Person-centered service planning team.** The facility ~~((will identify a team for each resident. The team will))~~ must develop and maintain a person-centered service planning team for each resident. The team must:

(1) Include the resident, the resident's representative when applicable, individuals chosen ~~((and any support persons identified))~~ by the resident, ~~((as well as))~~ a mental health professional, nursing staff, the medicaid client's department case manager, and other persons ~~((identified by the facility))~~ as needed;

(2) Provide the necessary information and support to ensure that the resident has an opportunity to identify team members, make informed choices and decisions regarding care and treatment, and direct the person-centered service planning process to the maximum extent possible;

(3) Ensure a coordinated approach to the development, implementation and evaluation of the ~~((individual treatment))~~ comprehensive person-centered service plan for the resident; and

~~((3))~~ (4) Meet at least monthly and more often as needed, at times and locations convenient to the resident, to review and modify the ~~((individual treatment))~~ comprehensive person-centered service plan as needed.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0110 Initial ~~((individual treatment))~~ person-centered service plan.** The ~~((enhanced services facility))~~ resident's person-centered service planning team must develop the initial ~~((individual treatment))~~ person-centered service plan prior to admission to the ESE, using information from the resident, the resident's representative if the resident has one, the comprehensive assessment reporting evaluation (CARE) assessment for medicaid clients, and the preadmission assessment, prior to admitting the resident to the facility. The ~~((enhanced services facility))~~ person-centered service planning team must ensure that each resident has an initial ~~((individual treatment))~~ person-centered service plan that includes:

(1) The resident's immediate specific ~~((problems and))~~ support needs (physical, mental and behavioral) identified in the preassessment;

(2) Direction to staff and caregivers relating to the resident's immediate needs, capabilities, and preferences;

(3) The means ~~((for))~~ by which the resident chooses not to accept or refuses care or services;

(4) The resident's informed consent to the person-centered service plan;

(5) What the facility will do to ensure the resident's health and safety related to the refusal of any care or service;

~~((5))~~ (6) Resident defined goals and preferences;

~~((6))~~ (7) How the facility will provide behavioral support to prevent a crisis and maintain placement in the facility while respecting the resident's rights; ~~and~~

~~(7)~~ (8) While in the community, what the facility will do to ensure resident and community safety; and

~~((8) Identifying)~~ (9) Identification of factors that ~~(will)~~ prevent the resident from accessing less restrictive community based services and ~~((developing))~~ development of a plan ((regarding)) that describes when and how the resident may be able to transfer or transition from the enhanced services facility to a more independent living situation in the community.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0120 Initial comprehensive ((individual treatment)) person-centered service plan.** (1) The ~~((enhanced services facility))~~ person-centered service planning team must integrate the information obtained in the resident's preadmission assessment, medicaid client's CARE assessment information from the department's case manager, initial comprehensive assessment and initial ((individual treatment)) person-centered service plan to develop a written comprehensive ~~((individual treatment))~~ person-centered service plan.

(2) The enhanced services facility must:

(a) Complete the initial comprehensive person-centered service plan within fourteen days of the resident's move-in date.

(b) Provide the initial comprehensive person-centered service plan to the resident in a clear and understandable format that is accessible to residents, including those with disabilities and persons who have limited English proficiency.

(c) Ensure that the resident, or the resident's representative, when applicable, consents to the initial person-centered service plan in writing and that the plan is signed by all individuals on the person-centered service planning team.

(d) Distribute a copy of the initial comprehensive person-centered service plan to the resident and all others responsible for the implementation of the plan.

(3) The ~~((enhanced services facility))~~ person-centered service planning team must ensure each resident's initial comprehensive ((individual treatment)) person-centered service plan includes:

~~((1))~~ (a) A list of the care and services to be provided;

~~((2))~~ (b) Identification of who will provide the care and services;

~~((3))~~ (c) When and how the care and services will be provided;

(d) A method for the resident to request updates to the plan as needed.

(e) A list of services that the resident chooses to self-direct.

~~((4))~~ (f) How medications will be managed, including how the resident will receive medications when the resident is not in the facility;

~~((5))~~ (g) The resident's daily activities preferences, spiritual and/or cultural preferences, interests, strengths and

needs and how the facility will meet those within the behavioral challenges of the resident;

~~((6))~~ (h) Other preferences and choices about issues important to the resident, including, but not limited to:

~~((a))~~ (i) The setting in which the resident resides:

(ii) Food;

~~((b))~~ (iii) Daily routine;

~~((c))~~ (iv) Grooming; and

~~((d))~~ (v) How the enhanced services facility will accommodate the preferences and choices.

(i) Identification of any communication barriers the resident may have and how the home will use behaviors and non-verbal gestures to communicate with the resident:

~~((7))~~ (j) A behavioral support plan to prevent crisis and maintain placement in the facility by:

~~((a))~~ (i) A crisis prevention and response protocol that outlines specific indicators which may signal a potential crisis for the resident;

~~((b))~~ (ii) Specific interventions and pre-crisis prevention strategies for each of the resident's indicators of a potential crisis;

~~((c))~~ (iii) A crisis prevention and response protocol that outlines steps to be taken if the prevention or intervention strategies are unsuccessful in diverting the crisis including the community crisis responder's coordination plan; and

~~((d) A plan on)~~ (iv) A description of how to respond to a resident's refusal of care or treatment, including when the resident's physician or practitioner should be notified of the refusal.

~~((8) Identification of any communication barriers the resident may have and how the home will use behaviors and nonverbal gestures to communicate with the resident;))~~

~~((9))~~ (k) A hospice care plan if the resident is receiving ~~((services for))~~ hospice care ~~((delivered by))~~ services from a licensed hospice agency.

~~((10))~~ (l) Advance directives, if the resident chooses, that are validly executed pursuant to chapters 70.122 and 71.32 RCW, as applicable;

~~((11))~~ (m) A plan ~~((regarding how the facility will work))~~ for working with the department of corrections (DOC) if the resident is under the supervision of DOC, collaborating to maximize treatment outcomes and reduce the likelihood of reoffense.

~~((12))~~ (n) A plan which maximizes the opportunities for independence, maintaining health and safety, recovery, employment, the resident's participation in treatment decisions, collaboration with peer-supported services, and care and treatment provided in the least restrictive manner appropriate to the resident and to any relevant court orders with which the resident must comply.

(o) Strategies for solving conflict or disagreement within the process of the development of the initial comprehensive individual treatment plan, including clear conflict-of-interest guidelines for all planning participants.

~~((13))~~ (p) A discharge plan that addresses factors and barriers that prevent a resident from being placed in a less restrictive community placement and assist the resident in the transition. This plan will include an assessment of all current medications and the resident's ability to self-medicate in a more independent living situation.

~~((14) The enhanced services facility must complete the comprehensive individual treatment plan within fourteen days of the resident's move-in date.))~~

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0130 Ongoing comprehensive ~~((individual treatment))~~ person-centered service plan.** (1) The ~~((enhanced services facility))~~ person-centered service planning team will review and update each resident's comprehensive ~~((individual treatment))~~ person-centered service plan, as follows:

(a) Within a reasonable time consistent with the needs of the resident following any significant change in the resident's physical, mental, emotional or behavioral functioning; ~~((and))~~

(b) Upon request by the resident;

(c) Whenever the comprehensive ~~((individual treatment))~~ person-centered service plan no longer adequately addresses the resident's current assessed needs and preferences; ~~((and))~~

~~((e))~~ (d) Following every full comprehensive assessment and medicaid client's full CARE assessment; and

(e) At least once every one hundred and eighty days.

~~((The process of developing and updating the comprehensive individual treatment plan will include the following:))~~

(a) The resident;

(b) The resident's representative to the extent he or she is willing and capable, if the resident has one;

(c) Other individuals the resident wants included;

(d) The medicaid client's department case manager; and

(e) Staff designated by the enhanced services facility.

~~((3))~~ The ~~((enhanced services facility))~~ person-centered service planning team ~~((with))~~ must ensure:

(a) Individuals participating in developing the resident's comprehensive ~~((individual treatment))~~ person-centered service plan:

(i) Discuss the resident's assessed needs, capabilities, and preferences; ~~((and))~~

(ii) Negotiate~~((, if possible and feasible,))~~ an agreed-upon comprehensive ~~((individual treatment))~~ person-centered service plan ~~((which would))~~ that will support the resident; and

(iii) Prevent the provision of unnecessary or inappropriate services and supports.

(b) The agreed plan for services is documented in the resident's record.

~~((b) Staff persons document in the resident's record the agreed upon plan for services.))~~

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

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0140 Implementation of the ~~((individual treatment))~~ person-centered service plan.** (1) The ~~((enhanced services facility))~~ person-centered service planning team must provide the care and services as agreed upon or outlined in the initial and comprehensive ~~((individualized treatment))~~ person-centered service plan to each resident unless a deviation from the plan is mutually agreed upon between the ~~((enhanced services facility))~~ person-centered service planning team, the medicaid client's department case manager, and the resident and/or the resident's representative at the time the care or services are scheduled.

(2) The details of any deviation from the plan must be clearly documented in the resident record.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0150 Comprehensive ~~((individual treatment))~~ person-centered service plan sent to the state.** When a resident's services are paid for by the department, the enhanced services facility must give the department case manager a copy of the comprehensive ~~((individual treatment))~~ person-centered service plan each time it is completed or updated and after it has been signed and dated. The department's case manager will:

(1) Review the ~~((individual treatment))~~ person-centered service plan;

(2) Sign, date, and return the ~~((individual treatment))~~ person-centered service plan to the facility;

(3) Document the review in the resident record, indicating it was signed and approved; and

(4) Schedule a department reassessment.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0160 Behavioral support plan.** The ~~((enhanced services facility))~~ person-centered service planning team will ensure that each resident's ~~((individual treatment))~~ person-centered service plan has interventions for behavioral support that are used first when a resident's behavior is escalating at home or in the community, including but not limited to the following:

(1) Strengths the individual ~~((holds))~~ has that support strategies for prevention and intervention.

(2) Specific indicators which may signal a potential crisis for the individual or that left unaddressed in the past has led to a behavioral crisis. Examples include but are not limited to typical challenging behaviors the individual displays when escalating, actions the resident may typically take before a behavioral outburst, or words or phrases the individual has been known to express during a time of escalation.

(3) Specific interventions and pre-crisis prevention strategies for each of the indicators identified above.

(4) Steps to be taken by each of the facility ~~((team members))~~ staff if the prevention or intervention strategies are unsuccessful in diverting the individual from a behavior or action that leads to crisis.

(5) A description of the types of holding techniques that are safe and effective for the individual.

~~((5))~~ (6) A plan to ensure coordination with community crisis responders in regard to each resident's ~~((treatment))~~ person-centered service plan as part of a regular, routine protocol for crisis prevention and intervention.

~~((6))~~ (7) A resident may not be secluded or isolated as part of the behavior support plan.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0180 Self-determination and participation.** Except when the health or safety of the individual or other residents or members of the community would be endangered and consistent with the ~~((individual treatment))~~ person-centered service plan, each resident has the right to:

(1) Choose activities, schedules, and health care consistent with his or her interests, assessments, and ~~((individual treatment))~~ person-centered service plan;

(2) Interact with members of the community both inside and outside the enhanced services facility;

(3) Make choices about aspects of his or her life in the facility that are significant to the resident; and

(4) Participate in social, religious, and community activities that do not interfere with the rights of other residents in the enhanced services facility.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0190 Rights of residents.** (1) Each resident of an enhanced services facility is entitled to all the rights set forth in this chapter, and chapters 71.05 and 70.96A RCW, and must retain all rights not denied him or her under these chapters.

(2) The enhanced services facility will only consider a resident's competence as determined or withdrawn under the provisions of chapters 10.77 or 11.88 RCW.

(3) The facility must give each resident, at the time of his or her ~~((treatment))~~ person-centered service planning meeting, a written statement setting forth the substance of this section.

(4) Every resident of an enhanced services facility has the right to ~~((adequate))~~ appropriate care and individualized treatment, interventions, and support that will not harm the resident.

(5) The provisions of this chapter must not be construed to deny to any resident treatment by spiritual means through prayer in accordance with the tenets and practices of a church or religious denomination.

(6) Each resident of an enhanced services facility must have, in addition to other rights not specifically withheld by law, the rights enumerated in subsections (6)(a) through ~~((m))~~ (o) ~~((below))~~ in this section, unless exercise of these rights creates a danger to the resident or to others. The facility

must prominently post a list of these rights in a place accessible to residents and must make this list available to residents without need of request. The resident has the right:

(a) To wear his or her own clothes and to keep and use his or her own personal possessions, except when deprivation of same is essential to protect the safety of the resident or other persons;

(b) To have access to fluids and snacks of choice at any time;

(c) To ~~((keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases))~~ control his or her personal finances;

(d) To have access to individual locked storage space for his or her private use;

(e) To have visitors at ~~((reasonable))~~ times convenient to the resident and in accordance with the person-centered service plan;

(f) To have ~~((reasonable))~~ twenty-four hour access to a telephone, both to make and receive confidential calls ~~((consistent with an effective treatment program))~~;

(g) To have ready access to letter-writing materials, including stamps, and to send and receive uncensored correspondence through the mails;

(h) To discuss and actively participate in ~~((treatment))~~ the development of person-centered service plans and decisions with professional persons;

(i) To a clean, comfortable, ~~((and))~~ home ~~((like))~~ environment;

(j) To furnish and decorate the sleeping room in accordance with the person-centered service plan.

(k) Not to have psychosurgery performed on him or her under any circumstances;

(l) To refuse antipsychotic medication consistent with RCW 70.97.050.

~~((k))~~ (m) To dispose of property and sign contracts unless the resident has been adjudicated ~~((as))~~ as incompetent in a court proceeding directed to that particular issue; and

~~((h))~~ (n) To complain about rights violations or conditions and request the assistance of ~~((a mental health))~~ an ombuds or representative of Disability Rights Washington ~~((protection and advocacy))~~. The facility may not prohibit or interfere with a resident's decision to consult with an advocate of his or her choice.

~~((m))~~ (o) To receive a minimum of thirty days' written notice if there are any changes to the scope of services identified in the ~~((individual treatment))~~ person-centered service plan.

(7) Any modification of the resident rights requirements outlined in 42 C.F.R. § 441.301 (c)(4)(vi)(A) through (D) must be supported by a specific assessed need and justified in the person-centered service plan. When making said modifications, the person-centered service planning team must document:

(a) The specific individualized assessed need;

(b) The positive interventions and supports used prior to any modification;

(c) Less intrusive methods of meeting the needs that have been tried but did not work;

(d) A clear description of the condition that is directly related to the specific assessed need;



(e) Regular collection and review of data to measure the ongoing effectiveness of the modification;

(f) Established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;

(g) Informed consent of the resident and/or resident's representative;

(h) An assurance that interventions and supports will cause no harm to the resident.

~~((7))~~ (8) Nothing contained in this chapter ~~((must))~~ may prohibit a resident and/or resident's representative from petitioning by writ of habeas corpus for release.

~~((8))~~ (9) Nothing in this section permits any person to knowingly violate a no-contact order or a condition of an active judgment and sentence or active supervision by the department of corrections.

~~((9))~~ (10) A resident has a right to refuse placement in an enhanced services facility. No person ~~((must))~~ may be denied other department services solely on the grounds that he or she has made such a refusal.

~~((10))~~ (11) A resident has a right to appeal the decision of the department that he or she is eligible for placement at an enhanced services facility, and must be given notice of the right to appeal in a format that is accessible to the resident with instructions regarding what to do if the resident wants to appeal.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0200 Quality of care.** (1) Consistent with resident rights, the enhanced services facility must provide each resident with the necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial well-being, self-care and independence in accordance with his or her comprehensive assessment and ~~((individual treatment))~~ person-centered service plan.

(2) Based on the comprehensive assessment of a resident, the enhanced services facility must ensure that:

(a) A resident's abilities in activities of daily living do not decline unless circumstances of the resident's clinical condition demonstrate that the decline was unavoidable. This includes the resident's ability to:

- (i) Bathe, dress, and groom;
- (ii) Transfer and ambulate;
- (iii) Toilet;
- (iv) Eat; and

(v) Use speech, language, or other functional communication systems.

(b) A resident is given the appropriate treatment and services to maintain or improve the resident's abilities in activities of daily living specified in subsection (2)(a) of this section; and

(c) A resident who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene.

(3) The enhanced services facility must ensure that the appropriate care and services are provided to the resident in a minimum of the following areas, as applicable in accordance

with the resident's individualized assessments and ~~((individual treatment))~~ person-centered service plan:

- (a) Mental health treatment;
- (b) Chemical dependency treatment;
- (c) Vision and hearing;
- (d) Skin;
- (e) Continence;
- (f) Range of motion;
- (g) Mental and psychosocial functioning and adjustment;
- (h) Nutrition;
- (i) Hydration;
- (j) Special needs, including but not limited to:
  - (i) Injections;
  - (ii) Parenteral and enteral fluids;
  - (iii) Colostomy, urostomy, or ileostomy care;
  - (iv) Tracheostomy care and/or tracheal suctioning;
  - (v) Respiratory care;
  - (vi) Dental care;
  - (vii) Foot care; and
  - (viii) Prostheses.
- (k) Medications, including freedom from:
  - (i) Unnecessary medications; and
  - (ii) Significant medication errors; and
- (l) Independent living skills.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0210 Care and services.** The enhanced services facility must develop and implement a program to meet the needs of each resident and to ensure each resident receives:

(1) The care and services identified in the ~~((individualized treatment))~~ person-centered service plan.

(2) The necessary care and services to help the resident reach the highest level of physical, mental, and psychosocial well-being consistent with resident choice, current functional status and potential for improvement or decline.

(3) The care and services in a manner and in an environment that:

(a) Actively supports, maintains or improves each resident's quality of life;

(b) Actively supports the safety of each resident; and

(c) Reasonably accommodates each resident's individual needs and preferences except when the accommodation endangers the health or safety of the individual, another resident, or a member of the community; and((-))

(4) Services by the appropriate professionals based upon the resident's assessment and ~~((individualized treatment))~~ person-centered service plan.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0240 Staffing ~~((ratios))~~ levels.** (1) The enhanced services facility must ensure that:

(a) Sufficient numbers of appropriately qualified and trained staff are available to provide necessary care and services consistent with residents' ~~((negotiated service agreements))~~ person-centered service plan safely under routine

conditions, as well as during fire, emergency, and disaster situations; and

(b) At least two staff are awake and on duty in the facility at all times if there are any residents in the facility.

(2) A ~~((licensed))~~ registered nurse must be ~~((on duty in the facility at all times-))~~ available to meet the needs of the residents as follows:

(a) On duty in the facility at least twenty hours per week; and

(b) Available on call, when not present, to respond within thirty minutes by phone or in person.

~~((a))~~ (3) A ((registered)) licensed nurse must be on duty in the facility ((at least eight hours per day; and)) whenever a registered nurse is not on site.

~~((b) A registered nurse must be on call during any shift that a licensed practical nurse is on duty in the facility-))~~

~~((3))~~ (4) A mental health professional must be ((on-site)) available to meet the needs of the residents as follows:

(a) On site in the facility at least ((sixteen)) eight hours per day; and

(b) Available on call, when not present to respond within thirty minutes by phone or in person.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0280 Transfer and discharge.** (1) ~~((Upon completion of the annual reassessment and/or significant change assessment by both case management and enhanced services facility staff, the enhanced services team will review each resident for possible discharge. The team will determine if the resident:~~

~~(a) No longer needs the level of behavioral support provided by the enhanced services facility;~~

~~(b) Behaviors are now mitigated by changed medical or personal care needs;~~

~~(c) Expresses the desire to move to a different type of community based setting and has demonstrated the ability or capacity to be successful; or~~

~~(d) Is a good candidate for relocation and recommends other community based programs to the resident.~~

~~(2))~~ The enhanced services facility, with input from the person-centered service planning team, will meet with case management staff to identify residents ((with potential for discharge or)) who want to discharge from this residential setting or who could transfer to a less restrictive ((program, and will participate in)) residential setting. Once these residents are identified, discharge planning meetings will be held for each resident who ((meets the above criteria for potential discharge)) is planning to be discharged or transferred from the facility.

~~((3) The enhanced services facility must provide a thirty day notice before discharging a resident unless the situation is emergent and the case manager is involved in the decision-))~~

(2) The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility, unless:

(a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(b) The safety of the individuals in the facility is endangered;

(c) The health of individuals in the facility would otherwise be endangered;

(d) The resident has failed to make the required payment for his or her stay; or

(e) The facility ceases to operate.

(3) Before transferring or discharging a resident, the facility must:

(a) First attempt through reasonable accommodation to avoid transfer or discharge, unless agreed to by the resident;

(b) Notify the resident or resident's representative and make a reasonable effort to notify, if known, an interested family member, of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand;

(c) Record the reasons in the resident's record; and

(d) Include in the notice the items described in subsection (6) of this section.

(4) Except when specified in subsection (5), the notice of transfer or discharge required under subsection (3) of this section, the facility must give the resident at least thirty days' notice before the resident is transferred or discharged.

(5) Discharge notice may be made as soon as practicable before transfer or discharge when:

(a) The safety of individuals in the facility would be endangered;

(b) The health of individuals in the facility would be endangered;

(c) An immediate transfer or discharge is required by the resident's urgent medical needs; or

(d) The resident has not resided in the facility for thirty days.

(6) The written notice specified in subsection (3) of this section must include the following:

(a) The reason for transfer or discharge;

(b) The effective date of transfer or discharge;

(c) The location to which the resident is transferred or discharged;

(d) The name, address, and telephone number of the state long-term care ombuds;

(e) For residents with development disabilities and/or mental illness, the mailing address and telephone number of Disability Rights Washington, the protection and advocacy system for individuals with developmental disabilities.

(7) The facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(8) A resident discharged in violation of this section has the right to be readmitted immediately upon the first availability of appropriate space in the facility.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0370 Treatment services.** The enhanced services facility must:

(1) Provide for diagnostic and therapeutic services prescribed by the attending clinical staff that meet all of the resident needs identified in the ~~((individual treatment))~~ person-centered service plan, to include mental health and chemical dependency treatment;

(2) Ensure that each resident's ~~((individual treatment))~~ person-centered service plan has interventions for behavioral support in accordance with WAC 388-107-0160;

(3) Ensure that all services are provided by specific program professionals, such as mental health professionals and chemical dependency professionals.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0390 Use of routine psychopharmacologic medications.** When the resident is using a ~~((psychopharmacological))~~ psychopharmacologic medication on a routine basis, the facility must ensure that ~~((the))~~:

(1) Medication is prescribed by a physician or health care professional with prescriptive authority;

(2) Resident's ~~((individual treatment))~~ person-centered service plan includes strategies and modifications of the environment and staff behavior to address the symptoms for which the medication is prescribed;

(3) Changes in medication only occur when the prescriber decides it is medically necessary;

(4) The resident's record includes documentation about the specific symptom or behavior that caused the physician to order the medication and what the resident needs to be able to do or stop doing in order to discontinue the medication~~((:))~~;

(5) Documentation includes that the resident, guardian or legal representative, if any, was informed of the need for the psychopharmacologic medication~~((:))~~; and

(6) Antipsychotic medications are administered in a manner consistent with RCW 70.97.040 and 70.97.050.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0400 Use of as needed psychopharmacologic medications.** If the physician has ordered an as-needed psychopharmacologic medication for a resident, the facility must ensure that ~~((the))~~:

(1) ~~((Order))~~ The order details the circumstances under which the medication may be used and the medication is given only as specifically ordered;

(2) Resident's ~~((individual treatment))~~ person-centered service plan includes behavioral intervention strategies and modifications of the environment and staff behavior to address the symptoms for which the medication is prescribed;

(3) ~~((Documentation))~~ There is documentation in the resident record ~~((is done on))~~ about the specific symptom or behavior that caused the need for the medication and ~~((what))~~ the results of the medication use ~~((is))~~; ~~((and))~~

(4) Documentation includes that the resident, guardian or legal representative, if any, was informed of the need for the medication~~((:))~~;

(5) The resident, guardian, or legal representative has given informed consent for the medication; and

(6) Antipsychotic medications are administered in a manner consistent with RCW 70.97.040 and 70.97.050.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0410 Management of escalating behaviors.** (1) An enhanced services facility must have a specific procedure for deescalating, preventing and redirecting aggressive and challenging behavior. This protocol must always be the first approach and strategy in resolving behavioral issues. The protocol must include:

(a) Training on prevention of escalation of behavior before it reaches the stage of physical assault;

(b) Techniques for staff to use in response to challenging client behaviors;

(c) Evaluation of the safety of the physical environment;

(d) Issues of respect and dignity of the resident; and

(e) Use of the least restrictive physical and behavioral interventions depending upon the situation;

(2) If the facility uses holding techniques ~~((as a last resort))~~ to physically restrain residents in emergency situations and as part of behavioral intervention protocols, the facility must:

(a) Ensure that all staff authorized to use holding techniques receive department-approved training on specific techniques prior to using them;

(b) Describe the types of holding techniques that are safe and effective for the individual in the resident's person-centered service plan;

(c) Use other established resident-specific behavioral interventions first to attempt to deescalate the situation;

~~((b))~~ (d) Limit the holding technique to specific emergency situations where behavioral interventions have not been successful in deescalating a situation and the resident is at imminent risk of harm to self or others due to aggressive behavior;

~~((e))~~ (e) Limit the time used to only until the arrival of emergency personnel and/or the emergency ceases;

~~((d))~~ (f) Release residents from the holding technique as soon as possible;

~~((e))~~ (g) Instruct observers on how to ~~((support))~~ recognize signs of:

(i) Distress by the client; and

(ii) Fatigue by the staff.

~~((f))~~ (h) Document:

(i) The reason for use of the holding technique;

(ii) Other behavioral interventions attempted prior to the use of the holding technique;

(iii) The duration of the use of the holding technique;

~~((and))~~

(iv) Assessment by a qualified assessor; and

(v) The condition of the resident at the time of release from the holding technique.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0420 Physical restraints for medical purposes only.** (1) For the purposes of this section, "physical restraint" means a manual method, obstacle, or physical or

mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, required to treat the resident's medical symptoms. The enhanced services facility must ensure:

(2) Each resident has the right to be free from physical and chemical restraints used for discipline, behavioral intervention, or staff convenience;

(3) That physical restraints are used only during infrequent and episodic occurrences for the protection of the individual during delivery of medical care or treatment.

(4) That before using the physical restraint, the least restrictive alternatives have been tried and documented, and such restraint is deemed required to temporarily protect the resident from harming themselves or others during the medical care or treatment;

(5) That before physical restraints are used, the resident or resident representative has been assessed as needing the restraint to treat the emergent medical symptoms or provide the medical care, and to prevent the resident from self-harm; and

(a) The resident has given informed consent for the use of physical restraints for medical purposes.

(b) The ~~((treatment))~~ person-centered service team has been consulted and evaluated the resistance to medical care; and

~~((b))~~ (c) ~~The ((documentation has been updated to include))~~ use of positive interventions and supports ((used)) has been documented.

(6) That if physical restraints are used, the restraints are episodic and infrequently applied and immediately supervised on-site by a:

(a) Licensed registered nurse;

(b) Licensed practical nurse; or

(c) Licensed physician; and

(d) For the purposes of this subsection, immediately supervised means that the licensed person is in the facility, quickly and easily available;

(7) When any physical restraint is used ~~((per (3) above))~~ in accordance with this section:

(a) A staff person ~~((is))~~ must be in the presence of the resident at all times when the restraint is in use;

(i) The staff person must be either a licensed or registered nurse, a mental health professional, a certified nursing assistant, or a certified home care aid.

(b) A physician's order ~~((is))~~ must be obtained within one hour;

(c) The order must include~~((s))~~ treatments to assist in resolving the emergency situation and eliminating the need for the restraint;

(d) Behavioral consultation ~~((is))~~ must be obtained within two hours;

(e) Resident ~~((is))~~ must be released immediately upon the cessation of the behavior that preceded the need for restraint.

(f) The restraint ~~((is))~~ must be removed immediately at the conclusion of the medical emergency, treatment or procedure;

(g) The enhanced services facility must immediately self-report~~((s within twenty four hours the use of the physical~~

~~restraint for medical purposes to the complaint resolution unit; and))~~ the use of the physical restraint for medical purposes to the complaint resolution unit (CRU). For the purposes of this regulation "immediately" means there should be no delay between staff awareness of the occurrence and reporting to the CRU unless the situation is unstable in which case reporting should occur as soon as the safety of all residents is assured.

(h) The use of the physical restraint ~~((is))~~ must be documented. Documentation must:

(i) ~~((On))~~ Describe the specific medical issue that caused the need for restraint and what the resident needs to do or stop doing in order to discontinue the use of the restraint; and

(ii) ~~((That))~~ Demonstrate that the resident, guardian or legal representative, if any, was informed of the need for restraint;

(i) The ~~((treatment))~~ person-centered service planning team will consult within ~~((twenty four))~~ seventy-two hours to determine less intrusive methods to meet the resident's needs for future care.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0430 Food services.** The enhanced services facility must provide or contract out food services for residents. If the facility chooses to contract out the food service, the contracted services must meet all of the applicable food codes and requirements.

(1) The enhanced services facility must:

(a) Provide a minimum of three meals a day;

(b) Provide snacks;

(i) Between meals and in the evening at regular intervals; and

(ii) With no more than fourteen hours between the evening meal and breakfast, unless the enhanced services facility provides a nutritious snack after the evening meal and before breakfast.

(c) Provide access to fluids and snacks at all times;

(d) Provide sufficient time and staff support for residents to consume meals;

(e) Ensure all menus:

(i) Are written at least one week in advance and delivered to residents' rooms or posted where residents can see them, except as specified in (h) of this subsection;

(ii) Indicate the date, day of week, month and year;

(iii) Include all food and snacks served that contribute to nutritional requirements;

(iv) Are kept at least six months;

(v) Provide a variety of foods;

(vi) Provide foods at safe and appropriate temperatures; and

(vii) Are not repeated for at least three weeks, except that breakfast menus in enhanced services facilities that provide a variety of daily choices of hot and cold foods are not required to have a minimum three-week cycle.

(f) Prepare food on-site, or provide food through a contract with a food service establishment located in the vicinity that meets the requirements of chapter 246-215 WAC regarding food service;

(g) Serve nourishing, palatable and attractively presented meals adjusted for:

(i) Age, gender and activities, unless medically contraindicated; and

(ii) Individual preferences to the extent reasonably possible.

(h) Substitute foods of equal nutrient value, when changes in the current day's menu are necessary, and record changes on the original menu;

(i) Make available and give residents alternate choices in entrees for midday and evening meals that are of comparable quality and nutritional value. The enhanced services facility is not required to post alternate choices in entrees on the menu one week in advance, but must record on the menus the alternate choices in entrees that are served;

(j) Develop, make known to residents, and implement a process for residents to express their views and comment on the food services; and

(k) Maintain a dining area or areas approved by the department with a seating capacity for seventy-five percent or more of the residents per meal setting, or ten square feet times the licensed resident bed capacity, whichever is greater.

(2) The enhanced services facility must plan in writing, prepare on-site or provide through a contract with a food service establishment located in the vicinity that meets the requirements of chapter 246-215 WAC, and serve to each resident as ordered:

(a) Prescribed general low sodium, general diabetic, and mechanical soft food diets according to a diet manual. The enhanced services facility must ensure the diet manual is:

(i) Available to and used by staff persons responsible for food preparation;

(ii) Approved by a dietitian; and

(iii) Reviewed and updated as necessary or at least every five years.

(b) Prescribed nutrient concentrates and supplements when prescribed in writing by a health care practitioner.

(3) The enhanced services facility may provide to a resident at his or her request and as agreed upon in the resident's comprehensive ~~((individual treatment))~~ person-centered service plan, nonprescribed:

(a) Modified or therapeutic diets; and

(b) Nutritional concentrates or supplements.

(4) The enhanced services facility must have a means for those residents whose ~~((individual treatment))~~ person-centered service plan indicates they have the ability to make or select their own snacks and beverages an opportunity to do so without having to ask a staff member for assistance.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0560 Resident records—Clinical records.** (1) The enhanced services facility must:

(a) Maintain clinical records on each resident in accordance with accepted professional standards and practices that are:

(i) Complete;

(ii) Accurately documented;

(iii) Readily accessible; and

(iv) Systematically organized.

(b) Safeguard clinical record information against alteration, loss, destruction, and unauthorized use; and

(c) Keep confidential all information contained in the resident's records, regardless of the form or storage method of the records, except when release is required by:

(i) Transfer to another health care institution;

(ii) Law; or

(iii) The resident.

(2) The enhanced services facility must ensure the clinical record of each resident includes at least the following:

(a) Resident identification and sociological data, including the name and address of the individual or individuals the resident designates as significant;

(b) Medical information;

(c) Physician's orders;

(d) Assessments;

(e) ~~((Individual treatment))~~ Person-centered service plans;

(f) Services provided;

(g) Progress notes;

(h) Medications administered;

(i) Consents, authorizations, releases;

(j) Allergic responses;

(k) Laboratory, X ray, and other findings; and

(l) Other records as appropriate.

(3) Maintain resident records and preserve their confidentiality in accordance with applicable state and federal statutes and rules, including chapters 70.02 and 70.96A RCW.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0770 Environment of care.** The facility must ensure that:

(1) The facility is designed to provide ~~((the level of))~~ safety and security appropriate for the specific type of service or program provided as well as the age level, acuity, and risk of the residents served (e.g., geriatric, acute psychiatric, or forensic).

(2) ~~((Facility spaces accessible to residents must be designed to minimize locations where residents are out of the line of sight of staff.~~

~~(3))~~ All rooms with lockable doors, including but not limited to resident sleeping rooms and bathrooms, have a readily accessible means of rapid access for ~~((all))~~ appropriate staff.

(3) The facility must be physically accessible to all residents.

~~((4) Perimeter security addresses elopement prevention, prevention of contraband smuggling, visitor access control, and exit process and procedures.~~

~~(5) Openings in the perimeter security system (e.g., windows, doors, and gates) are controlled by locks (manual, electric, or magnetic) when required by the functional program.)~~

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0810 Resident room.** The facility must ensure that each resident sleeping room:

- (1) Meets the following standards:
- (a) Maximum capacity of one resident.
  - (b) May be locked by the resident:
    - (i) Unless otherwise indicated by an identified need in the ~~((individual treatment))~~ person-centered service plan; and
    - (ii) ~~((AH))~~ Appropriate staff have a readily accessible means of unlocking the room when the door is locked.  - (c) Minimum clear floor area of ~~((100))~~ eighty square feet and meets the needs of the resident.
  - (d) Has one or more outside windows that:
    - (i) If used for ventilation, are easily opened;
    - (ii) Have ~~((break-away))~~ adjustable shades, blinds, or equivalent installed for visual privacy and are designed to meet the safety needs of the resident; and
  - (2) Is adjacent to bathing and toilet facilities;
  - (3) Is designed to offer visual privacy from casual observation by other residents and visitors. The design for privacy must not restrict resident access to the entrance, handwashing station, or toilet.
  - (4) Is accessible, clean, and well-maintained with sufficient space, light, and comfortable furnishings for sleeping and personal activities including, but not limited to:
    - (a) A minimum of a three-foot clear access aisle from the entry door, along at least one side of the bed, and in front of all storage equipment;
    - (b) Enough room for medical equipment and for a resident to move about freely with mobility aides, such as wheelchairs, if applicable as assessed by resident need; and
    - (c) Direct access to a hallway, living room, lounge, the outside, or other common use area without going through a laundry or utility area, a bath or toilet room, or another resident's bedroom.
  - (5) Is equipped with:
    - (a) One or more waste containers;
    - (b) Furniture appropriate for the age and physical condition of each resident, including but not necessarily limited to:
      - (i) A chair, which may be used in either the bedroom or a group room interchangeably;
      - (ii) A bed of appropriate length and size that is thirty-six or more inches wide with a mattress that fits the bed frame, is in good condition, and is at least four inches thick unless otherwise requested or necessary for resident health or safety; and
      - (iii) A lockable storage space accessible to each resident for storage of small personal items, upon request.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0830 Resident bathing facilities.** The facility must provide access to a bathtub or shower for every resident. The facility will ensure that bathing facilities are designed and located for resident convenience and privacy. The facility must ensure:

- (1) At least one bathing unit for every four residents, or fraction thereof, who are located in a resident room without an adjoining bathroom;
- (2) Access to at least one bathing device for immersion;
- (3) Access to at least one roll-in shower or equivalent on each resident care unit:

- (a) Designed and equipped for unobstructed ease of shower chair entry and use;
- (b) With a spray attachment equipped with a backflow prevention device;
- (c) ~~((One))~~ With one-half inch or less threshold that may be a collapsible rubber water barrier; and
- (d) ~~((A))~~ With a minimum nominal (rough-framed) size of thirty-six inches by forty-eight.
- (4) Resident bathing equipment is smooth, cleanable, and able to be disinfected after each use.
- (5) In each bathing unit containing more than one bathing facility:
  - (a) Each bathtub, shower, or equivalent, is located in a separate room or compartment with three solid walls;
  - (b) The entry wall may be a ~~((break-away))~~ "shower" type curtain or equivalent that is designed to meet the safety needs of the resident;
  - (c) The area for each bathtub and shower is sufficient to accommodate a shower chair, an attendant, and provide visual privacy for bathing, drying, and dressing;
  - (d) All shower and tub surfaces are slip-resistant; and
  - (e) All bathing areas are constructed of materials that are impervious to water and cleanable.
- (6) Common bathing facilities must comply with the state building code requirements for accessible bathing facilities.
- (7) Grab bar(s) must be installed to prevent fall and injury in bathing facilities in nonaccessible resident rooms.
- (8) Grab bar(s) in accessible bathing rooms must be installed according to the state building code requirements for accessible bathing rooms.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0890 Outdoor recreation space and walkways.** (1) A facility must provide a safe, protected outdoor area for resident use.

- (2) The facility must ensure the outdoor area:
  - (a) Has areas protected from direct sunshine and rain throughout the day;
  - (b) Is easily accessible ~~((from the floor or story))~~ to the resident ~~((resides on))~~ and has walking surfaces which are firm, stable, and free from cracks and abrupt changes with a maximum of one inch between the sidewalk and adjoining landscape areas;
  - (c) Has sufficient space and outdoor furniture provided with flexibility in arrangement of the furniture to accommodate residents who use wheelchairs and mobility aids;
  - (d) Contains nonpoisonous shrubs, natural foliage, and trees;
  - (e) Is surrounded by walls or fences at least seventy-two inches high; and
  - (f) If used as a resident courtyard, the outdoor area must not be used for public or service deliveries.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0940 Resident safety ~~((and suicide prevention))~~.** The enhanced services facility must be

designed to prevent injury and ~~((suicide prevention, with special design considerations to details, finishes, and equipment. The facility must ensure:))~~ promote resident safety.

(1) ~~((Ceilings))~~ The facility must ensure that:

(a) ~~((In resident bathrooms are secured to prevent resident access. Ceiling systems of a nonsecured (nonclipped down) lay-in ceiling tile design are not permitted.~~

(b) In resident bedrooms and bathrooms, are designed to eliminate tie-off point(s) or at nine feet in height to prevent resident access.

~~(2) Doors and door hardware:))~~

~~((a))~~ Doorways are at least 36" wide;

(b) Door swings for private resident bathrooms or shower areas swing out to allow for staff emergency access(-);

(i) Door closers will not be used unless required by the building code. If required on the resident room door, the closer will be mounted on the public side of the door rather than the private resident's side of the door(-);

~~((3) Door hinges:~~

(a) Are designed to minimize points for hanging (i.e., cut hinge type); and

(b) Are consistent with the level of care for the resident.

~~(4) Door lever handles are specifically designed antiligature hardware.~~

~~(5) All hardware has tamper-resistant fasteners:))~~

~~((6) Windows:~~

(a) Located in areas accessible to residents are designed to limit the opportunities for breakage;

All glazing, both interior and exterior, and glass mirrors are fabricated with laminated safety glass or equal;

(e) Use of tempered glass for interior windows is permitted.

(d) Break away window coverings for visual privacy; and

(e) The anchorage of windows and window assemblies, including frames, is designed to resist impact loads applied from the inside and must be tested in accordance with American National Standards Institute (ANSI) Z97.1. Where operable windows are used, the hinges and locking devices must also be tested;

~~(7) Bathroom hardware and accessories:~~

~~((a))~~ (b) Special design considerations for resident safety and injury ~~((and suicide))~~ prevention ~~((must be))~~ are given to shower, bath, toilet, and sink hardware and accessories, including grab bars and toilet paper holders(-); and

~~((b))~~ (c) Grab bars(-:

(i) Where grab bars are provided in resident rooms, resident toilet rooms, resident bathing rooms or other nonpublic space, the space between the bar and the wall must be filled to prevent the grab bar from becoming a ligature point.

(8) An overall design for antiligature including, but not limited to, grab bars, towel hooks, levers, handles, sprinkler heads, and other protrusions.

(9) Towel bars and shower curtain rods are not permitted.

(10) In unsupervised resident areas, sprinkler heads must be recessed or of a design to minimize resident access.

(11) In resident bathrooms, lighting fixtures, sprinkler heads, electrical outlets, and other fixtures must be the tam-

~~per resistant type:))~~, where provided, must be securely fastened to withstand a minimum three hundred pound force.

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

## NEW SECTION

**WAC 388-107-0945 Resident suicide and self-harm prevention.** When an enhanced services facility's functional program states that it plans to admit a resident, or the licensee or applicant identifies a current resident who is at risk of suicide and/or self-harm, the licensee or applicant must submit a risk assessment to the department of health construction review services, identifying the risks in the physical environment. The licensee or applicant must ensure that the facility is equipped with all or part of the following, as determined by the department of health's review of the risk assessment:

(1) Ceilings:

(a) In resident bathrooms are secured to prevent resident access. Ceiling systems of a non-secured (non-clipped down) lay-in ceiling tile design are not permitted.

(b) In resident bedrooms and bathrooms are designed to eliminate tie-off point(s) or are at least nine feet in height.

(2) Doors and door hardware:

(a) Door swings for private resident bathrooms or shower areas swing out to allow for staff emergency access.

(b) Door closers will not be used unless required by the building code. If required on the resident room door, the closer will be mounted on the public side of the door rather than the private resident's side of the door.

(c) Door hinges are designed to minimize points for hanging (e.g. cut hinge type) and are consistent with the level of care for the resident.

(d) Door lever handles are specifically designed anti-ligature hardware.

(e) All hardware has tamper-resistant fasteners.

(3) Windows:

(a) Windows located in areas accessible to residents are designed to limit the opportunities for breakage.

(b) All glazing, both interior and exterior, and glass mirrors are fabricated with laminated safety glass or equivalent.

(c) Use of tempered glass for interior windows is permitted.

(d) Break-away window coverings are used for visual privacy.

(4) Bathroom hardware and accessories:

(a) Special design considerations for injury and suicide prevention must be given to shower, bath, toilet, and sink hardware and accessories, including grab bars and toilet paper holders.

(b) Towel bars and shower curtain rods are not permitted.

(5) Grab bars:

(a) Where grab bars are provided in resident rooms, resident toilet rooms, resident bathing rooms or other nonpublic space, the space between the bar and the wall must be filled to prevent the grab bar from becoming a ligature point.

(6) Anti-ligature design:

(a) The facility must include an overall design for anti-ligature including, but not limited to, grab bars, towel hooks, levers, handles, sprinkler heads, and other protrusions.

(b) In unsupervised resident areas, sprinkler heads must be recessed or of a design to minimize resident access.

(c) In resident bathrooms, lighting fixtures, sprinkler heads, electrical outlets, and other fixtures must be the tamper-resistant type.

(d) Call system shall not use cords.

(e) All hardware fixtures that are fastened with exposed fasteners shall use tamper resistant screws.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0960 Plumbing—Water supply.** The facility must:

(1) Provide:

(a) Water meeting the provisions of chapter 246-290 WAC, Group A public water supplies or chapter 246-291 WAC, Group B public water systems;

(b) Hot and cold water under adequate pressure readily available throughout the enhanced services facility;

(c) Labels or color codes for nonpotable water supplies as "unsafe for domestic use."

(2) Provide faucet controls in lavatories and sinks with:

(a) ~~((Either antiligature fixtures or fixtures))~~ Fixtures with at least four-inch wrist blades or single-levers based on a risk assessment made by the facility;

(b) Sufficient space for full open and closed operation; and

(c) Color-coding and labels to indicate "hot" and "cold."

(3) Ensure that all lavatories and sinks have gooseneck spouts, without aerators in areas requiring infection control.

~~((Locations determined by the facility's risk assessment must be permitted to have antiligature devices:))~~

(4) Provide shower heads that are of the flash-mounted type.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-1000 Mechanical—Ventilation systems.** The facility must ensure:

(1) Ventilation of all rooms is designed to prevent objectionable odors, condensation, and direct drafts on the residents;

(2) All habitable space is mechanically ventilated including air supply and air exhaust systems;

~~(3) ((Installation of air handling duct systems according to the requirements of the International Mechanical Code and))~~ All heating, ventilation, and air conditioning equipment complies with the requirements of the state building code, chapter 51-52 WAC;

~~(4) ((Installation of supply registers and return air grilles at least three inches above the floor;~~

~~(5) Installation of exhaust grilles on or near the ceiling; and~~

~~(6))~~ Outdoor air intakes are located a minimum of twenty-five feet from the exhaust from any ventilating system, combustion equipment, or areas which may collect vehicular exhaust and other noxious fumes, and a minimum of ten feet from plumbing vents. The facility must locate the bottom of outdoor air intakes serving central systems a minimum of three feet above the adjoining grade level or, if installed through the roof, three feet above the highest adjoining roof level.

~~((7) Minimum ventilation requirements meet the pressure relationship and ventilation rates per the following table:~~

PRESSURE RELATIONSHIPS AND VENTILATION OF CERTAIN AREAS				
Function Area	Pressure Relationship To Adjacent Areas <sup>1,2</sup>	Minimum Air Changes of Outdoor Air Per Hour Supplied To Room	Minimum Total Air Changes Per Hour Supplied To Room	All Air Exhausted Directly To Outdoors
RESIDENT CARE				
Resident room (holding room)	=			
Resident corridor	=			
Toilet room	N			
Resident gathering (dining, activity)	=	2	4	Optional
DIAGNOSTIC AND TREATMENT		Optional	2	Optional
Examination room	=	Optional	10	Yes
Physical therapy <sup>3</sup>	N	2	4	Optional
Occupational therapy <sup>3</sup>	N			
Soiled workroom or soiled holding	N	2	6	Optional
Clean workroom or clean holding	P	2	6	Optional



PRESSURE RELATIONSHIPS AND VENTILATION OF CERTAIN AREAS				
Function Area	Pressure Relationship To Adjacent Areas <sup>1,2</sup>	Minimum Air Changes of Outdoor Air Per Hour Supplied To Room	Minimum Total Air Changes Per Hour Supplied To Room	All Air Exhausted Directly To Outdoors
STERILIZING AND SUPPLY		2	6	Optional
Sterilizer exhaust room	N	2	10	Yes
Linen and trash chute room	N	2	4	Optional
Laundry, general <sup>3</sup>	±			
Soiled linen sorting and storage	N	Optional	10	Yes
Clean linen storage	P	Optional	10	Yes
SERVICE		2	10	Yes
Food preparation center <sup>3</sup>	±	Optional	10	Yes
Warewashing room <sup>3</sup>	N	Optional	2	Yes
Dietary day storage	±			
Janitor closet	N	2	10	Yes
Bathroom	N	Optional	10	Yes
Personal services (barber/salon)	N	Optional	2	Yes

<sup>1</sup>P=Positive N=Negative ± = Continuous directional control not required.

<sup>2</sup>Whether positive or negative, pressure must be a minimum of seventy cubic feet per minute (CFM).

<sup>3</sup>The volume of air may be reduced up to fifty percent in these areas during periods of nonuse. The soiled holding area of the general laundry must maintain its full ventilation capacity at all times.)

**AMENDATORY SECTION** (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-1190 Administrator responsibilities.**

The licensee must ensure the administrator:

- (1) Directs and supervises the overall twenty-four hour per day operation of the enhanced services facility;
- (2) Ensures residents receive the care and services identified in their ~~((individual treatment))~~ person-centered service plans and assessments;
- (3) Is readily accessible to meet with residents;
- (4) Complies with the enhanced services facility's policies;
- (5) When not available on the premises, either:
  - (a) Is available by telephone or electronic pager; or
  - (b) Designates a person approved by the licensee to act in place of the administrator. The designee must be:
    - (i) Qualified by experience to assume designated duties; and
    - (ii) Authorized to make necessary decisions and direct operations of the enhanced services facility during the administrator's absence.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 388-107-0930 Nursing and nutrition station.

**WSR 16-01-007**

**PROPOSED RULES**

**COLUMBIA BASIN COLLEGE**

[Filed December 3, 2015, 10:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-15-091.

Title of Rule and Other Identifying Information:

- Amend chapter 132S-01 WAC (Practice and procedure) with new title board of trustees;
- Amend chapter 132S-05 WAC updated with current administration;
- New chapter 132S-09 WAC, Discrimination and harassment;
- Amend chapter 132S-10 WAC, Public records to reflect attorney general's (AG) model rules;
- Amend chapter 132S-20 WAC, Practice and procedure and repeal contested cases;
- Repeal chapter 132S-30 WAC, Faculty and staff;
- Repeal chapter 132S-31 WAC, Reduction in force for classified staff;

- Repeal chapter 132S-40 WAC, Student policies replaced with new chapter 132S-100 WAC, Student code of conduct;
- Repeal chapter 132S-50 WAC, College facilities replaced with new chapters 132S-200 through 132S-600 WAC;
- New chapter 132S-100 WAC, Student code of conduct;
- New chapter 132S-200 WAC, Health and safety regulations;
- Repeal chapter 132S-285 WAC, SEPA - moved to new chapter 132S-700 WAC;
- New chapter 132S-300 WAC, Campus parking and traffic regulations;
- New chapter 132S-400 WAC, Facility use for first amendment activities;
- New chapter 132S-500 WAC, Facility use for other than first amendment activities;
- New chapter 132S-600 WAC, Posting and literature distribution; and
- New chapter 132S-700 WAC, Environmental policy.

Hearing Location(s): Columbia Basin College (CBC), Board Room, A Building, 2600 North 20th Avenue, Pasco, WA 99301, on January 26, 2016, at 5:00 p.m.

Date of Intended Adoption: January 26, 2016.

Submit Written Comments to: Camilla Glatt, 2600 North 20th Avenue, MS-A2, Pasco, WA 99301, e-mail cglatt@columbiabasin.edu, fax (509) 544-2029, by January 22, 2016.

Assistance for Persons with Disabilities: Contact Peggy Buchmiller by January 22, 2016, TTY 800-833-6384 or pbuchmiller@columbiabasin.edu.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule changes are needed because many of the current WAC are outdated and needed to be reviewed and/or revised to accommodate current practices and/or changes in local, state and federal guidelines. Changes in the college's organizational structure, technical capability, staffing, collective bargaining agreements and student code of conduct also necessitate updating the colleges' WAC. The date of the last full review of the college policies and responsibilities at CBC was in the early 1990s.

Reasons Supporting Proposal:

Current WAC	Current Chapter Title	New Chapter Title	Old/Existing Chapter	Purpose for Proposed Changes
132S-01	<b>Practice and procedure</b>  Last revision 3/90	<b>Board of trustees</b>	Every college and university has this chapter for brief adjudicative and adjudicative hearings with reference to the model rules of procedure (RCW 34.05.250). Examples of the hearing types: Disputing parking tickets, student eligibility for suspension from athletics, disputing residency determination for payment of tuition and other matters involving finances.	This chapter was relocated to chapter 132S-20 WAC under the same title, with minor revisions proposed. The relocation allows the first chapter of CBC's WAC to be information related to the board of trustees (BOT) and introduction to CBC's governance structure. The general public is more likely to review WAC and/or need this information.
132S-05	<b>Administration</b>  Last revision 3/90	No change	This chapter currently identifies the composition of the BOT and notes the monthly meeting dates, but the BOT is not administrative in its function, but rather is a governance structure that should have its own chapter, which is proposed as chapter 132S-01 WAC and discussed above. The chapter also identifies the president as the CEO, the rules coordinator and other operational information about the college.	Proposed changes, aside from moving BOT info to a standalone chapter as described above, are updated administrative titles, hours of operation and a new section on "service of process" which reflects current CBC policy.

Current WAC	Current Chapter Title	New Chapter Title	Old/Existing Chapter	Purpose for Proposed Changes
132S-09	N/A	<b>Discrimination and harassment policy and grievance procedure</b>	Adoption of CBC's current nondiscrimination and harassment policy and grievance procedure into a WAC chapter (which includes compliance with Title IX) as recommended by the AG's office.	Adoption of the current policy replaces the previous chapter which references discrimination procedures that may have met compliance requirements for various discrimination laws in effect in 1990.  CBC's current policy is an overall policy/procedure that meets compliance requirements of all applicable discrimination laws, including recent changes to Title IX and Violence Against Women Act (VAWA).
132S-10	<b>Public records</b> <b>Last revision 11/82</b>	No change	The existing chapter is the process for filing a public records request with the college (e.g., public records officer, response, cost for records, etc.).	The proposed changes include incorporating the AG's model rules and the current RCW (i.e., changes include updated definitions, renaming of titles of sections, etc.). As the public records officer for CBC, our current way of processing requests complies with the law, so in effect there is no change to how public record requests are processed, it is just more clearly laid out for the requestor.
132S-20	<b>Practice and procedure—Contested cases</b> <b>Last revision 10/82</b>	<b>Practice and procedure</b>	As mentioned above, every college and university has this chapter for brief adjudicative and adjudicative hearings with reference to the model rules of procedure (RCW 34.05.250). Examples of the hearing types: Disputing parking tickets, student eligibility for suspension from athletics, disputing residency determination for payment of tuition and other matters involving finances.	As stated above for chapter 132S-01 WAC, some sections were moved to this section and the brief adjudicative process was streamlined.

<b>Current WAC</b>	<b>Current Chapter Title</b>	<b>New Chapter Title</b>	<b>Old/Existing Chapter</b>	<b>Purpose for Proposed Changes</b>
132S-30	<b>Faculty and staff</b> <b>Last revision 10/91</b>	<b>Proposed repeal</b>	The existing chapter is out-of-date information related to academic employee responsibilities, workloads, employer-employee relations, nondiscrimination, affirmative action, grievance procedures for faculty and classified staff, tenure regulations (committees, dismissal for cause, etc.) leaves of absence, and types of leaves. With the last revisions made in 1991, the information is not consistent with up-to-date collective bargaining agreements and current policy.	The proposed repeal of this chapter and nonreplacement is because employees and students can secure current information on the CBC web site. The WAC proposed takes six months to one year to change. Additionally, represented employees under collective bargaining agreements have collective bargaining agreements that are negotiated on their behalf. The outdated information in the WAC that conflicts with policy and procedure causes confusion.
132S-31	<b>Reduction in force for classified staff-civil service employees</b> <b>Last revision 10/82</b>	N/A	The existing chapter is out-of-date procedural information for reduction in force.	The purpose of the proposed removal is to avoid any confusion with current language in the WPEA CBA or policy for nonrepresented classified staff.
132S-40	<b>Student policies</b> <b>Last revision: Minor additional sections on procedures for student disciplinary hearings were added in 9/14 for compliance with VAWA.</b>	132S-100 Student code of conduct	The existing chapter addresses the process for the student conduct code standards and procedures.	The proposed new WAC presented by the vice-president for student services and assistant dean for student conduct would update, clarify and streamline student conduct code standards and procedures, as well as to incorporate federal requirements relating to sexual harassment and sexual misconduct, including VAWA and Title IX/OCR guidance. The WAC has substantial revisions to the structure and the underlying language and processes - definitions match with Title IX, brief adjudicative hearing, etc., which improved the reading and understanding of process.

Current WAC	Current Chapter Title	New Chapter Title	Old/Existing Chapter	Purpose for Proposed Changes
132S-50	College facilities Last revision 11/05	132S-200 Health and safety regulation 132S-300 Campus parking and traffic regulation 132S-400 Facility use for first amendment activities 132S-500 Facility use for other than first amendment activities 132S-600 Posting and literature distribution	The existing chapter addresses the regulations regarding use of college facilities, commercial activities and penalties, traffic and parking, reporting of accidents, pets and animal control, smoke- and tobacco-free environment, firearms and weapons, etc.	This purpose of the proposed relocation to different chapters is to separate out specific areas in the chapter, which will allow for ease in a community member finding applicable information. This chapter would be replaced with new chapters and titles, chapter 132S-200 through 132S-600 WAC. The proposed changes include a new chapter on "facility use for first amendment activities" which follows the AG's format. The new chapter does not apply to faculty, staff or students, so their rights are not hindered. There is a section that is for "facility use for OTHER than first amendment activities" which uses existing processes, but the section was renamed to distinguish it from the first amendment activities section.
132S-285	SEPA (State Environmental Policy Act) policy	132S-700 Environmental policy	The existing chapter addresses the policy of the college when capital projects are proposed and developed which still must be in compliance with SEPA.	This proposed chapter was modified with a title change and minor revisions and was renumbered to chapter 132S-700 WAC to maintain the flow of the new chapters for college facilities.

Statutory Authority for Adoption: RCW 28B.50.140.

Statute Being Implemented: RCW 28B.50.140.

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

Name of Proponent: CBC, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Camilla Glatt, CBC, Pasco Campus, 2600 North 20th Avenue, Pasco, WA 99301, (509) 542-5548.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules impose no costs or regulatory burden on small businesses as defined under RCW 19.85.040. The proposed rules are also exempt under RCW 19.85.025(3) and 34.05.310 (4)(g)(i). Revisions impact college-specific internal policies.

A cost-benefit analysis is not required under RCW 34.05.328. Does not apply to these college rules.

December 3, 2015  
Camilla Glatt  
Vice-President for  
Human Resources  
and Legal Affairs

**Chapter 132S-01 WAC**

**~~((PRACTICE AND PROCEDURE))~~ BOARD OF TRUSTEES**

NEW SECTION

**WAC 132S-01-015 Organization.** Washington state Community College District 19, Columbia Basin College, is established in Title 28B RCW as a public institution of higher education. District 19 is governed by a five-member board of trustees, appointed by the governor. The board employs a president, who acts as the chief executive officer of the institution and secretary to the board.

NEW SECTION

**WAC 132S-01-025 Bylaws of the board of trustees.** The bylaws of the board of trustees of Columbia Basin College (CBC) are contained in the CBC board policy manual.

NEW SECTION

**WAC 132S-01-035 Regular meetings of the board of trustees.** The board of trustees of Columbia Basin College shall hold regular monthly meetings according to a schedule

including place, time and date filed with the Washington state code reviser on or before January 1st of each year for publication in the *Washington State Register*. Notice of any change from such meeting schedule shall be published in the *Washington State Register* at least twenty days prior to the rescheduled meeting date.

All regular meetings of the board of trustees shall be held at 2600 North 20th Avenue, Pasco, WA 99301, unless otherwise announced in accordance with chapter 42.30 RCW (the Open Public Meetings Act). Information about specific meeting places and times may be obtained from the president's office or the Columbia Basin College web site.

#### NEW SECTION

**WAC 132S-01-045 Special meetings of the board of trustees.** Special meetings of the board of trustees of Columbia Basin College may be called by the chairperson of the board or by a majority of the members of the board by written notice delivered by e-mail, mail or in person to each member at least twenty-four hours before the time of such meeting. Such notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be transacted or official action taken, other than the purpose, or purposes for which the special meeting was called. Notice of such special meetings also shall be provided twenty-four hours prior to such meetings to the local newspaper of general circulation and to each local radio and television station which has on file a written request to be notified of such special meetings or of all meetings of the board.

#### NEW SECTION

**WAC 132S-01-055 Office of the board of trustees.** The board of trustees of Columbia Basin College shall maintain an office at 2600 North 20th Avenue, Pasco, WA 99301. All records, minutes and the official college seal shall be kept in the president's office located at 2600 North 20th Avenue, Pasco, WA 99301. The office hours are 7:00 a.m. to 4:30 p.m. Monday through Thursday and 7:00 a.m. to 12:00 p.m. Friday, except for legal holidays and occasional closures as communicated to the local media.

#### NEW SECTION

**WAC 132S-01-065 Correspondence for the board of trustees.** Correspondence or other business for the board of trustees of Columbia Basin College shall be sent to the secretary of the board at 2600 North 20th Avenue, Pasco, WA 99301.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 132S-01-010 Adoption of model rules of procedure.
- WAC 132S-01-020 Appointment of presiding officers.
- WAC 132S-01-030 Method of recording.

- WAC 132S-01-040 Application for adjudicative proceeding.
- WAC 132S-01-050 Brief adjudicative procedures.
- WAC 132S-01-060 Discovery.
- WAC 132S-01-070 Procedure for closing parts of the hearings.
- WAC 132S-01-080 Recording devices.
- WAC 132S-01-090 Petitions for stay of effectiveness.

AMENDATORY SECTION (Amending WSR 90-07-006, filed 3/12/90, effective 4/12/90)

**WAC 132S-05-010 Rules coordinator.** The rules coordinator for Columbia Basin College as designated by the president (~~(Marvin Weiss)~~) is:

~~((Jean Dunn~~

~~Office of the President))~~

The Vice-President for Human Resources & Legal Affairs

Columbia Basin College

2600 North 20th Avenue

Pasco, WA 99301

AMENDATORY SECTION (Amending WSR 90-07-006, filed 3/12/90, effective 4/12/90)

**WAC 132S-05-015 Organization—Operation—Information.** ~~((a)) (1) Organization. Columbia Basin College is established in Title 28B RCW as a public institution of higher education. ((The institution is governed by a five member board of trustees, appointed by the governor. The board employs a president, who acts as the chief executive officer of the institution. The president establishes the structure of the administration.~~

~~((b)) The president is the chief executive officer and as such, establishes the structure of the administration.~~

(2) Operation. The Columbia Basin College administrative office at the Pasco campus is located at the following address:

Columbia Basin College

2600 North 20th Avenue

Pasco, WA 99301

and is open from ~~((7:30))~~ 7:00 a.m. to 4:30 p.m., Monday through ~~((Friday))~~ Thursday, 7:00 a.m. to 12:00 p.m., except on legal holidays. ~~((Educational operations))~~ College campuses are also located at the following addresses:

~~((Columbia Basin College, Richland Campus~~

~~4011))~~ CBC Richland Health Science Center

891 Northgate Drive

Richland, WA 99352

~~((Columbia Basin College,))~~ CBC Chase Center

1600 North 20th Avenue

Pasco, WA 99301

~~((e))~~ (3) Additional and detailed information concerning the educational offerings may be obtained from ~~(the catalog, copies of which are available at the following address:~~

Columbia Basin College  
2600 North 20th Avenue  
Pasco, WA 99301) college web site at [www.columbiabasin.edu](http://www.columbiabasin.edu) and at various locations including college libraries, admissions and the counseling office.

~~((BOARD OF TRUSTEES REGULAR MEETING DATE))~~

#### NEW SECTION

**WAC 132S-05-025 Service of process.** To protect the interests of Columbia Basin College employees, all process servers (those attempting to deliver summonses, subpoenas, etc.) to employees should be directed to the human resources office on the Pasco campus. When the process server comes to the human resources office, he or she should be connected with the person to whom the papers are being served, if that person can be immediately located and is not instructing a class or performing other services at the time. If the person served is not immediately located, the papers will be left during usual business hours with the vice-president for human resources & legal affairs or his or her executive assistant. If any of the above designees receives the papers from a process server, he or she will arrange a time and place for the individual being served to receive the legal documents in such a way as to minimize embarrassment and preserve confidentiality.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132S-05-020 Regular meeting date, board of trustees.

#### **Chapter 132S-09 WAC**

#### **NONDISCRIMINATION AND HARASSMENT POLICY AND GRIEVANCE PROCEDURE**

#### NEW SECTION

**WAC 132S-09-010 Introduction.** Columbia Basin College recognizes its responsibility for investigation, resolution, implementation of corrective measures, and monitoring the educational environment and workplace to stop, remediate, and prevent discrimination on the basis of race, color, national origin, age, perceived or actual physical or mental disability, pregnancy, genetic information, sex, sexual orientation, gender identity, marital status, creed, religion, honorably discharged veteran or military status, or use of a trained guide dog or service animal, as required by Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, Sections 504 and 508 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and

ADA Amendment Act, the Age Discrimination Act of 1975, the Violence Against Women Reauthorization Act and Washington state's law against discrimination, chapter 49.60 RCW and their implementing regulations. To this end, Columbia Basin College has enacted this policy prohibiting discrimination against and harassment of members of these protected classes. Any individual found to be in violation of this policy will be subject to disciplinary action up to and including dismissal from the college or from employment.

Any employee, student, applicant, or visitor who believes that he or she has been the subject of discrimination or harassment based on protected class status or gender should report the incident or incidents to the college's Title IX/EEO coordinator identified below. If the complaint is against that coordinator, or his or her relative attending or working for the college, the complainant should report the matter to the president's office for referral to an alternate designee.

Name: Camilla Glatt, Vice-President for Human Resources & Legal Affairs

Title: Title IX/EEO Coordinator

Office: Human Resources Contact Information: 509-542-5548

The Title IX/EEO coordinator or designee:

- (1) Will accept all complaints and referrals from college employees, applicants, students, and visitors;
- (2) Will make determinations regarding how to handle requests by complainants for confidentiality;
- (3) Will keep accurate records of all complaints and referrals for the required time period;
- (4) May conduct investigations or delegate and oversee investigations conducted by a designee;
- (5) May impose interim remedial measures to protect parties during investigations of discrimination or harassment;
- (6) Will issue written findings and recommendations upon completion of an investigation; and
- (7) May recommend specific corrective measures to stop, remediate, and prevent the recurrence of inappropriate conduct.

The college encourages the timely reporting of any incidents of discrimination or harassment. Complaints may be submitted in writing or orally. For complainants who wish to submit a written complaint, a formal complaint form is available online at <https://www.columbiabasin.edu/index.aspx?page=907>. Hard copies of the policy and complaint form are available at the following locations on campus: Hawk central, counseling and advising center, human resources-student employment, president's office-administrative wing of A building and vice-president for instruction's office.

#### NEW SECTION

**WAC 132S-09-020 Definitions.** (1) **Advisor:** A person of the complainant or respondent's choosing who can accompany the complainant or respondent to any related meeting or proceeding.

(2) **Complainant:** Employee(s), applicant(s), student(s), or visitor(s) of Columbia Basin College who alleges that she

or he has been subjected to discrimination or harassment due to his or her membership in a protected class.

(3) **Complaint:** A description of facts that allege violation of the college's policy against discrimination or harassment.

(4) **Consent:** 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. In order to give effective consent one must be of legal age.

A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(5) **Discrimination:** Unfavorable treatment of a person based on that person's membership or perceived membership in a protected class. Harassment is a form of discrimination.

(6) **Force:** Use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation and coercion that overcome resistance or produce consent. Sexual activity that is forced is by definition nonconsensual, but nonconsensual sexual activity is not by definition forced.

(7) **Harassment:** A form of discrimination consisting of physical or verbal conduct that denigrates or shows hostility toward an individual because of their membership in a protected class or their perceived membership in a protected class. Harassment occurs when the conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the terms or conditions of employment or substantially limiting the ability of a student to participate in or benefit from the college's educational and/or social programs. Petty slights, annoyances, offensive utterances, and isolated incidents (unless extremely serious) typically do not qualify as harassment. Examples of conduct that could rise to the level of discriminatory harassment include, but are not limited to, the following:

(a) Epithets, "jokes," ridicule, mockery or other offensive or derogatory conduct focused upon an individual's membership in a protected class.

(b) Verbal or physical threats of violence or physical contact directed towards an individual based upon their membership in a protected class.

(c) Making, posting, e-mailing, texting, or otherwise circulating demeaning or offensive pictures, cartoons, graffiti, notes or other materials that relate to race, ethnic origin, gender or any other protected class.

(8) **Hazing:** Acts likely to cause physical or psychological harm or social ostracism to any person within the college community, when related to admission, initiation, joining, or any other group - Affiliation activity.

(9) **Hostile environment:** Any situation in which there is harassing conduct that is based on protected class status and is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the terms or conditions of employment or substantially limiting the ability of a student to participate in or benefit from the college's educational or social programs.

The determination of whether an environment is "hostile" must be based on all of the circumstances. These circumstances could include:

(a) The frequency of the conduct;

(b) The nature and severity of the conduct;

(c) Whether the conduct was physically threatening;

(d) Whether the conduct was directed at more than one person;

(e) Whether the conduct arose in the context of other discriminatory conduct;

(f) Whether the statement is a mere utterance of an epithet which engenders offense in an employee or student, or offends by mere discourtesy or rudeness;

(g) Whether the speech or conduct deserves the protections of academic freedom or the first amendment.

(10) **Protected class:** Persons who are protected under state or federal civil rights laws, including laws that prohibit discrimination on the basis of race, color, national origin, age, perceived or actual physical or mental disability, pregnancy, genetic information, sex, sexual orientation, gender identity, marital status, creed, religion, honorably discharged veteran or military status, or use of a trained guide dog or service animal.

(11) **Resolution:** The means by which the complaint is finally addressed. This may be accomplished through informal or formal processes, including counseling, mediation (when appropriate), or the formal imposition of discipline sanction.

(12) **Respondent:** Person or persons who are members of the campus community who allegedly discriminated against or harassed another person or persons.

(13) **Sexual exploitation:** Occurs when one person takes nonconsensual or abusive sexual advantage of another for his or her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

(a) Invasion of sexual privacy;

(b) Engaging in voyeurism;

(c) Nonconsensual video or audio taping of sexual activity;

(d) Sexually based stalking; and/or

(e) Bullying may also be forms of sexual exploitation.

(14) **Sexual harassment:** A form of discrimination consisting of unwelcome, gender-based verbal, written, electronic and/or physical conduct. Sexual harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's gender. There are two types of sexual harassment.

(a) **Hostile environment sexual harassment** occurs when the conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the



terms or conditions of employment or substantially limiting the ability of a student to participate in or benefit from the college's educational and/or social programs.

(b) **Quid pro quo sexual harassment** occurs when an individual in a position of real or perceived authority, conditions the receipt of a benefit upon granting of sexual favors. Examples of conduct that may qualify as sexual harassment include:

- (i) Persistent comments or questions of a sexual nature.
- (ii) A supervisor who gives an employee a raise in exchange for submitting to sexual advances.
- (iii) An instructor who promises a student a better grade in exchange for sexual favors.
- (iv) Sexually explicit statements, questions, jokes, or anecdotes.
- (v) Unwelcome touching, patting, hugging, kissing, or brushing against an individual's body.
- (vi) Remarks of a sexual nature about an individual's clothing, body, or speculations about previous sexual experiences.
- (vii) Persistent, unwanted attempts to change a professional relationship to an amorous relationship.
- (viii) Direct or indirect propositions for sexual activity.
- (ix) Unwelcome letters, e-mails, texts, telephone calls, or other communications referring to or depicting sexual activities.

(15) **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.

(16) **Nonconsensual sexual intercourse:** Is 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.

(17) **Nonconsensual sexual contact:** Is 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.

(18) **Domestic violence:** Includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

(19) **Dating violence:** Means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(20) **Stalking:** Means intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. 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 intent.

#### NEW SECTION

**WAC 132S-09-030 Who may file a complaint.** Any employee, applicant, student or visitor of the college may file a complaint. Complaints may be submitted in writing or verbally, which will be captured in written form for processing. The college encourages the timely reporting of any incidents of discrimination or harassment. For complainants who wish to submit a written complaint, a formal complaint form is available online at <https://www.columbiabasin.edu/index.aspx?page=907>. Hard copies of the complaint form are available at the following locations on campus: Hawk central, counseling and advising center, human resources/student employment, president's office/administrative wing of A building and vice-president for instruction's office. Any person submitting a discrimination complaint shall be provided with a written copy of the college's nondiscrimination and harassment policies and grievance procedures.

#### NEW SECTION

**WAC 132S-09-040 Confidentiality and right to privacy.** Columbia Basin College will seek to protect the privacy of the complainant to the full 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 Columbia Basin College policies and procedures. Although Columbia Basin College will attempt to honor complainants' requests for confidentiality, it cannot guarantee complete confidentiality. Determinations regarding how to handle requests for confidentiality will be made by the Title IX/EEO coordinator.

**Confidentiality requests and sexual violence complaints.** The Title IX/EEO coordinator will inform and obtain consent from the complainant before commencing an investigation into a sexual violence complaint. If a sexual violence complainant asks that his or her name not be revealed to the respondent or that the college not investigate the allegation, the Title IX/EEO 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 his or her name not be disclosed or that the college not investigate, the Title IX/EEO 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:

- (1) The seriousness of the alleged sexual violence;
- (2) The age of the complainant;
- (3) Whether the sexual violence was perpetrated with a weapon;
- (4) Whether the respondent has a history of committing acts of sexual violence or violence or has been the subject of other sexual violence complaints;
- (5) Whether the respondent threatened to commit additional acts of sexual violence against the complainant or others; and

(6) Whether relevant evidence can be obtained through other means (e.g., security cameras, other witnesses, physical evidence).

If the college is unable to honor a complainant's request for confidentiality, the Title IX/EEO 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.

If the college decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the Title IX/EEO coordinator will evaluate whether other measures are available to limit the effects of the harassment and prevent its recurrence and implement such measures if reasonably feasible.

#### NEW SECTION

**WAC 132S-09-050 Responsible employees and reporting responsibilities.** (1) The college is obligated to address acts of sex-based misconduct (including sexual harassment and/or retaliation) of which a responsible employee knew or should have known occurred. A "responsible employee" is any employee who:

(a) Has the authority to take action to redress sex-based misconduct;

(b) Has been given the duty of reporting incidents of sex-based misconduct or any other misconduct by students; or

(c) A student could reasonably believe has this authority or duty.

For student complainants where the alleged offender is another student, "responsible employees" includes administrators (directors, deans, vice-presidents, etc.), athletic director/assistant athletic director, ASCBC director/assistant director, resource center staff, completion coaches, hawk central staff members, security officers, and executive assistants and secretarial staff reporting to positions designated above.

(2) A responsible employee must report to the Title IX/EEO coordinator all relevant details about alleged sex-based misconduct (including sexual harassment and/or retaliation) that the student or other person has shared and that the college will need to determine what occurred and resolve the situation. This includes the names of the alleged respondent, if known, the student complainant or other person who experienced the alleged sex-based misconduct, others involved in the alleged sex-based misconduct, as well as relevant facts, including the date, time and location. If the complaint is against the Title IX/EEO coordinator, or his or her relative attending or working for the college, the complainant should report the matter directly to the president's office for referral to an alternate designee.

(3) A responsible employee should provide the following information to a complainant:

(a) The reporting obligations (discussed above) of the responsible employee;

(b) Complainant's option to request confidentiality and available confidential resources;

(c) Complainant's right to file a Title IX complaint with the college; and

(d) Complainant's right to report a crime to local law enforcement.

For convenience of student complaint reporting, there are college-designated responsible employees and contact information noted on the college's web page, with all reports referred by the designated responsible employees to the Title IX/EEO coordinator.

For a staff complaint of sex-based misconduct (including sexual harassment and/or retaliation) by a student or another staff member, the staff complaint may be reported to the immediate supervisor, with the supervisor report/referral to the Title IX/EEO coordinator or the human resources director. A direct report to the Title IX/EEO coordinator or human resources director will be more expeditious in terms of processing the complaint. If the complaint is against the Title IX/EEO coordinator, or his or her relative attending or working for the college, the complainant should report the matter directly to the president's office for referral to an alternate designee.

#### NEW SECTION

**WAC 132S-09-060 Investigation procedure.** Upon receiving a discrimination complaint, the Title IX/EEO coordinator will assess the written complaint and determine the appropriate steps necessary to ensure all relevant evidence is obtained and all critical elements are addressed. The Title IX/EEO coordinator shall be responsible for overseeing all investigations. Investigations may be conducted by the Title IX/EEO coordinator or his or her designee. If the investigation is assigned to someone other than the Title IX/EEO coordinator, the Title IX/EEO coordinator shall inform the complainant and respondent(s) of the appointment of an investigator.

(1) **Interim measures.** The Title IX/EEO coordinator may impose interim measures to protect the complainant and/or respondent and/or others pending the conclusion of the investigation. Interim measures may include, but are not limited to, imposition of no contact orders, rescheduling classes, temporary work reassignments, referrals for counseling or medical assistance, and imposition of summary discipline on the respondent consistent with the college's student conduct code or the college's employment policies and collective bargaining agreements.

(2) **Investigation.** Complaints shall be thoroughly and impartially investigated. The investigation shall include, but is not limited to, interviewing the complainant and the respondent, relevant witnesses, and reviewing relevant documents. The investigation shall be concluded within a reasonable time, normally sixty days barring exigent circumstances. At the conclusion of the investigation the investigator shall set forth his or her findings and recommendations in writing. If the investigator is a designee, the investigator shall send a copy of the findings and recommendations to the Title IX/EEO coordinator. The Title IX/EEO coordinator shall consider the findings and recommendations and determine, based on a preponderance of the evidence, whether a violation of the discrimination and harassment policy occurred, and if so, what steps will be taken to resolve the complaint, remedy the effects on any victim(s), and prevent its recur-

rence. Possible remedial steps may include, but are not limited to, referral for voluntary training/counseling, development of a remediation plan, limited contact orders, and referral and recommendation for formal disciplinary action. Referrals for disciplinary action will be consistent with the student conduct code or college employment policies and collective bargaining agreements.

(3) **Written notice of decision.** The Title IX/EEO coordinator will provide each party and the appropriate student services administrator or appointing authority with written notice of the investigative findings and of actions taken or recommended to resolve the complaint, subject to the following limitations.

(a) **Complainant notice.** The complainant shall be informed in writing of the findings and of actions taken or recommended to resolve the complaint, if any, only to the extent that such findings, actions or recommendations directly relate to the complainant, such as a finding that the complaint is or is not meritorious or a recommendation that the accused not contact the complainant. The complainant may be notified generally that the matter has been referred for disciplinary action.

(b) **Respondent notice.** The respondent shall be informed in writing of the findings and of actions taken or recommended to resolve the complaint and shall be notified of referrals for disciplinary action.

(c) **Request for reconsideration.** Either the complainant or the respondent may seek reconsideration of the finding and/or referral for disciplinary action to the Title IX/EEO coordinator. Requests for reconsideration shall be submitted in writing to the Title IX/EEO coordinator within seven days of receiving the decision. Requests must specify which portion of the decision should be reconsidered and the basis for reconsideration. If a request for reconsideration is received, the Title IX/EEO coordinator shall respond within ten days. If the Title IX/EEO coordinator determines the request for reconsideration has merit, he or she may issue an amended finding or referral. Any amended decision is final and no further reconsideration is available, with the exception of subsection (5) of this section for appeal/review/grievance of disciplinary action as appropriate.

(4) **Informal dispute resolution.** Informal dispute resolution processes, like mediation, may be used to resolve complaints, when appropriate. Informal dispute resolution shall not be used to resolve sexual discrimination complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

(5) **Appeal for disciplinary action.** If formal disciplinary action is imposed as a result of a finding of violation of this policy, then a respondent may file an appeal. The right to appeal on particular grounds (i.e., the finding is not supported by the evidence, the sanction is substantially disproportionate to the severity of the violation, due process was violated, new evidence is available), if offered to either party, must be equally accessible to the complainant.

(a) **Student conduct appeal.** A student respondent may appeal a disciplinary action taken by the chief student con-

duct officer or the student conduct board in accordance with chapter 132S-100 WAC. The complainant will receive notice of the appeal and may submit either his or her own appeal or a written response to the student respondent's appeal within ten calendar days, which will be considered.

(b) **Represented employee grievance.** A faculty member or represented classified staff member may file a grievance under the applicable collective bargaining agreement.

(c) **Nonrepresented classified employee appeal.** Nonrepresented classified staff may file an appeal with the personnel resources board under WAC 357-52-020.

(d) **All other employee reviews.** All other employees may request review of the disciplinary action through the supervisory chain of command to the college president within twenty days of the imposition of the discipline. This includes student workers if the discipline imposed resulted from conduct that occurred during the performance of student employment and includes a loss in pay as a sanction (nothing prohibits the Title IX/EEO coordinator and/or investigator from referring findings against a student employee to the chief student conduct officer for additional review under the student conduct code). The request for review must be a signed, written document articulating the grounds for review. The responsible supervisor will respond to the request for review within twenty working days of receipt. If the finding(s) and/or discipline is upheld, then review of the supervisor's decision can be filed with the college president using the same process. If the finding(s) and/or discipline is upheld, the college president's decision will constitute final action and there is no further appeal within the college.

(e) **Volunteer or visitor review.** A volunteer or visitor respondent may request review of sanction(s) imposed in response to any findings under this policy, including temporary or permanent trespass through the president's office.

#### NEW SECTION

**WAC 132S-09-070 Publication of antidiscrimination policies and procedures.** The policies and procedures regarding complaints of discrimination and harassment shall be published and distributed as determined by the president or president's designee. Any person who believes he or she has been subjected to discrimination in violation of college policy will be provided a copy of these policies and procedures.

#### NEW SECTION

**WAC 132S-09-080 Limits to authority.** Nothing in this policy or procedure shall prevent the college president or designee from taking immediate disciplinary action in accordance with Columbia Basin College policies and procedures, collective bargaining agreement(s), and federal, state, and municipal rules and regulations.

Nothing in this policy or procedure limits the college from considering applicable policies of the college when investigating complaints including, but not limited to, the college's standards of conduct policy, appropriate use of IT resources policy, code of ethics policy, consensual relations leading to conflicts of interest policy or any other policy or procedure. For complaints involving students, nothing in this

policy or procedure limits the college from evaluating the conduct of any student under the student code of conduct.

#### NEW SECTION

**WAC 132S-09-090 Nonretaliation, intimidation or coercion.** Retaliation by, for or against any participant (including complainant, respondent, witness, Title IX/EEO coordinator, or investigator) is expressly prohibited. Retaliatory action of any kind taken against individuals as a result of seeking redress under the applicable procedures or serving as a witness in a subsequent investigation, or any resulting disciplinary proceedings is prohibited, and is conduct subject to discipline. Any person who thinks he/she has been the victim of retaliation should contact the Title IX/EEO coordinator immediately.

#### NEW SECTION

**WAC 132S-09-100 Criminal complaints.** Discriminatory or harassing conduct may also be, or occur in conjunction with, criminal conduct. Criminal complaints may be filed with the following law enforcement authorities:

Pasco CBC Campus:  
Pasco Police Department 509-545-3481 or emergency 911

Richland CBC Campus:  
Richland Police Department 509-628-0333 or emergency 911

The college will proceed with an investigation of harassment and discrimination complaints regardless of whether the underlying conduct is subject to civil or criminal prosecution.

#### NEW SECTION

**WAC 132S-09-110 Other discrimination complaint options.** Discrimination complaints may also be filed with the following federal and state agencies:

Washington State Human Rights Commission:  
<http://www.hum.wa.gov/index.html>

U.S. Department of Education Office for Civil Rights:  
<http://www2.ed.gov/about/offices/list/ocr/index.html>

Equal Employment Opportunity Commission:  
<http://www.eeoc.gov/>

#### NEW SECTION

**WAC 132S-10-030 Authority and purpose.** (1) RCW 42.56.070(1) requires Columbia Basin College to make available for inspection and copying nonexempt "public records" in accordance with published rules. The act defines "public record" to include any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained" by the agency. RCW 42.56.070(2) requires each agency to set forth "for informational purposes" every law, in addition to the Public Records Act, that exempts or prohibits the disclosure of public records held by that agency.

(2) The purpose of these rules is to establish the procedures Columbia Basin College will follow in order to provide access to public records. These rules provide information to persons wishing to request access to public records of the college and establish processes for both requestors and college staff that are designed to best assist members of the public in obtaining such access.

(3) The purpose of the act is to provide the public access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. In carrying out its responsibilities under the act, the college will be guided by the provisions of the act describing its purposes and interpretation.

#### NEW SECTION

**WAC 132S-10-040 Definitions.** (1) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

(2) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion pictures, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

(3) Relating to the conduct of government. To be a public record, a document must relate to the conduct of government or the performance of any governmental or proprietary function. Almost all records held by an agency relate to the conduct of government; however, some do not. A purely personal record having absolutely no relation to the conduct of government is not a public record. Even though a purely personal record might not be a public record, a record of its existence might be. For example, a record showing the existence of a purely personal e-mail sent by an agency employee on an agency computer would probably be a public record, even if the contents of the e-mail itself were not.

(4) Prepared, owned, used, or retained. A public record is a record prepared, owned, used, or retained by an agency. A record can be used by an agency even if the agency does not actually possess the record. If an agency uses a record in its decision-making process, it is a public record. For example, if an agency considered technical specifications of a public works project and returned the specifications to the contractor in another state, the specifications would be a public record because the agency used the document in its decision-making process. The agency could be required to obtain the public record, unless doing so would be impossible. An agency cannot send its only copy of a record to a third party for the sole purpose of avoiding disclosure.

NEW SECTION

**WAC 132S-10-050 Availability of public records.** (1) Hours for inspection of records. Public records of Columbia Basin College are available for inspection and copying during normal business hours of the college, Monday through Thursday 7:00 a.m. to 4:30 p.m. and Friday 7:00 a.m. to 12:00 p.m., excluding legal holidays. Records must be inspected at the offices of the college's human resources office.

(2) **Records index.** An index of public records is available for use by members of the public. There may be exemptions that may prohibit the college from releasing certain documents. The index may be accessed online at [www.columbiabasin.edu](http://www.columbiabasin.edu).

(3) **Organization of records.** Columbia Basin College will maintain its records in a reasonably organized manner. The college will take reasonable actions to protect records from damage and disorganization. A requestor shall not take the college's records from Columbia Basin College offices without the permission of the public records officer or designee. A variety of records is available on the Columbia Basin College web site at [www.columbiabasin.edu](http://www.columbiabasin.edu). Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

(4) **Making a request for public records.**

(a) Any person wishing to inspect or copy public records of the college should make the request in writing on the college's request form, or by letter, fax, or e-mail addressed to the public records officer and including the following information:

- (i) Name of requestor;
- (ii) Address of requestor;
- (iii) Other contact information, including telephone number and any e-mail address;
- (iv) Identification of the public records adequate for the public records officer or designee to locate the records; and
- (v) The date and time of day of the request.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or a deposit. Pursuant to WAC 132S-10-025 standard photocopies will be provided at fifteen cents per page.

(c) A form is available for use by requestors at the office of the public records officer and online at [www.columbiabasin.edu](http://www.columbiabasin.edu).

(d) The public records officer or designee may accept requests for public records that contain the information in this subsection (4) by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing.

(e) **Commercial purpose:** The act does not allow an agency to provide access to "lists of individuals requested for commercial purposes." RCW 42.56.070(9). Columbia Basin College may require a requestor to sign a declaration that he or she will not put a list of individuals in the record to use for a commercial purpose.

NEW SECTION

**WAC 132S-10-060 Public records officer.** (1) Any person wishing to request access to public records of Columbia Basin College, or seeking assistance in making such a request should contact the public records officer of the college:

Camilla Glatt, Vice-President for Human Resources & Legal Affairs

Columbia Basin College

2600 North 20th Avenue, Pasco, WA 99301

Phone: 509-542-5548

Fax: 509-542-2029

E-mail: [cglatt@columbiabasin.edu](mailto:cglatt@columbiabasin.edu)

Information is also available at the college's web site at [www.columbiabasin.edu](http://www.columbiabasin.edu).

(2) The public records officer will oversee compliance with the act but another college staff member may process requests. Therefore, these rules will refer to the public records officer or designee.

NEW SECTION

**WAC 132S-10-070 Requests for public records.** Both requestors and agencies have responsibilities under the act. The public records process can function properly only when both parties perform their respective responsibilities. An agency has a duty to promptly provide access to all nonexempt public records. A requestor has a duty to request identifiable records, inspect the assembled records or pay for the copies, and be respectful to agency staff.

(1) Providing "fullest assistance." Columbia Basin College is charged by statute with adopting rules which provide for how it will provide full access to public records, protect records from damage or disorganization, prevent excessive interference with other essential functions of the agency, provide fullest assistance to requestors, and provide the most timely possible action on public records requests. The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

(2) Acknowledging receipt of request. Within five business days of receipt of the request, the public records officer will do one or more of the following:

- (a) Make the records available for inspection or copying;
- (b) If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;
- (c) Provide a reasonable estimate of when records will be available; or

(d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone or in writing. The public records officer or designee may revise the estimate of when records will be available; or

(e) Deny the request.

(3) Protecting rights of others. In the event the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records offi-

cer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(4) Records exempt from disclosure. Some records are exempt from disclosure, in whole or in part. If the college believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(5) Inspection of records.

(a) Consistent with other demands, the college shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes the agency to copy.

(b) The requestor must claim or review the assembled records within thirty days of the college's notification to him or her that the records are available for inspection or copying. The college will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the college to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the college may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(6) Providing copies of records. After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying.

(7) Providing records in installments. When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(8) Completion of inspection. When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that Columbia Basin College has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

(9) Closing withdrawn or abandoned request. When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records

officer will close the request and indicate to the requestor that the college has closed the request.

(10) Later discovered documents. If, after the college has informed the requestor that it has provided all available records, the college becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

#### NEW SECTION

**WAC 132S-10-080 Costs of providing copies of public records.** (1) Costs for paper copies. There is no fee for inspecting public records. A requestor may obtain standard black and white photocopies for fifteen cents per page and color copies for the actual cost per page.

Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. Columbia Basin College will not charge sales tax when it makes copies of public records.

(2) Costs for electronic records. The cost of electronic copies of records shall be the actual costs for information on a CD-ROM. There will be no charge for e-mailing electronic records to a requestor, unless another cost applies such as a scanning fee.

(3) Costs of mailing. The college may also charge actual costs of mailing, including the cost of the shipping container.

(4) Payment. Payment may be made by cash, check, or money order to the Columbia Basin College, 2600 North 20th Avenue, Pasco, WA 99301.

#### NEW SECTION

**WAC 132S-10-090 Exemptions.** (1) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any other statute exempts or prohibits disclosure. Requestors should be aware of the following exemptions provided by law, outside the Public Records Act, that restrict the availability of some documents held by Columbia Basin College for inspection and copying:

- (a) Educational records;
- (b) Privacy;
- (c) Commercial use;
- (d) Attorney-client privilege;
- (e) Deliberative process;
- (f) Personal information;
- (g) Investigative;
- (h) Employment;

- (i) Financial, commercial, and proprietary information.
- (2) Columbia Basin College is prohibited by statute from disclosing lists of individuals for commercial purposes.

NEW SECTION

**WAC 132S-10-100 Review of denials of public records.** (1) Petition for internal administrative review of denial of access. Any person who objects to the initial denial or partial denial of a records request may petition in writing (including e-mail) to the public records officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) Consideration of petition for review. The public records officer shall promptly provide the petition and any other relevant information to the president of Columbia Basin College or his or her designee to conduct the review. The president or his or her designee will immediately consider the petition and either affirm or reverse the denial within two business days following the college's receipt of the petition, or within such other time as the college and the requestor mutually agree to.

(3) Review by the attorney general's office. Pursuant to RCW 42.56.530, if Columbia Basin College denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) Judicial review. Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative appeal.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132S-10-010	Designation of legislative liaisons.
WAC 132S-10-016	Public records—Purpose and definitions.
WAC 132S-10-020	Operations and procedures.
WAC 132S-10-021	Public records available.
WAC 132S-10-022	Public records officer.
WAC 132S-10-023	Public records—Office hours.
WAC 132S-10-024	Requests for public records.
WAC 132S-10-025	Public records—Fees.
WAC 132S-10-026	Public records—Exemptions.
WAC 132S-10-027	Review of denials of public records requests.
WAC 132S-10-028	Public records index.
WAC 132S-10-029	Request for public records—Address.

**Chapter 132S-20 WAC****PRACTICE AND PROCEDURE(~~(—CONTESTED CASES)~~)**NEW SECTION

**WAC 132S-20-001 Purpose.** The purpose of this chapter is to provide process for brief and full adjudicative hearings.

NEW SECTION

**WAC 132S-20-025 Model rules of procedure.** The model rules of procedure adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended, are hereby adopted for use at the Columbia Basin College. These rules may be found in chapter 10-08 WAC. Other procedural rules adopted in this title are supplementary to the model rules of procedure. In the case of a conflict between the model rules of procedure and procedural rules adopted in this title, the procedural rules adopted by the college shall govern.

NEW SECTION

**WAC 132S-20-035 Brief adjudicative procedures.** This rule adopts the provision of RCW 34.05.482 through 34.05.494. Brief adjudicative procedures may, at the election of college, be used in all appeals related to:

(1) Residency determination. If a hearing is required by law or institutional right, appeals of residency determination under RCW 28B.15.013 are brief adjudicative proceedings conducted by the vice-president for student services;

(2) Outstanding debts of college employees or students;

(3) Loss of eligibility to participate in athletic events;

(4) Contents of educational records;

(5) Hearings on denial of financial aid. Any hearings required by state or federal law regarding granting, modification or denial of financial aid are brief adjudicative proceedings conducted by the vice-president for student services.

NEW SECTION

**WAC 132S-20-045 Appointment of presiding officers.** The president or his/her designee shall designate a presiding officer for an adjudicative proceeding. The presiding officer shall be an administrative law judge, a member in good standing of the Washington Bar Association, a panel of individuals, the president or his/her designee, or any combination listed in this section. Where more than one individual is designated to be the presiding officer, one person shall be designated by the president or president's designee to make decisions concerning discovery, closure, witness exclusion, means of recording adjudicative proceedings, and similar matters.

NEW SECTION

**WAC 132S-20-055 Application for adjudicative proceeding.** An application for adjudicative proceeding shall be

in writing and should be submitted to the following address within twenty calendar days of the college action giving rise to the application, unless provided for otherwise by statute or rule: President's Office, Columbia Basin College, 2600 N. 20th Avenue, Pasco, WA 99301.

An application shall include the signature of the applicant, the nature of the matter for which an adjudicative proceeding is sought, the applicable statutes regarding rules, and an explanation of the facts involved. The procedures in applicable collective bargaining agreements between the college and representative union in effect and governing the matter will supersede these proceedings.

#### NEW SECTION

**WAC 132S-20-065 Discovery and prehearing conferences.** Discovery, including investigation in adjudicative proceeding, may be permitted at the discretion of the presiding officer. In permitting discovery, the presiding officer shall make reference to the civil rules of procedure. The presiding officer shall have the power to control the frequency and nature of discovery permitted, and to order discovery conferences to discuss discovery issues.

Prehearing conferences or other conferences may be held for the settlement or simplification of issues at the discretion of the presiding officer, or pursuant to a motion by either of the parties for a prehearing conference. The prehearing conference may be conducted by telephone, television, or other electronic means, in the discretion of the presiding officer and where the rights of the parties will not be prejudiced. Each participant in the conference shall have an opportunity to participate effectively in, to hear, and if technically and economically feasible, to see the entire proceeding while it is taking place.

#### NEW SECTION

**WAC 132S-20-075 Method of recording.** Proceedings shall be recorded by a method determined by the presiding officer, among those available pursuant to the model rules of procedure in WAC 10-08-170.

#### NEW SECTION

**WAC 132S-20-085 Recording devices.** No camera or recording devices shall be allowed in those parts of proceedings which the presiding officer has determined shall be closed, except for the method of official recording selected by the college.

#### NEW SECTION

**WAC 132S-20-095 Procedure for closing parts of the hearing.** The hearing is open to public observation, except as determined by the presiding officer. The presiding officer shall have the authority to close all or part of the proceeding to public observation or impose reasonable conditions upon observation of the proceeding. The presiding officer may also close the proceeding under provision of law expressly authorizing closure or under a protective order entered by the presiding officer. A party may apply for a protective order to

close part of a hearing. The party making the request should state the reasons for making the application to the presiding officer. If the other party opposes the request, a written response to the request shall be made within ten days of the request to the presiding officer. The presiding officer shall determine which, if any, parts of the proceeding shall be closed and state the reasons therefore in writing within twenty days of receiving the request.

#### NEW SECTION

**WAC 132S-20-105 Process for excluding witnesses.** A party may apply for an order excluding witnesses for good cause. If the other party opposes the request, a written response to the request shall be made within ten days of the request to the presiding officer. The presiding officer shall determine and may order, upon a showing of good cause, which, if any, witnesses should be excluded and state the reasons therefore in writing within twenty days of receiving the request.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 132S-20-015 Practice and procedure—Formal hearing policy.
- WAC 132S-20-020 Practice and procedure—Definitions.
- WAC 132S-20-030 Practice and procedure—Appearance and practice before agency.
- WAC 132S-20-040 Practice and procedure—Notice and opportunity for hearing in contested cases.
- WAC 132S-20-050 Practice and procedure—Service of process—By whom served.
- WAC 132S-20-060 Practice and procedure—Service of process—Upon whom served.
- WAC 132S-20-070 Practice and procedure—Service of process—Service upon parties.
- WAC 132S-20-080 Practice and procedure—Service of process—Method of service.
- WAC 132S-20-090 Practice and procedure—Service of process—When service complete.
- WAC 132S-20-100 Practice and procedure—Service of process—Filing with agency.
- WAC 132S-20-110 Practice and procedure—Depositions and interrogatories in contested cases—Right to take.
- WAC 132S-20-120 Practice and procedure—Depositions and interrogatories in contested cases—Scope.
- WAC 132S-20-130 Practice and procedure—Depositions and interrogatories in contested cases—Officer before whom taken.



WAC 132S-20-140 Practice and procedure—Depositions and interrogatories in contested cases—Authorization.

WAC 132S-20-150 Practice and procedure—Depositions and interrogatories in contested cases—Protection of parties and deponents.

WAC 132S-20-160 Practice and procedure—Depositions and interrogatories in contested cases—Oral examination and cross-examination.

WAC 132S-20-170 Practice and procedure—Depositions and interrogatories in contested cases—Signing attestation and return.

WAC 132S-20-180 Practice and procedure—Depositions and interrogatories in contested cases—Use and effect.

WAC 132S-20-190 Practice and procedure—Depositions and interrogatories in contested cases—Fees of officers and deponents.

WAC 132S-20-200 Practice and procedure—Depositions upon interrogatories—Submission of interrogatories.

WAC 132S-20-210 Practice and procedure—Depositions upon interrogatories—The interrogation.

WAC 132S-20-220 Practice and procedure—Depositions upon interrogatories—Attestation and return.

WAC 132S-20-230 Practice and procedure—Depositions upon interrogatories—Provisions of deposition rule.

WAC 132S-20-240 Practice and procedure—Hearing officers.

WAC 132S-20-250 Practice and procedure—Hearing procedures.

WAC 132S-20-260 Practice and procedure—Duties of hearing officers.

WAC 132S-20-270 Practice and procedure—Stipulations and admissions of record.

WAC 132S-20-280 Practice and procedure—Definition of issues before hearing.

WAC 132S-20-290 Practice and procedure—Continuances.

WAC 132S-20-300 Practice and procedure—Rules of evidence—Admissibility criteria.

WAC 132S-20-310 Practice and procedure—Tentative admission—Exclusion—Discontinuance—Objections.

WAC 132S-20-320 Practice and procedure—Form and content of decisions in contested cases.

#### REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132S-30-010 Academic employee—Instructional responsibilities.

WAC 132S-30-011 Academic employee—Annual workload standards.

WAC 132S-30-012 Academic employee—Development of written syllabi.

WAC 132S-30-013 Academic employee—Verification of class roster.

WAC 132S-30-014 Academic employee—Extended day duty assignments.

WAC 132S-30-015 Split shift—Librarians and guidance counselors.

WAC 132S-30-016 Recruitment, screening and selection procedures.

WAC 132S-30-020 Employer-employee relations—Definitions.

WAC 132S-30-022 Communications with employees' representatives.

WAC 132S-30-024 Employer-employee relations—Negotiations procedure.

WAC 132S-30-026 Employer-employee relations—Severability.

WAC 132S-30-028 Nondiscrimination.

WAC 132S-30-030 Equal opportunity policy.

WAC 132S-30-032 Affirmative action responsibility—Appointing authority of the college.

WAC 132S-30-034 Grievance procedure.

WAC 132S-30-036 Grievance procedures—Sex discrimination.

WAC 132S-30-037 Grievance procedure—Handicapped.

WAC 132S-30-038 Referrals of complaints—Affirmative action.

WAC 132S-30-040 Contract compliance review officials.

WAC 132S-30-042 Faculty promotion—Generally.

WAC 132S-30-050 Tenure regulations—Purpose.

WAC 132S-30-052 Tenure regulations—Definitions.

WAC 132S-30-054 Tenure regulations—Composition of review committee.

WAC 132S-30-056 Tenure regulations—Duties of review committees.

WAC 132S-30-058	Tenure regulations—Required review committee action.
WAC 132S-30-060	Tenure regulations—Dismissal for cause.
WAC 132S-30-062	Tenure regulations—Dismissal for sufficient cause.
WAC 132S-30-064	Tenure regulations—Nonrenewal of tenured faculty contracts.
WAC 132S-30-066	Tenure regulations—Review committee recommendations.
WAC 132S-30-068	Tenure regulations—Tenure consideration.
WAC 132S-30-070	Grievance procedure—Generally.
WAC 132S-30-072	Academic employee grievance—Policy.
WAC 132S-30-074	Academic employee grievance—Definitions.
WAC 132S-30-076	Academic employee grievance—Procedures.
WAC 132S-30-078	Academic employee grievance—Appeal.
WAC 132S-30-080	Leaves of absence—Introduction.
WAC 132S-30-082	Applications and accounting for absences and benefits, obligations, and reimbursement.
WAC 132S-30-084	Types of leaves.
WAC 132S-30-086	Vacation leave—Administrative and exempt personnel.
WAC 132S-30-088	Procedures.
WAC 132S-30-090	Summary suspension.
WAC 132S-30-092	Hearing.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132S-31-010	Purpose of rules.
WAC 132S-31-011	Definitions.
WAC 132S-31-012	Initial procedures for reduction in force.
WAC 132S-31-013	Initial order of layoff.
WAC 132S-31-014	Options in lieu of layoff.
WAC 132S-31-015	Procedures for establishing order of layoff and notice of requirements.
WAC 132S-31-016	Distribution of layoff notice.
WAC 132S-31-017	Reemployment rights of laid off employees.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132S-40-005	Code of conduct, student—Definition.
WAC 132S-40-050	Delegation of disciplinary authority.
WAC 132S-40-085	Civilian prosecution.
WAC 132S-40-090	Disposition of financial obligations of students.
WAC 132S-40-095	Students—Financial obligation—Appeal procedure.
WAC 132S-40-100	Student data—Introduction.
WAC 132S-40-105	Student information which may be released.
WAC 132S-40-110	Student information—Who may request and receive such information.
WAC 132S-40-115	Student access to records.
WAC 132S-40-125	Probation, suspension and expulsion.
WAC 132S-40-130	Scholarships.
WAC 132S-40-135	Financial aid.
WAC 132S-40-195	Grounds for ineligibility.
WAC 132S-40-200	Initiation of ineligibility proceedings.
WAC 132S-40-210	Ineligibility proceedings.
WAC 132S-40-300	Preamble.
WAC 132S-40-310	Definitions.
WAC 132S-40-315	Supplemental definitions.
WAC 132S-40-320	Student rights.
WAC 132S-40-330	Student responsibilities.
WAC 132S-40-340	Student code authority.
WAC 132S-40-350	Proscribed conduct.
WAC 132S-40-360	Student conduct code procedures.
WAC 132S-40-365	Supplemental sexual misconduct procedures.
WAC 132S-40-370	Appeals of disciplinary action.
WAC 132S-40-375	Supplemental appeal rights.
WAC 132S-40-380	Disciplinary sanctions.
WAC 132S-40-390	Interim restriction and suspension procedures.
WAC 132S-40-400	Records of disciplinary action.
WAC 132S-40-410	Rights to brief adjudicative procedures.
WAC 132S-40-420	Procedure for addressing student complaints.
WAC 132S-40-425	Supplemental complaint process.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132S-50-010	Purpose.
WAC 132S-50-020	Regulations regarding use of college facilities.
WAC 132S-50-024	Commercial activities.
WAC 132S-50-025	Commercial activities defined.
WAC 132S-50-026	Penalties for violations of commercial activities regulations.
WAC 132S-50-027	Distribution of materials.
WAC 132S-50-028	General policies limiting use.
WAC 132S-50-029	Liability for damage.
WAC 132S-50-030	Traffic and parking—Introduction.
WAC 132S-50-040	Traffic and parking—Definitions.
WAC 132S-50-050	Traffic and parking—Purposes of regulations.
WAC 132S-50-055	Traffic and parking—Applicable rules and regulations.
WAC 132S-50-060	Special traffic and parking regulations and restrictions authorized.
WAC 132S-50-065	Exceptions from traffic and parking restrictions.
WAC 132S-50-070	Traffic and parking—Enforcement.
WAC 132S-50-075	[Fines, penalties and] issuance of traffic tickets.
WAC 132S-50-080	Traffic and parking—Fines and penalties.
WAC 132S-50-085	Authorization for issuance of parking permits.
WAC 132S-50-090	Valid parking permit.
WAC 132S-50-095	Display of parking permit.
WAC 132S-50-100	Transfer of parking permits.
WAC 132S-50-110	Parking permit revocation.
WAC 132S-50-115	Parking permit revocation—Hearing provided.
WAC 132S-50-120	Allocation of parking space.
WAC 132S-50-125	Parking within designated spaces.
WAC 132S-50-130	Day parking.
WAC 132S-50-135	Night parking.
WAC 132S-50-140	Regulatory signs and directions.
WAC 132S-50-145	Speed limit.
WAC 132S-50-150	Pedestrian's right of way.
WAC 132S-50-155	Two-wheeled motor bikes or bicycles.
WAC 132S-50-160	Report of accidents.
WAC 132S-50-165	Liability of college.

WAC 132S-50-170	Delegation of authority.
WAC 132S-50-175	Severability.
WAC 132S-50-180	Pets definition.
WAC 132S-50-185	Animal control.
WAC 132S-50-190	Penalties for violations of pet control regulations.
WAC 132S-50-195	Smoke and tobacco-free environment.
WAC 132S-50-280	Regulations governing firearms and weapons on or in college facilities.

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

**Chapter 132S-90 WAC****STUDENT RIGHTS, RESPONSIBILITIES AND STUDENT STATUS**NEW SECTION

**WAC 132S-90-010 Student rights.** The following enumerated rights which are deemed necessary to achieve the educational goals of the college are guaranteed to each student within the limitations of statutory law and college policy:

Academic freedom.

(1) Students have the right to pursue educational objectives from among the college's curricula, programs, and services subject to the provisions of this chapter.

(2) Students have the right to a learning environment that is free from unlawful and/or discriminatory actions.

(3) Students have the right to present their own views, even though they may differ from those held by faculty members, and will not be subject to adverse action by faculty when such views are expressed in a manner that does not interfere with the rights of others.

(4) Students are protected from academic evaluations which are arbitrary, prejudiced, or capricious.

NEW SECTION

**WAC 132S-90-020 Student responsibilities.** Students who choose to attend Columbia Basin College also choose to participate actively in the learning process offered by the college. The college is responsible for providing its students with an educational environment that includes resources used by students to attain their educational goals. In return each student is responsible to:

(1) Participate actively in the learning process, both in and out of the classroom;

(2) Seek timely assistance in meeting educational goals;

(3) Attend all class sessions;

(4) Prepare adequately to participate fully in class activities;

(5) Meet the standards of academic performance established by each instructor;

(6) Develop skills required for learning; e.g., basic skills, time management, and study skills;

- (7) Assume final authority for the selection of appropriate educational goals;
- (8) Select courses appropriate for meeting chosen educational goals;
- (9) Make appropriate use of services and resources;
- (10) Contribute towards improving the college;
- (11) Become knowledgeable of and adhere to the college's policies, practices, and procedures;
- (12) Abide by the standards set forth in the student code of conduct.

NEW SECTION

**WAC 132S-90-030 Admissions and registration procedures.** Columbia Basin College maintains an open door admission policy and grants admission to applicants who are at least eighteen years of age and/or have graduated from high schools accredited by a regional accrediting association or have a GED certificate. Home school graduates and graduates from nonaccredited high schools are required to petition for admissions through the admissions/graduation committee. For further information regarding the petition process, contact the student records office.

Applicants who are less than sixteen years of age and/or do not meet CBC admission requirements must petition for admissions through the admissions/graduation committee. For further information regarding the petition process, contact the student records office.

Admission to CBC does not guarantee admission to all degree or certificate programs. Some programs have special applications and admission procedures and limited entry dates. Students should consult the individual program and/or department for admission requirements.

Admissions and registration regulations and procedures for students wishing to attend Columbia Basin College are published in the college catalog. Copies of the catalog are available online at [www.columbiabasin.edu](http://www.columbiabasin.edu). Questions and inquires about admission and registration regulations and procedures should be directed to the student records office or the college registrar.

NEW SECTION

**WAC 132S-90-040 Deadlines and due dates.** Deadlines and due dates for students attending and wishing to attend Columbia Basin College are published in the college yearly catalog and quarterly schedules. Copies of the catalog and schedule are available online at [www.columbiabasin.edu](http://www.columbiabasin.edu). Questions and inquires about deadlines and due dates should be directed to the appropriate college administrator.

NEW SECTION

**WAC 132S-90-050 Graduation submissions.** (1) Candidates for degrees, certificates, and diplomas are advised to meet with their advisor at least two quarters prior to the anticipated completion date to review degree progress and to ensure graduation requirements will be met.

(2) Students must formally apply for graduation the quarter prior to completing all degree, certificate or diploma requirements. Graduation applications for transfer degrees

are available from a counselor or completion coach in the counseling and advising center. Graduation applications for the associate in applied science degrees and certificates are available from program department advisors. Students may graduate at the end of any quarter.

(3) To be approved for graduation, a student must:

(a) Complete all degree/certificate program requirements. No one course can fulfill two distribution requirements within a degree.

(b) Complete at least one-third of the credits required for a degree or certificate in residence at CBC.

NEW SECTION

**WAC 132S-90-060 Residency.** (1) A resident student is one who is a U.S. citizen and has met specific requirements demonstrating permanent residence in the state of Washington. Permanent residence in the state of Washington is evidenced by physical presence in the state as well as having a sufficient number of permanent Washington documents. Documentation should be dated one year and one day prior to the commencement of the quarter for which a student is applying for residency status. These documents include:

- (a) Voter's registration;
- (b) Washington state driver's license;
- (c) Car registration;
- (d) Bank accounts;
- (e) Federal tax return (required).

(2) Students wishing to change their residency classification must complete a residency questionnaire and provide necessary documentation. Application for reclassification prior to registration into classes is preferred. Residency reclassification must take place within thirty calendar days of the first day of the quarter. Special tuition allowances may apply to some eligible noncitizens, Washington higher education employees, and to military personnel and their dependents stationed in the state of Washington. For further information, contact the student records office.

**Chapter 132S-91 WAC****LOSS OF ELIGIBILITY—STUDENT ATHLETE PARTICIPATION**NEW SECTION

**WAC 132S-91-010 Loss of eligibility—Student athletic participation.** (1) Grounds for ineligibility. Any student found to have violated chapter 69.41 RCW, which prohibits the unlawful sale, delivery or possession of prescription drugs, shall, after hearing, be disqualified from participation in any school-sponsored athletic events or activities.

(2) Initiation of ineligibility proceedings. The dean or designee shall have the authority to request commencement of athletic ineligibility proceedings whenever he or she has reasonable cause to believe that the student has violated chapter 69.41 RCW or has been advised that the student has been convicted of a crime involving the violation of chapter 69.41 RCW. The notice of the alleged violations and proposed suspension and the opportunity for a hearing shall be given to the student at least ten days before the hearing. A

student convicted of violating chapter 69.41 RCW in a separate criminal proceeding may be given by the dean or designee an interim suspension pending final determination of any administrative proceeding held under these rules. Should the student desire not to go forward with the hearing, the disqualification for participation in athletic events or activities shall be imposed as set forth in the notice of hearing to the student.

(3) Ineligibility proceedings. The president of the college or designee shall select a presiding officer who shall be a college officer who is not involved with the athletic program to conduct the brief adjudicative hearing. The presiding officer shall promptly conduct the hearing and permit the affected parties to explain both the college's view of the matter and the student's view of the matter. The brief adjudicative proceeding shall be conducted in accordance with the Administrative Procedure Act, currently RCW 34.05.482 through 34.05.494. A written decision shall be issued within ten calendar days of the conclusion of the brief adjudicative hearing.

### Chapter 132S-92 WAC

#### FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT

##### NEW SECTION

**WAC 132S-92-010 The Family Educational Rights and Privacy Act.** FERPA policy and procedures are published yearly in the college catalog. Copies of the catalog are available online at [www.columbiabasin.edu](http://www.columbiabasin.edu). Questions and inquiries about FERPA policy and procedures should be directed to the college registrar.

### Chapter 132S-100 WAC

#### STUDENT CODE OF CONDUCT

##### NEW SECTION

**WAC 132S-100-010 Preamble.** Columbia Basin College (herein referred to as "CBC" or "the college") is supportive of diversity among ideas, cultures, and student characteristics in the pursuit of advancing one's education. A responsibility to secure, respect, and protect such opportunities and conditions is shared by all members of the academic community.

As a member of this community, students are expected to uphold and be accountable for this student code of conduct both on and off campus, and acknowledge that the college has the authority to take disciplinary action when a student violates these policies.

As an agency of the state of Washington, CBC must respect and adhere to all laws established by local, state, and federal authorities. This student code of conduct has been developed to educate students and protect the welfare of the community.

##### NEW SECTION

**WAC 132S-100-020 Good standing.** The award of a degree or certificate is conditioned upon the student's good

standing in the college and satisfaction of all program requirements. "Good standing" means the student has resolved any unpaid fees or acts of academic or behavioral misconduct and complied with all sanctions imposed as a result of any misconduct. CBC shall deny award of a degree or certificate if the student is dismissed from the college based on their misconduct.

##### NEW SECTION

**WAC 132S-100-030 Definitions.** Assembly - 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.

Board of trustees - The board of trustees of Community College District No. 19, state of Washington.

Bullying - Physical or verbal abuse, repeated over time, and involving a power imbalance between the aggressor and victim.

College - Columbia Basin College, established within Community College District No. 19, state of Washington.

College facilities - Any and all real property controlled or operated by the college, including all buildings and appurtenances affixed thereon or attached thereto.

College premises - All land, buildings, facilities, and other property in the possession of or owned, used, or controlled by the college, including adjacent streets and sidewalks.

Complainant - A person who reports that a violation of the student code of conduct has occurred towards themselves, another person, and/or group of people.

Complaint - A description of facts that allege a violation of student code of conduct or other college policy.

Consent - Knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon activity, including sexual activity. A person cannot consent for sexual activity if they are not of legal age, unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual activity.

Cyberstalking, cyberbullying, and online harassment - The prohibited behavior of stalking, bullying, and/or harassment through the use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, which harms, threatens, or is reasonably perceived as threatening the health or safety of another person.

Disciplinary action - The sanctioning of any student pursuant to WAC 132S-100-430 for the violation of any designated rule or regulation of the college, including rules of student conduct, for which a student is subject to adverse action.

Harassment - Conduct by any means that is severe, persistent, or pervasive, and is of such a nature that it would, or does cause a reasonable person substantial emotional distress and undermine their ability to work, study, or participate in their regular life activities or participate in the activities of the college.

**Instructional day** - Any regularly scheduled instructional day designated in the academic year calendar, including summer quarter, as a day when classes are held or during final examination week. Saturdays and Sundays are not regularly scheduled instructional days.

**Policy** - The written regulations of the college as found in, but not limited to, the student code of conduct and any other official regulation written or in electronic form.

**Preponderance of the evidence** - The standard of proof used with all student disciplinary matters at CBC that fall within the student code of conduct, which means that the amount of evidence needs to be at fifty-one percent or "more likely than not" before a student is found responsible for a violation.

**President** - The chief executive officer appointed by the board of trustees or, in such president's absence, the acting president or other appointed designee. The president is authorized to delegate any and all of their responsibilities as may be reasonably necessary.

**Respondent** - The student against whom disciplinary action is being taken or initiated.

**Rules of the student conduct code** - The rules contained herein as now exist or which may be hereafter amended, the violation of which subject a student to disciplinary action.

**Service** - 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 electronically mailed and deposited into the mail.

**Stalking** - Intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. 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 intent.

**Student** - Any person taking courses either full-time or part-time, or participating in any other educational offerings at CBC, excluding students enrolled in the High School Academy. If a student withdraws after allegedly violating the student code of conduct, but prior to the college reaching a disciplinary decision in the matter, the college can move forward with the disciplinary process, place the process on hold until the student returns, or choose to place the investigation results in the student's file for consideration should they reappear for admittance to reenroll in the college.

**Student appeals board** - Also referred to as the "SAB" or "appeals board." The SAB presides over the appeal process for the SCO and SCB conduct decisions that a student has timely appealed as set forth herein.

**Student conduct board** - Also referred to as the "SCB" is a hearing panel for some disciplinary matters as set forth herein.

**Student conduct officer** - Also referred to as "conduct officer" and/or "SCO" is the person designated by the college president to be responsible for the administration of the student code of conduct or, in such person's absence, the acting SCO or other appointed designee. The SCO is authorized to delegate any and all of his/her responsibilities as may be reasonably necessary.

## ARTICLE I

### AUTHORITY FOR THE STUDENT CODE OF CONDUCT

#### NEW SECTION

**WAC 132S-100-100 Student code authority.** The SCO will develop policies for the administration of the student code of conduct as well as procedural rules for the conduct of SCB hearings that are consistent with the provisions of the student code of conduct as specified herein.

The CBC board of trustees, acting pursuant to RCW 28B.50.140(14), do by written order, delegate to the president of the college, the authority to approve or reject a disciplinary action for which there is a recommendation that a student be expelled or suspended.

#### NEW SECTION

**WAC 132S-100-105 Composition of the student conduct board.** The college will have a SCB composed of five members who will serve as a standing committee until a decision is made regarding the case. The membership of the SCB during a hearing will consist of four members chosen and approved by the SCO and vice-president of student services, two students in good standing, and two faculty members. The fifth member is the chairperson, who may be of any category of college employee and who shall be approved by the president of the college. The chairperson will preside at the disciplinary hearing and will provide administrative oversight through the hearing process. The chairperson may participate in committee deliberations but will not vote unless it is necessary to constitute a quorum or the vote of the SCB is tied, at which time the chairperson will cast the deciding vote. Any three persons constitute a quorum of a conduct board and may act, provided that at least one student, one faculty, and the chairperson are present.

#### NEW SECTION

**WAC 132S-100-110 Student appeals board.** The college will have a student appeals board (herein referred to as the "SAB" or "appeals board") composed of three members who will serve as a standing committee until a decision is made regarding the appeal and after their following appeal time frame has passed. The membership of the appeals board will consist of three members, two individuals from the staff or faculty and the vice-president of student services or their designee. The two members will be chosen and approved by the SCO and they must possess no direct history or relation to the student that has filed an appeal. The vice-president of student services will act as the chairperson of the appeals board. The chairperson will provide administrative oversight throughout the process and participate in committee deliberations, but they will only vote if the SAB decision is tied, at which time the chairperson will cast the deciding vote.

NEW SECTION

**WAC 132S-100-115 Convening boards.** The SCO convenes the SCB and/or SAB from the appointed board membership only if a SCB or SAB is needed for disciplinary or appeal procedures.

NEW SECTION

**WAC 132S-100-120 Classroom conduct and the learning environment.** Instructors have the authority to take appropriate action to maintain order and proper conduct in the classroom and to maintain the effective cooperation of the class in fulfilling the objectives of the course. An instructor may exclude a student from any single class/program session during which the student is so disorderly or disruptive that it is difficult or impossible to maintain classroom decorum. The instructor will report any such exclusion from the class/program session to the SCO. The SCO may initiate disciplinary action under the student code of conduct.

NEW SECTION

**WAC 132S-100-125 Decisions.** Decisions on responsibility by the SCO, the SAB, or the SCB are made using the preponderance of evidence standard of proof. These decisions become final after fifteen calendar days from the date of notification to the student unless a written appeal is filed with the SCO prior to that final date. A decision to drop the charges, issue a warning, and/or to only document the case, are not subject to appeal unless the case involves sexual misconduct (see WAC 132S-100-420 and 132S-100-425). All decision notifications by the SCO, SCB, or SAB will include the outcome for the decision and the procedures for appealing that decision. Decisions on an appeal from the president of the college or their designee are final.

## ARTICLE II

## PROSCRIBED CONDUCT

NEW SECTION

**WAC 132S-100-200 Jurisdiction of the student code of conduct.** The CBC student code of conduct will apply to conduct that occurs on college premises, at college-sponsored events and activities, and to off-campus conduct which are violations or alleged violations of local, state, or federal law and which also violate this student code of conduct. Such allegations or violations that occur off-campus can be the subject of college disciplinary action if the SCO determines disciplinary action is necessary. Students are responsible for their conduct from the time of application for admission until thirty instructional days following the actual receipt of a degree and/or certificate, 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. These standards shall apply to a student's conduct even if the student withdraws from the college while a disciplinary matter is pending. The SCO will decide whether the

code will be applied to conduct occurring off campus, on a case-by-case basis, at their sole discretion.

NEW SECTION

**WAC 132S-100-203 Conduct—Rules and regulations.** The attendance of a student at CBC is a voluntary entrance into the academic community. By such entrance, the student assumes obligations of performance and behavior reasonably imposed by the college relevant to its lawful missions, processes, and functions. It is the college's expectation that students will:

- (1) Conduct themselves in a responsible manner;
- (2) Comply with rules and regulations of the college and its departments;
- (3) Respect the rights, privileges, and property of other members of the academic community;
- (4) Maintain a high standard of integrity and honesty; and
- (5) Not interfere with legitimate college business appropriate to the pursuit of educational goals.

Any student or student organization will be subject to disciplinary action who, either as a principal or participator or by aiding or abetting, commits or attempts to commit any of the misconduct per WAC 132S-100-205 through 132S-100-295.

NEW SECTION

**WAC 132S-100-205 Abusive conduct.** Physical and/or verbal abuse, threats, intimidation, harassment, online harassment, coercion, bullying, cyberbullying, retaliation, stalking, cyberstalking, and/or other conduct which threatens or endangers the health or safety of any person or which has the purpose or effect of creating a hostile or intimidating environment.

NEW SECTION

**WAC 132S-100-208 Abuse of the student conduct system.** Abuse of the student conduct system which includes, but is not limited to:

- (1) Failure to obey any notice from a college official to appear for a meeting or hearing as part of the student conduct system.
- (2) Willful falsification, distortion, or misrepresentation of information during the conduct process.
- (3) Disruption or interference with the orderly conduct of a college conduct proceeding.
- (4) Filing fraudulent charges or initiating a college conduct proceeding in bad faith.
- (5) Attempting to discourage an individual's proper participation in, or use of, the student conduct system.
- (6) Attempting to influence the impartiality of a member of the college conduct system prior to, during, and/or after any college conduct proceeding.
- (7) Harassment (verbal or physical), retaliation, and/or intimidation of any person or persons involved in the conduct process prior to, during, or after any college conduct proceeding.

(8) Failure to comply with the sanction(s) imposed under the student code of conduct.

NEW SECTION

**WAC 132S-100-210 Destroying or damaging property.** Intentional and/or reckless damage to or misuse of college-owned or controlled property, or the property of any person where such property is located within college owned or controlled premises or at college-sponsored functions.

NEW SECTION

**WAC 132S-100-213 Discrimination.** Engaging in any unfavorable treatment of a person based on that person's membership or perceived membership in a protected class. Harassment is a form of discrimination.

NEW SECTION

**WAC 132S-100-215 Disorderly conduct.** Includes, but is not limited to, the following:

(1) Obstruction of teaching, administration, or other college activities, including its public service function on- or off-campus, or of other authorized noncollege activities when the conduct occurs on college premises or at college-sponsored functions.

(2) Material and substantial interference with the personal rights or privileges of others or of the educational process of the college.

(3) Lewd or indecent conduct, breach of peace, or aiding, abetting, or procuring another person to breach the peace on college premises or at functions sponsored, or participated in, by the college or members of the academic community.

(4) Unauthorized use of electronic or other devices to make an audio or video recording of any person while on college premises without their prior knowledge, or without their effective consent, when such a recording is likely to cause injury or distress. This includes, but is not limited to, covertly taking pictures of another person in a gym, locker room, or restroom.

NEW SECTION

**WAC 132S-100-220 Disruption.** Includes, but is not limited to, the following:

(1) Participating in an on- or off-campus demonstration, riot, or any activity that disrupts the normal operations of the college and/or infringes on the rights of other members of the college community.

(2) Intentionally and/or recklessly inciting others to engage in any prohibited conduct as defined herein, when incitement may lead to such conduct.

(3) Obstruction of the free flow of pedestrian or vehicular traffic on college premises or at college-sponsored or supervised functions.

NEW SECTION

**WAC 132S-100-225 Drugs and drug paraphernalia.** Use, possession, manufacture, or distribution of marijuana,

narcotics, or other controlled substances, and drug paraphernalia except as permitted by federal, state, and local law.

NEW SECTION

**WAC 132S-100-230 Falsehoods and misrepresentations.** Includes, but is not limited to, the following:

(1) The intentional making of false statements and/or knowingly furnishing false information to any college official, faculty member, or office.

(2) Forgery, alteration, or misuse of any college document, record, fund, or instrument of identification with the intent to defraud.

NEW SECTION

**WAC 132S-100-235 Hazing.** Any method of initiation into a student club or organization, or any pastime or amusement engaged in with respect to such a group or organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending the college as described in Washington statute, RCW 28B.10.900.

NEW SECTION

**WAC 132S-100-240 Insubordination.** Failure to comply with the direction of college officials, campus security officers, or law enforcement officers acting in the legitimate performance of their lawful duties and/or failure to properly identify oneself, provide evidence of student enrollment and/or proper identification to these persons when requested to do so.

NEW SECTION

**WAC 132S-100-245 Liquor.** Consuming, possessing, furnishing, or selling of alcoholic beverages and/or being under the influence of any alcoholic beverage is prohibited on college premises or at college-sponsored or supervised events except as a participant of legal age in a student program, banquet, or educational program which has the special written authorization of the college president or their designee. Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person under the state alcohol legal drinking age.

NEW SECTION

**WAC 132S-100-250 Misuse of equipment and technology.** Misuse of the college's computer, telecommunications, or electronic technology, facilities, or equipment which includes, but is not limited to:

(1) Unauthorized entry into a file to use, read, or change the contents, or for any other purpose.

(2) Unauthorized transfer of a file.

(3) Use of another individual's credentials or password or allowing someone else to use your own credentials and password.

(4) Copyright violations.



(5) Use of the college's computer, telecommunications, or electronic technology facilities and resources:

(a) That interferes with the work of another student, faculty member, or college official.

(b) To send obscene or abusive messages.

(c) For personal profit, advertisement, or illegal purposes.

(d) For purposes other than those necessary to fulfill an assignment or task as part of the student's program of instruction.

(e) To engage in any of the prohibited actions and behaviors listed within the acceptable use of information technology resources policy.

#### NEW SECTION

**WAC 132S-100-255 Safety misconduct.** Intentionally initiating or causing to be initiated any false report, warning, or threat of fire, explosion, or other emergency on college premises or at any college-sponsored activity, or falsely setting off or otherwise tampering with any emergency safety equipment, alarm, or other device established for the safety of individuals and/or college facilities.

#### NEW SECTION

**WAC 132S-100-260 Sexual misconduct.** Engaging in nonconsensual sexual intercourse or nonconsensual sexual contact, requests for sexual favors, or other verbal or physical conduct of a sexual nature where such behavior offends a reasonable, orderly, prudent person under these circumstances. This includes, but is not limited to:

(1) Sexual activity or contact for which clear and voluntary consent has not been given in advance.

(2) Sexual activity with someone who is incapable of giving valid consent because, for example, they are underage, sleeping or otherwise incapacitated due to alcohol or drugs.

(3) Sexual harassment, which includes unwelcome, gender-based verbal, written, electronic, and/or physical conduct. Sexual harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's gender.

(4) Sexual violence which includes, but is not limited to, sexual assault, domestic violence, intimate violence, and sexual- or gender-based stalking.

(5) Nonphysical conduct such as sexual- or gender-based cyberstalking, sexual- or gender-based online harassment, sexual- or gender-based cyberbullying, nonconsensual recording of a sexual activity, and nonconsensual distribution of a recording of a sexual activity.

#### NEW SECTION

**WAC 132S-100-265 Theft.** The unauthorized taking or removing of college-owned or operated property or of another's property with the intent of depriving the owner of the property.

#### NEW SECTION

**WAC 132S-100-270 Trespass or unauthorized presence.** Entering or remaining unlawfully on college premises, as defined by state law. Using college premises, facilities, or property without authority and/or unauthorized possession, duplication or use of keys to any college premises.

#### NEW SECTION

**WAC 132S-100-275 Weapons.** Possession of weapons (e.g., firearms, daggers, swords, knives or other cutting or stabbing instruments, clubs) or substances (e.g., explosives) apparently capable of producing bodily harm and/or damage to real or personal property is prohibited on or in college-owned or operated facilities and premises and/or during college-sponsored events.

(1) Carrying of firearms on or in college-owned or operated facilities and/or during college-sponsored events is prohibited except and unless the firearm is registered with the campus security department for a specified period of time.

(2) The aforementioned regulations shall not apply to equipment or materials owned, used or maintained by the college; nor will they apply to law enforcement officers or campus security officers acting in the legitimate performance of their lawful duties.

#### NEW SECTION

**WAC 132S-100-280 Academic dishonesty.** Academic dishonesty includes, but is not limited to, cheating, plagiarism, and fabrication or falsification of the information, research, or other findings for the purpose of fulfilling any assignment or task as part of the student's program of instruction. Any student who commits or aids and abets the accomplishment of an act of academic dishonesty will be subject to disciplinary action.

#### NEW SECTION

**WAC 132S-100-285 Classroom misconduct.** Being disorderly or disruptive, where such behavior makes it difficult or impossible to continue with the normal functions of the class/program. Bringing any person or object to a teaching and learning environment that may disrupt the environment or cause a safety or health hazard, without the approval of the instructor or other authorized official, is expressly prohibited.

#### NEW SECTION

**WAC 132S-100-290 Violation of law.** Conduct which would constitute a violation of any federal, state, or local law. When traveling abroad, international law will apply.

#### NEW SECTION

**WAC 132S-100-295 Violation of college policy, rule, or regulation.** Violation of any college policy, rule, or regulation published electronically on the college web site or in hard copy.

## ARTICLE III

## RULES AND REGULATIONS

NEW SECTION

**WAC 132S-100-300 Responsibility for guests.** A student or student organization is responsible for the conduct of guests on or in college property and at functions sponsored by the college or sponsored by any recognized college organization.

NEW SECTION

**WAC 132S-100-305 Student clubs and organizations.** Any student club or organization shall comply with the student code of conduct. When a member or members of a student club or organization violates the student code of conduct, the members and/or individual member may be subject to appropriate sanctions authorized by this student code of conduct.

NEW SECTION

**WAC 132S-100-310 Violation of law and college discipline.** College disciplinary proceedings may be instituted against a student charged with conduct that potentially violates the criminal law and this student code (that is, if both possible violations result from the same factual situation) without regard to the pendency of civil or criminal litigation in court or criminal arrest and prosecution. Proceedings under this student code of conduct may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus at the discretion of the SCO. Determination made or sanctions imposed under this student code of conduct will not be subject to change because criminal charges arising out of the same facts giving rise to violation of college rules were dismissed, reduced, or resolved in favor of or against the criminal law defendant.

## ARTICLE IV

## STUDENT CODE OF CONDUCT PROCEDURES

NEW SECTION

**WAC 132S-100-400 Student conduct process.** (1) Initiation of disciplinary action. A request for disciplinary action of a student for violation(s) of the student code of conduct must be made in writing or in person to the SCO as soon as possible but no later than thirty instructional days after the occurrence or the date the requestor knew or should reasonably have known of the occurrence. The choice to pursue a request for disciplinary action that is submitted after thirty instructional days of the occurrence will be subject to the discretion of the SCO. Any member of the college's administration, faculty, staff, or any student or nonstudent may make such a request and it must be a good faith claim. The SCO may decline the request, implement the request, refer the case to the SCB, or engage in informal negotiations to resolve the situation based on the allegation(s) and the evidence that has

been provided. If the SCO is subject of a complaint initiated by the respondent, the vice-president for student services shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the request for disciplinary action.

(2) Notification requirements. Once the SCO has decided to begin the investigation process for the request of disciplinary action, the student will be sent a notice to appear for a disciplinary meeting with the SCO. A written notice to appear will be hand delivered or sent by certified mail to the most recent address in the student's record on file with the college, no later than fifteen instructional days after the decision is made to proceed with an investigation. The notice will not be ineffective if presented later due to the student's absence. Such notice will:

(a) Inform the student that a report has been filed alleging the student violated the student code of conduct.

(b) Set forth those provisions of the student code of conduct and the specific acts which are alleged to be violations, as well as the date(s) of the violation(s).

(c) Specify the time, date, and location where the student is required to meet with the SCO. The meeting will be scheduled no earlier than three instructional days, but within thirty instructional days of the date on the notice to appear sent to the student. The SCO may modify the time, date, and location of the meeting, either at the student's or college's request, for reasonable cause.

(d) Inform the student that failure to appear at the appointed time and place will not stop the disciplinary process and may result in a transcript/registration hold being placed onto the student's account, and the student receiving disciplinary sanctions, which could include suspension or expulsion from the college.

(e) Inform the student that they may bring an advisor or representative to the meeting with them. The advisor or representative cannot be a college employee.

(3) Student conduct meeting.

(a) When meeting with the SCO, the student will be informed of the following:

(i) The provision(s) of the rules of the student code of conduct or college policy that they are charged with violating;

(ii) The disciplinary process;

(iii) The range of sanctions which might result from the disciplinary process;

(iv) The student's right to appeal.

(b) The student will have the opportunity to respond to the allegation(s) by providing the information to the SCO about their involvement, if any, in the alleged violation(s), explaining the circumstances surrounding the violation(s), and/or defending themselves against the allegations. If the student chooses to have an advisor or representative present at the meeting, the SCO will allow the advisor or representative to make a brief statement.

(c) The advisor or representative is allowed to assist the student with the process. Any questions that are made by the advisor or representative will be addressed through the discretion of the SCO. Any disruptions or failure to follow the conduct process and/or directions made by the SCO may

result in the advisor or representative being removed from the meeting.

(4) Decision by the SCO.

(a) After interviewing the student or students involved and/or other individuals as appropriate, and after considering the evidence in the case, the SCO may take any of the following actions:

(i) Terminate the proceedings and thereby exonerate the respondent;

(ii) Impose disciplinary sanctions as provided herein;

(iii) Refer the matter to the SCB for appropriate action.

(b) Notification of the decision by the SCO will be hand delivered to the student or sent by mail to the most recent address in the student's record on file with the college, within thirty instructional days of the meeting. A copy of the notification will be filed with the office of the SCO.

(c) Disciplinary action taken by the SCO is final unless the student exercises the right of appeal.

### NEW SECTION

#### **WAC 132S-100-405 Student conduct board process.**

The SCB will hear, de novo, all disciplinary cases referred to the committee by the SCO.

(1) The respondent and the SCO will be sent written notification within fifteen instructional days from the date the committee received the referral from the SCO. The notification will contain the following:

(a) The time, date, and location of the hearing;

(b) The specific violation(s) alleged against the student;

(c) The SCB procedures;

(d) The names of the members of the acting SCB.

(2) The respondent and complainant has the right to be assisted by one advisor or representative of their choice and at their own expense. The advisor must be someone who is not employed by the college. If the respondent chooses to have an attorney serve as their advisor, the student must provide notice to the SCB no less than five instructional days prior to the hearing. The SCB hearing will not be delayed due to the scheduling conflicts of an advisor and such requests will be subject to the discretion of the SCB chairperson.

The respondent and/or complainant are responsible for presenting their own information, and therefore, during the hearing, advisors are not permitted to address the SCB, witnesses, the SCO, or any party or representative invited by the parties to the hearing, or to participate directly in any college conduct hearing. An advisor may communicate with their advisee and recesses may be allowed for this purpose at the discretion of the SCB chair.

(3) The SCB and respondent will be accorded reasonable access to the case file that will be retained by the SCO.

(4) Any SCB member who has a personal relationship, personal interest, or other interest which would prevent that person from rendering a fair and impartial decision must recuse themselves from the case. They will be replaced by another SCB member if possible.

A respondent may request in writing to the SCB chairperson no less than five instructional days prior to the hearing that a SCB member recuse or disqualify themselves. The request must be for good cause, which must be shown by the

respondent. In the event of such a request, the SCB will consider the request prior to the time schedule for the hearing and will decide whether the SCB member should be disqualified for that hearing.

(5) The parties involved in the hearing will be requested to submit their witness list and any documentary evidence to be discussed at the hearing to the SCB chairperson no less than five instructional days prior to the hearing. The respondent is allowed a maximum of three character witnesses to appear on their behalf. A written statement from each witness regarding their involvement with the case must be turned in with the witness list submitted by the respondent or the witness will not be allowed to participate.

(6) Hearings will be closed to the public except if requested by the respondent and at the discretion of the SCB chairperson. At all times, however, all parties, their advisors, the witnesses, and the public will be excluded during the deliberations of the SCB.

(7) The SCO may request a special presiding officer to the SCB in complex cases. In these circumstances the special presiding officer will act as the chairperson of the hearing. The president must approve this request.

(8) The chairperson will exercise control over the hearing to avoid needless consumption of time and to prevent the harassment or intimidation of witnesses. Any person, including the respondent who disrupts a hearing or who fails to adhere to the rulings of the chairperson may be excluded from the proceedings and may be subject to disciplinary action.

(9) Questions suggested by the respondent and/or complainant to be answered by each other or by other witnesses must be made in writing to the SCB chair. The chair, if appropriate and at their sole discretion, will read the question to the individual it is directed to. Questions related to the order of the proceedings are subject to the final decision of the chair and the SCB.

(10) Formal rules of evidence and procedure will not be applicable in disciplinary proceedings conducted pursuant to this student code of conduct. The chairperson will admit all matters into evidence which reasonable persons would accept as having probative value in the conduct of their affairs. Unduly repetitious or irrelevant evidence may be excluded.

(11) In order that a complete record of the proceeding can be made to include all evidence presented, hearings will be recorded or transcribed except for the deliberations of the SCB. The record will be the property of the college.

(12) After considering the evidence in the case, the SCB will decide by majority vote whether to terminate the proceedings, thereby exonerating the respondent, or impose disciplinary sanctions as set forth herein.

(13) The SCB's decision is made on the basis of a "preponderance of the evidence" standard of proof, that is, whether it is more likely than not that the respondent violated the student code of conduct.

(14) If the respondent is found responsible for any of the charges brought against them, the SCB may, at that time consider the student's past disciplinary record in determining an appropriate sanction.

(15) The decision of the SCB must include a written summary in sufficient detail to permit appellate review of the

violations alleged, testimony and evidence, and conclusions. Decisions of the SCB will be delivered, within thirty instructional days, to the respondent personally or sent by mail to the student's most recent address on file with the college, and a copy filed with the office of the SCO.

(16) Disciplinary action taken by the SCB is final unless the respondent exercises the right of appeal as provided herein.

#### NEW SECTION

##### **WAC 132S-100-410 Academic dishonesty process.**

Academic dishonesty minimizes the learning process and threatens the learning environment for all students. As members of the CBC learning community, students are not to engage in any form of academic dishonesty.

(1) The class instructor is responsible for handling each case of academic dishonesty in the classroom and for determining a penalty grade as outlined in the course syllabus.

(2) If, within the instructor's professional judgment, reasonable evidence would suggest a student engaged in academic dishonesty, the instructor will provide notice to the student, either written or verbal, of their assertion of academic dishonesty and of the academic penalty grade within thirty instructional days of the occurrence or when the instructor is made aware of the occurrence.

(3) The instructor will submit a report of the assertion of academic dishonesty, the explanation of the notice or actual notice given to the student and a copy of all applicable evidence to the SCO. At this time, the instructor can request that the incident only be documented with the SCO unofficially, or they can officially refer the matter for disciplinary action. If the student has a previous academic dishonesty record, then the SCO can choose to move forward with the disciplinary process without an official referral.

#### NEW SECTION

##### **WAC 132S-100-415 Appeal process.**

A decision by the SCO, SCB, and/or SAB can be appealed if a written request to appeal is received by the SCO within fifteen calendar days of notification of the SCO, SCB, or SAB's decision. Failure to file a written appeal within the time period specified will result in the decision(s) becoming final with no further right of appeal.

(1) The notice of appeal must include a brief statement explaining why they are seeking review and must assign error to specific findings of fact and/or conclusions of law in the initial order and must contain argument regarding why the appeal should be granted.

A respondent, who timely appeals a disciplinary action, has a right to a prompt, fair, and impartial appeals review as provided for in these procedures.

(2) Imposition of the discipline for violation of the student code of conduct shall be stayed pending appeal, unless the respondent has been issued an interim restriction or interim suspension.

(3) The SAB will be convened in private to review all appeals submitted within the appropriate time frames to the SCO. Their appeal decision will be personally delivered or

mailed to the respondent within fifteen instructional days of receiving the appeal from the SCO.

(a) If the respondent and/or complainant wish to explain their views of the matter to the SAB they shall be given an opportunity to do so in writing.

(b) The SAB may not take any action less favorable to the respondent(s), unless notice and an opportunity to explain the matter is first given to the respondent(s). In such cases, the decision notification time frame will be adjusted to thirty instructional days, to allow the respondent time to meet with the SAB.

(c) The SAB shall review the verbatim record of the meeting with the SCO and/or SCB hearing and all information provided by the parties to make a determination to affirm, reverse, or modify the SCO or SCB's decision, and/or affirm, reverse, or modify the sanctions imposed by the SCO or SCB's decision.

(4) An appeal is limited to a review by the SAB for one or more of the following purposes:

(a) To determine if the proceedings were conducted fairly in light of the charges and information presented, and in conformity with proscribed procedures giving the complaining party a reasonable opportunity to prepare and to present information that the student code of conduct was violated, and giving the respondent a reasonable opportunity to prepare and to present a response to those allegations. Deviation from designated procedures are not a basis for sustaining an appeal unless significant prejudice results.

(b) To determine whether the decision reached regarding the respondent was based on substantial information, that is, whether there were facts in the case that, if believed by the fact finder, were sufficient to establish that a violation of the student code of conduct occurred under the preponderance of evidence standard of proof.

(c) To determine whether the sanction(s) imposed were appropriate for the violation of the student code of conduct which the student was found to have committed.

(d) To consider new information, sufficient to alter a decision, or other relevant facts not brought out in the original hearing, because such information and/or facts were not known to the person appealing at the time of the original meeting with the SCO or SCB hearing.

(5) Appeals of disciplinary action(s) will be taken in the following order:

(a) Disciplinary decisions and action taken by the SCO or SCB may be appealed by the respondent to be reviewed by the SAB.

(b) Disciplinary decisions and action taken by the SAB may be appealed by the respondent to be reviewed by the college president.

(i) The president will send notification to the respondent of their decision on the appeal within fifteen instructional days after filing an appeal with the SCO. The president shall make determinations based on the following:

(i) Affirm, reverse, or modify the SAB's decision;

(ii) Affirm, reverse, or modify the sanctions imposed by the SAB's decision; and

(iii) The president's decision is final.

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

### NEW SECTION

#### **WAC 132S-100-420 Sexual misconduct procedures.**

(1) The college's Title IX coordinator or their designee, shall investigate complaints or other reports of alleged sexual misconduct by a student. Investigations will be completed in a timely manner and the substantiated results of the investigation shall be referred to the acting SCO for disciplinary action.

(2) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

(3) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety and welfare of the complainant or other members of the college community or compromising the college's duty to investigate and process sexual harassment and sexual violence complaints.

(4) Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in the student discipline matters, including the right to participate in the initial disciplinary decision-making process, to simultaneously receive all notification of the SCO, SCB, SAB, or president's decision, and to appeal any disciplinary decision from the SCO, SCB, or SAB.

(5) Application of the following procedures is limited to student conduct code proceedings involving allegations of sexual misconduct by a student. In such cases, these procedures shall supplement the student disciplinary procedures in WAC 132S-100-400 through 132S-100-405. In the event of conflict between the sexual misconduct procedures and the student disciplinary procedures, the sexual misconduct procedures shall prevail.

(6) The SCO, prior to initiating disciplinary action, 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.

(7) The SCO or SCB chairperson, 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 SCO shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.

(8) The SCO, the Title IX coordinator officer and any participating members of the SCB or SAB that are involved with cases alleging sexual misconduct receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking and learn how to conduct an investigative process that protects the safety of victims and promotes accountability.

### NEW SECTION

**WAC 132S-100-425 Appeal process for complainants of sexual misconduct.** (1) The following actions by the SCO, SCB, or SAB may be appealed by the complainant:

(a) Dismissal of a sexual misconduct complaint; or

(b) Disciplinary sanction(s) and condition(s) imposed against a respondent for a sexual misconduct violation, including a disciplinary warning and/or documentation only.

(2) A complainant may appeal a disciplinary decision by filing a notice of appeal in writing to the SCO within fifteen days of receiving notification of the disciplinary decision. The notice of appeal may include a written statement setting forth the grounds of appeal. Failure to file a timely notice of appeal constitutes a waiver of this right and the disciplinary decision shall be deemed final.

(3) 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.

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

(5) If the complainant appeals the SAB's decision, the appeal will be reviewed by the president or their designee subject to the same procedures and deadlines applicable to other parties.

### NEW SECTION

**WAC 132S-100-430 Sanctions.** The following sanctions may be imposed upon any student found to have violated the student code of conduct:

(1) Warning. A verbal statement or notice in writing to the respondent that they are violating or have violated college rules or regulations and that continued violations may be the cause for further disciplinary action.

(2) Reprimand. Notice in writing that the respondent has violated one or more of the policies outlined in the student code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(3) Loss of privileges. Denial of specified privileges for a designated period of time.

(4) Restitution. An individual student may be required to make restitution for damage, loss, or injury. This may take the form of appropriate service and/or monetary or material replacement. Failure to make restitution within thirty days or any period set by the SCO, SCB, SAB, or president will result in suspension for an indefinite period of time as set forth in subsection (7) of this section, provided that a student may be reinstated upon payment or upon a written agreed plan of

repayment. Failure to strictly comply with the terms of a repayment plan will result in immediate suspension.

(5) Discretionary sanctions. Work assignments, essays, service to the college, or other related discretionary assignments.

(6) Disciplinary probation. Formal action placing conditions upon the student's continued attendance for violations of college rules or regulations or other failure to meet the college's expectations within the student code of conduct. Written notice of disciplinary probation will specify the period of probation and any condition(s) upon which his/her continued enrollment is contingent. Such conditions may include, but not be limited to, adherence to terms of a behavior contract or limiting the student's participation in extra-curricular activities or access to specific areas of the college's facilities. Disciplinary probation may be for a specified term or for an indefinite period which may extend to graduation or other termination of the student's enrollment in the college.

(7) Suspension. Separation of the student from the college for a definite period of time, after which the student is eligible to return. Students who are suspended may be denied access to all or any part of the campus or other facilities during the duration of the period of suspension. Additionally, conditions for readmission may be specified.

(8) Expulsion. Permanent separation of the student from the college. Students who are expelled may be denied access to all or any part of the campus or other facilities permanently.

(9) Revocation of admission and/or degree. Admission to or a degree awarded from the college may be revoked for fraud, misrepresentation, or other violation of college standards in obtaining admission or the degree, or for other serious violations committed by a student prior to graduation. Revocation of a degree must be approved by the board of trustees.

(10) Withholding degree. The college may withhold awarding a degree otherwise earned until the completion of the process set forth in the student code of conduct, including the completion of all sanctions imposed, if any. Withholding a degree must be approved by the board of trustees.

(11) 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 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 student code of conduct.

(12) Delayed suspension. A probationary amount of time set by the SCO, SCB, SAB, or president in which the student must remain on good terms with the student code of conduct. If the student is found responsible for violating the student code of conduct while still under the delayed suspension guidelines, then the student will be suspended, as set forth in

subsection (7) of this section, for their next violation of the student code of conduct.

#### NEW SECTION

**WAC 132S-100-435 Interim measures.** (1) If there is cause to believe that a student or student organization poses an imminent threat to themselves, itself, to others, or to property, immediate action may be taken pending an investigation by the SCO. The SCO may take one or more of the following interim actions:

(a) Interim restrictions. A student may be restricted from college-owned or operated property and/or events.

(b) Interim suspension. A student may be suspended pending investigation, action, or prosecution.

(2) Permission to enter or remain on campus. During the period of interim measures, the student will not enter the college or any facility under the operation of the college other than to meet with the SCO or to attend the hearing. However, the SCO may grant the student special permission to enter the campus for the express purpose of meeting with faculty, staff, or students in preparation for the hearing or to participate in the Title IX process.

(3) Notice of interim measure proceedings. If the SCO finds it necessary to exercise the authority to evoke interim measures, they will give the student notice, orally or in writing, stating;

(a) The time, date, place, and nature of the alleged misconduct.

(b) The evidence in support of the charge(s).

(c) The corrective action or punishment which may be imposed against the student.

(d) The possibility that anything the student says to the SCO may be used against the student.

(e) The student's right to either accept the disciplinary action or, within three instructional days following receipt of the above notification, file at the office of the SCO a written request for a review of the interim measure by the SAB. If the request is not filed within the prescribed time, it will be deemed as waived.

(f) Conduct meeting. The meeting will be accomplished according to the procedures set forth in this document and no later than ten instructional days after the actions is taken unless the interim measures are related to a Title IX investigation, in which the conduct meeting will follow the referral of the Title IX coordinator officer upon completion of their investigation. Failure by the student to appear at the conduct meeting will result in the SCO suspending the student from the college.

## ARTICLE V

### RECORDS

#### NEW SECTION

**WAC 132S-100-500 Records of disciplinary action.** (1) Records of all disciplinary cases will be kept by the office of the SCO. Except in proceedings wherein the student is exonerated, all documentary proceedings and all recorded testimony will be preserved insofar as possible for at least

seven years. No record of proceedings wherein the student is exonerated, other than the fact of exoneration, will be maintained in the student's file or other college repository after the date of the student's graduation or for one calendar year.

(2) The office of the SCO will keep accurate records of all disciplinary actions taken by, or reported to, that office. Such recordings will be placed in the student's disciplinary records. The SCO is responsible for ordering the removal of any notations of any disciplinary action on the student's record. A student may petition the SCO for removal of such a notation at any time.

(3) The Family Educational Rights and Privacy Act (FERPA) provides that an educational institution may notify a student's parent or legal guardian if the student is under the age of twenty-one and has violated a federal, state, or local law involving the use or possession of alcohol or a controlled substance.

## Chapter 132S-200 WAC

### HEALTH AND SAFETY REGULATIONS

#### PART I

##### NEW SECTION

**WAC 132S-200-110 Animal control on campus.** In order to assure the health and safety of all persons on properties owned or controlled by Columbia Basin College, the following rules and regulations regarding animals on campus are hereby promulgated: No person will be permitted to bring any animal upon properties owned or controlled by Columbia Basin College unless such animal is a service animal as defined in RCW 70.84.021 and is under the immediate control of such person. Animals are prohibited from being on college grounds and from entering college buildings, with the following exceptions:

- (1) Service animals;
- (2) Events at which animals are participants;
- (3) When animals are part of an academic program.

Owners shall have immediate physical control of their animals (for example: Leashed, caged or carried) while on the grounds of Columbia Basin College.

Exceptions to this section may be authorized by the college president or his or her designee(s).

##### NEW SECTION

**WAC 132S-200-120 Penalties for violations of animal control regulations.** Persons violating WAC 132S-200-110 may be trespassed from the college campus and/or referred by administration or campus security to the appropriate police agency for prosecution under the city animal control code for the campus on which the violation occurred.

#### PART II

##### NEW SECTION

**WAC 132S-200-130 Smoke and tobacco-free environment.** (1) Smoking and tobacco products are not allowed

inside any building or vehicle operated by Columbia Basin College (CBC).

(2) Smoking materials and related tobacco supplies will not be available for sale or vended on the campuses.

(3) Smoking and tobacco use by staff, students and non-students, including visitors, are prohibited within at least fifty feet of building openings (i.e., doors, air intakes, windows) and spaces near outdoor work areas.

(4) Smoking is prohibited in any location where the air-flow carries smoke directly into a facility work area.

(5) Smokers must dispose of smoking and tobacco refuse in ash cans or other containers specifically designed and placed for such disposal.

(6) CBC shall ensure through proper posting that outside smoking and tobacco use areas are at least fifty feet from doorways and air intakes.

(7) Any student, staff, or faculty member who violates the college smoking and tobacco-free policy may be subject to disciplinary action. In addition, violations of the college smoking and tobacco-free policy by the public may subject the violator to trespass from campus and/or enforcement by a local law enforcement agency.

#### PART III

##### NEW SECTION

**WAC 132S-200-140 Regulations governing firearms and weapons on or in college facilities.** (1) It shall be the policy of this college that possession of weapons apparently capable of producing bodily harm and/or property damage is prohibited on or in college facilities or college-leased facilities.

(2) Explosives are prohibited on or in college facilities or leased college facilities.

(3) Carrying of firearms on or in college facilities or college-leased facilities is prohibited except when the concealed permit carrier registers the firearm with the campus security office for a specified period of time.

(4) The aforementioned regulations shall not apply to equipment or materials owned, used or maintained by the college; nor will they apply to law enforcement officers while on campus.

(5) Violations of these rules may be grounds for immediate suspension for student, staff or faculty pending a hearing. In addition, violations of this policy by a member of the public may subject the violator to trespass from the campus and/or enforcement by a local law enforcement agency.

##### NEW SECTION

**WAC 132S-200-150 Trespass.** Columbia Basin College campuses are open to the public, as are the buildings during business hours. To ensure safety of all on the campuses, the student conduct office and the campus security office may at times need to issue a trespass notice to an individual, trespassing that person or their vehicle from college property.

Trespass notices may be issued by the student conduct officer or campus security officers to an individual who has violated the student rights and responsibilities code, college

regulations specified in Title 132S WAC, administrative policies, state law or municipal codes, or has willfully jeopardized the safety of others.

When the student conduct officer or any campus security officer deems that any of the above criteria have been met, he or she will issue a trespass notice to the individual. A copy of the notice will be kept on file at the campus security office and may be shown to the local law enforcement agencies if an arrest for violation of the trespass order is necessary in the future.

**(1) Temporary trespass notice.**

(a) A temporary trespass notice of up to twenty-four hours can be issued, without a right to appeal, to any person for whom the college has received a complaint or who has been observed doing any of the following:

- (i) Causing harm or inflicting injury to college community members;
- (ii) Threatening or intimidating members of the community;
- (iii) Disrupting academic and administrative business of the college;
- (iv) Causing damage to college or personal property; and/or
- (v) Violating college policy, college regulation or the student conduct code.

(b) A temporary trespass notice will be hand delivered to the recipient at the time of the incident or as soon as possible if the recipient has left college grounds. Copies of all written notices are kept on file with the campus security office.

(c) If an individual violates the temporary trespass notice, the student conduct officer or the campus security officer can extend the trespass to remain in effect for up to two weeks.

(d) Individuals have the right to appeal a trespass that is longer than twenty-four hours.

**(2) Permanent trespass notice.**

(a) Individuals who are not current students of the college can be issued a permanent trespass by the campus security office if deemed necessary to protect the campus community. Permanent trespass notices will be hand delivered or sent via U.S. mail (certified receipt) to the individual.

(b) A permanent trespass can be simultaneously administered with the assistance of local law enforcement agencies and their official trespass notification.

(c) Individuals have a right to appeal a permanent trespass.

**(3) Student trespass appeals process.**

(a) Currently enrolled students who wish to appeal a temporary trespass notice must contact the office of student conduct. However, a trespass notice that is in effect for twenty-four hours or less cannot be appealed.

(b) Students, who are permanently trespassed through the student rights and responsibility code process will be notified through the sanction letter from the student conduct officer.

**(4) Nonstudent trespass appeals process.**

(a) Nonstudents who are not currently enrolled who wish to appeal a trespass notice must contact the office for the vice-president of administrative services.

(b) The criteria used for the appeals review include, but are not limited to:

(i) Determination of the threat posed by the individual to the community;

(ii) Review of the individual's need to be present on campus (with limitations when decided as appropriate); and

(iii) Review of the incident or supporting documentation that resulted in the trespass notice being issued.

(c) The vice-president for administrative services will review one appeal or request from the trespassed individual for modification per year and reserves the right to deny any appeal based on the safety of the campus community.

(d) If the vice-president of administrative services considers modifying or rescinding a trespass notice, he may consult with other college personnel as part of the appeal review process, such as the student conduct officer or the vice-president for human resources and legal affairs.

(e) Notification of the outcome of the appeal will be sent to the requestor within thirty days of the request via U.S. mail (certified receipt).

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

WAC 132S-285-010 Policy statement.

WAC 132S-285-015 Responsible official for carrying out policy.

**Chapter 132S-300 WAC**

**CAMPUS PARKING AND TRAFFIC REGULATIONS**

**PART I**

**TRAFFIC AND PARKING**

**NEW SECTION**

**WAC 132S-300-100 Introduction.** The rules and regulations provided in this chapter have been established by Columbia Basin College to govern pedestrian traffic, vehicular traffic, and parking on its campuses and upon all state lands devoted to the educational, recreational, and research activities of Columbia Basin College.

**NEW SECTION**

**WAC 132S-300-105 Definitions.** The words used in this chapter shall have the meaning given in this section, unless the context clearly indicates otherwise.

(1) "Board" shall mean the board of trustees of Columbia Basin College.

(2) "Campus" shall mean any or all real property owned, operated, or maintained by Columbia Basin College.

(3) "College" shall mean Columbia Basin College.

(4) "Faculty members" shall mean any employee of Columbia Basin College who is employed to teach at Columbia Basin College.



(5) "Campus security officer" shall mean an employed security officer, security guard or communication officer of the college.

(6) "Staff" shall mean the classified, exempt and administrative employees of Columbia Basin College.

(7) "Vehicle" shall mean an automobile, truck, motor driven cycle, scooter, or any vehicle empowered by a motor.

(8) "Visitors" shall mean any person or persons, excluding students as defined above, who come upon the campus as guests, and any person or persons who lawfully visit the campus for the purposes which are in keeping with the college's role as an institution of higher learning in the state of Washington.

(9) "Employee parking permits" shall mean permits which are valid annually and shall be obtained from the plant operations office at the fee set by administration.

(10) "Temporary permits" shall mean permits which are valid for a specific period of time designated on the permit.

#### NEW SECTION

**WAC 132S-300-110 Purposes of regulations.** The purposes of the rules and regulations established by this chapter are:

- (1) To control parking on college owned parking lots;
- (2) To protect and control pedestrian and vehicular traffic;
- (3) To assure access at all times for emergency equipment;
- (4) To minimize traffic disturbance during class hours;
- (5) To expedite Columbia Basin College business, protect state property and to provide maximum safety and convenience.

#### NEW SECTION

**WAC 132S-300-115 Applicable rules and regulations.** The traffic and parking regulations which are applicable upon state lands devoted to the educational, recreational and research activities of Columbia Basin College are as follows:

- (1) The motor vehicle and other traffic laws of the state of Washington;
- (2) The traffic code of Pasco and Richland; and
- (3) Special regulations set forth in this chapter.

#### NEW SECTION

**WAC 132S-300-120 Special traffic and parking regulations and restrictions authorized.** Upon special occasions causing additional heavy traffic, during emergencies or construction of campus facilities, the vice-president of administrative services or designee is authorized to impose additional traffic and parking regulations or modify the existing rules and regulations for the achievement of the general objectives provided in WAC 132S-300-110.

#### NEW SECTION

**WAC 132S-300-125 Exceptions from traffic and parking restrictions.** These rules and regulations shall not apply to city, county, or state-owned emergency vehicles.

#### NEW SECTION

**WAC 132S-300-130 Regulatory signs and directions.** The vice-president of administrative services or designee is authorized to erect signs, barricades and other structures and to paint marks or other directions upon the entry ways and streets on campus and upon the various parking lots owned or operated by the college. Such signs, barricades, structures, markings, and directions shall be so made and placed to best effectuate the rules and regulations contained in this chapter. Drivers of vehicles shall observe and obey the signs, barricades, structures, markings and directions erected pursuant to this section. Drivers shall also comply with the directions given them by campus security officers in the control and regulation of traffic.

#### NEW SECTION

**WAC 132S-300-135 Speed limit.** No vehicle shall be operated on the campuses at a speed in excess of fifteen miles per hour in parking lots; or such lower speed as is reasonable and prudent in the circumstances. No vehicle of any type shall at any time use the campus parking lots for reckless or negligent driving or unauthorized activities.

#### NEW SECTION

**WAC 132S-300-140 Pedestrian's right of way.** (1) The operator of a vehicle shall yield the right of way, slowing down or stopping, if need be to so yield to any pedestrian, but no pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.

(2) Whenever any vehicle slows or stops so as to yield to pedestrian traffic, the operator of any other vehicle approaching from the rear shall not overtake and pass such a vehicle which has slowed or stopped to yield to pedestrian traffic.

(3) Every pedestrian crossing at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right of way to all vehicles.

(4) Where a sidewalk is provided, pedestrians shall proceed upon such a sidewalk.

#### NEW SECTION

**WAC 132S-300-145 Report of accidents.** The operator of any vehicle involved in an accident on campus resulting in injury to or death of any person or claimed damage to either or both vehicles shall immediately report such accident to the campus security office.

#### NEW SECTION

**WAC 132S-300-150 Liability of college.** The college assumes no liability under any circumstances for vehicles driven or parked on campus.

NEW SECTION

**WAC 132S-300-155 Severability.** If any provision of this chapter shall be adjudged by a court of record to be unconstitutional, the remaining provisions of this chapter shall continue in effect.

**PART II****ENFORCEMENT**NEW SECTION

**WAC 132S-300-200 Enforcement authority.** The authority and powers conferred upon the vice-president of administrative services by these regulations shall be subject to delegation to appointed designees, including campus security officers or other designated subordinates.

NEW SECTION

**WAC 132S-300-205 Enforcement.** (1) Enforcement of the parking rules and regulations will begin the first day of the first week of full classes of the fall quarter and will continue until the end of summer quarter. These rules and regulations will not be enforced on Saturdays, Sundays, and official college holidays.

(2) The vice-president of administrative services or designee shall be responsible for the enforcement of the rules and regulations contained in this chapter. The vice-president of administrative services is hereby authorized to delegate this responsibility to the campus security officers or other designated subordinates.

**PART III****PARKING PERMITS**NEW SECTION

**WAC 132S-300-300 Issuance of traffic tickets.** Fines may be levied for parking violations that occur on Columbia Basin College (CBC) campuses. A schedule shall be published on the college's web site at [www.columbiabasin.edu](http://www.columbiabasin.edu). A copy of the fine schedule shall also be available in the campus security office. Upon the violations of any of the rules and regulations contained in this chapter, the vice-president of administrative services, and campus security and staff, including student workers, may issue a warning, summons or ticket setting forth the date, the approximate time, permit number, license information, infraction, officer, and fines as appropriate. Such warnings, summons or traffic tickets may be served by attaching or affixing a copy thereof in some prominent place outside such vehicle or by personally serving the operator.

NEW SECTION

**WAC 132S-300-305 Authorization for issuance of parking permits.** The plant operations office or designee is authorized to issue annually parking permits to faculty, staff

members and employees of private parties using college facilities pursuant to regulations and the payment of appropriate fees as determined by the college.

NEW SECTION

**WAC 132S-300-310 Valid parking permits.** A valid parking permit is:

- (1) A current parking permit issued by plant operations office and properly displayed;
- (2) A temporary or visitor's parking permit from the sponsoring department and properly displayed;
- (3) A special parking permit and properly displayed;
- (4) A shop permit authorized by a vocational-technical instructor and properly displayed; or
- (5) A carpool permit authorized by college security and properly displayed.

NEW SECTION

**WAC 132S-300-315 Display of parking permit.** (1) All annual parking permits shall be properly displayed and viewable from the front windshield of the vehicle. Temporary, special, visitor, carpool, or shop permits shall be placed in a visible position on the dashboard of the automobile. Additionally, for a vehicle utilizing a carpool space, two or more carpool permits must be displayed on the dashboard in a manner that is visible to campus security officers (e.g., cannot be stacked or overlapping, etc.).

(2) Permits not displayed pursuant to the provisions of this section shall not be valid and the vehicle may be subject to parking violation.

NEW SECTION

**WAC 132S-300-320 Transfer of parking permit.** Annually issued parking permits purchased by individuals stated in WAC 132S-300-305 are transferable.

NEW SECTION

**WAC 132S-300-325 Parking permit revocation.** Parking permits are the property of the college and may be recalled by the vice-president of administrative services for any of the following reasons:

- (1) When the purpose for which the permit was issued changes or no longer exists;
- (2) When a permit is used by an unregistered vehicle or by an unauthorized individual;
- (3) Falsification on a parking permit application;
- (4) Continued violations of parking regulations; or
- (5) Counterfeiting or altering a parking permit.

NEW SECTION

**WAC 132S-300-330 Parking permit revocation—Hearing provided.** Cancellation or revocation of any parking permit because of any of the causes stated in WAC 132S-300-325 (2) through (5) may be appealed to the vice-president of administrative services. The decision of the vice-pres-

ident for administrative services or designee may be appealed to the college president.

#### NEW SECTION

**WAC 132S-300-335 Allocation of parking space.** The parking space available on campus for annually issued parking permits shall be designated and allocated by the plant operations office or designee in such a manner as will best effectuate the objectives of the rules and regulations in this chapter.

(1) Parking spaces will be designated for use of visitors on campus.

(2) Parking spaces for persons with disabilities will be designated pursuant to RCW 46.61.581. The allocated parking spaces are exclusively for use by those designated, provided that appropriate state of Washington "disabled permit" are displayed properly within their vehicles.

(3) Parking spaces will be designated for use by carpool vehicles.

#### NEW SECTION

**WAC 132S-300-340 Parking within designated spaces.** (1) All vehicles shall follow traffic arrows and other markings established for the purpose of directing traffic on campus.

(2) In areas marked for diagonal parking, vehicles shall be parked at a forty-five degree angle with the vehicle facing head in.

(3) No vehicle shall be parked so as to occupy any portion of more than one parking space or stall as designated within the parking area. The fact that other vehicles may have been so parked as to require the vehicle parked to occupy a portion of more than one space or stall shall not constitute an excuse for a violation of this section.

#### NEW SECTION

**WAC 132S-300-345 Day parking.** The rules and regulations pertaining to the use of certain parking permits in specific areas as contained in WAC 132S-300-340 shall be in force during the hours from 6:00 a.m. to 5:00 p.m.

#### NEW SECTION

**WAC 132S-300-350 Night parking.** Night students and faculty members may park in any of the designated permitted/reserved spaces or stalls at any time, with the exception of disabled permitted parking.

### PART IV

#### FINES, PENALTIES AND APPEALS

#### NEW SECTION

**WAC 132S-300-400 Fines and penalties.** The vice-president of administrative services or designee is authorized to impose fines and penalties for the violation of the rules and regulations contained in this chapter.

**Fines.** A schedule of fines shall be set and reviewed by a committee (including one student) appointed by the vice-president of administrative services. This schedule shall be published online at the colleges web site located at www.columbiabasin.edu, summary of parking regulations, and traffic summons form. At the discretion of the vice-president of administrative services a student with an accumulation of traffic tickets may be referred to the college's student conduct officer to initiate disciplinary proceedings as determined appropriate. Except as provided under subsection (2) of this section, fines will be levied for all violations of the regulations contained in this chapter.

**Impoundment.** Vehicles parked on a Columbia Basin College campus in violation of any of the regulations contained in this chapter may be impounded at the discretion of the vice-president of administrative services. If a vehicle is impounded, it may be taken to such place for storage as the vice-president of administrative services or designee selects. The expenses of such impounding and storage shall be charged to the owner or operator of the vehicle and paid by him or her prior to its release. The college and its employees shall not be liable for loss or damage of any kind resulting from such impounding and storage.

**Appeals.** Any fines and penalties for citations under the rules and regulations of this chapter must be appealed in writing, stating fully all grounds for appeal, within five days from the date of the citation, to the vice-president for administrative services who will:

(1) After notice to the appealing party, confer with said party and review the appeal to determine whether a satisfactory solution can be reached without further administrative action. The vice-president for administrative services will advise the appealing party as soon as practicable of his or her decision.

(2) If the appealing party is dissatisfied with the vice-president of administrative services decision, the appealing party may submit the same appeal to the president. The decision of the president will be final.

### Chapter 132S-400 WAC

#### FACILITY USE FOR FIRST AMENDMENT ACTIVITIES

#### NEW SECTION

**WAC 132S-400-100 Title.** This chapter shall be known as facility use for first amendment activities.

#### NEW SECTION

**WAC 132S-400-105 Definitions.** (1) "College groups" shall mean individuals who are currently enrolled students or current employees of Columbia Basin College or who are affiliated with a recognized student organization or a recognized employee group of the college.

(2) "College facilities" includes all buildings, structures, grounds, office space and parking lots.

(3) "Limited public forum areas" means those areas of each campus that the college has chosen to open as places for

expressive activities protected by the first amendment, subject to reasonable time, place or manner restrictions.

(4) "First amendment activities" includes, but are not necessarily limited to, informational picketing, petition circulation, the distribution of informational leaflets or pamphlets, speech-making, demonstrations, rallies, appearances of speakers in outdoor areas, protests, meetings to display group feelings or sentiments and/or other types of constitutionally protected assemblies to share information, perspective or viewpoints.

(5) "Noncollege groups" shall mean individuals, or combinations of individuals, who are not currently enrolled students or current employees of the college or who are not officially affiliated or associated with a recognized student organization or a recognized employee group of the college.

#### NEW SECTION

**WAC 132S-400-110 Statement of purpose.** Columbia Basin College is an educational institution provided and maintained by the people of the state of Washington. College facilities are reserved primarily for educational use including, but not limited to, instruction, research, public assembly of college groups, student activities and other activities directly related to the educational mission of the college. The public character of the college does not grant to individuals an unlimited license to engage in activity which limits, interferes with, or otherwise disrupts the normal activities for and to which the college's facilities and grounds are dedicated. Accordingly, the college is a designated public forum opened for the limited purposes recited herein and further subject to the time, place, and manner limitations and restrictions set forth in this policy.

The purpose of the time, place and manner regulations set forth in this policy is to establish procedures and reasonable controls for the use of college facilities for noncollege groups. The college recognizes that college groups should be accorded the opportunity to utilize the facilities and grounds of the college to the fullest extent possible. The college intends to open its facilities to noncollege groups to a lesser extent as set forth herein.

#### NEW SECTION

**WAC 132S-400-115 Use of facilities.** (1) Subject to the regulations and requirements of this policy, noncollege groups may use the campus limited forums for first amendment activities between the hours of 7:00 a.m. and 10:00 p.m.

(2) Signs shall be no larger than three feet by five feet and no individual may carry more than one sign.

(3) Any sound amplification device may only be used at a volume which does not disrupt or disturb the normal use of classrooms, offices or laboratories or any previously scheduled college event or activity.

(4) All sites used for first amendment activities should be cleaned up and left in their original condition and may be subject to inspection by a representative of the college after the event. Reasonable charges may be assessed against the sponsoring organization for the costs of extraordinary clean-up or for the repair of damaged property.

(5) All fire, safety, sanitation or special regulations specified for the event are to be obeyed. The college cannot and will not provide utility connections or hook-ups for purposes of first amendment activities conducted pursuant to this policy.

(6) The event must not be conducted in such a manner to obstruct vehicular, bicycle, pedestrian or other traffic or otherwise interfere with ingress or egress to the college, or to college buildings or facilities, or to college activities or events. The event must not create safety hazards or pose unreasonable safety risks to college students, employees or invitees to the college.

(7) The event must not interfere with educational activities inside or outside any college building or otherwise prevent the college from fulfilling its mission and achieving its primary purpose of providing an education to its students. The event must not materially infringe on the rights and privileges of college students, employees or invitees to the college.

(8) There shall be no overnight camping on college facilities or grounds. Camping is defined to include sleeping, carrying on cooking activities, or storing personal belongings, for personal habitation, or the erection of tents or other shelters or structures used for purposes of personal habitation.

(9) College facilities may not be used for commercial sales, solicitations, advertising or promotional activities, unless:

(a) Such activities serve educational purposes of the college; and

(b) Such activities are under the sponsorship of a college department of office or officially chartered student club.

(10) The event must also be conducted in accordance with any other applicable college policies and regulations, local ordinances and state or federal laws.

(11) College buildings, rooms, and athletic fields may be rented by noncollege groups in accordance with the college's facilities use policy. Noncollege groups may otherwise use college facilities as identified in this policy.

(12) The college designates the following area(s) as the sole limited public forum area(s) for use by noncollege groups for first amendment activities on campus: Mural gathering area (concrete pad north of the A building).

(13) Noncollege groups that seek to use the campus limited forum to engage in First Amendment activities shall provide notice to the campus security office no later than twenty-four hours prior to the event along with the following information:

(a) The name, address and telephone number of the individual, group, entity or organization sponsoring the event (hereinafter "the sponsoring organization");

(b) The name, address and telephone number of a contact person for the sponsoring organization;

(c) The date, time and requested location of the event;

(d) The nature and purpose of the event;

(e) The type of sound amplification devices to be used in connection with the event, if any; and

(f) The estimated number of people expected to participate in the event.

(14) Noncollege group events shall not last longer than five hours from beginning to end.

NEW SECTION

**WAC 132S-400-120 Distribution of materials.** Information may be distributed as long as it is not obscene or libelous or does not advocate or incite imminent unlawful conduct. The sponsoring organization is encouraged, but not required, to include its name and address on the distributed information. Noncollege groups may distribute materials only at the site designated for noncollege groups.

NEW SECTION

**WAC 132S-400-125 Criminal trespass.** Any person determined to be violating these regulations is subject to an order from the college security office to leave the college campus. Persons failing to comply with such an order to leave the college campus are subject to arrest for criminal trespass.

NEW SECTION

**WAC 132S-400-130 Posting a bond and hold harmless statement.** When using college buildings or athletic fields, an individual or organization may be required to post a bond and/or obtain insurance to protect the college against cost or other liability in accordance with the college's facility use policy.

When the college grants permission to a noncollege group to use its facilities it is with the express understanding and condition that the individual or organization assumes full responsibility for any loss or damage.

**Chapter 132S-500 WAC****FACILITY USE FOR OTHER THAN FIRST AMENDMENT ACTIVITIES**NEW SECTION

**WAC 132S-500-100 Title.** WAC 132S-500-100 through 132S-500-140 will be known as facility use for other than first amendment activities.

NEW SECTION

**WAC 132S-500-105 Statement of purpose.** Columbia Basin College reserves its facilities, buildings and grounds for those activities that are related to its broad educational mission. At other times, the college facilities may be made available to other individuals and organizations as stated in this chapter. The purpose of these regulations is to establish procedures and reasonable controls for the use of college facilities for noncollege groups and for college groups where applicable.

In keeping with this general purpose, and consistent with RCW 28B.50.140 (7) and (9), facilities should be available for a variety of uses which are of benefit to the general public if such general uses substantially relate to and do not interfere with the mission of the college. However, a state agency is under no obligation to make its public facilities available to the community for private purposes.

Primary consideration shall be given at all times to activities specifically related to the college's mission, and no arrangements shall be made that may interfere with, or operate to the detriment of, the college's own teaching or public service programs.

Reasonable conditions may be imposed to regulate the timeliness of requests, to determine the appropriateness of space assigned, time of use, and to ensure the proper maintenance of the facilities. Subject to the same limitations, college facilities shall be made available for assignment to individuals or groups within the college community. Such arrangements by both individuals or groups within the college community must be made through the facility use request system through the executive assistant for the vice-president for administrative services.

NEW SECTION

**WAC 132S-500-110 Facilities use for first amendment activities.** This chapter does not apply to those individuals or groups using the college facilities for first amendment activities. Use of the campus for first amendment activities, as defined by law, is governed by the rules set forth in WAC 132S-400-100 through 132S-400-130.

NEW SECTION

**WAC 132S-500-115 Request for use of facilities.** Requests to use college facilities shall be made to the executive assistant for the vice-president for administrative services, who shall be the agent of the college in consummating use agreements.

NEW SECTION

**WAC 132S-500-120 Scheduling and reservation practices.** The primary purpose of college facilities is to serve the instructional programs of the college. However, the facilities, when not required for scheduled college use, may be available for use in accordance with current fee schedules and other relevant terms and conditions for such use.

College facilities may not be used by individuals or groups from outside the college unless the facilities including buildings, equipment and land have been reserved.

In determining whether to accept a request for the use of college facilities, the executive assistant shall use as guidelines the mission of the college and the following items, listed in priority order:

- (1) Columbia Basin College instruction, scheduled programs and activities.
- (2) Major college events.
- (3) Noncollege (outside individual or organization) events.

Arrangements for use of college facilities must be made through the executive assistant. Application for the use of facilities and grounds shall be made no later than ten working days prior to the date the event is scheduled to occur.

NEW SECTION

**WAC 132S-500-125 Limitations of use.** (1) Where college space is used for an authorized function (such as a class or a public or private meeting under approved sponsorship, administrative functions or service-related activities), groups must obey or comply with directions of an authorized representative of the college.

(2) If at any time actual use of college facilities by an individual or group constitutes an unreasonable disruption of the normal operation of the college, such use shall immediately terminate, all persons engaged in such use shall immediately vacate the premises, and leave the college property upon command of the appropriate college official.

(3) Any individual or group granted permission to use college facilities shall agree in advance to abide by all college rules and regulations. The college reserves the right to deny use of college facilities to any individual or group whose past conduct indicates likelihood that college rules and regulations will not be obeyed. The college may also deny use to a requesting individual or organization which has used the facilities in the past and has damaged college property, left college buildings and grounds in excessive disorder, or failed to cooperate with college staff concerning use of the facilities.

(4) No person may enter onto college grounds or facilities possessing a visible firearm or other dangerous weapon, except specifically as allowed by law under WAC 132S-200-140.

(5) Promotional materials or posting for any event being held in a college facility must follow the same procedure as applies to students outlined in chapter 132S-100 WAC.

(6) Use of audio amplifying equipment is permitted only in locations and at times that will not interfere with the normal conduct of college affairs.

(7) The college facilities may not be used for private or commercial purposes unless such activities clearly serve the educational mission of the college are either sponsored by an appropriate college unit or conducted by contractual agreement with the college.

(8) College facilities may not be used for purposes of political campaigning by or for candidates who have filed for public office except for student-sponsored activities. Rules, regulations, policies, procedures and practices regarding the use of college facilities shall not discriminate or promote discrimination among political parties, groups or candidates solely on the basis of their particular political viewpoint.

(9) Activities of commercial or political nature will not be approved if they involve the use of promotional signs or posters on buildings, trees, walls, or bulletin boards, or the distribution of samples or brochures outside rooms or facilities to which access may be granted.

(10) No person may solicit contributions on college property for political uses, except where this limitation conflicts with federal law concerning interference with the mail.

(11) Religious groups shall not, under any circumstances, use the college facilities as a permanent meeting place. Use shall be intermittent only, so as not to imply college endorsement.

(12) Alcoholic beverages will not be served without the approval of the vice-president for administrative services or

designee(s). It shall be the responsibility of the event sponsor to obtain all necessary licenses from the Washington state liquor and cannabis board and adhere to their regulations including all state and local regulations and laws, and those of Columbia Basin College.

(13) Authorization for use of college facilities shall not be considered as endorsement of or approval of any group or organization nor the purposes they represent. The name of the college shall not be associated with any program or activity for which the college facilities are used without specific written approval from the president or his or her designee(s).

(14) Rental of college facilities carries no right of advertising on college premises other than the right to post a sign for the purpose of directing people to the place of assembly.

(15) Unless otherwise provided by contractual agreement, an authorized member of the college staff shall be required to be available at times when college facilities are in use by a group. If service beyond normal business hours is required as a result of any meeting, such time shall be paid by the using organization at the currently established rate. The college may require and charge users for security services at the college's discretion.

(16) Audio-visual equipment and materials are intended to support and supplement the college's curriculum. Equipment shall not be rented to external users, unless official prior approval has been granted and currently established rates are charged. The existence of equipment in a rented space does not mean the user has the right to use it.

NEW SECTION

**WAC 132S-500-130 Denial of use.** Columbia Basin College is a state agency and exists to serve the public. However, the college may deny use of its facilities to any individual, group or organization if the requested use would:

(1) Interfere or conflict with the college's instructional, student services or support programs;

(2) Interfere with the free flow of pedestrian or vehicular traffic on campus;

(3) Involve illegal activity;

(4) Create a hazard or result in damage to college facilities; or

(5) Create undue stress on college resources.

The college president hereby delegates his or her designee(s) the right to cancel the facilities rental agreement at any time and to refund any payment to the college for the use of college facilities. If imminent danger exists or unlawful activity is practiced by the using organization, or if there is any violation of any term, condition or provision of the use arrangement, the college may terminate an agreement immediately and without notice.

NEW SECTION

**WAC 132S-500-135 Other requirements.** When using college facilities, an individual or organization may be required to make an advance deposit, post a bond and/or obtain insurance to protect the college against cost or other liability.

When the college grants permission to an individual or organization to use its facilities, it is with the expressed

understanding and condition that the individual or organization assumes full responsibility for any loss or damage resulting from such use and agrees to hold harmless and indemnify the college against any loss or damage claim arising out of such use.

#### NEW SECTION

**WAC 132S-500-140 Facility rental/use fees.** Fees will be charged in accordance with the rates available from the executive assistant for the vice-president of administrative services. The college reserves the right to make pricing changes without prior written notice, except that such price changes shall not apply to facility use agreements already approved by the administration.

The college reserves the right to have trained college staff operate any and all technical equipment at the user's expense. Rates and fees for use of facilities are available online at [www.columbiabasin.edu](http://www.columbiabasin.edu) and from the executive assistant for the vice-president of administrative services.

#### **Chapter 132S-600 WAC**

#### **POSTING AND LITERATURE DISTRIBUTION**

#### NEW SECTION

**WAC 132S-600-100 Distribution of materials.** (1) The college reserves the right to control and regulate the distribution of nonfirst amendment materials which might interfere with the college's educational mission.

(2) Permission for the posting, display or distribution of handbills, leaflets, newspapers, posters and similar related matter on college facilities must be obtained from the vice-president of administrative services or designee. Permission for such posting or display will be given only if such material meets the following criteria:

(a) Must not be commercial, obscene or unlawful in nature;

(b) Must not interfere with the ingress and egress of persons, or interfere with the free flow of vehicle or pedestrian traffic, or the orderly administration of college affairs, or cause an interruption of classes;

(c) Each of such handbills, leaflets, newspapers and related matter must bear identification as to the publishing agency and distributing organization or individual, as well as the date when posted materials will be removed from the property.

(3) Students/college employees.

Handbills, leaflets, newspapers and similar related matter may be sold or distributed free of charge by any Columbia Basin College student or students or by members of recognized Columbia Basin College student organizations or by Columbia Basin College employees on or in Columbia Basin College facilities at locations specifically designated by the director of student activities; provided such distribution or sale meets the criteria listed in subsection (2)(a) through (c) of this section.

(4) Nonstudent persons and organizations not connected with the college may not distribute handbills, leaflets, newspapers and similar materials.

(5) Any distribution of materials as authorized by the office of the vice-president for administrative services and regulated by established guidelines shall not be construed as support or approval by the college community or the board of trustees.

#### **Chapter 132S-700 WAC**

#### **ENVIRONMENTAL POLICY**

#### NEW SECTION

**WAC 132S-700-010 State Environmental Policy Act (SEPA).** It is the policy of Community College District No. 19 that capital projects proposed and developed by the district shall be accomplished in compliance with chapter 43-21C RCW, the State Environmental Policy Act (SEPA); and in accordance with chapter 197-11 WAC and all subsequent amendments thereto, and WAC 131-24-030.

In compliance with chapter 197-11 WAC, the president, or a duly appointed administrator designee, shall be the responsible official for implementing this policy.

#### **WSR 16-01-026**

#### **PROPOSED RULES**

#### **DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Behavioral Health and Service Integration Administration)

[Filed December 8, 2015, 8:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-18-035.

Title of Rule and Other Identifying Information: The department is repealing sections in chapter 388-865 WAC that pertain to regional support networks (RSN), and adding new sections that pertain specifically to RSNs becoming behavioral health organizations (BHO).

Other amendments in chapters 388-875, 388-877, 388-877A, 388-877B, and 388-877C WAC include updating language regarding BHOs, the BHO managed care plan, behavioral health services, and other related changes as necessary.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on February 9, 2016, at 10:00 a.m.

Date of Intended Adoption: Not earlier than February 10, 2016.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax (360) 664-6185, by 5:00 p.m., February 9, 2016.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by January 26, 2015 [2016], phone (360) 664-6092, TTY (360) 664-6178, or e-mail [KildaJA@dshs.wa.gov](mailto:KildaJA@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is

adopting rules to comply with 2SSB 6312, chapter 225, Laws of 2014, that requires RSNs to be renamed BHOs effective April 1, 2016, and authorizes the department to establish regional service areas within the state and integrate substance use disorder treatment with mental health services. The rules also update the verbiage "chemical dependency" to "substance use disorders," amend and add new definitions, move the grievance system rules from chapter 388-877A WAC to chapter 388-877 WAC, and make updates to provide clarifications.

**Reasons Supporting Proposal:** The rules meet the requirements of 2SSB 6312, chapter 225, Laws of 2014. The updated rules will provide more consistent statewide administration, continuity, delivery, and monitoring of behavioral health services which impact consumers, their families, advocates, and contracted providers.

**Statutory Authority for Adoption:** RCW 71.05.560, chapters 70.96A, 71.05 and 71.24 RCW; 2SSB 6312.

**Statute Being Implemented:** RCW 71.05.560, chapters 70.96A, 71.05 and 71.24 RCW; 2SSB 6312.

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

**Name of Proponent:** Department of social and health services, governmental.

**Name of Agency Personnel Responsible for Drafting:** Kathy Sayre, P.O. Box 45330, Olympia, WA 98504-5330, (360) 725-1342; **Implementation and Enforcement:** Dennis Malmer, P.O. Box 45330, Olympia, WA 98504-5330, (360) 725-3747.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 (3), rules are exempt from the preparation of a small business economic impact statement if the content of the rules are dictated by statute. Without these rules, the department would not be in compliance with 2SSB 6312, chapter 225, Laws of 2014.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(v) because they include requirements that are specifically dictated by statute and clarify the language of existing rules without changing their effect.

December 3, 2015  
Katherine I. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 16-02 issue of the Register.

**WSR 16-01-029**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed December 8, 2015, 12:11 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-06-055.

**Title of Rule and Other Identifying Information:** Chapter 296-45 WAC, Safety standards for electrical workers, rotorcraft/helicopter for power distribution and transmission line installation, construction and repair.

**Hearing Location(s):** Red Lion Hotel, 1225 North Wenatchee Avenue, Wenatchee, WA, on January 26, 2016, at 9:00 a.m.; at the Enduris Training Facility, 1610 South Technology Boulevard, Suite 100, Spokane, WA, on January 27, 2016, at 9:00 a.m.; at the The Heathman Lodge, 7801 Greenwood Drive, Vancouver, WA, on February 1, 2016, at 9:00 a.m.; and at the Department of Labor and Industries, 7273 Linderson Way S.W., S118 and S119 Rooms, Tumwater, WA, on February 3, 2016, at 9:00 a.m.

**Date of Intended Adoption:** April 4, 2016.

**Submit Written Comments to:** Cindy Ireland, Administrative Regulations Analyst, Division of Occupational Safety and Health, P.O. Box 44620, Olympia, WA 98504-4620, Cynthia.Ireland@lni.wa.gov, by 5:00 p.m. on February 17, 2016. In addition to written comments, the department will accept comments submitted to fax (360) 902-5619. Comments submitted by fax must be ten pages or less.

**Assistance for Persons with Disabilities:** Contact Cynthia Ireland by January 11, 2016, at (360) 902-5522 or cynthia.ireland@lni.wa.gov.

**Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:** In the spring of 2012, the electrical utility safety advisory committee (EUSAC), a work group comprised of about fifty business and labor representatives, asked the department to commence rule making to update and clarify safety requirements that relate to electrical work being done with the assistance of helicopters. Some of the changes being proposed:

- Add language relating to certification requirements for helicopter service providers.
- Amend language to expand the scope of personnel to "all workers," and to specify that they must be "qualified and trained" to perform their assigned work tasks.
- Add language to address the requirement of hazard analysis and job briefings.
- Add language to address pilot fatigue.
- Sling and rigging requirements were updated to be able to perform new practices allowed by the proposed rule.

**AMENDED SECTIONS:**

**WAC 296-45-67503 Definitions.**

- Remove numbers from each definition.
- Add definitions for helicopter service provider and pilot in command, pilot or PIC.

**WAC 296-45-67513 Personal protective equipment (PPE).**

- Subsection (2): Add an ANSI reference relating to hard hats and helmets.
- Subsection (3): Add language relating to performing and documenting a hazard assessment to determine appropriate PPE.

**WAC 296-45-67519 Housekeeping.**

- Change title of this section to "Landing zones."
- Subsection (1): Add language relating to establishing a landing zone.



**WAC 296-45-67521 Operator's responsibility.**

- Change title of this section to "Pilot's responsibility."
- Subsection (1): Add language relating to the pilot being properly rested and fit for duty.
- Replace "operator" with "pilot" throughout this section.
- Subsection (5): Add language relating to the pilot possessing the appropriate ratings for the aircraft and be [being] competent to safely conduct assigned tasks.

**WAC 296-45-67523 Hooking and unhooking loads.**

- Subsections (1) through (3): Reworded language for clarity.

**WAC 296-45-67525 Static charge.**

- Revised language to include "bonded" as means to protect against static charge and removed rubber gloves.

**WAC 296-45-67527 Load permitted.**

- Change title of this section to "Line stringing."
- Subsections (2) and (3): Reworded for clarity.
- Subsection (4): Add language relating to a helicopter shall not pull any cable, rope or similar line which is at any point attached to a fixed object other than the helicopter itself.

**WAC 296-45-67529 Visibility.**

- Housekeeping change.

**WAC 296-45-67531 Signal systems.**

- Change title of this section to "Communication."
- Subsections (1) and (2): Reworded for clarity.
- Subsections (3) and (4): Move language from current WAC 296-45-67507 and reword for clarity.

**WAC 296-45-67533 Approaching the helicopter.**

- Change title of this section to "Helicopter operation."
- Subsections (2) through (12) are new but language is existing and considered current industry work practices. Merge this section with current WAC 296-45-67535.

**WAC 296-45-67537 Sling and rigging.**

- Subsection (1): Clarify language making it clear that rigging must be checked prior to using.
- Subsection (2): Add language requiring appropriate training.
- Subsection (3): Reword for clarity.
- Subsection (4): Add language from current WAC 296-45-67509.

**WAC 296-45-67545 Refueling operations.**

- Reword this section for clarity.
- Remove subsection (3)(h).

**NEW SECTIONS:****WAC 296-45-67504 Operating certification.**

- Add this section relating to operating certification requiring additional training.

**WAC 296-45-67506 Personnel.**

- Move this section from current WAC 296-45-67539 adding additional training requirements.

**WAC 296-45-67508 Hazard analysis and job briefing.**

- Add this section relating to hazard analysis and job briefings adding additional training requirements.

**WAC 296-45-67522 Cargo hooks.**

- Move this section from current WAC 296-45-67511 for better organization of information.

**WAC 296-45-67536 Helicopter work tasks.**

- Subsection (1): Add language relating to aerial hover transfer.
- Subsection (2): Reword language relating to human external cargo (HEC).
- Subsection (3): Add language relating to external cargo sling loads.

**REPEALED SECTIONS:****WAC 296-45-67505 Briefing, 296-45-67507 Signals, 296-45-67509 Slings and taglines, 296-45-67511 Cargo hooks, 296-45-67535 In helicopter, 296-45-67539 Personnel, and 296-45-67543 General.**

Reasons Supporting Proposal: The Occupational Safety and Health Administration (OSHA) also regulate helicopter safety. The department will coordinate with OSHA to ensure our rules are as-effective-as OSHA's. The Federal Aviation Administration (FAA) also regulates helicopter safety; however the FAA's focus is on pilot safety and operation of the aircraft. The department's proposed rule primarily focuses on electrical workers who work on high voltage wires with the assistance of helicopters. The safety standards for electrical workers under chapter 296-45 WAC with regard to helicopter-assisted power line work have not been updated for many years. Therefore, parts of them are outdated and do not reflect best industry practices, are inconsistent with federal or state laws, or are inadequate to protect electrical workers.

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

Statute Being Implemented: Chapter 49.17 RCW.

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

Name of Proponent: Department of labor and industries (L&I), governmental.

Name of Agency Personnel Responsible for Drafting: Chris Miller, Tumwater, Washington, (360) 902-5516; Implementation and Enforcement: Anne Soiza, Tumwater, Washington, (360) 902-5090.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

**Small Business Economic Impact Statement**

DOSH of L&I is proposing changes to the rule under WAC 296-45-675, regarding the regulation of helicopter-assisted power line work in the state of Washington.

The following small business economic impact statement (SBEIS) was prepared in compliance with the Regulatory Fairness Act, RCW 19.85.040. It provides an analysis comparing the average costs associated with the implementation of the proposed rule changes to WAC 296-45-675 through 296-45-67545 on small and large businesses.

**1. INTRODUCTION OF THE PROPOSED RULE**

**1.1 The background of this rule making:** In recent years, helicopters have helped linemen and other related electrical workers do their jobs in the power line work areas more efficiently and less costly to the customers than traditional

approaches. As a result, helicopters have become one of the most important resources to assist in constructing transmission and distribution lines, performing line inspections, and responding to storm or other emergencies or damages. On the other hand, there may arise some safety issues as a consequence of these new industry practices, and workers could get injured or killed if sufficient safety measures are not implemented and followed.

In Washington, the safety standards for electrical workers under chapter 296-45 WAC with regard to helicopter-assisted power line work have not been updated for many years. Therefore, parts of them are outdated and do not reflect best industry practices, are inconsistent with federal or state laws, or are inadequate to protect electrical workers. In light of this situation, stakeholders have requested that L&I work with them to update these standards. In March 2013, the department issued a preproposal notice and officially initiated the rule-making process.

Between January 24, 2013, and June 10, 2014, eight stakeholder meetings were held by the department to help develop the rule language. The stakeholder group is comprised of a mix of representatives from businesses identified as being most affected by the proposed rule. The group's membership includes representatives from utility companies, electrical contractors, and helicopter providers. The draft rule was revised many times as a result of the discussions from each meeting and the draft was finalized in August 2014 after incorporating the comments from the last stakeholder meeting.

**1.2 The description of the rule amendments:** FAA regulates helicopter safety practices. However, the FAA's focus is on pilot safety and safe operation of aircraft. OSHA also plays a critical role in helicopter safety regulation with its focus on electrical workers who work on high voltage wires with the assistance of helicopters. As the administrator of an OSHA-approved state plan, L&I is required to coordinate with OSHA to ensure its rules are at-least-as-effective-as OSHA's. This proposal is primarily intended to protect electrical workers when they perform the work specified in the rule.

The proposed rule changes cover the sections from WAC 296-45-67503 through 296-45-67545. Specifically, the following sections have been revised or added as a result of this rule-making project:

- WAC 296-45-67503 was amended to include new definitions for the terms used in the proposed rule.
- WAC 296-45-67504 was created to state the certification requirement for helicopter service providers the rule would apply to.
- WAC 296-45-67506 was amended to expand the scope of this section to "all workers," and to specify that they must be "qualified and trained" to perform their assigned work tasks.
- WAC 296-45-67508 was amended to address the requirement of hazard analysis and job briefing. A more detailed written job hazard analysis is now required before the commencement of any helicopter operation and an additional job briefing is required if working conditions change during the course of a job.

- WAC 296-45-67513 was amended to require that "ANSI approved" hard hats or helmets be provided for electrical work specified in this rule. This section also states that employers must perform and document a hazard assessment to identify and determine the appropriate PPE.
- WAC 296-45-67519 was amended to add more details about landing zones.
- WAC 296-45-67521 was amended to address the pilot fatigue issue and to emphasize pilots' responsibility for safe operations of helicopter loads.
- WAC 296-45-67523 was revised to incorporate changes in hooking and unhooking loads to ensure that this section is consistent with the new practices of HEC allowed under the new rule.
- WAC 296-45-67527 was revised to include more specifications related to the line stringing requirements.
- WAC 296-45-67531 was revised to incorporate changes to the communications between air crew and ground personnel, including the required utilization of "designated and qualified" signal persons and the limitations on the use of head signals.
- WAC 296-45-67533 was amended to reflect safe practices in helicopter operations including secured loads and the twenty minute reserve fuel requirements.
- WAC 296-45-67536 was added to allow new helicopter work tasks including the HEC and external cargo sling loads.
- WAC 296-45-67537 was amended to reflect changes in the sling and rigging requirements that are necessary to perform new practices allowed by the proposed rule.
- WAC 296-45-67545 was revised to improve clarity with regard to refueling operations and related requirements set forth under this section.

**2. INTRODUCTION OF THE COST SURVEY:** To estimate the economic impact of the helicopter-assisted electrical work safety rule on affected businesses, L&I developed a business survey in the fall of 2014. This survey was created by the economists from L&I's research and data services program, in collaboration with the DOSH rule-making technical team, L&I internal survey review committee and other relevant parties. The main purpose of this online survey was to gauge the probable new compliance costs that businesses would incur if the identified rule changes were adopted, and to determine whether there exists a disproportionate cost impact on small businesses.

**2.1 Survey development and sample size:** The survey was first designed by the economists in October 2014. The draft was then revised and reviewed by the rule-making technical team from DOSH, followed by a number of meetings to discuss the details of these comments and suggestions. Per L&I internal policy, the survey was also submitted to its internal survey committee for their review. After another round of updates, it was finalized at the end of November. The final survey questionnaire was then posted on the SurveyGizmo, a popular online survey tool, by the agency's webmasters.

Due to the relatively small number (see Section 6 for more details) of affected businesses, the agency attempted to send the survey to as many businesses as possible. The final list selected for the survey included all the businesses that

attended at least one stakeholder meeting, another twenty utility or electrical companies and six helicopter service providers that did not attend stakeholder meetings but would most likely be affected by the rule. The agency believes that these forty-seven businesses are representative of the population in the three major industries. On December 11, 2014, the agency officially sent out this online survey.

**2.2 Survey contents and responses:** After a comparison between the proposed rule and the existing rule language and discussions with the technical team, L&I identified a few rule changes that are above current standards and would likely impose new costs on the businesses involved. Considering the length and time needed to complete the survey, only the most important and costly components were included in the survey questionnaire.

The survey was organized as follows: The first section was designed to obtain the background information of each employer including the respondent's title, the number of employees, and the primary business areas; the second and third sections ask the participants to estimate the probable new compliance costs related to two major proposed requirements: More training required for lineman and other electrical workers, and training for riggers, signal persons and other ground personnel. The last section was intended to collect information regarding the major benefits of this rule.

On December 18, 2014, and January 8, 2015, the agency sent two reminders to all selected businesses. Between December 11, 2014, and January 19, 2015, the agency received twenty-four responses, among which eighteen were complete and six were incomplete.

**3. ASSESSING ECONOMIC IMPACT BY EMPLOYMENT SIZE:** The Regulatory Fairness Act, RCW 19.85.040(1) requires the department to determine whether a proposed rule will have a disproportionate cost impact on small businesses. The act directs the department to compare "the cost of compliance for small businesses with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rule." A convenient and easy way to make this comparison is to compare the compliance cost per employee for these two groups. This SBEIS compares the average cost per affected worker for each component that represents increased requirements. The purpose here is to best estimate the extent to which the disproportionate impact, if any, is on small businesses rather than to estimate the total costs to the affected businesses as a whole. As this rule will affect only a small number of employers and the sample size for the survey is very small, we decided to compare the average unit cost between all small businesses and all larger ones.

**3.1 Cost per worker associated with qualification requirements for linemen and other electrical workers:** Section 2 in the survey asks respondents whether they have linemen or similar workers performing power distribution and transmission line work. If yes, they are required to provide the total number of workers, and the number of workers who need additional training in order to be eligible for the assigned work activities under the new rule. Then, they need to estimate the hours of training needed. To mitigate the impact of a small sample on our results, we used the mode,

i.e., the most frequently occurring value, as the estimated training hours for each group.

Eighteen respondents indicated that they were subject to this requirement ("YES" to question 2a) and provided the number of workers needing additional training to be eligible. Of these eighteen respondents, only three businesses are small businesses (and one indicated that they only hire signal persons) with an average size of thirty-eight employees, and the remainder are large businesses with more than fifty employees.

In terms of additional training hours needed for linemen, one small business indicated their workers need five to eight hours and another indicated more than eight hours. For the large businesses, seven indicated that their workers need five to eight hours, accounting for forty-seven percent of that group. As to the additional training hours for other electrical workers, only one small business indicated that they hire these workers and they estimated that more than sixteen hours of additional training would be required for them. In contrast, half of the large businesses that hire these workers estimated that about five to eight hours would be needed.

Using the median hourly wage of \$41.30 paid to a lineman in Washington<sup>1</sup>, the average training cost is between \$207 and \$330 for a lineman hired by large businesses. The average cost for small businesses is more likely to exceed \$330 per affected lineman. From the same data source, the weighted median hourly wage paid to other electrical workers is \$26.65<sup>2</sup>. Therefore, the average training cost is between \$133 and \$213 per worker for large businesses and over \$426 for small businesses. As discussed in the cost-benefit analysis report for this rule, we assume that these workers need to be retrained every two years. Therefore, the annualized training cost is only fifty percent of this total training cost for each affected worker.

<sup>1</sup> This was the hourly rate paid to Washington electrical power line installers and repairers in the 2014 Occupational Employment and Wage Estimates. The report was released by Washington employment security department.

<sup>2</sup> The scope of other electrical workers discussed here is defined in subsection 2.3.1 of the cost-benefit analysis report for this rule making (page 10).

There may be some other costs related to training such as travel to the field and the cost of purchasing training equipment and materials that were not captured in the survey. Given that large businesses will normally have some cost advantage on these items small businesses may be disproportionately affected by this training requirement.

In conclusion, we estimate that the cost of additional training for a lineman in small businesses is twenty-two percent or more than in large businesses, although the exact effect size is unknown. For other electrical workers, this unit cost is one hundred forty-five percent or more for small businesses. However, the cost estimate for small businesses is based on only one response, so confidence in this estimate is low.

**Table 1: Unit cost relating to linemen and other electrical workers**

Cost Item /Business Size	Small Business	Large Business
Training hours for linemen	One reported at 5-8 hours and another reported at > 8 hours	5-8 hours (47% employers)
Training cost for linemen	> = \$330 per affected worker	\$207 - \$330 per affected worker average: \$269
Annualized cost for linemen	> = \$165 per affected worker	\$104 - \$165 per affected worker average: \$135
Training hours for other electrical workers	> 16 hours	5-8 hours (50% employers)
Training cost for other electrical workers	> \$426 per affected worker	\$133 - \$213 per affected worker average: \$173
Annualized cost for other electrical workers	> \$213 per affected worker	\$67 - \$107 per affected worker average: \$87

**3.2 Cost per worker associated with qualification requirements for signal persons and riggers:** There are other workers such as signal persons and riggers who are also an integral part of the work crew. If they don't receive appropriate safety training, serious or sometimes even fatal accidents can occur to them and the other workers around them.

Section 3 in the survey asks respondents whether they have hired these ground personnel to support power line work and if yes, how many they have hired and how many of them would need additional training in order to be eligible for the assigned work activities under the new rule. They are then asked to estimate the hours of training needed for those identified. To mitigate the impact of a small sample on these results, we use the mode, i.e., the most frequently occurring value, as the estimated training hours for each group.

Twelve respondents indicated that they were subject to this requirement ("YES" to question 3a) and provided the number of workers hired and needing additional training to be eligible. Of these twelve respondents, only two businesses are small businesses (one of them did not report training hours), and the remaining are large businesses with more than fifty employees.

In terms of additional training hours needed for signal persons, the small business indicated their workers need five to eight hours. For large businesses, about thirty-eight percent of them reported at three to four hours and another thirty-eight percent reported at five to eight hours. As to the additional training hours for riggers, the small business indicated that their workers need more than eight hours of additional training. In contrast, fifty percent of the large businesses that hire riggers estimated about five to eight hours would be needed.

Using the average hourly wage of \$26.02<sup>3</sup>, the average training cost is between \$78 and \$208 for a signal person hired by large businesses. The average cost for small businesses is between \$130 and \$208 per affected signal person.

The average training cost for a rigger is between \$130 and \$208 for large businesses and more than \$208 for small businesses. We also assume that these workers need to be retrained every two years and the annual cost is fifty percent of this total training cost for each affected worker.

<sup>3</sup> Same data source as in footnote 2.

For other costs relating to training such as travel to the field and the cost of purchasing training equipment and materials that were not captured in the survey, we believe large businesses will have some cost advantage over their smaller counterparts.

In conclusion, we estimate that the cost of additional training for a signal person in small businesses is eighteen percent or more than in large businesses. For other electrical workers, this unit cost is twenty-two percent or more for small businesses, although the exact effect size is unknown.

**Table 2: Unit cost relating to signal persons and riggers**

Cost Item /Business Size	Small Business	Large Business
Training hours for signal persons	5-8 hours	38% of them reported at 3-4 hours and another 38% reported at 5-8 hours
Training cost for signal persons	\$130 - \$208 average: \$169	\$78 - \$208 average: \$143
Annualized cost for signal persons	\$65 - \$104 per affected worker average: \$85	\$39 - \$104 per affected worker average: \$72
Training hours for riggers	> 8 hours	5-8 hours (50% employers)
Training cost for riggers	> \$208 per affected worker	\$130 - \$208 per affected worker average: \$169
Annualized cost for riggers	> \$104 per affected worker	\$65 - \$104 per affected worker average: \$85

**3.3 Cost per worker associated with other requirements in the new rule:** The new rule proposes other requirements needed to protect electrical workers performing certain types of tasks. These include a requirement of a written job hazard analysis before the commencement of any helicopter operation under WAC 296-45-67508, a requirement of ANSI approved hard hats or helmets for electrical work associated with helicopter operations under the revised section of WAC 296-45-67513, and a requirement of a primary and secondary attachment means for helicopter operations involving HEC under WAC 296-45-67536.

As indicated in Table 3, some components are reflective of the current federal or national consensus standards and will not be considered as new or increased requirements from this proposed rule.

**Table 3: Other rule components that may impose additional costs**

WAC Number	Rule Contents	Cost Items	Source of Estimates
WAC 296-45-67504 and 296-45-67521	<i>Pilot training, qualifications and responsibilities</i>	<i>Not considered as a new requirement from the proposed rule</i>	<i>Inherited from FAA, OSHA or other federal standards</i>
WAC 296-45-67508	<i>A written job hazard analysis before the commencement of any helicopter operation</i>	<i>Time needed by a supervisor or lead worker to prepare this report for each task</i>	<i>Based on internal technical experts' estimates</i>
WAC 296-45-67513	<i>An ANSI approved hard hat or helmet for electrical work associated with helicopter operations</i>	<i>Cost of providing an ANSI Class E hard hat for each worker involved</i>	<i>Market prices from various hardware stores</i>
WAC 296-45-67533	<i>Increase of the reserve fuel requirement from 15 minutes to 20 minutes</i>	<i>Not considered as a new requirement from the proposed rule</i>	<i>Inherited from 14 CFR 91.151(b) regarding the federal minimum fuel standard</i>
WAC 296-45-67536 (1)(a)	<i>Sling/vertical suspension system for HEC</i>	<i>Not considered as a new requirement from the proposed rule</i>	<i>Inherited from FAA regulations under 14 CFR Part 133</i>
WAC 296-45-67536 (1)(b)	<i>A secondary attachment means to prevent inadvertent release of HEC load</i>	<i>Most employers use a belly band system, or an emergency anchor as the most cost-effective means</i>	<i>Market prices from various hardware stores</i>
WAC 296-45-67536 (1)(c)	<i>External platform and skid system for the HEC</i>	<i>Not considered as a new requirement from the proposed rule</i>	<i>Inherited from FAA regulations under 14 CFR Part 133</i>

**3.3.1 Requirement of a written job hazard analysis under WAC 296-45-67508:** This is a new requirement proposed by the rule and it is intended to improve the understanding of the nature of the work tasks and to increase the safety awareness for each worker involved before the work begins. The agency estimates that it will normally take 1.5 hours or less for a supervisor or lead worker to prepare this material. Using the median hourly wage of \$33.16, the total cost is near \$50 for each operation. As such, we believe there is no significant difference in this cost between small and large businesses.

**3.3.2 Requirement of a hard hat or helmet under WAC 296-45-67508:** The proposed rule requires that an ANSI approved hard hat or helmet be used for electrical work associated with helicopter operations. The agency estimates that a basic ANSI Class-E hard hat is priced between \$6.50 and \$18.50, with an average cost of \$10.00. As this cost is the same for any worker regardless of whether they are from small or large businesses, we don't conclude that small businesses would bear a higher cost than their larger counterparts as a result of complying with this rule.

**3.3.3 Requirement of a secondary attachment under WAC 296-45-67508:** An additional safety device has been widely used in the utility industry to protect workers involved in the Class-B HEC. This secondary device can catch the person suspended by a line outside the helicopter if the aircraft's primary attachment means fails or is inadvertently released by the pilot. Most employers have used a belly band system, or an emergency anchor, which is an affordable and effective option. While this is an extra cost to the businesses, it does

save many lives. Based on the cost information available online and from various stores, the agency estimates the average cost of this type of device at \$200, with a range from \$100 to \$300. If it needs to be replaced every five years as recommended<sup>4</sup>, the annual cost would be \$20 to \$60 per affected worker. For the same reason specified in subsection 3.3.2, this is a flat cost so we don't estimate that small businesses would bear a higher cost than their larger counterparts as a result of this requirement.

<sup>4</sup> This is the recommendation from the United States Department of Interior in its Helicopter Short-Haul Handbook published in February 2010.

**4. ACTIONS TAKEN TO REDUCE THE IMPACT OF THE PROPOSED RULES ON SMALL BUSINESS:** The above analysis indicates that except for the cost of training other electrical workers, small businesses are likely to bear a slightly disproportionate share of regulatory burden, ranging from eighteen to twenty-two percent, with the implementation of the proposed rule. In addition, the majority of businesses affected by this rule are large businesses. For these reasons, the agency did not develop any specific actions to mitigate this impact. That being said, many existing free services, although not specifically designed for this rule, are available and will be very helpful to affected small businesses. These services include training and education opportunities, free materials to help them develop their safety plans, and consultation services for all small businesses.

**5. SMALL BUSINESS INVOLVEMENT IN THE RULE-MAKING PROCESS:** The department has made a considerable effort

to involve small businesses and their representatives at various points in this rule-making process. These efforts include:

(1) Since January 24, 2013, the department has held eight stakeholder meetings in Tumwater and other regional offices to hear from the business community, including representatives from a number of small businesses. There was also a stakeholder comment period after each series of meetings. The representatives of small businesses, along with all the other attendees, have made a significant contribution to the development of the new rule. The department developed the draft rule in August 2014 with consideration of all the comments and concerns submitted by interested stakeholders from across the state, including the small business community.

(2) The department conducted a business survey in December 2014 to estimate the economic impact of this rule. A certain number of small businesses were selected to participate in this survey and provide their input.

(3) The department will conduct a public hearing for this proposed rule after the CR-102 is filed. During this hearing, small businesses will have opportunities to provide their comments and suggestions on this proposed rule.

**6. INDUSTRIES LIKELY TO BE REQUIRED TO COMPLY WITH THE RULE:** The proposed rule will apply to the businesses involved in the power distribution and transmission line construction, alteration, repair or similar work with the assistance of a helicopter or other similar device. Three major types of businesses have been identified as the affected businesses: Utility providers, electrical contractors, and helicopter service providers specialized in utility projects. Within each of these types of businesses, only those firms that have participated or will participate in helicopter-assisted utility work will be affected by the proposed rule changes. Therefore, this rule will affect a relatively small number of specialized businesses in these three industries.

Due to the fact that the proposed rule will introduce new work activities such as the HEC operations that are currently not allowed in Washington, we needed to identify the businesses that have already performed these activities in other states, as well as those that are currently not involved, but have a plan to do so should this new rule be adopted. A few steps were taken to identify the pool of the affected businesses. First, all twenty-one businesses that participated in stakeholder meetings were part of the population as they have shown their strong interest and support for this proposed rule. Second, based on the agency's internal administrative data base on registered businesses, another forty utility or electrical companies that currently specialize in the power line work and will likely use helicopter services were identified. Third, multiple data sources were scrutinized to identify helicopter companies that provide services for power line projects and seem likely to engage in this business in Washington. These include the Helicopter Association International online membership directory and the Helicopter Links online directory. Based on the locations of these helicopter companies, the types of helicopters each company owns and operates, and the work areas they specialize in<sup>5</sup>, we determined that approximately twenty-four helicopter providers would be affected by the proposed rule. Altogether, at least eighty-five businesses in the three major industries are expected to

be affected by the proposed rule, with the actual population thought to be slightly larger.

<sup>5</sup> We estimate that the helicopter providers that will most likely be affected by this rule are those that are located in Washington or the adjacent states, own and operate at least one helicopter designed for external cargo operations in electric utility industry (such as MD 500 and its variants, Bell JetRanger series, etc.), particularly in power line construction, alteration, repair or maintenance work. The providers that only conduct power line patrol will be excluded.

**Table 4: The population of affected businesses**

Type of Business	Total Number of Affected Businesses
Electric utility providers <sup>6</sup>	37
Electrical contractors	24
Helicopter service providers	24
All	85

<sup>6</sup> See Table A1 in the Appendix for the largest utility companies operating in the state and the power lines they own.

**7. NUMBER OF JOBS CREATED OR LOST:** The introduction of the HEC operations is expected to significantly improve the work productivity of power line projects. As a result, fewer labor hours, or fewer workers may be needed for the same size of project under this new practice. For this reason, the department does anticipate that a certain number of jobs may be lost due to these rule changes. However, we do not know the extent to which this proposed rule would impact total employment in these three affected industries<sup>7</sup>.

<sup>7</sup> The industry-specific occupations that would be affected by the proposed rule are presented in Table A2 in the Appendix.

**8. CONCLUSIONS:** As we have analyzed above, this proposed rule is likely to impose slightly disproportionate compliance costs on small businesses as a whole. The extent of the disproportion varies among different rule components, ranging from no disproportionate impact to as much as one hundred forty-five percent higher cost for small businesses.

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10. APPENDIX:

**Table A1: Power line infrastructure owned by largest utilities in Washington**

Company	Power Line Systems and Population Served
All Washington PUDs excluding Snohomish	Combined have installed <b>33,059 miles</b> of electric power lines, serving 634,121 customers based on its 2011 operating year data.
Puget Sound Energy	Its power distribution system includes <b>2,597 miles</b> of transmission lines (>=55kV) and <b>20,428 miles</b> of distribution lines (<55kV), serving more than 1 million customers. About a half of distribution lines are overhead lines.
Avista Utilities	Owns <b>2,719 miles</b> of transmission lines and <b>19,000 miles</b> of distribution lines in Washington, Idaho and Oregon, serving a total of 1,610,000 customers. Utility operating revenues from Washington accounted for <b>62.94%</b> in 2013.
Snohomish County PUD	The PUD has a total of <b>6,321 miles</b> of power lines in 2013, serving 750,000 customers.
Pacific Power	Owns <b>16,300 miles</b> of transmission lines and <b>62,930 miles</b> of distribution lines in Oregon, Wyoming, Washington, Utah, Idaho and California. There are 127,967 Washington customers, accounting for <b>7.24%</b> of its total customers.
Seattle City Light	Owns <b>656 miles</b> of transmission and <b>2,300 miles</b> of distribution lines, serving almost 700,000 people, according to its 2013-2018 Strategic Plan Report.

**Table A2: Industry-specific occupations affected by the proposed rule**

Affected Occupations	Affected Industries	Employment Share by Industry	Combined Share	Affected Workers as % of Total*
Electrical Power Line Installers and Repairers	Electric Power Generation, Transmission and Distribution	50.1%	62.1%	51.9%
	Power System Construction	12.0%		
Installation, Maintenance and Repair Helpers	Electric Power Generation, Transmission and Distribution	1.5%	2.8%	1.8%
	Power System Construction	0.6%		
	Nonscheduled Air Transportation	0.1%		
	Support Activities for Air Transportation	0.6%		
Construction Laborers	Electric Power Generation, Transmission and Distribution	0.1%	2.5%	1.5%
	Power System Construction	2.4%		
Riggers	Electric Power Generation, Transmission and Distribution	0.3%	1.3%	1.1%
	Power System Construction	1.0%		
Installation, Maintenance, and Repair Workers, All Other	Electric Power Generation, Transmission and Distribution	0.4%	1.6%	1.4%
	Power System Construction	0.3%		
	Support Activities for Air Transportation	0.9%		

Affected Occupations	Affected Industries	Employment Share by Industry	Combined Share	Affected Workers as % of Total*
First-Line Supervisors of Mechanics, Installers, and Repairers	Electric Power Generation, Transmission and Distribution	3.1%	4.4%	4.4%
	Power System Construction	0.3%		
	Nonscheduled Air Transportation	0.2%		
	Support Activities for Air Transportation	0.8%		

\* These percentages are derived based on the combined share of employment across the affected industries and the share of workers needing additional training collected from the survey.

**Online Survey Questionnaire**

**2014 Rule Making Survey on Safety Standards for Electrical Workers**

**INTRODUCTION:** The purpose of this survey is to determine both new costs and benefits your business may have due to the new or increased requirements in the proposed safety standards for power distribution and transmission line work with assistance of helicopter or rotorcraft. Your answers are very important for us to accurately estimate the economic impact of the proposed rule on affected businesses.

There are four sections in this survey:

- **Section 1:** General questions about your business as a whole.

- **Section 2:** Questions to answer if your business employs **linemen and other supporting electrical workers** who perform power distribution and transmission line installation, construction and repair work.
- **Section 3:** Questions to answer if your business employs **riggers, signal persons and other ground personnel** to assist with these electrical tasks.
- **Section 4:** Questions about your opinions on the benefits of the proposed rule. Please **complete this section** if it applies to you as your input is critical to an accurate estimate on the benefits of the proposed rule.

Please answer the questions the best you can. If you do not have the exact information, use your best estimate.

**Section 1: General Questions About Your Business**

1a. Please describe your title/position in your company.

- A: Business Owner/Co-Owner
- B: President/CEO/Chairman
- C: General Manager
- D: Safety Manager/Director
- E: Engineer/Lead Worker
- F: Other. Please specify: \_\_\_\_\_

1b. During 2014, what was the maximum number of full-time workers your business employed?  
 \_\_\_\_\_ full-time workers (if none, enter 0)

1c. During 2014, how many total hours did your part-time and/or seasonal employees work?  
 \_\_\_\_\_ hours (if none, or if you don't employ part-time or seasonal workers, enter 0)

1d. Please check **all** the industry descriptions that apply to your business:

<input type="checkbox"/> Utility provider involving electrical power generation, transmission and distribution <input type="checkbox"/> Electrical contractor <input type="checkbox"/> Helicopter services provider <input type="checkbox"/> Others: Please specify _____
--

**Section 2: Linemen and Other Supporting Electrical Workers**

Please read the text in the box below before answering the following questions.

The standards under proposed WAC 296-45-675 shall apply to work being done on or near any rotorcraft, helicopter crane, or similar device when such device is for **power distribution and transmission line construction, alteration, repair** or similar work.

WAC 296-45-67536(1) specifies **Human External Cargo (HEC)** practice in electrical work which is not currently allowed. Workers would be lifted by **helicopters** through a **slings/vertical suspension system** to perform such electrical work.

WAC 296-45-67506(1) requires all personnel be **physically and mentally able and qualified** to perform the work to which they are assigned, including being knowledgeable in these rules.





3d. How many of your workers designated as **riggers** need **additional training** to be able and qualified to perform their jobs, while around **Human External Cargo** by a helicopter?

\_\_\_\_\_ riggers (*If none, enter 0*).

3e. For each **rigger** identified in 3d, please estimate **the hours of additional training** needed to meet the proposed requirements.

- A: less than 1 hours                       B: 1 ~ 2 hours  
 C: 3 ~ 4 hours                               D: 5 ~ 8 hours  
 E: more than 8 hours, please specify: \_\_\_\_\_ hours

3f. Please estimate new costs that are related to the proposed requirement for **other involved ground workers (other than signal persons or riggers)**.

How many ground workers? \_\_\_\_\_.                      How much cost? \$\_\_\_\_\_ **per** ground worker.

#### Section 4: Benefit Estimate

Please read the text in the box below before answering the following questions.

Under the proposed rule, there are three possible benefits to businesses, employees and society if helicopter operations **involving Human External Cargo (HEC)** are allowed to facilitate the power distribution and transmission line construction, alteration, repair or similar work.

**Benefit 1: Total time** needed to complete these tasks could be significantly **reduced**.

**Benefit 2: Reduced exposure to injury hazards** for linemen, pilots and ground personnel involved due to the reduced completion time and a higher level of safety training.

**Benefit 3: Faster power restoration for electricity customers** if a power outage occurs.

4a. Have you already performed the work specified in this rule with the assistance of helicopter operations involving **Human External Cargo (HEC)** in other states?

- Yes: Please answer the following questions.  
 No: You have completed the survey. Thank you!

4b. For a typical **power line construction** project, please estimate:

- 1) On average, how many construction projects does your company complete in a normal year? \_\_\_\_\_ projects.
- 2) On average, **without** the assistance of HEC, how long will it take to complete such projects? \_\_\_\_\_ **hours** for a typical project.
- 3) On average, **with** the assistance of HEC, how long will it take to complete such projects? \_\_\_\_\_ **hours** for a typical project.

4c. For a typical **power line alteration** project, please estimate:

- 1) On average, how many alteration projects does your company complete in a normal year? \_\_\_\_\_ projects.
- 2) On average, **without** the assistance of HEC, how long will it take to complete such projects? \_\_\_\_\_ **hours** for a typical project.
- 3) On average, **with** the assistance of HEC, how long will it take to complete such projects? \_\_\_\_\_ **hours** for a typical project.

4d. For a typical **power line repair or inspection** project, please estimate:

- 1) On average, how many repair or inspection projects does your company complete in a normal year? \_\_\_\_\_ projects.
- 2) On average, **without** the assistance of HEC, how long will it take to complete such projects? \_\_\_\_\_ **hours** for a typical project.
- 3) On average, **with** the assistance of HEC, how long will it take to complete such projects? \_\_\_\_\_ **hours** for a typical project.

A copy of the statement may be obtained by contacting Cynthia Ireland, P.O. Box 44620, Olympia, WA 98504-4620, phone (360) 902-5522, fax (360) 902-5619, e-mail cynthia.ireland@lni.wa.gov.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Cynthia Ireland, P.O. Box 44620, Olympia, WA 98504-4620, phone (360) 902-5522, fax (360) 902-5619, e-mail cynthia.ireland@lni.wa.gov.

December 8, 2015  
Joel Sacks  
Director

AMENDATORY SECTION (Amending WSR 94-20-057, filed 9/30/94, effective 11/20/94)

**WAC 296-45-67503 Definitions.** ~~((+))~~ **"Approved rubber gloves."** Rubber insulating gloves used for protection of electrical workers from electric shock while working on energized conductors and equipment.

**"Cargo hooks."** A device attached or suspended from an aircraft which is used to connect an external load to the aircraft through direct couplings or by lead lines. This unit has both mechanical and electrical locking/unlocking means.

~~((2))~~ **"Designated employees."** Those employees selected or designated by the employer to work under or near helicopters who have first been instructed in hooking, unhooking, guiding and securing the load, including the signalperson, all of whom have been instructed in the hazards of helicopter work and who know the provisions of this section.

~~((3))~~ **"Downwash."** A down and outward air column from the main rotor system.

~~((4))~~ **"Ground personnel or crew."** Those employees who are physically and mentally capable, who are familiar with the hazards of helicopter use in power distribution and transmission line work, and who know these rules and the methods of operation.

~~((5))~~ **"Helicopter," "helicopter crane," and "rotorcraft."** Those aircraft whose support in the air is derived solely from the reaction of a stream of air driven downward by propellers revolving around a vertical axis, which are designed for and capable of carrying external loads. The use of the word helicopter in these rules shall also mean helicopter crane, rotorcraft, or similar device.

~~((6))~~ **"Helicopter service provider."** Entity that holds the appropriate FAA operating certification and provides helicopter support services.

**"Hooking and unhooking."** That process by which an external load is either attached to or released from the cargo hook.

~~((7))~~ **"Pilot in command, pilot or PIC."** The person who:

- Has the final authority and responsibility for the operation and safety of the flight;
- Has been designated as pilot in command before or during the flight; and
- Holds the appropriate category, class and type rating for the conduct of the flight if applicable.

**"Positive guide system."** A system or method of installing a load into position so that the load is capable of being

released from the helicopter without being otherwise secured so that the load will remain in position permanently or until otherwise secured by physical means.

~~((8))~~ **"Rotors."** That system of blades which rotates or revolves to supply lift or direction to the rotorcraft.

~~((9))~~ ~~"Approved rubber gloves."~~ ~~Rubber insulating gloves used for protection of electrical workers from electric shock while working on energized conductors and equipment.~~

~~((10))~~ **"Signalperson."** That member of the ground crew that is designated by an employer to direct, signal and otherwise communicate with the operator of the helicopter.

~~((11))~~ **"Sling line."** A strap, chain, rope or the like used to securely hold something being lifted, lowered, carried or otherwise suspended.

~~((12))~~ **"Sock line."** A rope(s), cable(s) or similar line(s) which is used to pull a conductor line from a reel or to remove existing strung conductors from poles or towers.

~~((13))~~ **"Static charge."** A stationary charge of electricity.

~~((14))~~ **"Tag line."** A rope or similar device used to guide or control the direction or movement of a load.

#### NEW SECTION

**WAC 296-45-67504 Operating certification.** The helicopter service provider must hold appropriate certification and have a current "FAA Operating Certificate" for the category of operation being performed. (Reference 14 C.F.R. Parts 133, 135, and 137 - Contact the local Flight Standards District Office (FSDO) for assistance.)

#### NEW SECTION

**WAC 296-45-67506 Personnel.** (1) All personnel must be physically and mentally able and qualified to perform the work to which they are assigned, including being knowledgeable in these rules.

(2) There must be a sufficient number of qualified ground personnel to safely guide, secure, hook and unhook the load.

(3) No employee shall perform or be ordered or assigned to perform any activity for which they are not trained, qualified, and competent or which they may compromise their safety or the safety of others.

Note: Applicable training requirements in WAC 296-45-065 shall be followed.

#### NEW SECTION

**WAC 296-45-67508 Hazard analysis and job briefing.** (1) Before the commencement of any helicopter operation, a written job hazard analysis (JHA) shall be completed and shall include, at a minimum, the following items:

- (a) Define the core tasks;
- (b) Identify specific hazards;
- (c) Identify mission specific tasks;
- (d) Describe procedures to safely manage or mitigate the hazards;
- (e) Describe communication procedure with the crew;
- (f) Discuss recognition and effects of fatigue;

- (g) Specify minimum approach distance (MAD); and  
 (h) Describe a site specific emergency action plan.

(2) An additional job briefing must be held immediately if working conditions change during the course of a job. Working conditions would include, but are not limited to, weather, wind, and visibility.

(a) During the job briefing, all affected employees and others, including signalpersons, ground workers, and pilot(s) must be advised of the hazards including a change of operation, if needed.

(b) No employee shall be permitted to work unless all affected employees fully understand the hazards and the change of operation.

AMENDATORY SECTION (Amending Order 76-38, filed 12/30/76)

**WAC 296-45-67513 Personal protective equipment (PPE).** Personal protective equipment when working on, under or in the near vicinity of helicopters:

(1) All employees shall wear eye protection of such design as to prevent the likelihood of dust or other substances from contacting the eye(s) of employees.

(2) All employees shall wear ANSI-approved hard hats ~~((which))~~ or helmets for electrical work specific to work associated with helicopter operations that shall be secured on the employee's head by a chinstrap or other suitable means.

(3) The employer must perform and document a hazard assessment to identify and determine the appropriate PPE for the work being performed, the location and site and/or equipment.

AMENDATORY SECTION (Amending Order 76-38, filed 12/30/76)

**WAC 296-45-67519 ~~((Housekeeping-))~~ Landing zones.** (1) When establishing the landing zone, the following items shall be considered:

- Size and type of helicopter;
- Suitability of the planned activity;
- Physical barriers or obstructions;
- Helicopter touchdown area and congestion in the area.

(2) All helicopter landing, loading and unloading areas shall be maintained in a neat and orderly fashion so as to reduce the likelihood of flying materials, tripping, or other hazards attendant to the work being performed.

AMENDATORY SECTION (Amending WSR 94-20-057, filed 9/30/94, effective 11/20/94)

**WAC 296-45-67521 ~~((Operator's))~~ Pilot's responsibility.** (1) The pilot and employer must ensure the pilot is properly rested and fit for duty.

(2) The helicopter ~~((operator))~~ pilot shall be responsible for the size, weight and manner in which loads are connected to the helicopter.

~~((2))~~ (3) No load shall be made if the helicopter ~~((operator))~~ pilot believes the lift cannot safely be performed. The employer shall make certain that the ~~((operator))~~ pilot of the helicopter is able to freely exercise their prerogative and

judgment as to safe operation of the helicopter itself concerning size, weight and manner by which loads are connected.

~~((3))~~ (4) No employee shall work on, under, near or in conjunction with a helicopter whose operation does not correspond with the foregoing provisions.

(5) The pilot shall possess the appropriate ratings for the aircraft and shall be competent to safely conduct the assigned tasks. The pilot shall have the final authority and is solely responsible for the safe operation of the helicopter load at all times.

#### NEW SECTION

**WAC 296-45-67522 Cargo hooks.** (1) All electrically operated cargo hooks shall have the electrical activating device so designed and installed as to prevent inadvertent operation. In addition, these cargo hooks shall be equipped with an emergency mechanical control for releasing the load. The hooks shall be tested prior to each day's operation to determine that the release functions properly, both electrically and mechanically.

(2) No employee shall be permitted to work under a hovering helicopter(s) unless the cargo hooks used comply with Federal Aviation Administration regulations governing such hooks.

AMENDATORY SECTION (Amending Order 76-38, filed 12/30/76)

**WAC 296-45-67523 Hooking and unhooking loads.** ~~((No employee shall perform work under hovering helicopters: Provided, That qualified and capable employees may function under such craft for that limited period of time necessary to guide, secure, hook or unhook the loads. When guiding, securing, hooking or unhooking the load at elevated positions, employees shall be assisted by and use a positive positioning guide system. When under hovering helicopters at any other location, the employee shall have a safe means of ingress and egress, including readily available escape route or routes in the event of an emergency. No other work or work-related activity other than the aforementioned shall be permitted under hovering helicopters. Bolting of or otherwise permanently securing the structures is prohibited under hovering helicopters except that in the event of an unforeseen contingency of an emergency nature which represents a substantial hazard to life or property, an employee may do such work as is necessary to preserve life or protect substantial property.))~~ (1) Work performed at an elevated position and directly under hovering helicopters shall be performed only by qualified and capable employees.

(a) Work shall be limited to the minimum time necessary to guide, secure, hook or unhook the loads, provided that only a single point of attachment is required to secure the load.

(b) When an employee is working from the ground under hovering helicopters, the employee shall have a safe means of ingress and egress at all times, including a readily available escape route or routes in the event of an emergency.

(2) Except as specifically permitted under WAC 296-45-675 through 296-45-67545, no other work or work-related activity shall be permitted under hovering helicopters.

(3) Positive guide systems shall be used for the placement of large segments of primary tower structure and shall enable the heavy lift helicopter to temporarily secure and release the load. Bolting of or otherwise permanently securing the structures is prohibited under hovering helicopters except that in the event of an unforeseen contingency of an emergency nature which represents a substantial hazard to life or property, an employee may do such work as is necessary to preserve life or protect substantial property.

AMENDATORY SECTION (Amending Order 76-38, filed 12/30/76)

**WAC 296-45-67525 Static charge.** All loads shall be grounded or bonded with a (~~(grounding)~~) device capable of discharging either the actual or potential static charge before ground personnel either touch or come close enough to touch the suspended load (~~(, or protective rubber gloves shall be worn by all ground personnel either touching the suspended load or who are likely to touch the load)~~).

AMENDATORY SECTION (Amending WSR 94-20-057, filed 9/30/94, effective 11/20/94)

**WAC 296-45-67527 (~~(Load permitted:)~~) Line stringing.** (1) Weight of the external load shall not exceed the manufacturer's load limit.

(2) (~~(A helicopter shall not pull any cable, rope or similar line which is at any point attached to a fixed object other than the helicopter itself. Helicopters may pull a free wheeling sock line so long as the end of the sock line is not tied to a reel, truck, or other fixed object. Such line cannot be tied to or otherwise secured to the roll-off reel other than by having been wrapped around such reel.)~~) Each helicopter operator utilized in line stringing shall be authorized by the Federal Aviation Administration, Part 133, Class C Operations.

(3) All line stringing operations shall be conducted in accordance with the following requirements:

(a) Stringing tension method shall enable a consistent positive control of the cable, rope, or similar lines at all times during pulling operations;

(b) During all pulling operations, the helicopter pilot shall maintain an aircraft orientation that allows the pilot to maintain constant visibility in both directions on line;

(c) No pulling operation shall be conducted at a speed greater than ten knots;

(d) When pulling from the aircraft belly hook attachment point, a ballast weight of a minimum three hundred pounds shall be utilized;

(e) At no time during the pulling operation shall the load line that is attached to helicopter's belly hook attachment point exceed a thirty degree angle from vertical.

Note: Subsection (3)(d) and (e) does not apply when pulling from the helicopter's approved side pull attachment point.

(4) A helicopter shall not pull any cable, rope, or similar line which is at any point attached to a fixed object other than the helicopter itself. Helicopters may pull a "free-wheeling" or "pay-out" of the cable, rope, or similar line so long as the end is not tied to a truck or fixed object other than the reel itself.

AMENDATORY SECTION (Amending Order 76-38, filed 12/30/76)

**WAC 296-45-67529 Visibility.** Employees shall keep clear of and outside the downwash of the helicopters except as necessary to perform a permitted activity. Where reasonably (~~(practicable)~~) practical, reduced vision of the operator and ground crew shall be eliminated.

AMENDATORY SECTION (Amending WSR 94-20-057, filed 9/30/94, effective 11/20/94)

**WAC 296-45-67531 (~~(Signal systems:)~~) Communication.** (1) Communication (~~(shall)~~) must be maintained between the air crew and ground personnel at all times by a designated and qualified signalperson. Such signal systems (~~(shall)~~) must be understood by the air crew and the ground crew, including signalpersons, prior to the hoisting of any load. There (~~(shall)~~) must be constant (~~(radio)~~) communication using radios or head and hand signals (~~(used)~~). The designated signalperson (~~(shall)~~) must have the sole and exclusive function during periods of loading and unloading of signaling and maintaining communications with the pilot. The designated signalperson shall be so dressed as to make their appearance distinguishable from other members of the ground crew by the (~~(operator)~~) pilot of the (~~(craft)~~) aircraft. This may be by way of orange-colored gloves, vest, or other wearing apparel. In addition, the leadworker and one top person shall also have an operating transmitter and receiver.

(2) (~~(Designated)~~) Authorized and qualified employees may come within 50 feet of the helicopter when the rotor blades are turning, but no closer, other than to enter the (~~(craft)~~) aircraft or to hook or unhook the load or do other essential functions. Other employee(s) shall not come closer than 100 feet of the (~~(craft)~~) aircraft when it is operating.

(3) The signals between the signalperson and the operator of the helicopter shall be those submitted to the FAA for the particular job. When head signals are to be used, the qualified worker must utilize a visually enhanced hard hat or helmet with clear markings to indicate the desired movement. Any signals other than up/down or in/out will require the use of hand signals.

(4) Should there occur a change in the hazards, method of performing the job, signals to be used, or other operating conditions during the course of any particular job, a conference shall immediately be held at which time all affected employees and others (including signalpersons, ground workers, and pilots) will be advised of such hazards or change of operation. No employee shall be permitted to work unless such employee and others fully understand any changes that have taken place.

AMENDATORY SECTION (Amending Order 76-38, filed 12/30/76)

**WAC 296-45-67533 (~~(Approaching the)~~) Helicopter operation.** (1) Whenever approaching or (~~(leaving)~~) departing a helicopter with blades rotating, all employees shall remain in full view of the pilot (~~(or operator)~~) and remain in a crouched position if within 50 feet of the helicopter. No employee shall approach the rear of the helicopter unless

directly authorized and directed by the ~~((operator))~~ pilot and the designated signalperson of such craft to be there at that time. All employees when operating or working within 50 feet of the helicopter with blades turning are subject to the direction of the helicopter ~~((operator))~~ pilot. No employee shall ~~((enter or leave))~~ board or depart the helicopter ~~((unless and until the place at which they enter or leave such craft is large enough for the helicopter itself to land))~~ without direction from the pilot in command.

(2) All materials and equipment loaded in the aircraft shall be properly secured for flight.

(3) Long objects, such as shovels and hot sticks, shall be carried horizontally and below the waist to avoid contact with the aircraft rotor blades.

(4) The pilot shall ensure that all loads are safely secured to the helicopter, or in cargo baskets, and properly loaded with regard to weight and balance.

(5) Never throw anything while loading and unloading the helicopter. Thrown items may come in contact with the aircraft rotor blade, causing damage to the aircraft and possible injury to ground personnel.

(6) While in the helicopter, safety belts must remain fastened at all times except when the pilot instructs otherwise or while entering or leaving the helicopter.

(7) Smoking in the helicopter is prohibited at all times.

(8) No employee shall ride in or work under or near a helicopter with less than twenty minutes reserve fuel.

(9) No employee shall have sharp objects in their pocket or unsecured while sitting in or on the helicopter.

(10) No employee shall touch any switch, knob, instrument, or other control device in the cockpit unless specifically directed by the pilot.

(11) No employee shall obscure or otherwise obstruct the pilot's ability to visually see the instruments or flight path during flight or operation.

(12) No employee shall attempt to slow or stop the rotorcraft blades.

#### NEW SECTION

**WAC 296-45-67536 Helicopter work tasks.** (1) Aerial hover transfer.

(a) Full body harnesses, lanyards, hardware, and attachment points must meet the requirements in ANSI Z359.1-2007.

(b) Any employees transferring from a helicopter to a structure/conductor must wear a full body harness and lanyard fixed to an approved attachment point on the helicopter, structure/conductor. An ANSI-approved device that allows the worker to be attached simultaneously to the helicopter and the structure/conductor shall be used until the transfer is complete.

(c) Fall protection must be established and maintained one hundred percent during the entire time the employee is transferring from the helicopter to the structure/conductor.

(2) Human external cargo (HEC).

(a) The sling/vertical suspension system (human external cargo or HEC) is a vertical system suspended from the helicopter cargo hook. The sling system will comply with all governmental requirements (e.g., 14 C.F.R. Part 133, Class B

or D - External Load.) The sling system will also comply with 14 C.F.R. 27.865 or 29.865.

(b) Helicopter operations involving HEC shall incorporate the use of a secondary safety device, in addition to the helicopter's primary attachment means, to prevent the inadvertent release of the load. This device shall remain jettisonable in accordance with Class B load requirements.

(i) All lines utilized for HEC operations shall be dedicated for HEC and shall not be used for transporting cargo.

(ii) HEC lines shall not be less than 10:1 safety ratio between the rated breaking strength and the working load.

(iii) All harnesses utilized for helicopter short-haul operations must meet the ANSI Z359.1-2007 standards for class III (full body) harnesses and must be equipped with both dorsal and sternal D rings.

(iv) All suspension harnesses used for HEC must be adjusted to the user. The harness must be equipped with an orthostatic shock relief device. Such devices shall be deployed and used if an employee has been in suspension for any length of time greater than five minutes.

(c) External platform and skid operation. If a platform system is used to transport crews or where a crew member performs work from the platform system and all aircraft attachment points shall comply with applicable FAA regulations and requirements. All platform operations shall be conducted in accordance with the 14 C.F.R. Part 133, Class A - External Load. Flight and hovering capabilities of the helicopter must not be adversely affected by the design of the platform. The platform must not affect the auto rotation and emergency capabilities of the helicopter. The platform and loads may affect the lateral and longitudinal CG weight and balance of the helicopter in flight. An engineered counterbalance system must be used if the platform exceeds the lateral CG limits of the manufacturer's specifications for the helicopter which will ensure stability.

(3) External cargo sling loads. Helicopter longline support operations (cargo operations) shall only be performed by qualified, competent and trained personnel. All operations shall be conducted in accordance with applicable Federal Aviation Administration regulations.

#### AMENDATORY SECTION (Amending Order 76-38, filed 12/30/76)

**WAC 296-45-67537 Sling and rigging.** (1) The pilot is responsible for the integrity of the rigging for any external load and must ensure safe delivery of the cargo by inspecting and monitoring the security of the rigging throughout the operation. Prior to operations, the pilot must check the condition and application of all rigging gear to ensure serviceability. Prior to commencing operations, determine the complete rigging requirements, including slings and taglines.

(2) All personnel involved with rigging activities must receive appropriate rigging training and show proficiency specific to helicopter operations and the work or tasks being performed.

(3) The slings used for the external load ~~((shall))~~ must be inspected each day before use. Slings must be inspected by an employee designated ~~((as rigger, who shall be capable of properly inspecting the rigging, shall inspect the sling.~~

~~(2))~~, trained and qualified as a rigger.

(4) No sling shall be used unless it has a properly marked minimum tensile strength of ~~((four))~~ five times the load which will be carried or is being carried.

~~((3))~~ (a) No sling shall be used unless upon inspection it is determined to be in good condition and capable of the work which is to be performed and properly marked.

(b) Loads must be properly slung so that there will be no slippage or shifting of the load and so that the load will not accidentally be dislodged from the helicopter.

(c) Helicopter load lines must be comprised of nonconductive materials which are the appropriate weight, strength, and length to prevent the line from being lifted and entangled into the aircraft rotor system.

(d) Pressed sleeves, wedged eyes, or equivalent means shall be used for all suspended loads utilizing wire rope. All eyes on synthetic line shall be produced by the lines manufacturer or a certified splicer for the specific type of line.

AMENDATORY SECTION (Amending WSR 01-17-033, filed 8/8/01, effective 9/1/01)

**WAC 296-45-67545 Refueling operations.** (1) ~~((Under no circumstances shall the))~~ Refueling of any ((type)) helicopter with either aviation gasoline or Jet B (Turbine) type fuel ((be permitted)) shall be prohibited while the engines are running.

(2) Fueling of helicopters using Jet A (Turbine-Kerosene) type fuel ((may be refueled)) is allowed with engines running ((provided the following criteria is met:))

(3) All helicopter fueling must comply with the following:

(a) No unauthorized persons shall be allowed within fifty feet of the refueling operation or fueling equipment.

(b) A minimum of one thirty-pound fire extinguisher, or a combination of same, good for class A, B and C fires, shall be provided within one hundred feet on the upwind side of the refueling operation.

Note: For additional requirements relating to portable fire extinguishers see WAC 296-800-300.

(c) All fueling personnel shall be thoroughly trained in the refueling operation and in the use of the available fire extinguishing equipment they may be expected to utilize.

(d) There shall be no smoking, open flames, exposed flame heaters, flare pots, or open flame lights within fifty feet of the refueling area or fueling equipment. All entrances to the refueling area shall be posted with "NO SMOKING" signs.

(e) ~~((Due to the numerous causes of static electricity, it shall be considered present at all times. Prior to starting refueling operations, the fueling equipment and the helicopter shall be grounded and the fueling nozzle shall be electrically bonded to the helicopter. The use of conductive hose shall not be accepted to accomplish this bonding. All grounding and bonding connections shall be electrically and mechanically firm, to clean unpainted metal parts.))~~ Prior to making any fueling connection to the aircraft, the fueling equipment shall be bonded to the aircraft by use of a cable, thus providing a conductive path to equalize the potential between the fueling equipment and the aircraft. The bond shall be maintained until fueling connections have been removed, thus allowing

separated charges that could be generated during the fueling operation to reunite. Grounding during aircraft fueling shall not be permitted.

(f) To control spills, fuel shall be pumped either by hand or power. Pouring or gravity flow shall not be permitted. Self-closing nozzles or deadman controls shall be used and shall not be blocked open. Nozzles shall not be dragged along the ground.

(g) In case of a spill, the fueling operation shall be immediately stopped until such time as the person-in-charge determines that it is safe to resume the refueling operation.

~~((h) When ambient temperatures have been in the one hundred degrees Fahrenheit range for an extended period of time, all refueling of helicopters with the engines running shall be suspended until such time as conditions become suitable to resume refueling with the engines running.~~

~~(3))~~ (4) Helicopters with their engines stopped being refueled with aviation gasoline or Jet B (Turbine) type fuel, shall also comply with subsection ~~((2))~~ (3)(a) through (g) of this section.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-45-67505 Briefing.

WAC 296-45-67507 Signals.

WAC 296-45-67509 Slings and tag lines.

WAC 296-45-67511 Cargo hooks.

WAC 296-45-67535 In helicopter.

WAC 296-45-67539 Personnel.

WAC 296-45-67543 General.

**WSR 16-01-030**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
[Filed December 8, 2015, 12:12 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-24-094.

Title of Rule and Other Identifying Information: Chapter 296-45 WAC, Safety standards for electrical workers.

Hearing Location(s): Red Lion Hotel, 1225 North Wenatchee Avenue, Wenatchee, WA, on January 26, 2016, at 9:00 a.m.; at the Enduris Training Facility, 1610 South Technology Boulevard, Suite 100, Spokane, WA, on January 27, 2016, at 9:00 a.m.; at The Heathman Lodge, 7801 Greenwood Drive, Vancouver, WA, on February 1, 2016, at 9:00 a.m.; and at the Department of Labor and Industries (L&I), 7273 Linderson Way S.W., S118 and S119 Rooms, Tumwater, WA, on February 3, 2016, at 9:00 a.m.

Date of Intended Adoption: April 4, 2016.

Submit Written Comments to: Cindy Ireland, Administrative Regulations Analyst, Division of Occupational Safety

and Health, P.O. Box 44620, Olympia, WA 98504-4620, Cynthia.Ireland@lni.wa.gov, by 5:00 p.m., on February 17, 2016.

In addition to written comments, the department will accept comments submitted to fax (360) 902-5619. Comments submitted by fax must be ten pages or less.

Assistance for Persons with Disabilities: Contact Cynthia Ireland by January 11, 2016, at (360) 902-5522 or cynthia.ireland@lni.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule making is federally initiated. The department is responding to a Federal Register notice where the Occupational Safety and Health Administration (OSHA) published their final rule relating to Electric Power Generation, Transmission, and Distribution; and Electrical Protective Equipment (29 C.F.R. 1910 and 1926). This was published on April 11, 2014, and effective July 11, 2014. The department is required to update our rules to be at-least-as-effective-as OSHA. The department will have a few provisions that may differ but will be at-least-as-effective-as the OSHA rule. In addition, the rule changes incorporate the most recent national standards or best industry practices, include adoption of various 2014 ANSI standards, update internal references and make minor housekeeping changes throughout our chapters.

**AMENDED CHAPTER:**

- Rename the title of this chapter from "Safety Standards for Electrical Workers" to "Electric Power Generation, Transmission, and Distribution."

**AMENDED SECTIONS:**

**WAC 296-45-015 Scope and application.**

- Add the word "construction" in subsection (1). Add the word electrical to qualified employees in subsections (1)(a), (e)(i), (ii) and (7).
- Change "qualified persons" to "qualified electrical employees" in the notes after subsection (2).
- Add a reference to chapter 296-27 WAC in subsection (4).
- Create a new subsection (12) with current language.

**WAC 296-45-035 Definitions.**

- Add definitions for contract employer, entry, fall restraint system, first-aid training, host employer, may, must, network system, personal fall arrest system, roadway or public highway, shall, should, statistical spark-over voltage, statistical withstand voltage, and work-positioning equipment.
- Modify the definitions for automatic circuit recloser, designated employee, enclosed space, line-clearance tree trimmer, line-clearance tree trimming, qualified person or qualified employee, and system operator or power dispatcher.
- Delete the definitions of electric utility, public highway, and underground network.

**WAC 296-45-045 NESC applicable.**

- Update the NESC references to 2012.

**WAC 296-45-055 Employer's responsibility.**

- Update a reference in subsection (2).

**WAC 296-45-065 Training.**

- Housekeeping changes in subsections (1), (4), (5), (6) and (8).
- Add a new subsection (2) relating to the degree of training, using OSHA language. Renumber the rest of this section.
- Add the word "electrical" to qualified employees in subsections (3) and (3)(c). Add language in subsection (3)(c) using OSHA language. Add a new subsection (3)(e), using OSHA language. Add the word "electrical" to qualified employees in the note after subsection (3)(e).
- Add notes after subsection (8) using OSHA language.
- Add a new subsection (9) relating to line-clearance tree trimmers using OSHA language.

**WAC 296-45-075 Employer's safety program.**

- Update a reference in subsection (5).

**WAC 296-45-105 Work required of leadworkers.**

- Change "lineworkers" to "qualified electrical employees" throughout this section.

**WAC 296-45-125 Medical services and first aid.**

- Add OSHA language in subsections (1)(a) and (3).

**WAC 296-45-135 Job briefing.**

- Reformat part of the language in subsection (1) and move to subsection (3).
- Add a new subsection (2) using OSHA language. Renumber the rest of this section.

**WAC 296-45-17505 Lockout/tagout (hazardous control) program.**

- Add the word "designated" after "authorized" throughout this section.

**WAC 296-45-17510 Retraining.**

- Add the word "designated" after "authorized" in subsection (1).

**WAC 296-45-17515 Protective materials and hardware.**

- Update a reference in the note at the end of this section.

**WAC 296-45-17520 Energy isolation and 296-45-17525 Notification.**

- Add the word "designated" after "authorized" in these sections.

**WAC 296-45-17530 Lockout/tagout application.**

- Add the word "designated" after "authorized" throughout this section.

**WAC 296-45-17535 Releasing stored energy.**

- Add the word "designated" after "authorized" in subsection (2).

**WAC 296-45-17540 Release from lockout/tagout, 296-45-17550 Group lockout/tagout, and 296-45-17565 Central system operator.**

- Add the word "designated" after "authorized" throughout these sections.

**WAC 296-45-205 Enclosed spaces.**

- Update this section using OSHA language. Also update references throughout this section.



**WAC 296-45-215 Underground electrical installations.**

- Change "qualified persons" to "qualified electrical employees" throughout this section.
- Update a reference in the note.

**WAC 296-45-225 Underground residential distribution (URD).**

- Update the table reference in subsection (1)(b).
- Change "qualified employees" to "qualified electrical employees" throughout this section.
- Change "qualified employee" to "designated employee" in subsection (1)(c).

**WAC 296-45-255 Protective equipment.**

- Update the table reference in subsection (15).

**WAC 296-45-25505 Personal protective equipment.**

- Update the ANSI reference in subsection (2).
- Housekeeping change in subsection (3).

**WAC 296-45-25510 Fall protection.**

- Update this entire section with OSHA language.
- Add a reference to Appendix E.

**WAC 296-45-275 Ladders, platforms, and manhole steps.**

- Update references in subsections (1), (2) and the note.

**WAC 296-45-295 Gasoline engine power chain saws.**

- Update the ANSI reference in subsection (1).
- Update a reference in subsection (2).
- Add a note after subsection (15).

**WAC 296-45-305 Live-line tools.**

- Update the ASTM reference in the note.
- Housekeeping change in subsection (2)(c).
- Update the IEEE reference in the note.

**WAC 296-45-315 Materials handling and storage.**

- Change "qualified employees" to "qualified electrical employees" throughout this section.

**WAC 296-45-325 Working on or near exposed energized parts.**

- Change "qualified employees" to "qualified electrical employees" throughout this section.
- Housekeeping change in subsection (3).
- Update the table reference in subsections (4) and (11). Renumber subsections (a) and (b).
- Replace Minimum Approach Distance table with a more current table.
- Add Table 3, Altitude correction factors using OSHA language. This table is currently in Appendix A.
- Add a reference to Appendix A.
- Add a new subsection (13) relating to protection from arcs and flames using OSHA language. Delete subsection (12)(b) and (c) and the note, now redundant with the new subsection (13). Renumber section.
- Update language referencing Appendix D.

**WAC 296-45-335 Deenergizing lines and equipment for employee protection.**

- Change "designated employees" to "qualified electrical employees" throughout this section.

- Add a new subsection (15) relating to network protectors using OSHA language. Renumber the rest of this section.
- Housekeeping change in subsection (18).

**WAC 296-45-345 Grounding for the protection of employees.**

- Add "and bonding jumpers" to subsection (3). Also, add a note relating to bonding jumpers.
- Update ASTM reference in the note.
- Add language to subsection (6) relating to the order of connection using OSHA language.
- Update language referencing Appendix B.

**WAC 296-45-355 Underground grounding.**

- Housekeeping change in subsection (3).

**WAC 296-45-365 Testing and test facilities.**

- Change "qualified employees" to "qualified electrical employees" in the note.
- Update language referencing Appendix B.

**WAC 296-45-375 Mechanical equipment, including aerial manlift equipment.**

- Add references in subsections (1)(a) using OSHA language. Renumber subsection.
- Housekeeping change in subsection (1)(d).
- Update the table reference in subsection (10)(a). Change "qualified employee" to "qualified electrical employee."
- Update the table reference in subsection (10)(c)(ii).
- Add the word "mechanical" to subsection (10)(c)(iii)(B) to match OSHA.
- Update language referencing Appendix B.

**WAC 296-45-385 Overhead lines.**

- Housekeeping change in the note, subsections (1)(c), (13)(d) and (16).
- Update language referencing Appendix B and C.
- Add language relating to temporary protective grounds to subsection (2)(e) using OSHA language.
- Delete subsections (2)(e)(i) through (v) since covered by new OSHA language. Add notes using OSHA language.
- Change "qualified employees" to "qualified electrical employees" throughout this section.

**WAC 296-45-455 Line-clearance tree-trimming operations.**

- Change "qualified employees" to "qualified electrical employees" in this section.
- Housekeeping change in subsection (2) and (2)(c).
- Update the table references in subsections (2)(b), (3), (4) and (5).

**WAC 296-45-45505 Brush chippers.**

- Add a reference in subsection (2) and update a reference in subsection (5).

**WAC 296-45-475 Substations.**

- Update ANSI references throughout this section.
- Change "qualified persons" to "qualified electrical employees" throughout this section.
- Update the table references in subsection (6).

**WAC 296-45-48515 Access and working space.**

- Update ANSI references throughout this section.

**WAC 296-45-48525 Guarding of energized parts.**

- Update ANSI references throughout this section.
- Change "qualified persons" to "qualified electrical employees" in subsection (2).

**WAC 296-45-545 Trolley maintenance, jumpering or bypassing.**

- Change "lineworkers" to "qualified electrical employees" throughout this section.

**WAC 296-45-903 Appendix B—Protection from step and touch potentials—Nonmandatory.**

- Update this appendix to match OSHA.

**WAC 296-45-905 Appendix C—Methods of inspecting and testing wood poles—Nonmandatory.**

- Update this appendix to match OSHA.

**NEW SECTIONS:****WAC 296-45-067 Information transfer.**

- Create this section relating to host and contract employers using OSHA language.

**WAC 296-45-902 Appendix A—Working on exposed energized parts.**

- Add this appendix from 29 C.F.R. 1910.269.

**WAC 296-45-906 Appendix D—Protection from flames and arcs—Nonmandatory.**

- Add this appendix from 29 C.F.R. 1910.269 and add applicable WAC numbers.

**WAC 296-45-907 Appendix E—Work-positioning equipment inspection guidelines—Nonmandatory.**

- Add this appendix from 29 C.F.R. 1910.269.

**WAC 296-45-908 Appendix F—Other applicable safety and health Washington administrative codes.**

- Add this appendix as a resource.

**WAC 296-45-909 Appendix G—Flow chart—Nonmandatory.**

- Add this appendix from 29 C.F.R. 1910.269.

**WAC 296-45-910 Appendix H—Reference documents.**

- Add this appendix from 29 C.F.R. 1910.269.

**REPEALED SECTION:****WAC 296-45-901 Appendix A—Nonmandatory.**

Reasons Supporting Proposal: By law, L&I's division of occupational safety and health is required to update our rules to be at-least-as-effective-as OSHA.

OSHA's final rule includes new or revised requirements for fall protection, minimum approach distances, and arc-flash protection, and for host employers and contract employers to exchange safety-related information.

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

Statute Being Implemented: Chapter 49.17 RCW.

Rule is necessary because of federal law, 29 C.F.R. 1910 Subpart R; 29 C.F.R. 1926 Subpart V.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Chris Miller, Tumwater, Washington, (360) 902-5516; Implementation and Enforcement: Anne Soiza, Tumwater, Washington, (360) 902-5090.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department estimates that the proposed rule changes will, on average, impose no more than minor costs on a business in any affected industry and a small business economic impact statement report is not required for this rule-making project.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Cynthia Ireland, P.O. Box 44620, Olympia, WA 98504-4620, phone (360) 902-5522, fax (360) 902-5619, e-mail cynthia.ireland@lni.wa.gov.

December 8, 2015

Joel Sacks

Director

**Chapter 296-45 WAC****((SAFETY STANDARDS FOR ELECTRICAL WORKERS)) ELECTRIC POWER GENERATION, TRANSMISSION, AND DISTRIBUTION**

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-45-015 Scope and application.** (1) This chapter covers the operation (~~and~~), maintenance, and construction of electric power generation, control, transformation, transmission, and distribution lines and equipment. These provisions apply to:

(a) Power generation, transmission, and distribution installations, including related equipment for the purpose of communication or metering, which are accessible only to qualified electrical employees;

Note: The types of installations covered by this chapter include the generation, transmission, and distribution installations of electric utilities, as well as equivalent installations of industrial establishments. Trolley maintenance, jumpering, and bypass is also covered by this chapter. Supplementary electric generating equipment that is used to supply a workplace for emergency, standby, or similar purposes only is covered under Part L of chapter 296-24 WAC and WAC 296-800-280.

(b) Other installations at an electric power generating station, as follows:

(i) Fuel and ash handling and processing installations, such as coal conveyors;

(ii) Water and steam installations, such as penstocks, pipelines, and tanks, providing a source of energy for electric generators; and

(iii) Chlorine and hydrogen systems.

(c) Test sites where electrical testing involving temporary measurements associated with electric power generation, transmission, and distribution is performed in laboratories, in

the field, in substations, and on lines, as opposed to metering, relaying, and routine line work;

(d) Work on or directly associated with the installations covered in subsections (1)(a) through (c) of this section; and

(e) Line-clearance tree-trimming operations, as follows:

(i) This chapter except WAC 296-45-455, applies to line-clearance tree-trimming operations performed by qualified electrical employees (those who are knowledgeable in the construction and operation of electric power generation, transmission, or distribution equipment involved, along with the associated hazards).

(ii) WAC 296-45-065, 296-45-125, 296-45-135, 296-45-255, 296-45-315, 296-45-375, and 296-45-455 through 296-45-45530 apply to line-clearance tree-trimming operations performed by line-clearance tree trimmers who are not qualified electrical employees.

(2) Notwithstanding subsection (1) of this section, this chapter does not apply to electrical installations, electrical safety-related work practices, or electrical maintenance considerations covered by Part L of chapter 296-24 WAC and WAC 296-800-280.

Note 1: Work practices conforming to WAC 296-24-970 through 296-24-985 are considered as complying with the electrical safety-related work practice requirements of this chapter, provided the work is being performed on a generation or distribution installation meeting WAC 296-24-95601 through 296-24-95699. This chapter also applies to work by qualified ((persons)) electrical employees directly on or associated with installations of electric power generation, transmission, and distribution lines or equipment, regardless of compliance with WAC 296-24-970 through 296-24-985.

Note 2: Work practices performed by qualified ((persons)) electrical employees and conforming to this chapter are considered as complying with WAC 296-24-95601 through 296-24-95699.

(3) This section applies in addition to all other applicable safety and health standards administered by the department. Specific references in this section to other standards are provided for emphasis only.

(4) Operation, conditions, work methods and other work related situations or activities not specifically covered by this chapter are subject to the rules and regulations of chapter 296-24 WAC(;) General safety and health standards; chapter 296-27 WAC Recordkeeping and reporting; chapter 296-62 WAC(;) General occupational health standards; chapter 296-155 WAC(;) Safety standards for construction work; chapter 296-800 WAC(;) Safety and health core rules; and, insofar as applicable to employee safety and health, chapter 19.29 RCW. Additionally, operations, conditions, work methods and other work related situations or activities may be subject to additional rules and regulations depending upon the nature of the work being performed.

(5) These rules shall not apply to the use of existing electrical installations during their lifetime, provided they are maintained in good condition and in accordance with the applicable safety factor requirements and the rules in effect at the time they were installed, and provided that reconstruction shall conform to the rules as herein provided.

(6) Any rule, regulation or standard contained within this chapter, if subject to interpretation, shall be interpreted so as to achieve employee safety, which is the ultimate purpose of this chapter.

(7) Should a rule or standard contained within this chapter conflict, in any manner, with a standard or rule contained within any other chapter of Title 296 WAC the standard or rule contained herein shall apply so long as the work being done is power generation, transmission, and distribution installations, including related equipment for the purpose of communication or metering, which are accessible only to qualified electrical employees. If there are rules within this chapter that conflict, the rule that provides the greatest employee safety will apply.

(8) Neither the promulgation of these rules, nor anything contained in these rules shall be construed as affecting the relative status or civil rights or liabilities between employers and their employees and/or the employees of others and/or the public generally; nor shall the use herein of the words "duty" and "responsibility" or either, import or imply liability other than provided for in the industrial insurance and safety laws of the state of Washington, to any person for injuries due to negligence predicated upon failure to perform or discharge any such "duty" or "responsibility," but failure on the part of the employees, leadworker, or employer to comply with any compulsory rule may be cause for the department of labor and industries to take action in accordance with the industrial insurance and safety laws.

(9) "Shall" and "must" as used in this chapter make the provisions mandatory. "Should," "may," or "it is recommended" are used to indicate the provisions are not mandatory but are recommended.

(10) If any section, subsection, phrase, or provisions of this chapter or part thereof should be held invalid by any court for any reason, such invalidity shall not in any way affect the validity of the remainder of this chapter, unless such decision renders the remainder of the provision unintelligible, or changes the meaning of such other provision or provisions.

(11) When the language used in this chapter indicates that it is the responsibility, duty, or obligation of the leadworker or other employee, it shall also be the employer's responsibility, obligation, and duty.

(12) Whenever this chapter refers to the provisions of another safety and health standard or statute affecting safety and health, such reference refers to the statute or code in effect at the time the work is being performed.

AMENDATORY SECTION (Amending WSR 14-07-086, filed 3/18/14, effective 5/1/14)

**WAC 296-45-035 Definitions.** These definitions apply to chapter 296-45 WAC.

**"Aerial manlift equipment"** - Equipment such as extended towers, boom-mounted cages or baskets, and truck-mounted ladders, that is primarily designed to place personnel and equipment aloft to work on elevated structures and equipment.

**"Affected employee"** - An employee whose job requires him or her to operate or use a machine or equipment on which servicing or maintenance is being performed under lockout or tagout, or whose job requires him or her to work in an area in which such servicing or maintenance is being performed.

**"Apprentice"** - An employee who is being trained to be journey level.

**"Approved"** - Meets or exceeds the recognized standards of safety within the industry.

**"Approved protectors"** - Gloves worn over rubber insulating gloves which are of such material or substance and so constructed as to protect the rubber gloves from abrasions, lacerations, or other physical damage which might otherwise occur to rubber gloves. Approved protectors must conform to the standards which are recognized by the industry.

**"Attendant"** - An employee assigned to remain immediately outside the entrance to an enclosed or other space to render assistance as needed to employees inside the space.

**"Authorized employee"** - An employee who locks out or tags out machines or equipment in order to perform servicing or maintenance on that machine or equipment. An affected employee becomes an authorized employee when that employee's duties include performing servicing or maintenance covered under this section.

**"Automatic (~~electrical recloser~~) reclosing device"** - A self-controlled device for interrupting and reclosing an alternating current circuit with a predetermined sequence of opening and reclosing followed by resetting, hold-closed, or lock-out operation.

**"Barricade"** - A physical obstruction such as tapes, cones, or A-frame type wood or metal structures intended to provide a warning about and to limit access to a hazardous area.

**"Barrier"** - A physical obstruction which is intended to prevent contact with energized lines or equipment or to prevent unauthorized access to a work area.

**"Bond"** - The electrical interconnection of conductive parts designed to maintain a common electrical potential.

**"Bus"** - A conductor or a group of conductors that serve as a common connection for two or more circuits.

**"Bushing"** - An insulating structure, including a through conductor or providing a passageway for such a conductor, with provision for mounting on a barrier, conducting or otherwise, for the purposes of insulating the conductor from the barrier and conducting current from one side of the barrier to the other.

**"Cable"** - A conductor with insulation, or a stranded conductor with or without insulation and other coverings (single-conductor cable), or a combination of conductors insulated from one another (multiple-conductor cable).

**"Cable sheath"** - A conductive protective covering applied to cables.

Note: A cable sheath may consist of multiple layers of which one or more is conductive.

**"Circuit"** - A conductor or system of conductors through which an electric current is intended to flow.

**"Clearance" (between objects)** - The clear distance between two objects measured surface to surface.

**"Clearance" (for work)** - Authorization to perform specified work or permission to enter a restricted area.

**"Communication lines."** (See "Lines, communication.")

**"Conductor"** - A material, usually in the form of a wire, cable, or bus bar, used for carrying an electric current.

**"Contract employer"** - An employer, other than a host employer, that performs work covered by this chapter under contract.

**"Covered conductor"** - A conductor covered with a dielectric having no rated insulating strength or having a rated insulating strength less than the voltage of the circuit in which the conductor is used.

**"Current-carrying part"** - A conducting part intended to be connected in an electric circuit to a source of voltage. Noncurrent-carrying parts are those not intended to be so connected.

**"Deenergized"** - Free from any electrical connection to a source of potential difference and from electric charge; not having a potential difference from that of the earth.

Note: The term is used only with reference to current-carrying parts, which are sometimes energized (alive).

**"Designated employee(~~person~~)"** - (~~An employee~~) A person who is designated by the employer to perform specific duties under the terms of this (~~(section)~~) chapter and who is knowledgeable in the construction and operation of the equipment and the hazards involved.

Note: Considering an employee to be a designated employee will depend on various circumstances in the workplace, on the level of training they have received, and the proficiency demonstrated by the employee with the tasks required of the job.

**"Electric line truck"** - Any vehicle used to transport employees, tools, and material, which serves as a traveling workshop for electric power line construction and maintenance work. It may be equipped with a boom and auxiliary equipment for setting poles, digging holes, and elevating material and/or workers.

**"Electric supply equipment"** - Equipment that produces, modifies, regulates, controls, or safeguards a supply of electric energy.

**"Electric supply lines."** (See "Lines, electric supply.") (~~"Electric utility" - An organization responsible for the installation, operation, or maintenance of an electric supply system.~~)

**"Emergency"** - An unforeseen occurrence endangering life, limb, or property.

**"Enclosed"** - Surrounded by a case, cage, fence or otherwise which will protect the contained equipment and prevent accidental contact of a person with live parts.

**"Enclosed space"** - A working space, such as a man-hole, vault, tunnel, or shaft, that has a limited means of egress or entry, that is designed for periodic employee entry under normal operating conditions, and that under normal conditions does not contain a hazardous atmosphere, but that may contain a hazardous atmosphere under abnormal conditions.

Note: Spaces that are enclosed but not designed for employee entry under normal operating conditions are not considered to be enclosed spaces for the purposes of this section. Similarly, spaces that are enclosed and that are expected to contain a hazardous atmosphere are not considered to be enclosed spaces for the purposes of this section. Such spaces meet the definition of permit spaces in (~~(WAC 296-62-145)~~) chapter 296-809 WAC. Confined spaces, and entry into them must be performed in accordance with that standard.

**"Energized" (alive, live)** - Electrically connected to a source of potential difference, or electrically charged so as to

have a potential significantly different from that of earth in the vicinity.

**"Energy isolating device"** - A physical device that prevents the transmission or release of energy, including, but not limited to, the following: A manually operated electric circuit breaker, a disconnect switch, a manually operated switch, a slide gate, a slip blind, a line valve, blocks, and any similar device with a visible indication of the position of the device. (Push buttons, selector switches, and other control-circuit-type devices are not energy isolating devices.)

**"Energy source"** - Any electrical, mechanical, hydraulic, pneumatic, chemical, nuclear, thermal, or other energy source that could cause injury to personnel.

**"Entry"** (as used in WAC 296-45-205 of this chapter) - The action by which a person passes through an opening into an enclosed space. Entry includes ensuing work activities in that space and is considered to have occurred as soon as any part of the entrant's body breaks the plane of an opening into the space.

**"Equipment" (electric)** - A general term including material, fittings, devices, appliances, fixtures, apparatus, and the like used as part of or in connection with an electrical installation.

**"Exposed"** - Not isolated or guarded.

**"Fall restraint system"** - A fall protection system that prevents the user from falling any distance.

**"Fault current"** - The current that flows in an electrical system because of a defect in the circuit induced accidentally or otherwise.

**"First-aid training"** - Training in the initial care, including cardiopulmonary resuscitation (which includes chest compressions, rescue breathing, and, as appropriate, other heart and lung resuscitation techniques), performed by a person who is not a medical practitioner, of a sick or injured person until definitive medical treatment can be administered.

**"Fixed ladder"** - A ladder that is permanently secured to a structure.

**"Ground"** - A conducting connection, whether intentional or accidental, between an electric circuit or equipment and the earth, or to some conducting body that serves in place of the earth.

**"Grounded"** - Connected to earth or to some conducting body that serves in place of the earth.

**"Grounded system"** - A system of conductors in which at least one conductor or point (usually the middle wire, or neutral point of transformer or generator windings) is intentionally grounded either solidly or through a current-limiting device (not a current-interrupting device).

**"Groundperson"** - A member of crew working on ground under direction of a leadworker.

**"Guarded"** - Covered, fenced, enclosed, or otherwise protected, by means of suitable covers or casings, barrier rails or screens, mats, or platforms, designed to prevent the possibility, under normal conditions, of dangerous approach or accidental contact by persons or objects.

Note: Wires which are insulated, but not otherwise protected, are not considered as guarded.

**"Hazardous atmosphere"** - An atmosphere that may expose employees to the risk of death, incapacitation, impair-

ment of ability to self-rescue (that is, escape unaided from an enclosed space), injury, or acute illness from one or more of the following causes:

- Flammable gas, vapor, or mist in excess of 10 percent of its lower flammable limit (LFL);
- Airborne combustible dust at a concentration that meets or exceeds its LFL;

Note: This concentration may be approximated as a condition in which the dust obscures vision at a distance of 5 feet (1.52 m) or less;

- Atmospheric oxygen concentration below 19.5 percent or above 23.5 percent;

- Atmospheric concentration of any substance for which a dose or a permissible exposure limit is published in chapter 296-62 WAC, Part L, or in chapter 296-62 WAC, toxic and hazardous substances, and which could result in employee exposure in excess of its dose or permissible exposure limit;

Note: An atmospheric concentration of any substance that is not capable of causing death, incapacitation, impairment of ability to self-rescue, injury, or acute illness due to its health effects is not covered by this provision.

- Any other atmospheric condition that is "immediately dangerous to life or health" (IDLH).

~~("IDLH" - Any condition that poses an immediate or delayed threat to life or that would cause irreversible adverse health effects or that would interfere with an individual's ability to escape unaided from a permit space.~~

Note: Some materials (hydrogen fluoride gas and cadmium vapor, for example) may produce immediate transient effects that, even if severe, may pass without medical attention, but are followed by sudden, possibly fatal collapse 12-72 hours after exposure. The victim "feels normal" from recovery from transient effects until collapse. Such materials in hazardous quantities are considered to be "immediately" dangerous to life or health.

Note: For air contaminants for which WISHA has not determined a dose or permissible exposure limit, other sources of information, such as Safety Data Sheets that comply with the hazard communication program, WAC 296-901-140, published information, and internal documents can provide guidance in establishing acceptable atmospheric conditions.)

**"High-power tests"** - Tests in which fault currents, load currents, magnetizing currents, and line-dropping currents are used to test equipment, either at the equipment's rated voltage or at lower voltages.

**"High-voltage tests"** - Tests in which voltages of approximately 1000 volts are used as a practical minimum and in which the voltage source has sufficient energy to cause injury.

**"High wind"** - A wind of such velocity that the following hazards would be present:

- An employee would be exposed to being blown from elevated locations; or
- An employee or material handling equipment could lose control of material being handled; or
- An employee would be exposed to other hazards not controlled by the standard involved.

Note: Winds exceeding 40 miles per hour (64.4 kilometers per hour), or 30 miles per hour (48.3 kilometers per hour) if material handling is involved, are normally considered as meeting this criteria unless precautions are taken to protect employees from the hazardous effects of the wind.

**"Host employer"** - An employer that operates, or that controls the operating procedures for, an electric power generation, transmission, or distribution installation on which a contract employer is performing work covered by this chapter.

Note: The division of occupational safety and health (DOSH) will treat the electric utility or the owner of the installation as the host employer if it operates or controls operating procedures for the installation. If the electric utility or installation owner neither operates nor controls operating procedures for the installation, DOSH will treat the employer that the utility or owner has contracted with to operate or control the operating procedures for the installation as the host employer. In no case will there be more than one host employer.

**"IDLH"** - Any condition that poses an immediate or delayed threat to life or that would cause irreversible adverse health effects or that would interfere with an individual's ability to escape unaided from a permit space.

Note: Some materials (hydrogen fluoride gas and cadmium vapor, for example) may produce immediate transient effects that, even if severe, may pass without medical attention, but are followed by sudden, possibly fatal collapse twelve to seventy-two hours after exposure. The victim "feels normal" from recovery from transient effects until collapse. Such materials in hazardous quantities are considered to be "immediately" dangerous to life or health.

Note: For air contaminants for which WISHA has not determined a dose or permissible exposure limit, other sources of information, such as safety data sheets that comply with the hazard communication program, WAC 296-901-140, published information, and internal documents can provide guidance in establishing acceptable atmospheric conditions.

**"Insulated"** - Separated from other conducting surfaces by a dielectric (including air space) offering a high resistance to the passage of current.

Note: When an object is said to be insulated, it is understood to be insulated for the conditions to which it is normally subjected. Otherwise, it is, within the purpose of this section, uninsulated.

**"Insulation" (cable)** - That which is relied upon to insulate the conductor from other conductors or conducting parts or from ground.

**"Insulation shielding"** - An envelope which encloses the insulation of a cable and provides an equipotential surface in contact with cable insulation.

**"Isolated"** - An object that is not readily accessible to persons unless special means of access are used.

**"Leadworker"** - The person directly in charge of workers doing the work, regardless of title.

**"Line-clearance tree trimmer"** - An employee who, through related training or on-the-job experience or both, is familiar with the special techniques and hazards involved in line-clearance tree trimming.

Note 1: An employee who is regularly assigned to a line-clearance tree-trimming crew and who is undergoing on-the-job training and who, in the course of such training, has demonstrated an ability to perform duties safely at his or her level of training and who is under the direct supervision of a line-clearance tree trimmer is considered to be a line-clearance tree trimmer.

Note 2: A line-clearance tree trimmer is not considered to be a "qualified electrical employee" under this section unless ((he or she has)) they have the training required for a qualified electrical employee under WAC 296-45-065. However, under the electrical safety-related work practices standard, a line-clearance tree trimmer is considered to be a "qualified employee." Tree trimming performed by such "qualified employees" is not subject to the electrical safety-related work practice requirements contained in WAC 296-24-970. (See also the note following WAC 296-24-970 for information regarding the training an employee must have to be considered a qualified employee.)

**"Line-clearance tree trimming"** - The pruning, trimming, repairing, maintaining, removing, or clearing of trees or the cutting of brush that is within ((10 feet (305 cm))) the following distance of electric supply lines and equipment:

- For voltages to ground of 50 kilovolts or less - 3.05 meters (10 feet);

- For voltages to ground of more than 50 kilovolts - 3.05 meters (10 feet) plus 0.10 meters (4 inches) for every 10 kilovolts over 50 kilovolts.

**"Lines"** -

- **"Communication lines"** - The conductors and their supporting or containing structures which are used for public or private signal or communication service, and which operate at potentials not exceeding 400 volts to ground or 750 volts between any two points of the circuit, and the transmitted power of which does not exceed 150 watts. If the lines are operating at less than 150 volts, no limit is placed on the transmitted power of the system. Under certain conditions, communication cables may include communication circuits exceeding these limitations where such circuits are also used to supply power solely to communication equipment.

Note: Telephone, telegraph, railroad signal, data, clock, fire, police alarm, cable television, and other systems conforming with this definition are included. Lines used for signaling purposes, but not included under this definition, are considered as electric supply lines of the same voltage.

- **"Electric supply lines"** - Conductors used to transmit electric energy and their necessary supporting or containing structures. Signal lines of more than 400 volts are always supply lines within this section, and those of less than 400 volts are considered as supply lines, if so run and operated throughout.

**"Live-line tools and ropes"** - Tools and ropes specifically designed for work on energized high voltage lines and equipment.

**"Load-break elbow"** - A connector designed to close and interrupt current on energized circuits within the design current and voltage rating.

**"Manhole"** - A subsurface enclosure which personnel may enter and which is used for the purpose of installing, operating, and maintaining submersible equipment or cable.

**"Manhole steps"** - A series of steps individually attached to or set into the walls of a manhole structure.

**"May" and "should" or "it is recommended"** are used to indicate the provisions are not mandatory but are recommended.

**"Minimum approach distance"** - The closest distance an employee is permitted to approach an energized or a grounded object.

**"Must" and "shall"** as used in this chapter make the provisions mandatory.

**"Network system"** - An electrical installation fed from multiple primary sources directly associated with area-wide secondary network connected into a common grid.

**"Neutral"** - A system in which one conductor is used as the neutral for one or more circuits; one conductor may be used as the neutral for both primary and secondary circuits of a distribution system.

**"Personal fall arrest system"** - A system used to arrest an employee in a fall from a working level.

**"Pole"** - Any device used to support a power distribution or transmission line. The pole may be made of any substance including wood, concrete, metal, is usually cylindrical in shape and comparatively slender. It is the upright standard to which is affixed part of the power distribution and transmission line system as defined in this chapter.

**"Power dispatcher" (load dispatcher or system operator)** - A person who has been designated by the employer as having authority over switching and clearances of high voltage lines and station equipment.

**"Protective devices"** - Devices such as rubber gloves, rubber blankets, line hose, rubber boots, or other insulating devices, which are specifically designed for the protection of employees.

~~("Public highway" - Every way, land, road, street, boulevard, and every other way or place in the state open as a matter of right to public vehicular travel, both inside and outside the limits of cities and towns, regardless of ownership.)~~

**"Qualified ((person or qualified)) electrical employee"** - A person who is familiar ((with)) and knowledgeable in the construction ((of, or)) and operation of the electric power generation, transmission, and distribution equipment involved, and such lines and/or equipment that concerns his/her position and who is fully aware of the hazards connected therewith, or, one who has passed a journey status examination for the particular branch of the electrical trades with which he/she may be connected.

((Note 1:)) • An employee must have the training required by WAC 296-45-065((+)) in order to be considered a qualified electrical employee.

((Note 2:)) (((Apprentice) Except under WAC 296-45-25510(12),)) • An employee who is undergoing on-the-job training ((and)) (an apprentice) who, in the course of such training, has demonstrated an ability to perform duties safely at his or her level of training and who is under the direct supervision of a qualified ((person)) electrical employee is considered to be a qualified ((person)) electrical employee for the performance of those duties.

• An employee having experience and training comparable to journey level would be considered a qualified electrical employee.

**"Roadway or public highway"** - Every way, land, road, street, boulevard, and every other way or place in the state open as a matter of right to public vehicular travel, both inside and outside the limits of cities and towns, regardless of ownership.

**"Rubber"** - Any goods, equipment, or tool made out of either natural or synthetic rubber.

**"Secured ladder"** - A ladder which is not capable of being dislodged from the top by lateral, or jerking motion(s).

**"Shall" and "must"** as used in this chapter make the provisions mandatory.

**"Sheath"** - As applied to tools carried in a lineman's tool belt, a sheath that effectively covers the tool and prevents such tool from falling from the belt.

**"Should" and "may" or "it is recommended"** are used to indicate the provisions are not mandatory but are recommended.

**"Statistical sparkover voltage"** - A transient overvoltage level that produces a 97.72 percent probability of sparkover (that is, two standard deviations above the voltage at which there is a 50 percent probability of sparkover).

**"Statistical withstand voltage"** - A transient overvoltage level that produces a 0.14 percent probability of sparkover (that is, three standard deviations below the voltage at which there is a 50 percent probability of sparkover).

**"Step bolt"** - A bolt or rung attached at intervals along a structural member and used for foot placement during climbing or standing.

**"Supporting structure"** - The main supporting unit (usually a pole or tower).

**"Switch"** - A device for opening and closing or for changing the connection of a circuit. In these rules, a switch is understood to be manually operable, unless otherwise stated.

**"System operator or power dispatcher"** - A qualified ((person)) electrical employee who has been designated by the employer and having authority over switching, clearances, and operation of the system and its parts.

**"Tag"** - A system or method of identifying circuits, systems, or equipment for the purpose of alerting employees and others that the circuit, system, or equipment is being worked on.

~~("Underground network" - An underground electrical installation fed from multiple primary sources directly associated with area-wide secondary network connected into a common grid.)~~

**"Underground residential distribution system (URD)"** - An electrical installation normally fed from a single primary source which may feed one or more transformers with secondaries not connected to a common grid.

**"Utility"** - An organization responsible for the installation, operation, or maintenance of electric supply or communications systems.

**"Vault"** - An enclosure, above or below ground, which personnel may enter and which is used for the purpose of installing, operating, or maintaining equipment or cable.

**"Vented vault"** - A vault that has provision for air changes using exhaust flue stacks and low level air intakes operating on differentials of pressure and temperature providing for airflow which precludes a hazardous atmosphere from developing.

**"Voltage"** - The effective (rms) potential difference between any two conductors or between a conductor and ground. Voltages are expressed in nominal values unless otherwise indicated. The nominal voltage of a system or circuit is the value assigned to a system or circuit of a given voltage class for the purpose of convenient designation. The operating voltage of the system may vary above or below this value.

Note: Low voltage includes voltages from 50 to 600 volts. High voltage shall mean those voltages of 601 volts to 230,000. Extra high voltage means any voltage over 230,000 volts. Where the words "high voltage" are used in this chapter it shall include extra high voltage, unless otherwise specified.

**"Work-positioning equipment" - A body belt or body harness system rigged to allow an employee to be supported on an elevated vertical surface, such as a utility pole or tower leg, and work with both hands free while leaning.**

**AMENDATORY SECTION** (Amending WSR 03-17-071, filed 8/19/03, effective 11/1/03)

**WAC 296-45-045 NESC applicable.** (1) All electric utilities and entities operating transmission and distribution facilities within the state of Washington must design, construct, operate, and maintain their lines and equipment according to the requirements of the ~~((2002))~~ 2012 National Electrical Safety Code (NESC) (ANSI-C2), parts (1), (2), and (3).

Note: The department has copies of the NESC available for review at each service location across the state. To purchase a copy, write to:  
The Institute of Electrical and Electronics Engineers, Inc.  
(IEEE, Inc.)  
445 Hoes Lane  
Piscataway, NJ 08855-1331

(2) The employer must ensure that climbing space is provided on all poles and structures. The climbing space must meet the requirements of the ~~((2002))~~ 2012 National Electrical Safety Code (NESC) (ANSI-C2), except that Rule 236H does not apply.

**AMENDATORY SECTION** (Amending WSR 14-07-086, filed 3/18/14, effective 5/1/14)

**WAC 296-45-055 Employer's responsibility.** (1) The employer shall provide and maintain the necessary protective devices specified in these rules and require the employees to use them properly.

(2) The employer shall develop and maintain a hazard communication program as required by ~~((WAC 296-901-140))~~ chapter 296-901 WAC, which will provide information to all employees relative to hazardous chemicals or substances to which they are exposed, or may become exposed, in the course of their employment.

(3) There shall be installed and maintained in every fixed establishment employing eight or more persons a safety bulletin board of a size to display and post safety bulletins, newsletters, posters, accident statistics and other safety educational material. It is recommended that safety bulletin boards be painted green and white.

(4) The employer shall require the leadworker to observe and enforce all safety rules and shall furnish a copy of the electrical workers' safety rules to each employee who is covered by these rules.

(5) The employer shall appoint only competent workers to supervise other employees and those appointed shall be responsible for the safety of the employees under their supervision.

**AMENDATORY SECTION** (Amending WSR 98-07-009, filed 3/6/98, effective 5/6/98)

**WAC 296-45-065 Training.** (1) Each employee((s)) shall be trained and proficient in the safety-related work practices, safety procedures, and other safety requirements in this section that pertain to their respective job assignments. Employees shall also be trained in and proficient with any other safety practices, including applicable emergency procedures (such as pole top, aerial, manhole, and tree rescue), that are not specifically addressed by this section but that are related to their work and are necessary for their safety.

~~((1))~~ (2) The degree of training shall be determined by the risk of the employee for the hazard involved.

(3) Qualified electrical employees shall also be trained and competent in:

(a) The skills and techniques necessary to distinguish exposed live parts from other parts of electric equipment;

(b) The skills and techniques necessary to determine the nominal voltage of exposed live parts;

(c) The minimum approach distances specified in this ~~((section))~~ chapter corresponding to the voltages to which the qualified electrical employee will be exposed~~((;))~~ and the skills and techniques necessary to maintain those distances:

(d) The proper use of the special precautionary techniques, personal protective equipment, insulating and shielding materials, and insulated tools for working on or near exposed energized parts of electric equipment; and

(e) The recognition of electrical hazards to which the employee may be exposed and the skills and techniques necessary to control or avoid these hazards.

Note: For the purposes of this section, a person must have this training in order to be considered a qualified ~~((person))~~ electrical employee.

~~((2))~~ (4) The employer shall determine, through regular supervision and through inspections conducted on at least an annual basis, that each employee is complying with the safety-related work practices required by this ~~((section-))~~ chapter.

(5) An employee shall receive additional training (or retraining) under any of the following conditions:

(a) If the supervision and annual inspections required by subsection ~~((2))~~ (4) of this section indicate that the employee is not complying with the safety-related work practices required by this ~~((section))~~ chapter; or

(b) If new technology, new types of equipment, or changes in procedures necessitate the use of safety-related work practices that are different from those which the employee would normally use; or

(c) If ~~((he or she))~~ the employee must employ safety related work practices that are not normally used during ~~((his or her))~~ their regular job duties.

Note: ~~((WISHA))~~ DOSH would consider tasks that are performed less often than once per year to necessitate retraining before the performance of the work practices involved.

~~((4))~~ (6) The training required by ~~((WAC 296-45-065))~~ this section shall be of the classroom or on-the-job type.

~~((5))~~ (7) The training shall establish employee proficiency in the work practices required by this section and shall



introduce the procedures necessary for compliance with this section.

~~((6))~~ (8) The employer shall certify that each employee has received the training required by ~~((WAC 296-45-065))~~ this section. This certification shall be made when the employee demonstrates proficiency in the work practices involved and shall be maintained for the duration of the employee's employment.

Notes:

- Employment records that indicate that an employee has received the required training are an acceptable means of meeting this requirement.
- For an employee with previous training, an employer may determine that the employee has demonstrated the proficiency required by this subsection using the following process:
  - Confirm that the employee has the training required by this section;
  - Use an examination or interview to make an initial determination that the employee understands the relevant safety related work practices before he or she performs any work covered by this chapter; and
  - Supervise the employee closely until that employee has demonstrated proficiency as required by this section.

(9) Each line-clearance tree trimmer who is not a qualified electrical employee shall also be trained and competent in:

(a) The skills and techniques necessary to distinguish exposed live parts from other parts of electric equipment;

(b) The skills and techniques necessary to determine the nominal voltage of exposed live parts; and

(c) The minimum approach distances specified in this chapter corresponding to the voltages to which the employee will be exposed and the skills and techniques necessary to maintain those distances.

## NEW SECTION

**WAC 296-45-067 Information transfer.** (1) Host employer responsibilities. Before work begins, the host employer shall inform contract employers of:

(a) The characteristics of the host employer's installation that are related to the safety of the work to be performed and are listed in subsection (4)(a) through (e) of this section;

Note: This subsection requires the host employer to obtain information listed in subsection (4)(a) through (e) of this section if it does not have this information in existing records.

(b) Conditions that are related to the safety of the work to be performed, that are listed in subsection (4)(f) through (h) of this section, and that are known to the host employer;

Note: For the purposes of this subsection, the host employer need only provide information to contract employers that the host employer can obtain from its existing records through the exercise of reasonable diligence. This subsection does not require the host employer to make inspections of worksite conditions to obtain this information.

(c) Information about the design and operation of the host employer's installation that the contract employer needs to make the assessments required by this chapter; and

Note: This subsection requires the host employer to obtain information about the design and operation of its installation that contract employers need to make required assessments if it does not have this information in existing records.

(d) Any other information about the design and operation of the host employer's installation that is known by the host employer, that the contract employer requests, and that is related to the protection of the contract employer's employees.

Note: For the purposes of this subsection, the host employer need only provide information to contract employers that the host employer can obtain from its existing records through the exercise of reasonable diligence. This subsection does not require the host employer to make inspections of worksite conditions to obtain this information.

(2) Contract employer responsibilities.

(a) The contract employer shall ensure that each of its employees is instructed in the hazardous conditions relevant to the employee's work that the contract employer is aware of as a result of information communicated to the contract employer by the host employer under subsection (1) of this section.

(b) Before work begins, the contract employer shall advise the host employer of any unique hazardous conditions presented by the contract employer's work.

(c) The contract employer shall advise the host employer of any unanticipated hazardous conditions found during the contract employer's work that the host employer did not mention under subsection (1) of this section. The contract employer shall provide this information to the host employer within two working days after discovering the hazardous condition.

(3) Joint host- and contract-employer responsibilities. The contract employer and the host employer shall coordinate their work rules and procedures so that each employee of the contract employer and the host employer is protected as required by this section.

(4) Existing characteristics and conditions. Existing characteristics and conditions of electric lines and equipment that are related to the safety of the work to be performed shall be determined before work on or near the lines or equipment is started. Such characteristics and conditions include, but are not limited to:

- (a) The nominal voltages of lines and equipment;
- (b) The maximum switching-transient voltages;
- (c) The presence of hazardous induced voltages;
- (d) The presence of protective grounds and equipment grounding conductors;
- (e) The locations of circuits and equipment, including electric supply lines, communication lines, and fire protective signaling circuits;
- (f) The condition of protective grounds and equipment grounding conductors;
- (g) The condition of poles; and
- (h) Environmental conditions relating to safety.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-45-075 Employer's safety program.** (1) The employer shall hold safety meetings at least once a month, which meetings shall be held at a reasonable time and place as selected by the employer. The employer shall require all employees subject to provisions of this chapter to attend

said meetings: Provided, That employees whose presence is otherwise required by reason of an emergency or whose function is such that they cannot leave their station or cease their work without serious detriment to the service provided, such as dispatcher, may be excused from such meeting under those circumstances. Minutes shall be kept of each safety meeting and retained for a period of one year.

(2) The employer or a representative(s) designated shall investigate all accidents or injuries of a serious nature and, where possible, take the proper remedial steps to prevent the occurrence of similar accidents.

(3) The employer shall furnish instructions stating the proper procedure in event of an emergency, which shall include the names of those individuals to be notified and methods of contacting them.

(4) The employer shall provide and make available to all employees accident report and safety suggestion forms or other approved methods. Safety suggestion forms should, where possible, be used for suggesting the elimination of hazardous conditions and such reported suggestions shall be retained (for one year) by the employer or an authorized representative.

(5) ~~(The employer must notify the department of employee fatalities or catastrophes according to the requirements of WAC 296-800-320.)~~ For work-related injuries and illnesses involving any employee that resulted in death, inpatient hospitalization, amputation or loss of an eye, the employer must comply with the recordkeeping and reporting regulations located in chapter 296-27 WAC.

(6) Nothing contained within this chapter shall prohibit an employer or an authorized representative from disciplining employees for failure to comply with the provisions of this or any other safety code.

(7) Existing conditions related to the safety of the work to be performed shall be determined before work on or near electric lines or equipment is started. Such conditions include, but are not limited to, the nominal voltages of lines and equipment, the maximum switching transient voltages, the presence of hazardous induced voltages, the presence and condition of protective grounds and equipment grounding conductors, the condition of poles, environmental conditions relative to safety, and the locations of circuits and equipment, including power and communication lines and fire protective signaling circuits.

AMENDATORY SECTION (Amending WSR 98-07-009, filed 3/6/98, effective 5/6/98)

**WAC 296-45-105 Work required of leadworkers.** (1) A leadworker cannot properly supervise the work and look out for the safety of employees under their direction if required to work as a leadworker and a ~~((lineworker))~~ qualified electrical employee at the same time.

(2) Leadworkers should be constantly alert and shall not be required to serve in such dual capacity, except in crews of not more than two ~~((lineworkers))~~ qualified electrical employees, in which case they may work as one of the ~~((lineworkers))~~ qualified electrical employees.

(3) In crews of two ~~((lineworkers))~~ qualified electrical employees or less, each ~~((lineworker))~~ qualified electrical

employee may have a groundworker but, if additional ~~((lineworkers))~~ qualified electrical employees or groundworkers are added to the crew, the leadworker shall confine his/her activities to supervising the work, as exhibited below:

#### Type of Crew

2 ~~((lineworkers))~~ qualified electrical employees

2 ~~((lineworkers))~~ qualified electrical employees plus 1 groundworker

2 ~~((lineworkers))~~ qualified electrical employees plus 2 groundworkers

2 ~~((lineworkers))~~ qualified electrical employees plus any combination of 3 ~~((lineworkers))~~ qualified electrical employees or groundworkers

#### Minimum Requirements

One ~~((lineworker))~~ qualified electrical employee as person-in-charge.

One ~~((lineworker))~~ qualified electrical employee as person-in-charge or climbing leadworker.

One ~~((lineworker))~~ qualified electrical employee as person-in-charge or climbing leadworker.

One nonclimbing leadworker.

AMENDATORY SECTION (Amending WSR 04-07-160, filed 3/23/04, effective 5/1/04)

**WAC 296-45-125 Medical services and first aid.** The employer shall provide medical services and first aid as required in WAC 296-800-150. The following requirements also apply:

(1) Cardiopulmonary resuscitation and first-aid training. When employees are performing work on or associated with exposed lines or equipment energized at 50 volts or more, persons trained in first aid including cardiopulmonary resuscitation (CPR) shall be available as follows:

(a) For field work involving two or more employees at a work location, at least two trained persons shall be available. However, for line-clearance tree trimming operations performed by line-clearance tree trimmers who are not qualified electrical employees, only one trained person need be available if all new employees are trained in first aid, including CPR, within 3 months of their hiring dates.

(b) For fixed work locations such as generating stations, the number of trained persons available shall be sufficient to ensure that each employee exposed to electric shock can be reached within 4 minutes by a trained person. However, where the existing number of employees is insufficient to meet this requirement (at a remote substation, for example), all employees at the work location shall be trained.

(2) First-aid supplies. First-aid supplies required by WAC 296-800-150 shall be placed in weatherproof containers if the supplies could be exposed to the weather.

(3) First-aid kits. ~~((Each first-aid kit))~~ The employer shall ((be maintained)) maintain each first-aid kit, shall ((be)) ensure that it is readily available for use, and shall ((be inspected)) inspect it frequently enough to ensure that

expended items are replaced (~~but~~). The employer also shall inspect each first-aid kit at least once per year.

AMENDATORY SECTION (Amending WSR 98-07-009, filed 3/6/98, effective 5/6/98)

**WAC 296-45-135 Job briefing.** (1) The employer shall ensure that the leadworker conducts a job briefing with the employees involved before they start each job. (~~The briefing shall cover at least the following subjects: Hazards associated with the job, work procedures involved, special precautions, energy source controls, and personal protective equipment requirements.~~

~~(4))~~ (2) The employer shall provide the employee in charge of the job with all available information that relates to the determination of existing characteristics and conditions required by WAC 296-45-067(4) of this chapter.

(3) The briefing shall also cover at the least the following subjects:

(a) Hazards associated with the job;

(b) Work procedures involved;

(c) Special precautions;

(d) Energy source controls; and

(e) Personal protective equipment requirements.

(4) Number of briefings. If the work or operations to be performed during the work day or shift are repetitive and similar, at least one job briefing shall be conducted before the start of the first job of each day or shift. Additional job briefings shall be held if significant changes, which might affect the safety of the employees, occur during the course of the work.

~~((2))~~ (5) Extent of briefing. A brief discussion is satisfactory if the work involved is routine and if the employee, by virtue of training and experience, can reasonably be expected to recognize and avoid the hazards involved in the job. A more extensive discussion shall be conducted:

(a) If the work is complicated or particularly hazardous; or

(b) If the employee cannot be expected to recognize and avoid the hazards involved in the job.

Note: The briefing is always required to touch on all the subjects listed in the introductory text to this section.

~~((3))~~ (6) Working alone. An employee working alone need not conduct a job briefing. However, the employer shall ensure that the tasks to be performed are planned as if a briefing were required.

AMENDATORY SECTION (Amending WSR 98-07-009, filed 3/6/98, effective 5/6/98)

**WAC 296-45-17505 Lockout/tagout (hazardous control) program.** (1) The employer shall establish a program consisting of energy control procedures, employee training, and periodic inspections to ensure that, before any employee performs any servicing or maintenance on a machine or equipment where the unexpected energizing, start up, or release of stored energy could occur and cause injury, the machine or equipment is isolated from the energy source and rendered inoperative.

(2) The employer's energy control program under this section shall meet the following requirements:

(a) If an energy isolating device is not capable of being locked out, the employer's program shall use a tagout system.

(b) If an energy isolating device is capable of being locked out, the employer's program shall use lockout, unless the employer can demonstrate that the use of a tagout system will provide full employee protection as follows:

(i) When a tagout device is used on an energy isolating device which is capable of being locked out, the tagout device shall be attached at the same location that the lockout device would have been attached, and the employer shall demonstrate that the tagout program will provide a level of safety equivalent to that obtained by the use of a lockout program.

(ii) In demonstrating that a level of safety is achieved in the tagout program equivalent to the level of safety obtained by the use of a lockout program, the employer shall demonstrate full compliance with all tagout-related provisions of this standard together with such additional elements as are necessary to provide the equivalent safety available from the use of a lockout device. Additional means to be considered as part of the demonstration of full employee protection shall include the implementation of additional safety measures such as the removal of an isolating circuit element, blocking of a controlling switch, opening of an extra disconnecting device, or the removal of a valve handle to reduce the likelihood of inadvertent energizing.

(3) Whenever replacement or major repair, renovation, or modification of a machine or equipment is performed, and whenever new machines or equipment are installed, energy isolating devices for such machines or equipment shall be designed to accept a lockout device.

(4) Procedures shall be developed, documented, and used for the control of potentially hazardous energy covered by this section.

(5) The procedure shall clearly and specifically outline the scope, purpose, responsibility, authorization, rules, and techniques to be applied to the control of hazardous energy, and the measures to enforce compliance including, but not limited to, the following:

(a) A specific statement of the intended use of this procedure;

(b) Specific procedural steps for shutting down, isolating, blocking and securing machines or equipment to control hazardous energy;

(c) Specific procedural steps for the placement, removal, and transfer of lockout devices or tagout devices and the responsibility for them; and

(d) Specific requirements for testing a machine or equipment to determine and verify the effectiveness of lockout devices, tagout devices, and other energy control measures.

(6) The employer shall conduct a periodic inspection of the energy control procedure at least annually to ensure that the procedure and the provisions of this section are being followed.

(a) The periodic inspection shall be performed by an authorized/designated employee who is not using the energy control procedure being inspected.

(b) The periodic inspection shall be designed to identify and correct any deviations or inadequacies.

(c) If lockout is used for energy control, the periodic inspection shall include a review, between the inspector and each authorized/designated employee, of that employee's responsibilities under the energy control procedure being inspected.

(d) Where tagout is used for energy control, the periodic inspection shall include a review, between the inspector and each authorized/designated and affected employee, of that employee's responsibilities under the energy control procedure being inspected, and the elements set forth in this section.

(e) The employer shall certify that the inspections required by this section have been accomplished. The certification shall identify the machine or equipment on which the energy control procedure was being used, the date of the inspection, the employees included in the inspection, and the person performing the inspection.

Note: If normal work schedule and operation records demonstrate adequate inspection activity and contain the required information, no additional certification is required.

(7) The employer shall provide training to ensure that the purpose and function of the energy control program are understood by employees and that the knowledge and skills required for the safe application, usage, and removal of energy controls are acquired by employees. The training shall include the following:

(a) Each authorized/designated employee shall receive training in the recognition of applicable hazardous energy sources, the type and magnitude of energy available in the workplace, and in the methods and means necessary for energy isolation and control.

(b) Each affected employee shall be instructed in the purpose and use of the energy control procedure.

(c) All other employees whose work operations are or may be in an area where energy control procedures may be used shall be instructed about the procedures and about the prohibition relating to attempts to restart or reenergize machines or equipment that are locked out or tagged out.

(8) When tagout systems are used, employees shall also be trained in the following limitations of tags:

(a) Tags are essentially warning devices affixed to energy isolating devices and do not provide the physical restraint on those devices that is provided by a lock.

(b) When a tag is attached to an energy isolating means, it is not to be removed without authorization of the authorized/designated person responsible for it, and it is never to be bypassed, ignored, or otherwise defeated.

(c) Tags must be legible and understandable by all authorized/designated employees, affected employees, and all other employees whose work operations are or may be in the area, in order to be effective.

(d) Tags and their means of attachment must be made of materials which will withstand the environmental conditions encountered in the workplace.

(e) Tags may evoke a false sense of security, and their meaning needs to be understood as part of the overall energy control program.

(f) Tags must be securely attached to energy isolating devices so that they cannot be inadvertently or accidentally detached during use.

AMENDATORY SECTION (Amending WSR 98-07-009, filed 3/6/98, effective 5/6/98)

**WAC 296-45-17510 Retraining.** (1) Retraining shall be provided for all authorized/designated and affected employees whenever there is a change in their job assignments, a change in machines, equipment, or processes that present a new hazard or whenever there is a change in the energy control procedures.

(2) Retraining shall also be conducted whenever a periodic inspection reveals, or whenever the employer has reason to believe, that there are deviations from or inadequacies in an employee's knowledge or use of the energy control procedures.

(3) The retraining shall reestablish employee proficiency and shall introduce new or revised control methods and procedures, as necessary.

(4) The employer shall certify that employee training has been accomplished and is being kept up to date. The certification shall contain each employee's name and dates of training.

AMENDATORY SECTION (Amending WSR 98-07-009, filed 3/6/98, effective 5/6/98)

**WAC 296-45-17515 Protective materials and hardware.** (1) Locks, tags, chains, wedges, key blocks, adapter pins, self-locking fasteners, or other hardware shall be provided by the employer for isolating, securing, or blocking of machines or equipment from energy sources.

(2) Lockout devices and tagout devices shall be singularly identified; shall be the only devices used for controlling energy; may not be used for other purposes; and shall meet the following requirements:

(a) Lockout devices and tagout devices shall be capable of withstanding the environment to which they are exposed for the maximum period of time that exposure is expected.

(b) Tagout devices shall be constructed and printed so that exposure to weather conditions or wet and damp locations will not cause the tag to deteriorate or the message on the tag to become illegible.

(c) Tagout devices shall be so constructed as not to deteriorate when used in corrosive environments.

(3) Lockout devices and tagout devices shall be standardized within the facility in at least one of the following criteria: Color, shape, size. Additionally, in the case of tagout devices, print and format shall be standardized.

(4) Lockout devices shall be substantial enough to prevent removal without the use of excessive force or unusual techniques, such as with the use of bolt cutters or metal cutting tools.

(5) Tagout devices, including their means of attachment, shall be substantial enough to prevent inadvertent or accidental removal. Tagout device attachment means shall be of a nonreusable type, attachable by hand, self-locking, and non-releasable with a minimum unlocking strength of no less than fifty pounds and shall have the general design and basic char-

acteristics of being at least equivalent to a one-piece, all-environment-tolerant nylon cable tie.

(6) Each lockout device or tagout device shall include provisions for the identification of the employee applying the device.

(7) Tagout devices shall warn against hazardous conditions if the machine or equipment is energized and shall include a legend such as the following: Do Not Start, Do Not Open, Do Not Close, Do Not Energize, Do Not Operate.

Note: ((For specific provisions covering accident prevention tags, see chapter 296-24 WAC.)) See ANSI Z535.5, 2011 for the format and design criteria of danger/warning tags.

**AMENDATORY SECTION** (Amending WSR 98-07-009, filed 3/6/98, effective 5/6/98)

**WAC 296-45-17520 Energy isolation.** Lockout and tagout device application and removal may only be performed by the authorized/designated employees who are performing the servicing or maintenance.

**AMENDATORY SECTION** (Amending WSR 98-07-009, filed 3/6/98, effective 5/6/98)

**WAC 296-45-17525 Notification.** Affected employees shall be notified by the employer or authorized/designated employee of the application and removal of lockout or tagout devices. Notification shall be given before the controls are applied and after they are removed from the machine or equipment.

Note: This section requires that the second notification take place before the machine or equipment is reenergized.

**AMENDATORY SECTION** (Amending WSR 98-07-009, filed 3/6/98, effective 5/6/98)

**WAC 296-45-17530 Lockout/tagout application.** The established procedures for the application of energy control (the lockout or tagout procedures) shall include the following elements and actions, and these procedures shall be performed in the following sequence:

(1) Before an authorized/designated or affected employee turns off a machine or equipment, the authorized/designated employee shall have knowledge of the type and magnitude of the energy, the hazards of the energy to be controlled, and the method or means to control the energy.

(2) The machine or equipment shall be turned off or shut down using the procedures established for the machine or equipment. An orderly shutdown shall be used to avoid any additional or increased hazards to employees as a result of the equipment stoppage.

(3) All energy isolating devices that are needed to control the energy to the machine or equipment shall be physically located and operated in such a manner as to isolate the machine or equipment from energy sources.

(4) Lockout or tagout devices shall be affixed to each energy isolating device by authorized/designated employees.

(a) Lockout devices shall be attached in a manner that will hold the energy isolating devices in a "safe" or "off" position.

(b) Tagout devices shall be affixed in such a manner as will clearly indicate that the operation or movement of energy isolating devices from the "safe" or "off" position is prohibited.

(5) Where tagout devices are used with energy isolating devices designed with the capability of being locked out, the tag attachment shall be fastened at the same point at which the lock would have been attached.

(6) Where a tag cannot be affixed directly to the energy isolating device, the tag shall be located as close as safely possible to the device, in a position that will be immediately obvious to anyone attempting to operate the device.

**AMENDATORY SECTION** (Amending WSR 98-07-009, filed 3/6/98, effective 5/6/98)

**WAC 296-45-17535 Releasing stored energy.** Following the application of lockout or tagout devices to energy isolating devices, all potentially hazardous stored or residual energy shall be relieved, disconnected, restrained, or otherwise rendered safe.

(1) If there is a possibility of reaccumulation of stored energy to a hazardous level, verification of isolation shall be continued until the servicing or maintenance is completed or until the possibility of such accumulation no longer exists.

(2) Before starting work on machines or equipment that have been locked out or tagged out, the authorized/designated employee shall verify that isolation and deenergizing of the machine or equipment have been accomplished. If normally energized parts will be exposed to contact by an employee while the machine or equipment is deenergized, a test shall be performed to ensure that these parts are deenergized.

**AMENDATORY SECTION** (Amending WSR 98-07-009, filed 3/6/98, effective 5/6/98)

**WAC 296-45-17540 Release from lockout/tagout.** Before lockout or tagout devices are removed and energy is restored to the machine or equipment, procedures shall be followed and actions taken by the authorized/designated employees to ensure the following:

(1) The work area shall be inspected to ensure that non-essential items have been removed and that machine or equipment components are operationally intact.

(2) The work area shall be checked to ensure that all employees have been safely positioned or removed.

(3) After lockout or tagout devices have been removed and before a machine or equipment is started, affected employees shall be notified that the lockout or tagout devices have been removed.

(4) Each lockout or tagout device shall be removed from each energy isolating device by the authorized/designated employee who applied the lockout or tagout device. However, if that employee is not available to remove it, the device may be removed under the direction of the employer, provided that specific procedures and training for such removal have been developed, documented, and incorporated into the employer's energy control program. The employer shall demonstrate that the specific procedure provides a degree of safety equivalent to that provided by the removal of the device by the authorized/designated employee who applied

it. The specific procedure shall include at least the following elements:

- (a) Verification by the employer that the authorized/~~des-ignated~~ employee who applied the device is not at the facility;
- (b) Making all reasonable efforts to contact the authorized/~~designated~~ employee to inform him or her that his or her lockout or tagout device has been removed; and
- (c) Ensuring that the authorized/~~designated~~ employee has this knowledge before he or she resumes work at that facility.

AMENDATORY SECTION (Amending WSR 99-09-080, filed 4/20/99, effective 8/1/99)

**WAC 296-45-17550 Group lockout/tagout.** When servicing or maintenance is performed by a crew, craft, department, or other group, they shall use a procedure which affords the employees a level of protection equivalent to that provided by the implementation of a personal lockout or tagout device. Group lockout or tagout devices shall be used in accordance with the procedures required by the following specific requirements:

- (1) Primary responsibility shall be vested in an authorized/~~designated~~ employee for a set number of employees working under the protection of a group lockout or tagout device (such as an operations lock);
- (2) Provision shall be made for the authorized/~~designated~~ employee to ascertain the exposure status of all individual group members with regard to the lockout or tagout of the machine or equipment;
- (3) When more than one crew, craft, department, or other group is involved, assignment of overall job-associated lockout or tagout control responsibility shall be given to an authorized/~~designated~~ employee designated to coordinate affected work forces and ensure continuity of protection; and
- (4) Each authorized/~~designated~~ employee shall affix a personal lockout or tagout device to the group lockout device, group lockbox, or comparable mechanism when he or she begins work and shall remove those devices when he or she stops working on the machine or equipment being serviced or maintained.

AMENDATORY SECTION (Amending WSR 98-07-009, filed 3/6/98, effective 5/6/98)

**WAC 296-45-17565 Central system operator.** If energy isolating devices are installed in a central location under the exclusive control of a system operator, the following requirements apply:

- (1) The employer shall use a procedure that affords employees a level of protection equivalent to that provided by the implementation of a personal lockout or tagout device.
- (2) The system operator shall place and remove lockout and tagout devices in place of the authorized/~~designated~~ employee.
- (3) Provisions shall be made to identify the authorized/~~designated~~ employee who is responsible for (that is, being protected by) the lockout or tagout device, to transfer responsibility for lockout and tagout devices, and to ensure that an authorized/~~designated~~ employee requesting removal

or transfer of a lockout or tagout device is the one responsible for it before the device is removed or transferred.

AMENDATORY SECTION (Amending WSR 98-07-009, filed 3/6/98, effective 5/6/98)

**WAC 296-45-205 Enclosed spaces.** This section covers enclosed spaces that may be entered by employees. It does not apply to vented vaults if the employer makes a determination (~~(is made)~~) that the ventilation system is operating to protect employees before they enter the space. This (~~(para-graph)~~) section applies to routine entry into enclosed spaces in lieu of the permit-space entry requirements contained in chapter 296-809 WAC (~~(296-62-145)~~). If, after the employer takes the precautions given in WAC 296-45-205, 296-45-215, and 296-45-225 (~~(are taken)~~), the hazards remaining in the enclosed space endanger the life of an entrant or could interfere with an entrant's escape from the space, then entry into the enclosed space shall meet the permit-space entry requirements of chapter 296-809 WAC (~~(296-62-145)~~).

Note: Entries into enclosed spaces conducted in accordance with the permit-space entry requirements of chapter 296-809 WAC (~~(296-62-145)~~) are considered as complying with this section.

- (1) "Safe work practices." The employer shall ensure the use of safe work practices for entry into, and work in, enclosed spaces and for rescue of employees from such spaces.
- (2) "Training." Each employee(~~s~~) or who serves as an attendant(~~s~~) shall be trained in the hazards of enclosed space entry, in enclosed space entry procedures, and in enclosed space rescue procedures.
- (3) "Rescue equipment." Employers shall provide equipment to ensure the prompt and safe rescue of employees from the enclosed space.
- (4) "~~(Evaluation)~~ Evaluating of potential hazards." Before any entrance cover to an enclosed space is removed, the employer shall determine whether it is safe to do so by checking for the presence of any atmospheric pressure or temperature differences and by evaluating whether there might be a hazardous atmosphere in the space. Any conditions making it unsafe to remove the cover shall be eliminated before the cover is removed.

Note: The (~~evaluation~~) determination called for in this subsection may (~~take the form~~) consist of a check of the conditions (~~expected to~~) that might foreseeably be in the enclosed space. For example, the cover could be checked to see if it is hot and, if it is fastened in place, could be loosened gradually to release any residual pressure. (~~A determination must~~) An evaluation also needs to be made of whether conditions at the site could cause a hazardous atmosphere, such as an oxygen deficient or flammable atmosphere, to develop within the space.

- (5) "~~(Removal of)~~ Removing covers." When covers are removed from enclosed spaces, the opening shall be promptly guarded by a railing, temporary cover, or other barrier (~~intended~~) designed to prevent an accidental fall through the opening and to protect employees working in the space from objects entering the space.
- (6) "Hazardous atmosphere." Employees may not enter any enclosed space while it contains a hazardous atmosphere,

unless the entry conforms to the (~~(generic)~~) permit-required confined spaces standard in chapter 296-809 WAC (~~(296-62-145 through 296-62-14543)~~).

Note: The term "entry" is defined in chapter 296-809 WAC (~~(296-62-14504)~~).

(7) "Attendants." While work is being performed in the enclosed space, (~~(a person)~~) an attendant with first-aid training (~~(meeting WAC 296-45-125)~~) shall be immediately available outside the enclosed space to (~~(render emergency)~~) provide assistance if (~~(there is reason to believe that)~~) a hazard (~~(may)~~) exists (~~(in the space or if a hazard exists)~~) because of traffic patterns in the area of the opening used for entry. (~~(That person)~~) The attendant is not precluded from performing other duties outside the enclosed space if these duties do not distract the attendant from monitoring employees within the space or ensuring that it is safe for employees to enter and exit the space.

Note: See WAC 296-45-215(12) for additional requirements on attendants for work in manholes.

(8) "Calibration of test instruments." Test instruments used to monitor atmospheres in enclosed spaces shall be kept in calibration (~~(-with)~~) and shall have a minimum accuracy of + or - 10 percent.

(9) "Testing for oxygen deficiency." Before an employee enters an enclosed space, the (~~(internal)~~) atmosphere in the enclosed space shall be tested for oxygen deficiency with a direct-reading meter or similar instrument, capable of collection and immediate analysis of data samples without the need for off-site evaluation. If continuous forced air ventilation is provided, testing is not required provided that the procedures used ensure that employees are not exposed to the hazards posed by oxygen deficiency.

(10) "Testing for flammable gases and vapors." Before an employee enters an enclosed space, the internal atmosphere shall be tested for flammable gases and vapors with a direct-reading meter or similar instrument capable of collection and immediate analysis of data samples without the need for off-site evaluation. This test shall be performed after the oxygen testing and ventilation required by subsection (9) of this section demonstrate that there is sufficient oxygen to ensure the accuracy of the test for flammability.

(11) "Ventilation and monitoring for flammable gases or vapors." If flammable gases or vapors are detected or if an oxygen deficiency is found, forced air ventilation shall be used to maintain oxygen at a safe level and to prevent a hazardous concentration of flammable gases and vapors from accumulating. A continuous monitoring program to ensure that no increase in flammable gas or vapor concentration above safe levels occurs may be followed in lieu of ventilation (~~(;)~~) if flammable gases or vapors are initially detected at safe levels.

Note: See the definition of hazardous atmosphere for guidance in determining whether (~~(or not a given)~~) a specific concentration of a substance is (~~(considered to be)~~) hazardous.

(12) "Specific ventilation requirements." If continuous forced air ventilation is used, it shall begin before entry is made and shall be maintained long enough for the employer to (~~(ensure)~~) be able to demonstrate that a safe atmosphere exists before employees are allowed to enter the work area.

The forced air ventilation shall be so directed as to ventilate the immediate area where employees are present within the enclosed space and shall continue until all employees leave the enclosed space.

(13) "Air supply." The air supply for the continuous forced air ventilation shall be from a clean source and may not increase the hazards in the enclosed space.

(14) "Open flames." If open flames are used in enclosed spaces, a test for flammable gases and vapors shall be made immediately before the open flame device is used and at least once per hour while the device is used in the space. Testing shall be conducted more frequently if conditions present in the enclosed space indicate that once per hour is insufficient to detect hazardous accumulations of flammable gases or vapors.

Note: See the definition of hazardous atmosphere for guidance in determining whether (~~(or not a given)~~) a specific concentration of a substance is (~~(considered to be)~~) hazardous.

AMENDATORY SECTION (Amending WSR 99-09-080, filed 4/20/99, effective 8/1/99)

**WAC 296-45-215 Underground electrical installations.** This section provides additional requirements for work on underground electrical installations.

(1) Protective barriers, or approved guards and warning signs must be erected before removing manhole covers or making excavations in places accessible to vehicular or pedestrian traffic.

(2) Whenever an opening is made in the street, it shall be properly guarded or covered until same is closed and whenever an obstruction is left in the roadway after dark, it shall be marked with approved lights, flares or similar devices.

(3) Access. A ladder or other climbing device shall be used to enter and exit a manhole or subsurface vault exceeding 4 feet (122 cm) in depth. No employee may climb into or out of a manhole or vault by stepping on cables or hangers.

(4) When work is to be performed in a manhole or unvented vault:

(a) No entry shall be permitted unless the atmosphere is found to be safe by testing for the presence of explosive or potentially hazardous gases or fumes.

(b) No entry shall be permitted unless the atmosphere has been found safe by testing for oxygen deficiency or forced ventilation is provided.

(c) When unsafe conditions are detected, by testing or other means, the work area shall be ventilated and otherwise made safe before entry.

(d) Provisions shall be made for a continuous supply of air as provided for in Part L, chapter 296-62 WAC.

(e) When forced ventilation is not used a method of monitoring said manhole or vault so as to prevent the occurrence of oxygen deficiency due to work being performed in said manhole or vault, and to detect the presence of any explosive gases or fumes which may occur while the employees are working in said manhole or vault.

(5) When open flames are used or smoking is permitted in manholes, adequate mechanical forced air ventilation shall be used.

(6) Before using open flames in a manhole or excavation in an area where combustible gases or liquids may be present, such as near a gasoline service station, the atmosphere of the manhole or excavation shall be tested and found safe or cleared of the combustible gases or liquids prior to the entry.

(7) When work is to be performed in manholes containing any wires or appliances carrying electrical current, they shall be in a sanitary condition.

(8) Care shall be taken to prevent the possibility of vehicles or pedestrians coming in contact with the wires and equipment.

(9) Lowering equipment into manholes. Equipment used to lower materials and tools into manholes or vaults shall be capable of supporting the weight to be lowered and shall be checked for defects before use. Before tools or materials are lowered into the opening for a manhole or vault, each employee working in the manhole or vault shall be clear of the area directly under the opening.

(10) Materials shall not be thrown into or out of manholes but shall be placed in the proper receptacle and hoisted in and out by means of a rope.

(11) Tools and materials shall not be left on the ground around or near the manhole opening where they might be pushed or otherwise fall into the hole.

(12) Attendants for manholes.

(a) An attendant shall be kept at the surface when there is any hazard to the employees in the manhole and the attendant should not leave the manhole unwatched until such time as all employees are out and the cover has been replaced.

(b) While work is being performed in a manhole containing energized electric equipment, an employee with first aid and CPR training meeting WAC 296-45-125(1) shall be available on the surface in the immediate vicinity to render emergency assistance.

~~((Note 1:))~~ • An attendant may also be required under WAC 296-45-205(7). One person may serve to fulfill both requirements. Notes: However, attendants required under WAC 296-45-205(7) are not permitted to enter the manhole.

~~((Note 2:))~~ • Employees entering manholes containing unguarded, uninsulated energized lines or parts of electric equipment operating at 50 volts or more are required to be qualified electrical employees under WAC ~~((296-45-325 (1) through (4)))~~ 296-45-065.

(c) No work shall be permitted to be done in any manhole or subway on any energized wire, cable or appliance carrying more than 300 volts of electricity by less than two qualified ~~((persons))~~ electrical employees who shall at all times, while performing such work, be in the same manhole or subway in which work is being done. This rule shall not apply to work on telephone, telegraph or signal wires or cables.

(d) For the purpose of inspection, housekeeping, taking readings, or similar work, an employee working alone may enter, for brief periods of time, a manhole where energized cables or equipment are in service, if the employer can demonstrate that the employee will be protected from all electrical hazards.

(e) Reliable communications, through two-way radios or other equivalent means, shall be maintained among all employees involved in the job.

(13) Cable in manholes or underground vaults shall be accessible to employees and a clear working space shall be maintained at all times; and/or approved protective guards, barriers, etc., when installed shall be considered as providing adequate working clearance for cables over 5 k.v. If a manhole and/or underground vault is determined to have an electrical or structural hazard, no work shall be done in the manhole and/or vault until the unsafe condition is corrected or deenergized.

(14) No work shall be performed on cables or equipment unless they have been properly identified by an approved method.

(15) Duct rods. If duct rods are used, they shall be installed in the direction presenting the least hazard to employees. An employee shall be stationed at the far end of the duct line being rodged to ensure that the required minimum approach distances are maintained.

(16) Multiple cables. When multiple cables are present in a work area, the cable to be worked shall be identified by electrical means, unless its identity is obvious by reason of distinctive appearance or location or by other readily apparent means of identification. Cables other than the one being worked shall be protected from damage.

(17) Before cutting into a high voltage cable or opening a high voltage splice, the cable shall be deenergized then clearance obtained, tested and then grounded in an approved manner. The cable to be worked on shall be identified by tags or equivalent means.

(18) Moving cables. Energized cables that are to be moved shall be inspected for defects.

(19) Insulated platforms or other protective devices shall be provided when work is to be done on energized wires or equipment in manholes.

(20) Furnaces shall always be placed in a secure, level position on the downhill side of the manhole to avoid spillage of hot metals or compounds into the manhole.

(21) Pulling underground cable. When pulling cable(s) all employees shall be made aware of the hazard of being caught in the sheaves, lashings or winch gears. All employees shall stand clear of the pulling line when the pull is begun or when the line is under tension. This rule applies to all work performed by means of a winch.

(22) Fishing conduit or ducts. When fishing conduit or ducts, it shall first be determined that the fish tape or wires will not contact any energized line or equipment.

(23) WAC 296-45-335 on clearances shall be complied with. Also WAC 296-45-345 and/or WAC 296-45-355 on grounding shall be complied with.

(24) Defective cables. Where a cable in a manhole has one or more abnormalities that could lead to or be an indication of an impending fault, the defective cable shall be deenergized before any employee may work in the manhole, except when service load conditions and a lack of feasible alternatives require that the cable remain energized. In that case, employees may enter the manhole provided they are protected from the possible effects of a failure by shields or other devices that are capable of containing the adverse effects of a fault in the joint.



Note: Abnormalities such as oil or compound leaking from cables or joints, broken cable sheaths or joint sleeves, hot localized surface temperatures of cables or joints, or joints that are swollen beyond normal tolerance are presumed to lead to or be an indication of an impending fault.

(25) Sheath continuity. When work is performed on buried cable or on cable in manholes, metallic sheath continuity shall be maintained by bonding across the opening (or by equivalent means), or the cable sheath shall be treated as energized.

**AMENDATORY SECTION** (Amending WSR 98-07-009, filed 3/6/98, effective 5/6/98)

**WAC 296-45-225 Underground residential distribution (URD).** (1) General.

(a) Each employee shall be knowledgeable of the equipment provided for their use and shall at all times use this equipment only for the purpose intended.

(b) U.R.D. cables which are properly insulated for the voltages to which they are energized shall be considered as an effective barrier to protect the employees and table ~~((one))~~ two need not apply.

(i) Workers will take adequate precautions to avoid physical contact with energized U.R.D. cable by using approved procedures and/or protective devices.

(ii) When handling energized U.R.D. primary cables, the work shall be done with approved tools and/or procedures by two qualified electrical employees. Switching is exempt from this rule.

(iii) When energized terminators or load-break elbows are handled by a hot stick, there shall be two qualified electrical employees at the scene.

(c) When energized pad-mounted transformers or similar equipment are to be left unlocked and open, they shall be attended by a ~~((qualified))~~ designated employee.

(d) Approved tools and procedures shall be used to remove any debris, vines, weeds, etc., from an underground system.

(e) A primary and secondary system neutral on any energized circuit shall not be opened under any circumstances except for testing.

(f) Primary and secondary neutrals shall be firmly connected and grounded before the circuit or equipment is energized.

(g) Where different phases are in the same vault, enclosures, or parked in some manner that they could be looped, these phases shall be marked or identified.

(h) Bayonet fuses:

(i) Bayonet fuses shall not be closed into suspected faults or overloads.

(ii) Submersible U.G. transformer installations will require other methods of energizing or deenergizing and bayonet fuses shall not be used for this purpose.

(iii) Bayonet fuses shall only be operated after pad-mount transformers have been properly vented.

(iv) Bayonet fuses shall only be operated in accordance with manufacturing design and rating capabilities.

(2) Working on cables.

(a) Before any work is to be performed on underground cables and apparatus carrying high voltage, they shall be deenergized with the following exceptions:

(i) Replacing fuses, operating switches, closing or opening load-break elbows, when approved protective devices are used.

(ii) Work in the high-voltage compartment of pad-mounted transformers and similar equipment installed above ground, provided the work is done by approved methods.

(b) Only one energized conductor shall be worked on at any one time, and protective means shall be used to insulate or isolate it from all others.

(c) When work is to be performed in manholes containing any wires or appliances carrying electrical current, they shall be in a sanitary condition.

**AMENDATORY SECTION** (Amending WSR 03-17-071, filed 8/19/03, effective 11/1/03)

**WAC 296-45-255 Protective equipment.** (1) Rubber protective equipment must be in accordance with and tested as follows:

Item	Standard
Rubber Insulating Gloves	(ASTM) D 120-2002
Rubber Matting for Use Around Electrical Apparatus	(ASTM) D 178-2001
Rubber Insulating Blankets	(ASTM) D 1048-1999
Rubber Insulating Hoods	(ASTM) D 1049-2002
Rubber Insulating Line Hose	(ASTM) D 1050-1999
Rubber Insulating Sleeves	(ASTM) D 1051-2002

(2) No protective equipment or material other than rubber shall be used: Provided, That such other nonconductive equipment may be used if it provides equal or better (dielectric) electrical and mechanical protection than rubber protective equipment: Provided, That the employer obtain before placing in service, manufacturer's data or other data to demonstrate that such nonrubber protective equipment provided equal or better electrical and mechanical protection than approved rubber equipment.

(3) Protective equipment shall not be used at voltages in excess of that for which the manufacturer has supplied data to the employer demonstrating that it is fit for such voltages.

(4) No protective equipment shall be modified, altered, or used for purposes other than those for which it is designed unless and until the manufacturer has, in writing, agreed or suggested that there be such modification, alteration, or use.

(5) Each rubber glove before it is used shall be inspected for defects and an approved air test performed. If, upon inspection, rubber gloves are either defective or appear to be defective, they shall not be used.

(6) Before being placed in service, all rubber protective equipment shall be numbered and records kept for test purposes and assignment.

(7) Rubber protective equipment shall not be used unless it has been dielectrically tested within six months and bears

marking or identification of the date of the test or the expiration date.

(8) Protector gloves must be worn over insulating gloves.

Exception: Protector gloves need not be used with Class 0 gloves, under limited-use conditions, where small equipment and parts manipulation necessitate unusually high finger dexterity.

Note: Extra care is needed in the visual examination of the glove and in the avoidance of handling sharp objects.

(9) Rubber gloves when not in use shall be carried in an approved bag provided and designed for that purpose. It shall be provided by the employer and made available to the employees.

(10) Approved rubber gloves and carrying bag shall be assigned to each employee who works with, or is exposed to energized parts.

(11) Rubber protective equipment shall not be vulcanized or patched.

(12) A compartment or box shall be provided on each electric line truck, which box or compartment shall be used for storing rubber protective equipment. No equipment shall be stored in said compartment or box which can or could cause damage to the rubber equipment or goods placed in the compartment or box. Additionally, a separate container or compartment shall be provided for rubber blankets.

(13) Line hose shall not be doubled on themselves at any time. All blankets before storage must be wiped clean and rolled, not folded, before being placed in the container or box.

(14) Protective line equipment of material other than rubber shall be kept clean and visually inspected before each use.

(15) If protective line equipment of material other than rubber is found to be substantially defective or unsuitable for the purpose for which it is designed and intended, said protective line equipment shall not be used for personal protection of employees as may be required in Table ((F)) 2 of this chapter. Said protective line equipment shall be marked defective but may be otherwise used unless the defect or damage to said protective line equipment creates additional safety hazards.

AMENDATORY SECTION (Amending WSR 09-05-071, filed 2/17/09, effective 4/1/09)

**WAC 296-45-25505 Personal protective equipment.**

(1) General. Personal protective equipment (PPE) shall meet the requirements of chapter 296-24 WAC, Part L and the PPE requirements in chapter 296-800 WAC. PPE required by these chapters or a hazard assessment will be provided by the employer at no cost to the employee.

(2) All protective hats shall be in accordance with the specifications of ANSI ((Z89.2-1971 Edition Industrial Protective Helmets for Electrical Workers)) Z89.1-2014, American National Standard for Industrial Head Protection Type II, Class ((B)) E, and shall be worn at the job site by employees who are exposed to overhead or electrical hazards.

(3) ((Wearing apparel-)) Goggles, hearing protection, respirators, rubber gloves, and other such personal protective

devices shall not be interchanged among employees unless they have been sanitized.

AMENDATORY SECTION (Amending WSR 13-04-073, filed 2/4/13, effective 4/1/13)

**WAC 296-45-25510 Fall protection.** (1) Personal fall arrest ((equipment)) systems shall meet the requirements of chapter 296-155 WAC, Part C-1, Fall protection requirements for construction.

(2) ((Specific requirements for lineman's belts, safety straps and lanyards.

(a) All fabric used for safety straps must withstand an A-C dielectric test of not less than 25,000 volts per foot "dry" for 3 minutes, without visible deterioration.

(b) All fabric and leather used must be tested for leakage current and must not exceed 1 milliamperes when a potential of 3,000 volts is applied to the electrodes positioned 12 inches apart.

(c) Direct current tests may be permitted in lieu of alternating current tests.

(d) The cushion part of the body belt must:

(i) Contain no exposed rivets on the inside;

(ii) Be at least three (3) inches in width;

(iii) Be at least five thirty-seconds (5/32) inch thick, if made of leather; and

(iv) Have pocket tabs that extended at least 1 1/2 inches down and three (3) inches back of the inside of circle of each D ring for riveting on plier or tool pockets. On shifting D belts, this measurement for pocket tabs must be taken when the D ring section is centered.

(e) A maximum of four (4) tool loops must be so situated on the body belt that four (4) inches of the body belt in the center of the back, measuring from D ring to D ring, must be free of tool loops, and any other attachments.

(f) Suitable copper, steel, or equivalent liners must be used around bar of D rings to prevent wear between these members and the leather or fabric enclosing them.

(g) All stitching must be of a minimum 42-pound weight nylon or equivalent thread and must be lock stitched. Stitching parallel to an edge must not be less than three sixteenths (3/16) inch from edge of narrowest member caught by the thread. The use of cross stitching on leather is prohibited.

(h) The keeper of snaphooks must have a spring tension that will not allow the keeper to begin to open with a weight of 2 1/2 pounds or less, but the keeper of snaphooks must begin to open with a weight of four (4) pounds, when the weight is supported on the keeper against the end of the nose.

(i) Testing of lineman's safety straps, body belts and lanyards must be in accordance with the following procedure:

(i) Attach one end of the safety strap or lanyard to a rigid support, the other end must be attached to a 250-pound canvas bag of sand;

(ii) Allow the 250-pound canvas bag of sand to free fall 4 feet for (safety strap test) and 6 feet for (lanyard test); in each case stopping the fall of the 250-pound bag;

(iii) Failure of the strap or lanyard must be indicated by any breakage, or slippage sufficient to permit the bag to fall free of the strap or lanyard. The entire "body belt assembly" must be tested using one D ring. A safety strap or lanyard

must be used that is capable of passing the "impact loading test" and attached as required in (i)(i) of this subsection. The body belt must be secured to the 250 pound bag of sand at a point to simulate the waist of a man and allowed to drop as stated in (i)(ii) of this subsection. Failure of the body belt must be indicated by any breakage, or slippage sufficient to permit the bag to fall free of the body belt.

(3) Body belts, safety straps, lanyards, lifelines, and body harnesses shall be inspected before use each day to determine that the equipment is in safe working condition. Defective equipment may not be used.

(4) Employees shall not wear climbers while doing work where they are not required. Employees shall not continue to wear their climbers while working on the ground; except for momentary or short periods of time on the ground.

(5) Employees, when working from a hook ladder, must either belt themselves securely to the ladder, attach themselves to the structures by means of a safety line, or belt themselves to ladder safety equipment, which shall consist of a safety rope or belting threaded through the rungs or secured to the ladder at intervals of not more than three feet.

(6) Before an employee throws his/her weight on a belt, the employee shall determine that the snap or fasteners are properly engaged.

(7) Safety straps shall not be placed around poles above the cross arm except where it is not possible for the strap to slide or be slipped over the top of the pole by inadvertence of the employee. Neither end of the strap shall be allowed to hang loose or dangle while the employee is ascending or descending poles or other structures.

(8) Body belts and safety straps shall not be stored with sharp edged tools or near sharp objects. When a body belt, safety strap and climbers are kept in the same container, they shall be stored in such a manner as to avoid cutting or puncturing the material of the body belt or safety strap with the gaffs or climbers.

(9) Employees shall not attach metal hooks or other metal devices to body belts. Leather straps or rawhide thongs shall have hardwood or fibre crossbars. Leather straps and rawhide thongs shall not have metal or other conductive crossbars on them.

(10) Climbing gaffs shall be kept properly sharpened and shall be at least 1-1/8 inches in length.

(11) Lifelines shall be protected against being cut or abraded.

(12) Fall arrest equipment, work positioning equipment, or travel restricting equipment shall be used by employees working at elevated locations more than 4 feet (1.2 m) above the ground on poles, towers, or similar structures if other fall protection has not been provided. Fall protection equipment is not required to be used by a qualified employee climbing or changing location on poles, towers, or similar structures, unless conditions, such as, but not limited to, ice, high winds, the design of the structure (for example, no provision for holding on with hands), or the presence of contaminants on the structure, could cause the employee to lose his or her grip or footing.

Note 1: This subsection applies to structures that support overhead electric power generation, transmission, and distribution lines and equipment. It does not apply to portions of buildings, such as loading docks, to electric equipment, such as transformers and capacitors, nor to aerial lifts. Requirements for fall protection associated with walking and working surfaces are contained in chapter 296-155 WAC, Part C-1. Fall protection requirements for construction requirements for fall protection associated with aerial lifts are contained in chapter 296-869 WAC, Elevating work platforms.

Note 2: Employees undergoing training are not considered "qualified employees" for the purposes of this provision. Unqualified employees (including trainees) are required to use fall protection any time they are more than 4 feet (1.2 m) above the ground.

(13) The following requirements apply to personal fall arrest systems:

(a) When stopping or arresting a fall, personal fall arrest systems shall limit the maximum arresting force on an employee to 1800 pounds (8 kN) if used with a body harness.

(b) Personal fall arrest systems shall be rigged such that an employee can neither free fall more than 6 feet (1.8 m) nor contact any lower level.

(14) If vertical lifelines or droplines are used, not more than one employee may be attached to any one lifeline.

(15) Snaphooks may not be connected to loops made in webbing type lanyards.

(16) Snaphooks may not be connected to each other.)

Personal fall arrest equipment used by employees who are exposed to hazards from flames or electric arcs, as determined by the employer under WAC 296-45-325(13), shall be capable of passing a drop test equivalent to that required by subsection (3)(1) of this section after exposure to an electric arc with a heat energy of 40±5 cal/cm<sup>2</sup>.

(3) Body belts and positioning straps for work-positioning equipment shall meet the following requirements:

(a) Hardware for body belts and positioning straps shall meet the following requirements:

(i) Hardware shall be made of drop-forged steel, pressed steel, formed steel, or equivalent material.

(ii) Hardware shall have a corrosion-resistant finish.

(iii) Hardware surfaces shall be smooth and free of sharp edges.

(b) Buckles shall be capable of withstanding an 8.9 kilonewton (2,000 pound-force) tension test with a maximum permanent deformation no greater than 0.4 millimeters (0.0156 inches).

(c) D-rings shall be capable of withstanding a 22 kilonewton (5,000 pound-force) tensile test without cracking or breaking.

(d) Snaphooks shall be capable of withstanding a 22 kilonewton (5,000 pound-force) tension test without failure.

Note: Distortion of the snaphook sufficient to release the keeper is considered to be tensile failure of a snaphook.

(e) Top grain leather or leather substitute may be used in the manufacture of body belts and positioning straps; however, leather and leather substitutes may not be used alone as a load-bearing component of the assembly.

(f) Plied fabric used in positioning straps and in load-bearing parts of body belts shall be constructed in such a way that no raw edges are exposed and the plies do not separate.

(g) Positioning straps shall be capable of withstanding the following tests:

(i) A dielectric test of 819.7 volts, AC, per centimeter (25,000 volts per foot) for three minutes without visible deterioration;

(ii) A leakage test of 98.4 volts, AC, per centimeter (3,000 volts per foot) with a leakage current of no more than 1 mA;

Note: Positioning straps that pass direct-current tests at equivalent voltages are considered as meeting this requirement.

(iii) Tension tests of 20 kilonewtons (4,500 pounds-force) for sections free of buckle holes and of 15 kilonewtons (3,500 pounds-force) for sections with buckle holes;

(iv) A buckle-tear test with a load of 4.4 kilonewtons (1,000 pounds-force); and

(v) A flammability test in accordance with Table 1.

**Table 1 - Flammability Test**

Test Method	Criteria for Passing the Test
Vertically suspend a 500 mm (19.7 inch) length of strapping supporting a 100 kg (220.5 lb) weight.	Any flames on the positioning strap shall self extinguish.
Use a butane or propane burner with a 76 mm (3 inch) flame.	The positioning strap shall continue to support the 100 kg (220.5 lb) mass.
Direct the flame to an edge of the strapping at a distance of 25 mm (1 inch).	
Remove the flame after 5 seconds.	
Wait for any flames on the positioning strap to stop burning.	

(h) The cushion part of the body belt shall contain no exposed rivets on the inside and shall be at least 76 millimeters (3 inches) in width.

(i) Tool loops shall be situated on the body of a body belt so that the 100 millimeters (4 inches) of the body belt that is in the center of the back, measuring from D-ring to D-ring, is free of tool loops and any other attachments.

(j) Copper, steel, or equivalent liners shall be used around the bars of D-rings to prevent wear between these members and the leather or fabric enclosing them.

(k) Snaphooks shall be of the locking type meeting the following requirements:

(i) The locking mechanism shall first be released, or a destructive force shall be placed on the keeper, before the keeper will open.

(ii) A force in the range of 6.7 N (1.5 lbf) to 17.8 N (4 lbf) shall be required to release the locking mechanism.

(iii) With the locking mechanism released and with a force applied on the keeper against the face of the nose, the keeper may not begin to open with a force of 11.2 N (2.5 lbf)

or less and shall begin to open with a maximum force of 17.8 N (4 lbf).

(l) Body belts and positioning straps shall be capable of withstanding a drop test as follows:

(i) The test mass shall be rigidly constructed of steel or equivalent material with a mass of 100 kg (220.5 lbf). For work-positioning equipment used by employees weighing more than 140 kg (310 lbf) fully equipped, the test mass shall be increased proportionately (that is, the test mass equal the mass of the equipped worker divided by 1.4).

(ii) For body belts, the body belt shall be fitted snugly around the test mass and shall be attached to the test-structure anchorage point by means of a wire rope.

(iii) For positioning straps, the strap shall be adjusted to its shortest length possible to accommodate the test and connected to the test-structure anchorage point at one end and to the test mass on the other end.

(iv) The test mass shall be dropped an unobstructed distance of 1 meter (39.4 inches) from a supporting structure that will sustain minimal deflection during the test.

(v) Body belts shall successfully arrest the fall of the test mass and shall be capable of supporting the mass after the test.

(vi) Positioning straps shall successfully arrest the fall of the test mass without breaking, and the arrest force may not exceed 17.8 kilonewtons (4,000 pounds-force). Additionally, snaphooks on positioning straps may not distort to such an extent that the keeper would release.

Note: When used by employees weighing no more than 140 kg (310 lbf) fully equipped, body belts and positioning straps that conform to American Society of Testing and Materials *Standard Specifications for Personal Climbing Equipment*, ASTM F887-12<sup>e1</sup>, are deemed to be in compliance with (l) of this subsection.

(4) The following requirements apply to the care and use of personal fall protection equipment.

(a) Work-positioning equipment shall be inspected before use each day to determine that the equipment is in safe working condition. Work-positioning equipment that is not in safe working condition may not be used.

Note: Work-Positioning Equipment Inspection Guidelines are located in Appendix E of this chapter.

(b) Personal fall arrest systems shall be used in accordance with chapter 296-155 WAC, Part C-1.

Note: Fall protection equipment rigged to arrest falls is considered a fall arrest system and must meet the applicable requirements for the design and use of those systems. Fall protection equipment rigged for work positioning is considered work-positioning equipment and must meet the applicable requirements for the design and use of that equipment.

(c) The employer shall ensure that employees use fall protection systems as follows:

(i) Each employee working from an aerial lift shall use a fall restraint system or a personal fall arrest system.

(ii) Except as provided in (c)(iii) of this subsection, each employee in elevated locations more than 1.2 meters (4 feet) above the ground on poles, towers, or similar structures shall use a personal fall arrest system, work-positioning equipment, or fall restraint system, as appropriate, if the employer

has not provided other fall protection meeting chapter 296-155 WAC, Part C-1.

(iii) Each qualified employee climbing or changing location on poles, towers, or similar structures must use fall protection equipment unless the employer can demonstrate that climbing or changing location with fall protection is infeasible or creates a greater hazard than climbing or changing location without it.

Notes: • These subsections apply to structures that support overhead electric power transmission and distribution lines and equipment. They do not apply to portions of buildings, such as loading docks, or to electric equipment, such as transformers and capacitors. Chapter 296-155 WAC, Part C-1 contains the duty to provide fall protection associated with walking and working surfaces.

• Until the employer ensures that employees are proficient in climbing and the use of fall protection under WAC 296-45-065(8), the employees are not considered "qualified electrical employees" for the purposes of (c)(ii) and (iii) of this subsection. These subsections require unqualified employees (including trainees) to use fall protection any time they are more than 1.2 meters (4 feet) above the ground.

(d) Work-positioning systems shall be rigged so that an employee can free fall no more than 0.6 meters (2 feet).

(e) Anchorages for work-positioning equipment shall be capable of supporting at least twice the potential impact load of an employee's fall, or 13.3 kilonewtons (3,000 pounds-force), whichever is greater.

Note: Wood-pole fall-restriction devices meeting American Society of Testing and Materials Standard Specifications for Personal Climbing Equipment, ASTM F887-12<sup>el</sup>, are deemed to meet the anchorage-strength requirement when they are used in accordance with manufacturers' instructions.

(f) Unless the snaphook is a locking type and designed specifically for the following connections, snaphooks on work-positioning equipment may not be engaged:

(i) Directly to webbing, rope, or wire rope;

(ii) To each other;

(iii) To a D-ring to which another snaphook or other connector is attached;

(iv) To a horizontal lifeline; or

(v) To any object that is incompatibly shaped or dimensioned in relation to the snaphook such that accidental disengagement could occur should the connected object sufficiently depress the snaphook keeper to allow release of the object.

(5) Employees shall not wear climbers while doing work where they are not required. Employees shall not continue to wear their climbers while working on the ground; except for momentary or short periods of time on the ground.

(6) Employees, when working from a hook ladder, must either belt themselves securely to the ladder, attach themselves to the structures by means of a safety line, or belt themselves to ladder safety equipment, which shall consist of a safety rope or belting threaded through the rungs or secured to the ladder at intervals of not more than three feet.

(7) Before an employee throws their weight on a belt, the employee shall determine that the snap or fasteners are properly engaged.

(8) Safety straps shall not be placed around poles above the cross-arm except where it is not possible for the strap to

slide or be slipped over the top of the pole by inadvertence of the employee. Neither end of the strap shall be allowed to hang loose or dangle while the employee is ascending or descending poles or other structures.

(9) Body belts and safety straps shall not be stored with sharp-edged tools or near sharp objects. When a body belt, safety strap and climbers are kept in the same container, they shall be stored in such a manner as to avoid cutting or puncturing the material of the body belt or safety strap with the gaffs or climbers.

(10) Employees shall not attach metal hooks or other metal devices to body belts. Leather straps or rawhide thongs shall have hardwood or fibre crossbars. Leather straps and rawhide thongs shall not have metal or other conductive crossbars on them.

(11) Climbing gaffs shall be kept properly sharpened and shall be at least 1-1/8 inches in length.

(12) Lifelines shall be protected against being cut or abraded.

(13) Fall arrest equipment, work positioning equipment, or travel restricting equipment shall be used by employees working at elevated locations more than 4 feet (1.2 m) above the ground on poles, towers, or similar structures if other fall protection has not been provided.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-45-275 Ladders, platforms, and manhole steps.** (1) General. Requirements for ladders contained in chapter ((296-24)) 296-876 WAC((, Part J-1, and WAC 296-800-290)) apply, except as specifically noted in subsection (2) of this section.

(2) Special ladders and platforms. Portable ladders and platforms used on structures or conductors in conjunction with overhead line work need not meet chapter ((296-24)) 296-876 WAC((, Part J-1, chapter 296-155 WAC, Part J or WAC 296-800-290)). However, these ladders and platforms shall meet the following requirements:

(a) Ladders and platforms shall be secured to prevent their becoming accidentally dislodged.

(b) Ladders and platforms may not be loaded in excess of the working loads for which they are designed.

(c) Ladders and platforms may be used only in applications for which they were designed.

(d) In the configurations in which they are used, ladders and platforms shall be capable of supporting without failure at least 2.5 times the maximum intended load.

(e) All ladders shall be handled and stored in such a manner as to prevent damage to the ladder.

(f) When ascending or descending a ladder, the employee shall face the ladder and have free use of both hands.

(g) All defective ladders shall be taken out of service and labeled as defective.

(h) When a ladder is being used which is not fixed or otherwise secured, there shall be an attendant to hold the ladder and watch traffic when the work is being done on streets, alleys, sidewalks, or in industrial plants or other places where

there exists the possibility of accidental contact with the ladder by third persons or vehicles.

(i) When working on the ladder, employees shall, where possible, tie the top of the ladder to a substantial object to prevent falling unless the ladder is equipped with approved hooks which may be used for the same purpose.

(j) Portable ladders shall not be moved with employees on the ladder.

(k) No employee shall ascend or descend a rolling ladder while it is moving.

(l) No employee shall stand on the top two steps of a step ladder.

(m) No employee shall use a step ladder as a straight ladder.

(n) Ladders shall always be placed on a secure footing with both legs resting firmly on the lower surface.

(o) Ladders made by fastening cleats or similar devices across a single rail shall not be used.

(3) Conductive ladders. Portable metal ladders and other portable conductive ladders may not be used near exposed energized lines or equipment. However, in specialized high-voltage work, conductive ladders shall be used where the employer can demonstrate that nonconductive ladders would present a greater hazard than conductive ladders.

Note: A greater electrical hazard would be static electricity such as might be found in extra high voltage substations.

(4) All conductive or metal ladders shall be prominently marked and identified as being conductive and shall be grounded when used near energized lines or equipment.

Note: See chapter ((296-24)) 296-876 WAC for additional ladder requirements.

**AMENDATORY SECTION** (Amending WSR 98-07-009, filed 3/6/98, effective 5/6/98)

**WAC 296-45-295 Gasoline engine power chain saws.**

(1) Each chain saw placed into initial service after February 9, 1995, shall be equipped with a chain brake and shall otherwise meet the requirements of the ANSI ((B175.1-1991)) B175.1-2012 "Safety Requirements for Gasoline-Powered Chain Saws." Each chain saw placed into service before February 9, 1995, shall be equipped with a protective device that minimizes chain saw kickback, i.e., reduced kickback bar, chains, bar tip guard or chain brake. No chain-saw kickback device shall be removed or otherwise disabled.

(2) Gasoline-engine power saw operations shall meet the requirements of WAC ((296-54-515)) 296-54-537(10).

(3) The chain saw shall be operated and adjusted in accordance with the manufacturer's instructions.

(4) The employer must ensure that each chain saw, including any chain saw provided by an employee, is inspected before initial use during each workshift. At a minimum, the inspection shall include the following:

(a) Chain-saw chains, to assure proper adjustment;

(b) Chain-saw mufflers, to assure that they are operational and in place;

(c) Chain brakes and nose shielding devices, to assure that they are in place and function properly;

(5) The chain saw shall be fueled at least 10 feet (3 m) from any open flame or other source of ignition.

(6) The chain saw shall be started at least 10 feet (3 m) from the fueling area.

(7) The chain saw shall be started on the ground or where otherwise firmly supported. Drop-starting a chain saw is prohibited.

(8) The chain saw shall be started with the chain brake engaged.

(9) The chain saw shall be held with the thumbs and fingers of both hands encircling the handles during operation unless the employer demonstrates that a greater hazard is posed by keeping both hands on the chain saw in that particular situation.

(10) The chain-saw operator shall be certain of footing before starting to cut. The chain saw shall not be used in a position or at a distance that could cause the operator to become off-balance, to have insecure footing, or to relinquish a firm grip on the saw.

(11) Prior to felling any tree, the chain saw operator shall clear away brush or other potential obstacles which might interfere with cutting the tree or using the retreat path.

(12) The chain saw shall not be used to cut directly overhead.

(13) The chain saw shall be carried in a manner that will prevent operator contact with the cutting chain and muffler.

(14) The chain saw shall be shut off or at idle before the feller starts their retreat.

(15) The chain saw shall be shut down or the chain brake shall be engaged whenever a saw is carried further than 50 feet (15.2 m). The chain saw shall be shut down or the chain brake shall be engaged when a saw is carried less than 50 feet if conditions such as, but not limited to, the terrain, underbrush and slippery surfaces, may create a hazard for an employee.

Note: When an employee working aloft in trees or on poles when supported by climbing spurs and climbing belt, or when an employee is working from a vehicle mounted elevating and rotating work platform meeting the requirements of chapter 296-869 WAC, Elevating work platforms, leg protection covering the full length of the thigh to the top of the boot on each leg to protect against contact with a moving chain saw is not required.

(16) Each power saw weighing more than 15 pounds (6.8 kilograms, service weight) that is used in trees shall be supported by a separate line, except when work is performed from an aerial lift and except during topping or removing operations where no supporting limb will be available, and the following:

(a) Each power saw shall be equipped with a control that will return the saw to idling speed when released;

(b) Each power saw shall be equipped with a clutch and shall be so adjusted that the clutch will not engage the chain drive at idling speed;

(c) Drop starting of saws over 15 pounds (6.8 kg) is permitted outside of the bucket of an aerial lift only if the area below the lift is clear of personnel;

(d) A power saw engine may be started and operated only when all employees other than the operator are clear of the saw;

(e) A power saw may not be running when the saw is being carried up into a tree by an employee; and

(f) Power saw engines shall be stopped for all cleaning, refueling, adjustments, and repairs to the saw or motor, except as the manufacturer's servicing procedures require otherwise.

**AMENDATORY SECTION** (Amending WSR 98-07-009, filed 3/6/98, effective 5/6/98)

**WAC 296-45-305 Live-line tools.** (1) Design of tools. Live-line tool rods, tubes, and poles shall be designed and constructed to withstand the following minimum tests:

(a) 100,000 volts per foot (3281 volts per centimeter) of length for 5 minutes if the tool is made of fiberglass-reinforced plastic (FRP); or

(b) 75,000 volts per foot (2461 volts per centimeter) of length for 3 minutes if the tool is made of wood; or

(c) Other tests that the employer can demonstrate are equivalent.

Note: Live-line tools using rod and tube that meet ASTM ((F711-89)) F711-02 (2013), Standard Specification for Fiberglass-Reinforced Plastic (FRP) Rod and Tube Used in Live-Line Tools, conform to subsection (1)(a) of this section.

(2) Condition of tools.

(a) Each live-line tool shall be wiped clean and visually inspected for defects before use each day.

(b) If any defect or contamination that could adversely affect the insulating qualities or mechanical integrity of the live-line tool is present after wiping, the tool shall be removed from service and examined and tested according to this section before being returned to service.

(c) Live-line tools used for primary employee protection shall be removed from service every two years and whenever required under this ((subsection)) **section** for examination, cleaning, repair, and testing as follows:

(i) Each tool shall be thoroughly examined for defects.

(ii) If a defect or contamination that could adversely affect the insulating qualities or mechanical integrity of the live-line tool is found, the tool shall be repaired and refinished or shall be permanently removed from service. If no such defect or contamination is found, the tool shall be cleaned and waxed.

(iii) The tool shall be tested in accordance with this section under the following conditions:

(A) After the tool has been repaired or refinished; and

(B) After the examination if repair or refinishing is not performed, unless the tool is made of FRP rod or foam-filled FRP tube and the employer can demonstrate that the tool has no defects that could cause it to fail in use.

(iv) The test method used shall be designed to verify the tool's integrity along its entire working length and, if the tool is made of fiberglass-reinforced plastic, its integrity under wet conditions.

(v) The voltage applied during the tests shall be as follows:

(A) 75,000 volts per foot (2461 volts per centimeter) of length for one minute if the tool is made of fiberglass; or

(B) 50,000 volts per foot (1640 volts per centimeter) of length for one minute if the tool is made of wood; or

(C) Other tests that the employer can demonstrate are equivalent.

Note: Guidelines for the examination, cleaning, repairing, and in-service testing of live-line tools are contained in the Institute of Electrical and Electronics Engineers Guide for In-Service Maintenance and Electrical Testing of Live-Line Tools, IEEE Std. ((978-1984)) 516-2009.

(d) Live-line tools and rope shall be stored and maintained and used in such a manner as to prevent damage. Live-line tools and ropes shall not be used for purposes other than line work.

**AMENDATORY SECTION** (Amending WSR 05-17-038, filed 8/9/05, effective 10/1/05)

**WAC 296-45-315 Materials handling and storage.** (1) General. Material handling and storage shall conform to the requirements of chapter 296-24 WAC, Part D.

(2) Materials storage near energized lines or equipment. In areas not restricted to qualified ((persons)) **electrical employees** only, materials or equipment may not be stored closer to energized lines or exposed energized parts of equipment than the following distances plus an amount providing for the maximum sag and side swing of all conductors and providing for the height and movement of material handling equipment:

(a) For lines and equipment energized at 50 kV or less, the distance is 10 feet (305 cm).

(b) For lines and equipment energized at more than 50 kV, the distance is 10 feet (305 cm) plus 4 inches (10 cm) for every 10 kV over 50 kV.

(c) In areas restricted to qualified **electrical** employees, material may not be stored within the working space about energized lines or equipment.

Note: Requirements for the size of the working space are contained in WAC 296-45-475(1) and 296-45-48515.

(3) Prior to unloading steel, poles, crossarms and similar materials, the load shall be thoroughly examined to determine if the load has shifted, binders or stakes have broken or the load is otherwise hazardous to employees. The hoist rope shall not be wrapped around the load. This provision shall not apply to electric construction crews when setting or removing poles.

(4) Pole handling.

(a) During pole hauling operations, all loads shall be secured to prevent displacement, and a red flag shall be displayed at the trailing end of the longest pole.

(b) While loading and unloading materials, roadways shall not be blocked unless approved traffic control is used.

(c) When hauling poles during darkness, illuminated warning devices shall be attached to the trailing end of the longest pole in accordance with the state of Washington motor vehicle code.

(d) Framing. During framing operations, employees must not work under a pole or a structure suspended by a crane, A-frame or similar equipment unless the pole or structure is adequately supported.

(5) Tag lines. When necessary to control loads, tag lines or other approved devices shall be used.

(6) Oil filled equipment. During construction or repair of oil filled equipment, the oil may be stored in temporary con-

tainers other than those required by WAC 296-155-270, such as pillow tanks.

(7) Storage of tools and materials. All tools and materials shall be stored in a safe and orderly manner in yards for equipment and other areas.

**AMENDATORY SECTION** (Amending WSR 05-17-038, filed 8/9/05, effective 10/1/05)

**WAC 296-45-325 Working on or near exposed energized parts.** This section applies to work on exposed live parts, or near enough to them, to expose the employee to any hazard they present.

(1) General. Only qualified electrical employees may work on or with exposed energized lines or parts of equipment. Only qualified electrical employees may work in areas containing unguarded, uninsulated energized lines or parts of equipment operating at 50 volts or more. Electric lines and equipment shall be considered and treated as energized unless the provisions of WAC 296-45-175 through 296-45-17565 or 296-45-335 have been followed.

(2) Except as provided in subsection (3) of this section, at least two qualified electrical employees shall be present while the following types of work are being performed:

(a) Installation, removal, or repair of lines that are energized at more than 600 volts;

(b) Installation, removal, or repair of deenergized lines if an employee is exposed to contact with other parts energized at more than 600 volts;

(c) Installation, removal, or repair of equipment, such as transformers, capacitors, and regulators, if an employee is exposed to contact with parts energized at more than 600 volts;

(d) Work involving the use of mechanical equipment, other than insulated aerial lifts, near parts energized at more than 600 volts; and

(e) Other work that exposes an employee to electrical hazards greater than or equal to those posed by operations that are specifically listed in subsection (2)(a) through (d) of this section.

~~((Note 1:))~~ Notes: • One qualified electrical employee will serve principally as a standby person who must be so located that they may physically reach the other qualified electrical employee in the event of an accident either with their hand or with a hot stick twelve feet or less in length. The standby person will be so positioned as to be able to observe the other employee, their bodily movements, and verbally warn of any impending dangers. In no case when working in pairs will qualified electrical employees work simultaneously on energized wires or parts of different phases or polarity;

~~((Note 2:))~~ • When installing or removing a hot line clamp connection on a multiphase system, it is permissible for the second qualified electrical employee to stand by at the lower controls of the aerial lift provided the connection or disconnection does not interrupt or pick up the load. The hot line clamp and connecting jumper must be constructed so it cannot make contact with any other energized parts. The work must not be performed above lines or apparatus energized at more than 600 V.

~~((Note 3:))~~ • In cases of necessity the standby person may temporarily assist the other qualified electrical employee provided that they both work on wires or parts of the same phase or polarity. Both qualified electrical employees shall so position themselves so that the presence of the second person does not increase the hazard.

(3) The provisions of WAC 296-45-325(2) do not apply to (a) through (e) of this subsection. In addition to the requirements of subsection (4) of this section, a qualified electrical employee working under this subsection (3), must position themselves so that (~~he/she is~~) they are neither within reach of nor otherwise exposed to contact with energized parts.

(a) When re-fusing circuits or equipment with a hot stick.

(b) When operating switches by means of operating handle or switch sticks.

(c) When installing or removing a hot line clamp connection with an approved hot stick on a single-phase line or apparatus, providing that the connection or disconnection does not interrupt or pick up a load.

~~((Note 1:))~~ Notes: • The hot line clamp and connecting jumper must be constructed so that it cannot make contact with any other energized parts.

~~((Note 2:))~~ • On a multiphase feed this applies only when one single-phase line or apparatus is present on the load side.

(d) When installing or removing by hot stick simple load metering devices provided the connection does not interrupt or pickup load.

(e) Emergency repairs to the extent necessary to safeguard the general public.

(4) "Minimum approach distances." The employer shall ensure that no employee approaches or takes any conductive object closer to exposed energized parts than set forth in Table (~~(1 through Table 4))~~ 2, unless:

(a) The employee is insulated from the energized part (insulating gloves or insulating gloves and sleeves worn in accordance with subsection (6) of this section are considered insulation of the employee only with regard to the energized part upon which work is being performed); or

(b) The energized part is insulated from the employee and from any other conductive object at a different potential.



**Table 2**  
**AC Live Work Minimum Approach Distance**

<b>Voltage in Kilovolts Phase to Phase*</b>	<b>Distance to Employee</b>					
	<b>Phase to Ground</b>			<b>Phase to Phase</b>		
	<b>(m)</b>	<b>(ft-1/10)</b>	<b>(ft-in)</b>	<b>(m)</b>	<b>(ft-1/10)</b>	<b>(ft-in)</b>
<b>Table 2-A For Voltages of 72.5 KV and Less <sup>(1,2,3,4)</sup></b>						
0 to 0.050	not specified			not specified		
0.051 to 0.300	avoid contact			avoid contact		
0.301 to 0.750	0.33	1.09	(1'-2")	0.33	1.09	(1'-2")
0.751 to 5	0.63	2.07	(2'-1")	0.63	2.07	(2'-1")
5.1 to 15.0	0.65	2.14	(2'-2")	0.68	2.24	(2'-3")
15.1 to 36	0.77	2.53	(2'-7")	0.89	2.92	(3'-0")
36.1 to 46.0	0.84	2.76	(2'-10")	0.98	3.22	(3'-3")
46.1 to 72.5	1.00**	3.29**	(3'-3")	1.20	3.94	(4'-0")

<sup>1</sup>Employers may use the minimum approach distances in this table provided the worksite is at an elevation of 900 meters (3,000 feet) or less. If employees will be working at elevations greater than 900 meters (3,000 feet) above mean sea level, the employer shall determine minimum approach distances by multiplying the distances in this table by the correction factor in Table 3 below. A corresponding to the altitude of the work.

<sup>2</sup>For single-phase systems, use voltage-to-ground.

<sup>3</sup>For single-phase lines off three phase systems, use the phase-to-phase voltage of the system.

<sup>4</sup>The 46.1 to 72.5 kV phase-to-ground 3-3 distance contains a 1-3 electrical component and a 2-0 inadvertent movement component.

<b>Table 2-B For Voltages of 72.6 KV <sup>(1,2,3)</sup></b>						
72.6 to 121	1.13**	3.71**	(3'-9")	1.42	4.66	(4'-8")
121.1 to 145.0	1.30	4.27	(4'-4")	1.64	5.38	(5'-5")
145.1 to 169.0	1.46	4.79	(4'-10")	1.94	6.36	(6'-5")
169.1 to 242.0	2.01	6.59	(6'-8")	3.08	10.10	(10'-2")
242.1 to 362.0	3.41	11.19	(11'-3")	5.52	18.11	(18'-2")
362.1 to 420.0	4.25	13.94	(14'-0")	6.81	22.34	(22'-5")
420.1 to 550.0	5.07	16.63	(16'-8")	8.24	27.03	(27'-1")
550.1 to 800.0	6.88	22.57	(22'-7")	11.38	37.34	(37'-5")

<sup>1</sup>Employers may use the minimum approach distances in this table provided the worksite is at an elevation of 900 meters (3,000 feet) or less. If employees will be working at elevations greater than 900 meters (3,000 feet) above mean sea level, the employer shall determine minimum approach distances by multiplying the distances in this table by the correction factor in Table 3 below. A corresponding to the altitude of the work.

<sup>2</sup>Employers may use the phase-to-phase minimum approach distances in this table provided that no insulated tool spans the gap and no large conductive object is in the gap.

<sup>3</sup>The 72.6 to 121 kV phase-to-ground 3-2 distance contains a 2-2 electrical component and a 1-0 inadvertent movement component.

*Note: The clear live-line tool distance shall equal or exceed the values for the indicated voltage ranges.*

<b>Table 3 - Altitude Correction Factors</b>			
		1,201 to 1,500	1.05
	Altitude above sea level (m)	1,501 to 1,800	1.08
		1,801 to 2,100	1.11
	<b>A</b>	2,101 to 2,400	1.14
0 to 900	1.00	2,401 to 2,700	1.17
901 to 1,200	1.02	2,701 to 3,000	1.20

<u>3,001 to 3,600</u> .....	<u>1.25</u>
<u>3,601 to 4,200</u> .....	<u>1.30</u>
<u>4,201 to 4,800</u> .....	<u>1.35</u>
<u>4,801 to 5,400</u> .....	<u>1.39</u>
<u>5,401 to 6,000</u> .....	<u>1.44</u>

- ((Note 1:)) • WAC 296-45-475 (5)(a) and 296-45-48525(1) contain requirements for the guarding and isolation of live parts. Parts of electric circuits that meet these two provisions are not considered as "exposed" unless a guard is removed or an employee enters the space intended to provide isolation from the live parts.
- ((Note 2:)) • When an employee is required to work on or within reach of any unprotected conductors that are or may become energized at more than 50 volts and less than 600 volts between phases, they shall take the following precautions:
- ((1:)) - They shall wear approved insulating gloves or insulating gloves and sleeves during the time they are working on such conductor((:))2 or
  - ((2:)) - They shall cover, with approved devices, any adjacent unprotected conductor that could be touched by any part of their body, and use insulated tools.
  - ((3:)) - Cables which are properly insulated for the voltages to which they are energized, shall be considered as an effective barrier to protect the employees and Table ((1:)) 2 need not apply.
- Appendix A of this chapter contains additional information relating to working on exposed energized parts.

(5) Initial determination.

(a) Before any work is performed, the location of energized lines and their condition, the location and condition of energized equipment, the condition of the poles, the location of circuits and equipment including power communication lines, CATV and fire alarm circuits, shall be determined as shall any other particular hazard of a particular work site.

(b) No work shall be performed on energized lines or parts until the voltage of such equipment and lines is determined.

(6) Type of insulation. If the employee is to be insulated from energized parts by the use of insulating gloves (under subsection (4) of this section), insulating sleeves shall also be used. However, insulating sleeves need not be used under the following conditions:

(a) If exposed energized parts on which work is not being performed are insulated from the employee; and

(b) If such insulation is placed from a position not exposing the employee's upper arm to contact with other energized parts.

(7) Working position. The employer shall ensure that each employee, to the extent that other safety-related conditions at the worksite permit, works in a position from which a slip or shock will not bring the employee's body into contact with exposed, uninsulated parts energized at a potential different from the employee.

(8) Making connections. The employer shall ensure that connections are made as follows:

(a) In connecting deenergized equipment or lines to an energized circuit by means of a conducting wire or device, an employee shall first attach the wire to the deenergized part;

(b) When disconnecting equipment or lines from an energized circuit by means of a conducting wire or device, an employee shall remove the source end first; and

(c) When lines or equipment are connected to or disconnected from energized circuits, loose conductors shall be kept away from exposed energized parts.

(9) Rubber gloves can only be used on 5,000 volts or less between phases.

(10) It shall not be permissible to consider one part of a high voltage switch or disconnect as deenergized for the purpose of doing work on it if the remainder of the switch or disconnect remains energized unless approved barriers are erected which will prevent employees who are doing the work on such equipment from coming in direct contact with the energized parts.

(11) Conductor support tools such as link sticks, strain carriers, and insulator cradles may be used: Provided, That the clear insulation is at least as long as the insulator string or the minimum distance specified in Table ((1:)) 2 for the operating voltage.

(12) Apparel.

(a) When work is performed within reaching distance of exposed energized parts of equipment, the employer shall ensure that each employee removes or renders nonconductive all exposed conductive articles, such as key or watch chains, rings, or wrist watches or bands, unless such articles do not increase the hazards associated with contact with the energized parts.

~~(b) ((The employer shall train each employee who is exposed to the hazards of flames or electric arcs in the hazards involved.~~

~~(c) The employer shall ensure that each employee who is exposed to the hazards of flames or electric arcs does not wear clothing that, when exposed to flames or electric arcs, could increase the extent of injury that would be sustained by the employee.~~

Note: Clothing made from the following types of fabrics, either alone or in blends, is prohibited by this subsection, unless the employer can demonstrate that the fabric has been treated to withstand the conditions that may be encountered or that the clothing is worn in such a manner as to eliminate the hazard involved: Acetate, nylon, polyester, rayon.

~~(d))~~ Workers shall wear clothing appropriate to the season and the kind of work being performed. Shirts or jumpers must have full length sleeves that are rolled down. Protective hard hats and eye protection shall be worn when working on or near live parts or while climbing poles.

(13) Protection from flames and electric arcs.

(a) The employer shall assess the workplace to identify employees exposed to hazards from flames or from electric arcs.

(b) For each employee exposed to hazards from electric arcs, the employer shall make a reasonable estimate of the incident heat energy to which the employee would be exposed.

Notes: • Appendix D of this chapter provides guidance on estimating available heat energy. The department will deem employers following the guidance in Appendix D to be in compliance with (b) of this subsection. An employer may choose a method of calculating incident heat energy not included in Appendix D if the chosen method reasonably predicts the incident energy to which the employee would be exposed.  
 • This subsection does not require the employer to estimate the incident heat energy exposure for every job task performed by each employee. The employer may make broad estimates that cover multiple system areas provided the employer uses reasonable assumptions about the energy-exposure distribution throughout the system and provided the estimates represent the maximum employee exposure for those areas. For example, the employer could estimate the heat energy just outside a substation feeding a radial distribution system and use that estimate for all jobs performed on that radial system.

(c) The employer shall ensure that each employee who is exposed to hazards from flames or electric arcs does not wear clothing that could melt onto their skin or that could ignite and continue to burn when exposed to flames or the heat energy estimated under (b) of this subsection.

Note: This subsection prohibits clothing made from acetate, nylon, polyester, rayon and polypropylene, either alone or in blends, unless the employer demonstrates that the fabric has been treated to withstand the conditions that may be encountered by the employee or that the employee wears the clothing in such a manner as to eliminate the hazard involved.

(d) The employer shall ensure that the outer layer of clothing worn by an employee, except for clothing not required to be arc rated under (e)(i) through (v) of this subsection, is flame resistant under any of the following conditions:

(i) The employee is exposed to contact with energized circuit parts operating at more than 600 volts;

(ii) An electric arc could ignite flammable material in the work area that, in turn, could ignite the employee's clothing;

(iii) Molten metal or electric arcs from faulted conductors in the work area could ignite the employee's clothing; or

Note: This subsection does not apply to conductors that are capable of carrying, without failure, the maximum available fault current for the time the circuit protective devices take to interrupt the fault.

(iv) The incident heat energy estimated under (b) of this subsection exceeds 2.0 cal/cm<sup>2</sup>.

(e) The employer shall ensure that each employee exposed to hazards from electric arcs wears protective clothing and other protective equipment with an arc rating greater than or equal to the heat energy estimated under (b) of this subsection whenever that estimate exceeds 2.0 cal/cm<sup>2</sup>. This protective equipment shall cover the employee's entire body, except as follows:

(i) Arc-rated protection is not necessary for the employee's hands when the employee is wearing rubber insulating gloves with protectors or, if the estimated incident energy is no more than 14 cal/cm<sup>2</sup>, heavy-duty leather work gloves with a weight of at least 407 gm/m<sup>2</sup>(12 oz/yd<sup>2</sup>);

(ii) Arc-rated protection is not necessary for the employee's feet when the employee is wearing heavy-duty work shoes or boots;

(iii) Arc-rated protection is not necessary for the employee's head when the employee is wearing head protection meeting WAC 296-800-16055 if the estimated incident energy is less than 9 cal/cm<sup>2</sup> for exposures involving single-phase arcs in open air or 5 cal/cm<sup>2</sup> for other exposures;

(iv) The protection for the employee's head may consist of head protection meeting WAC 296-800-16055 and a face shield with a minimum arc rating of 8 cal/cm<sup>2</sup> if the estimated incident-energy exposure is less than 13 cal/cm<sup>2</sup> for exposures involving single-phase arcs in open air or 9 cal/cm<sup>2</sup> for other exposures; and

(v) For exposures involving singlephase arcs in open air, the arc rating for the employee's head and face protection may be 4 cal/cm<sup>2</sup> less than the estimated incident energy.

Note: See Appendix D of this chapter for further information on the selection of appropriate protection.

(14) Fuse handling. When fuses must be installed or removed with one or both terminals energized at more than 300 volts or with exposed parts energized at more than 50 volts, the employer shall ensure that tools or gloves rated for the voltage are used. When expulsion-type fuses are installed with one or both terminals energized at more than 300 volts, the employer shall ensure that each employee wears eye protection meeting the requirements of WAC 296-45-25505(1), uses a tool rated for the voltage, and is clear of the exhaust path of the fuse barrel.

((14)) (15) Covered (noninsulated) conductors. The requirements of this section which pertain to the hazards of exposed live parts also apply when work is performed in the proximity of covered (noninsulated) wires.

((15)) (16) Noncurrent-carrying metal parts. Noncurrent-carrying metal parts of equipment or devices, such as transformer cases and circuit breaker housings, shall be treated as energized at the highest voltage to which they are exposed, unless the employer inspects the installation and determines that these parts are grounded before work is performed.

((16)) (17) Opening circuits under load. Devices used to open circuits under load conditions shall be designed to interrupt the current involved.

((Table 1: AC Live-Work Minimum Approach Distance

Voltage in kilovolts phase-to-phase*	Distance-to-employee			
	Phase-to-ground		Phase-to-Phase	
	(m)	(ft-in)	(m)	(ft-in)
0 to 0.050	not specified		not specified	
0.051 to 0.300	avoid contact		avoid contact	
0.301 to 0.750	0.31	1-0	0.31	1-0
0.751 to 15	0.65	2-2	0.67	2-3
15.1 to 36.0	0.77	2-7	0.86	2-10
36.1 to 46.0	0.84	2-9	0.96	3-2
46.1 to 72.5	1.00**	3-3**	1.20	3-11
72.6 to 121	0.95**	3-2**	1.29	4-3
138 to 145	1.09	3-7	1.50	4-11
161 to 169	1.22	4-0	1.71	5-8
230 to 242	1.59	5-3	2.27	7-6
345 to 362	2.59	8-6	3.80	12-6

500 to 550	3.42	11-3	5.50	18-1
765 to 800	4.53	14-11	7.91	26-0

\*For single phase systems, use the highest voltage available.

For single phase lines off three phase systems, use the phase to phase voltage of the system.

\*\*The 46.1 to 72.5 kV phase-to-ground 3-3 distance contains a 1-3 electrical component and a 2-0 inadvertent movement component while the 72.6 to 121 kV phase-to-ground 3-2 distance contains a 2-2 electrical component and a 1-0 inadvertent movement component.

- Note 1: These distances take into consideration the highest switching surge an employee will be exposed to on any system with air as the insulating medium and the maximum voltages shown.
- Note 2: The clear live-line tool distance shall equal or exceed the values for the indicated voltage ranges.
- Note 3: See Appendix B to this section for information on how the minimum approach distances listed in the tables were derived.)

AMENDATORY SECTION (Amending WSR 98-07-009, filed 3/6/98, effective 5/6/98)

**WAC 296-45-335 Deenergizing lines and equipment for employee protection.** (1) Application. This section applies to the deenergizing of transmission and distribution lines and equipment for the purpose of protecting employees. Control of hazardous energy sources used in the generation of electric energy is covered in WAC 296-45-175. Conductors and parts of electric equipment that have been deenergized under procedures other than those required by WAC 296-45-175 or 296-45-335, as applicable, shall be treated as energized.

(2) "General."

(a) If a system operator is in charge of the lines or equipment and their means of disconnection, all of the requirements of subsection (3) of this section shall be observed, in the order given.

(b) If no system operator is in charge of the lines or equipment and their means of disconnection, one employee in the crew shall be designated as being in charge of the clearance. All of the requirements of subsection (3) of this section apply, in the order given, except as provided in subsection (2)(c) of this section. The employee in charge of the clearance shall take the place of the system operator, as necessary.

(c) If only one crew will be working on the lines or equipment and if the means of disconnection is accessible and visible to and under the sole control of the employee in charge of the clearance, subsection (3)(a), (c), and (d) of this section do not apply. Additionally, tags required by the remaining provisions of subsection (3) of this section need not be used.

(d) Any disconnecting means that are accessible to persons outside the employer's control (for example, the general public) shall be rendered inoperable while they are open for the purpose of protecting employees.

(3) Deenergizing lines and equipment.

(a) In all cases, switching orders must be given directly to the employees in charge of operating the switches by the system operator who has jurisdiction and such communications must be repeated back word for word to the speaker. When requesting clearance on lines under the control of the system operator, a person requesting the clearance shall

obtain the name of the system operator to whom the request was made and the system operator shall obtain the name of the person requesting the clearance; and assure that the person is qualified to receive such a clearance. A ~~((designated))~~ qualified electrical employee shall make a request of the system operator to have the particular section of line or equipment deenergized. The ~~((designated))~~ qualified electrical employee becomes the employee in charge (as this term is used in subsection (2)(b) of this section) and is responsible for the clearance. In giving a clearance, the system operator shall make certain that the person to whom the clearance is given is fully aware of the extent or the limits of the clearance.

(b) All switches, disconnectors, jumpers, taps, and other means through which known sources of electric energy may be supplied to the particular lines and equipment to be deenergized shall be opened. Such means shall be rendered inoperable, unless its design does not so permit, and tagged to indicate that employees are at work.

(c) Automatically and remotely controlled switches that could cause the opened disconnecting means to close shall also be tagged at the point of control. The automatic or remote control feature shall be rendered inoperable, unless its design does not so permit.

(d) Tags shall prohibit operation of the disconnecting means and shall indicate that employees are at work.

(e) After the applicable requirements in subsection (3)(a) through (d) of this section have been followed and the employee in charge of the work has been given a clearance by the system operator, the lines and equipment to be worked shall be tested to ensure that they are deenergized.

(4) The system operator shall order clearance tags printed on red cardboard, or equivalent, not less than 2-1/4 inches by 4-1/2 inches, attached to all switches opened or checked open to provide clearance on any line or equipment for employees to work thereon.

(5) Clearance tags attached to substation control devices and to line switches beyond the switchyard of any substation; indicating the limits of the clearance involved; shall state the designation of the switch opened or checked open and tagged; the name of the person to whom the clearance is to be issued; the date and time the switch was opened or checked open; the name of the dispatcher ordering the switching and tagging; and the name of the person doing the switching and tagging.

(6) Protective grounds shall be installed as required by WAC 296-45-345.

(7) After the applicable requirements of subsection (3)(a) through (d) of this section have been followed, the lines and equipment involved may be worked as deenergized.

(8) If two or more independent crews will be working on the same lines or equipment, each crew shall independently comply with the requirements in subsection (3) of this section.

(9) To transfer the clearance, the employee in charge (or, if the employee in charge is forced to leave the worksite due to illness or other emergency, the employee's supervisor) shall inform the system operator; employees in the crew shall be informed of the transfer; and the new employee in charge shall be responsible for the clearance.

(10) To release a clearance, the employee in charge shall:

- (a) Notify employees under his or her direction that the clearance is to be released;
- (b) Determine that all employees in the crew are clear of the lines and equipment;
- (c) Determine that all protective grounds installed by the crew have been removed; and
- (d) Report this information to the system operator and release the clearance.

(11) The person releasing a clearance shall be the same person that requested the clearance, unless responsibility has been transferred under subsection (9) of this section.

(12) Tags may not be removed unless the associated clearance has been released under subsection (10) of this section.

(13) Only after all protective grounds have been removed, after all crews working on the lines or equipment have released their clearances, after all employees are clear of the lines and equipment, and after all protective tags have been removed from a given point of disconnection, may action be initiated to reenergize the lines or equipment at that point of disconnection.

(14) To meet unforeseen conditions, it will be permissible to tag isolated switches for the system operator and issue clearances against this tag. In tagging out inter-utility tie lines, the open switches on the foreign end of the line shall be tagged for the foreign system operator requesting the outage who will issue clearances to individuals of the organization against this tag.

(15) Network protectors. The employer need not use the tags mentioned in subsection (3)(d) and (e) of this section on a network protector for work on the primary feeder for the network protector's associated network transformer when the employer can demonstrate all of the following conditions:

(a) Every network protector is maintained so that it will immediately trip open if closed when a primary conductor is deenergized;

(b) Employees cannot manually place any network protector in a closed position without the use of tools, and any manual override position is blocked, locked, or otherwise disabled; and

(c) The employer has procedures for manually overriding any network protector that incorporate provisions for determining, before anyone places a network protector in a closed position, that: The line connected to the network protector is not deenergized for the protection of any employee working on the line; and (if the line connected to the network protector is not deenergized for the protection of any employee working on the line) the primary conductors for the network protector are energized.

(16) Metal-clad, draw-out switchgear of over 600 volts in which the physical separation of the disconnecting parts is not visible may be used to clear a line or equipment, provided the switchgear is equipped with:

- (a) A positive positioning means to insure that the disconnecting contacts are separated;
- (b) An isolating shutter which moves into place between the separated contact for circuit isolation; and
- (c) A mechanically(--) connected indicating means to show that the shutter is in place.

~~((16))~~ (17) In all other cases, only a visible break of all phases shall be regarded as clearing a line or equipment.

~~((17))~~ (18) No person shall make contact with a circuit or equipment that has not been taken out of service to be worked on until ~~(he/she has)~~ they have the circuit or equipment cleared and tagged for themselves or is working directly under the supervision of one who has the circuit or equipment cleared and tagged for themselves.

AMENDATORY SECTION (Amending WSR 98-07-009, filed 3/6/98, effective 5/6/98)

**WAC 296-45-345 Grounding for the protection of employees.** (1) Application. This section applies to the grounding of transmission and distribution lines and equipment for the purpose of protecting employees. Subsection (4) of this section also applies to the protective grounding of other equipment as required elsewhere in this section.

(2) General. For the employee to work lines or equipment as deenergized, the lines or equipment shall be deenergized under the provisions of WAC 296-45-335 and shall be grounded as specified in subsections (3) through (9) of this section. However, if the employer can demonstrate that installation of a ground is impracticable or that the conditions resulting from the installation of a ground would present greater hazards than working without grounds, the lines and equipment may be treated as deenergized provided all of the following conditions are met:

(a) The lines and equipment have been deenergized under the provisions of WAC 296-45-335.

(b) There is no possibility of contact with another energized source.

(c) The hazard of induced voltage is not present.

(3) Equipotential zone. Temporary protective grounds and bonding jumpers shall be placed at such locations and arranged in such a manner as to prevent each employee from being exposed to hazardous differences in electrical potential.

Note: This may require bonding equipment together.

(4) Protective grounding equipment.

(a) Protective grounding equipment shall be capable of conducting the maximum fault current that could flow at the point of grounding for the time necessary to clear the fault. This equipment shall have an ampacity greater than or equal to that of No. 2 AWG copper.

(b) Grounding jumpers shall have approved ferrules and grounding clamps that provide mechanical support for jumper cables independent of the electrical connection.

Note: Guidelines for protective grounding equipment are contained in American Society for Testing and Materials Standard Specifications for Temporary Grounding Systems to be Used on Deenergized Electric Power Lines and Equipment, ASTM ~~(F855-1990))~~ F855-2015.

(c) Protective grounds shall have an impedance low enough to cause immediate operation of protective devices in case of accidental energizing of the lines or equipment.

(5) Testing. Before any ground is installed, lines and equipment shall be tested and found absent of nominal voltage, unless a previously installed ground is present.

(a) Inspection before use: Grounding equipment shall be given a visual inspection and all mechanical connections shall be checked for tightness before each use.

(b) Ground surface cleaning: The surface to which the ground is to be attached shall be clean before the grounding clamp is installed; otherwise, a self-cleaning clamp shall be used.

(6) Order of connection. ~~((When a ground is to be attached to a line or to equipment, the ground end connection shall be attached first, and then the other end shall be attached by means of a live-line tool.))~~ The employer shall ensure that, when an employee attaches a ground to a line or to equipment, the employee attaches the ground-end connection first and then attaches the other end by means of a live-line tool. For lines or equipment operating at 600 volts or less, the employer may permit the employee to use insulating equipment other than a live-line tool if the employer ensures that the line or equipment is not energized at the time the ground is connected or if the employer can demonstrate that each employee is protected from hazards that may develop if the line or equipment is energized.

(7) "Order of removal." When a ground is to be removed, the grounding device shall be removed from the line or equipment using a live-line tool before the ground-end connection is removed.

(8) "Additional precautions." When work is performed on a cable at a location remote from the cable terminal, the cable may not be grounded at the cable terminal if there is a possibility of hazardous transfer of potential should a fault occur.

(9) Removal of grounds for test. Grounds may be removed temporarily during tests. During the test procedure, the employer shall ensure that each employee uses insulating equipment and is isolated from any hazards involved, and the employer shall institute any additional measures as may be necessary to protect each exposed employee in case the previously grounded lines and equipment become energized.

(10) Conductor separation: In cases where the conductor separation at any pole or structure is so great as to make it impractical to apply shorts on all conductors, and where only one conductor is to be worked on, only that conductor which is to be worked on needs to be grounded.

(11) Ground personnel: In cases where ground rods or pole grounds are utilized for personal protective grounding, personnel working on the ground should maintain sufficient distance from such equipment or utilize other approved procedures designed to prevent "touch-and step potential" hazards.

Note: See ~~((the Appendix for tables))~~ Appendix B of this chapter for protection from step and touch potentials.

AMENDATORY SECTION (Amending WSR 98-07-009, filed 3/6/98, effective 5/6/98)

**WAC 296-45-355 Underground grounding.** (1) Grounding. A capacitance charge can remain in the high voltage cables after it has been disconnected from the circuit and a static-type arc can occur when grounds are applied to such cables.

(2) When work is to be done on cables or equipment of a high-voltage underground system, precautions to prevent back-feed shall be taken. This shall include either isolating or grounding of the secondary conductors.

(3) After grounding the cable, if the worker is to work on cable between terminations, ~~((he/she))~~ they must first spike the cable or use other approved methods of testing. If the cable is to be cut, it shall be cut only with approved hot cutters.

(4) Additional precautions. When work is performed on a cable at a location remote from the cable terminal, the cable may not be grounded at the cable terminal if there is a possibility of hazardous transfer of potential should a fault occur.

AMENDATORY SECTION (Amending WSR 98-07-009, filed 3/6/98, effective 5/6/98)

**WAC 296-45-365 Testing and test facilities.** (1) Application. This section provides for safe work practices for high-voltage and high-power testing performed in laboratories, shops, and substations, and in the field and on electric transmission and distribution lines and equipment. It applies only to testing involving interim measurements utilizing high voltage, high power, or combinations of both, and not to testing involving continuous measurements as in routine metering, relaying, and normal line work.

Note: Routine inspection and maintenance measurements made by qualified electrical employees are considered to be routine line work and are not included in the scope of this section, as long as the hazards related to the use of intrinsic high-voltage or high-power sources require only the normal precautions associated with routine operation and maintenance work required in the other subsections of this section. Two typical examples of such excluded test work procedures are "phasing-out" testing and testing for a "no-voltage" condition.

(2) General requirements.

(a) The employer shall establish and enforce work practices for the protection of each worker from the hazards of high-voltage or high-power testing at all test areas, temporary and permanent. Such work practices shall include, as a minimum, test area guarding, grounding, and the safe use of measuring and control circuits. A means providing for periodic safety checks of field test areas shall also be included.

(b) Employees shall be trained in safe work practices upon their initial assignment to the test area, with periodic reviews and updates provided as required by subsections of this section.

(3) Guarding of test areas.

(a) Permanent test areas shall be guarded by walls, fences, or barriers designed to keep employees out of the test areas.

(b) In field testing, or at a temporary test site where permanent fences and gates are not provided, one of the following means shall be used to prevent unauthorized employees from entering:

(i) The test area shall be guarded by the use of distinctively colored safety tape that is supported approximately waist high and to which safety signs are attached;

(ii) The test area shall be guarded by a barrier or barricade that limits access to the test area to a degree equivalent,

physically and visually, to the barricade specified in this section; or

(iii) The test area shall be guarded by one or more test observers stationed so that the entire area can be monitored.

(c) The barriers required by this section shall be removed when the protection they provide is no longer needed.

(d) Guarding shall be provided within test areas to control access to test equipment or to apparatus under test that may become energized as part of the testing by either direct or inductive coupling, in order to prevent accidental employee contact with energized parts.

(4) Grounding practices.

(a) The employer shall establish and implement safe grounding practices for the test facility.

(i) All conductive parts accessible to the test operator during the time the equipment is operating at high voltage shall be maintained at ground potential except for portions of the equipment that are isolated from the test operator by guarding.

(ii) Wherever ungrounded terminals of test equipment or apparatus under test may be present, they shall be treated as energized until determined by tests to be deenergized.

(b) Visible grounds shall be applied, either automatically or manually with properly insulated tools, to the high-voltage circuits after they are deenergized and before work is performed on the circuit or item or apparatus under test. Common ground connections shall be solidly connected to the test equipment and the apparatus under test.

(c) In high-power testing, an isolated ground-return conductor system shall be provided so that no intentional passage of current, with its attendant voltage rise, can occur in the ground grid or in the earth. However, an isolated ground-return conductor need not be provided if the employer can demonstrate that both the following conditions are met:

(i) An isolated ground-return conductor cannot be provided due to the distance of the test site from the electric energy source; and

(ii) Employees are protected from any hazardous step and touch potentials that may develop during the test.

Note: See Appendix B of this chapter for information on measures that can be taken to protect employees from hazardous step and touch potentials.

(d) In tests in which grounding of test equipment by means of the equipment grounding conductor located in the equipment power cord cannot be used due to increased hazards to test personnel or the prevention of satisfactory measurements, a ground that the employer can demonstrate affords equivalent safety shall be provided, and the safety ground shall be clearly indicated in the test set up.

(e) When the test area is entered after equipment is deenergized, a ground shall be placed on the high-voltage terminal and any other exposed terminals.

(i) High capacitance equipment or apparatus shall be discharged through a resistor rated for the available energy.

(ii) A direct ground shall be applied to the exposed terminals when the stored energy drops to a level at which it is safe to do so.

(f) If a test trailer or test vehicle is used in field testing, its chassis shall be grounded. Protection against hazardous touch potentials with respect to the vehicle, instrument pan-

els, and other conductive parts accessible to employees shall be provided by bonding, insulation, or isolation.

(5) Control and measuring circuits.

(a) Control wiring, meter connections, test leads and cables may not be run from a test area unless they are contained in a grounded metallic sheath and terminated in a grounded metallic enclosure or unless other precautions are taken that the employer can demonstrate as ensuring equivalent safety.

(b) Meters and other instruments with accessible terminals or parts shall be isolated from test personnel to protect against hazards arising from such terminals and parts becoming energized during testing. If this isolation is provided by locating test equipment in metal compartments with viewing windows, interlocks shall be provided to interrupt the power supply if the compartment cover is opened.

(c) The routing and connections of temporary wiring shall be made secure against damage, accidental interruptions and other hazards. To the maximum extent possible, signal, control, ground, and power cables shall be kept separate.

(d) If employees will be present in the test area during testing, a test observer shall be present. The test observer shall be capable of implementing the immediate deenergizing of test circuits for safety purposes.

(6) Safety check.

(a) Safety practices governing employee work at temporary or field test areas shall provide for a routine check of such test areas for safety at the beginning of each series of tests.

(b) The test operator in charge shall conduct these routine safety checks before each series of tests and shall verify at least the following conditions:

(i) That barriers and guards are in workable condition and are properly placed to isolate hazardous areas;

(ii) That system test status signals, if used, are in operable condition;

(iii) That test power disconnects are clearly marked and readily available in an emergency;

(iv) That ground connections are clearly identifiable;

(v) That personal protective equipment is provided and used;

(vi) That signal, ground, and power cables are properly separated.

**AMENDATORY SECTION** (Amending WSR 98-07-009, filed 3/6/98, effective 5/6/98)

**WAC 296-45-375 Mechanical equipment, including aerial manlift equipment.** (1) General requirements.

(a) Other applicable requirements. Mechanical equipment shall be operated in accordance with applicable requirements in other chapters, including chapter 296-155 WAC, Parts L, M, and R, and chapter 296-869 WAC, except that WAC 296-155-605 (1)(h) and 296-155-77100 (1)(h) do not apply to operations performed by qualified electrical employees.

(b) The critical safety components of mechanical elevating and rotating equipment shall receive a thorough visual inspection and operational test before use on each shift.

Note: Critical safety components of mechanical elevating and rotating equipment are components whose failure would result in a free fall or free rotation of the boom.

~~((b))~~ (c) No vehicular equipment having an obstructed view to the rear may be operated on off-highway job sites where any employee is exposed to the hazards created by the moving vehicle, unless:

(i) The vehicle has a reverse signal alarm audible above the surrounding noise level; or

(ii) The vehicle is backed up only when a designated employee signals that it is safe to do so.

~~((e))~~ (d) The operator of an electric line truck may not leave ~~(his or her)~~ their position at the controls while a load is suspended, unless the employer can demonstrate that no employee (including the operator) might be endangered.

~~((f))~~ (e) Rubber-tired, self-propelled scrapers, rubber-tired front-end loaders, rubber-tired dozers, wheel-type agricultural and industrial tractors, crawler-type tractors, crawler-type loaders, and motor graders, with or without attachments, shall have rollover protective structures that meet the requirements of chapter 296-155 WAC, Part V.

(2) Outriggers.

(a) Vehicular equipment, if provided with outriggers, shall be operated with the outriggers extended and firmly set as necessary for the stability of the specific configuration of the equipment. Outriggers may not be extended or retracted outside of clear view of the operator unless all employees are outside the range of possible equipment motion.

(b) If the work area or the terrain precludes the use of outriggers, the equipment may be operated only within its maximum load ratings for the particular configuration of the equipment without outriggers.

(3) Applied loads. Mechanical equipment used to lift or move lines or other material shall be used within its maximum load rating and other design limitations for the conditions under which the work is being performed.

(4) Hydraulic fluids. All hydraulic fluids used for the insulated section of derrick trucks, aerial lifts, and hydraulic tools which are used on or around energized lines or equipment shall be of the insulating type.

(5) Mechanical adjustment or repairs shall not be attempted or performed in the field except by a person qualified to perform such work.

(6) Malfunction or needed repairs of manlift equipment shall be reported to the employee responsible for such repairs as soon as is reasonably possible. Use of equipment which is known to be in need of repairs or is malfunctioning is prohibited when such deficiency creates an unsafe operating condition.

(7) When any aerial manlift equipment is parked for operation at the job site, the brakes shall be set. Wheel chocks shall be used to prevent accidental movement while parked on an incline.

(8) Employees shall not sit or stand on the basket edge, stand on materials placed in or across the basket, or work from a ladder set inside the basket.

(9) The basket shall not be rested on a fixed object(s) so that the weight of the boom is either totally or partially supported by the basket.

(10) Operations near energized lines or equipment.

(a) Mechanical equipment shall be operated so that the minimum approach distances of Table ~~((1 through 4))~~ 2, located in WAC 296-45-325, are maintained from exposed energized lines and equipment. However, the insulated upper portion excluding the basket/bucket of an aerial lift operated by a qualified electrical employee in the lift is exempt from this requirement.

(b) A designated employee other than the equipment operator shall observe the approach distance to exposed lines and equipment and give timely warnings before the minimum approach distance required by subsection (10)(a) of this section is reached, unless the employer can demonstrate that the operator can accurately determine that the minimum approach distance is being maintained.

(c) If, during operation of the mechanical equipment, the equipment could become energized, the operation shall also comply with at least one of the following:

(i) The energized lines exposed to contact shall be covered with insulating protective material that will withstand the type of contact that might be made during the operation.

(ii) The equipment shall be insulated for the voltage involved. The equipment shall be positioned so that its uninsulated portions cannot approach the lines or equipment any closer than the minimum approach distances specified in Table ~~((1 through 4))~~ 2, located in WAC 296-45-325.

(iii) Each employee shall be protected from hazards that might arise from equipment contact with the energized lines. The measures used shall ensure that employees will not be exposed to hazardous differences in potential. Unless the employer can demonstrate that the methods in use protect each employee from the hazards that might arise if the equipment contacts the energized line, the measures used shall include all of the following techniques:

(A) Using the best available ground to minimize the time the lines remain energized;

(B) Bonding mechanical equipment together to minimize potential differences;

(C) Providing ground mats to extend areas of equipotential; and

(D) Employing insulating protective equipment or barricades to guard against any remaining hazardous potential differences.

Note: Appendix B of this chapter contains information on hazardous step and touch potentials and on methods of protecting employees from hazards resulting from such potentials.

(11) While working in aerial equipment, employees shall wear a full body harness and a lanyard attached to the boom or basket, in a secure manner.

(12) No component of aerial devices shall be operated from the ground without permission from the employee in the basket except in case of emergency.

(13) Operating levers or controls shall be kept clear of tools, materials or obstructions.

(14) Employees shall not climb into or out of the basket or platform while it is elevated or change from one basket to another on dual basket equipment, except in case of emergency or when the employees involved agree that this is the safest way to perform the work. This exception shall not be used to circumvent safety rules.



(15) Existing safety rules governing the use of hot line tools, rubber and other protective equipment and safe work practices while performing work from poles or structures shall also apply to work done from aerial manlift equipment.

(16) The basket shall be kept clean and all tools not in use shall be secured or removed.

(17) Approved warning light shall be operating when the boom leaves the cradle. This light shall be visible to approaching traffic when the boom is in position over any traveled area.

(18) All aerial manlift equipment shall have both upper and lower controls (except ladder trucks need not have upper controls). The upper controls shall not be capable of rendering the lower controls inoperative. The lower controls should be located at or near the base of the aerial structure. If the lower controls are used, the operator shall have a view of the elevated employee(s) or there shall be communication between the operator and the employee in the elevated aerial structure: Provided, That no employee shall be raised, lowered, or moved into or from the elevated position in any aerial manlift equipment unless there is another employee, not in the elevated aerial structure, available at the site to operate the lower controls, except as follows:

(a) Where there is a fixed method permanently attached to or part of the equipment which will permit an employee to descend from the elevated position without lowering the elevated structure; or

(b) Where there is a system which will provide operation from the elevated position in the event of failure or malfunction of the primary system.

Note: This section shall not be interpreted as an exception to any other rule in this chapter.

(19) Controls in aerial manlift equipment shall be protected from accidental operation. Controls of the outriggers shall also be protected from accidental operation. Such protection may be by guarding or equivalent means.

(20) The manufacturer's recommended maximum load limit shall be posted at a conspicuous place near each set of controls and shall be kept in a legible condition.

(21) The manufacturer's operator's instructional manual shall be kept on the vehicle.

(22) Operating instructions, proper sequence and maintenance procedures prescribed by the manufacturer for operation of the equipment shall be followed.

**AMENDATORY SECTION** (Amending WSR 05-17-038, filed 8/9/05, effective 10/1/05)

**WAC 296-45-385 Overhead lines.** This section provides additional requirements for work performed on or near overhead lines and equipment.

(1) General.

(a) Before elevated structures and adjacent structures, such as poles or towers of the adjacent supporting poles, structures, and conductor supporting hardware, are subjected to such stresses as climbing or the installation or removal of equipment may impose, the employer shall ascertain that the structures are capable of sustaining the additional or unbalanced stresses. If the pole or other structure cannot withstand

the loads which will be imposed, it shall be braced or otherwise supported so as to prevent failure.

Note: Appendix C of this chapter contains test methods that can be used in ascertaining whether a wood pole is capable of sustaining the forces that would be imposed by an employee climbing the pole. This ((paragraph)) section also requires the employer to ascertain that the pole can sustain all other forces that will be imposed by the work to be performed.

(b) When poles are set, moved, or removed near exposed energized overhead conductors, the pole may not contact the conductors.

(c) When a pole is set, moved, or removed near an exposed energized overhead conductor, the employer shall ensure that each employee wears electrical protective equipment or uses insulated devices when handling the pole and that no employee contacts the pole with uninsulated parts of ((his or her)) their body.

(d) To protect employees from falling into holes into which poles are to be placed, the holes shall be attended by employees or physically guarded whenever anyone is working nearby.

(2) Installing and removing overhead lines. The following provisions apply to the installation and removal of overhead conductors or cable.

(a) The employer shall use the tension stringing method, barriers, or other equivalent measures to minimize the possibility that conductors and cables being installed or removed will contact energized power lines or equipment.

(b) When conductors are being strung in or removed, they shall be kept under positive control to prevent accidental contact with energized circuit.

(c) The protective measures required by WAC 296-45-375 (10)(c) for mechanical equipment shall also be provided for conductors, cables, and pulling and tensioning equipment when the conductor or cable is being installed or removed close enough to energized conductors that any of the following failures could energize the pulling or tensioning equipment or the wire or cable being installed or removed:

(i) Failure of the pulling or tensioning equipment;

(ii) Failure of the wire or cable being pulled; or

(iii) Failure of the previously installed lines or equipment.

(d) When conductors being installed or removed cross over energized conductors in excess of 600 volts, rope nets or guard structures must be installed unless provision is made to isolate or insulate the worker or the energized conductor. Where the design of the circuit-interrupting devices protecting the lines so permits, the automatic-reclosing feature of these devices must be made inoperative. In addition, the line being strung must be grounded on either side of the crossover or grounded and worked as energized.

(e) Before lines are installed parallel to existing energized lines, the employer shall make a determination of the approximate voltage to be induced in the new lines, or work shall proceed on the assumption that the induced voltage is hazardous. Unless the employer can demonstrate that the lines being installed are not subject to the induction of a hazardous voltage or unless the lines are treated as energized, ((the following requirements also apply:

(i) ~~Each bare conductor shall be grounded in increments so that no point along the conductor is more than 2 miles (3.22 km) from a ground.~~

(ii) ~~The grounds required in subsection (2)(c)(i) of this section shall be left in place until the conductor installation is completed between dead ends.~~

(iii) ~~The grounds required in subsection (2)(c)(i) of this section shall be removed as the last phase of aerial cleanup.~~

(iv) ~~If employees are working on bare conductors, grounds shall also be installed at each location where these employees are working, and grounds shall be installed at all open dead end or catch off points or the next adjacent structure.~~

(v) ~~If two bare conductors are to be spliced, the conductors shall be bonded and grounded before being spliced.)~~ temporary protective grounds shall be placed at such locations and arranged in such a manner that the employer can demonstrate will prevent exposure of each employee to hazardous differences in electric potential.

Notes: • If the employer takes no precautions to protect employees from hazards associated with involuntary reactions from electric shock, a hazard exists if the induced voltage is sufficient to pass a current of 1 milliampere through a 500-ohm resistor. If the employer protects employees from injury due to involuntary reactions from electric shock, a hazard exists if the resultant current would be more than 6 milliamperes.  
• Appendix B of this chapter contains guidelines for protecting employees from hazardous differences in electric potential as required by this section.

(f) Reel handling equipment, including pulling and tensioning devices, shall be in safe operating condition and shall be leveled and aligned.

(g) Load ratings of stringing lines, pulling lines, conductor grips, load-bearing hardware and accessories, rigging, and hoists may not be exceeded.

(h) Each pull must be snubbed or dead ended at both ends before subsequent pulls.

(3) Pulling lines and accessories shall be inspected prior to each use and replaced or repaired when damaged or when there is a reasonable basis to doubt the dependability of such lines or accessories.

(4) Conductor grips may not be used on wire rope, unless the grip is specifically designed for this application.

(5) Reliable communications, through two-way radios or other equivalent means, shall be maintained between the reel tender and the pulling rig operator.

(6) The pulling rig may only be operated when it is safe to do so.

Note: Examples of unsafe conditions include employees in locations prohibited by subsection (7) of this section, conductor and pulling line hang-ups, and slipping of the conductor grip.

(7) While the conductor or pulling line is being pulled (in motion) with a power-driven device, employees are not permitted directly under overhead operations or on the cross arm, except as necessary to guide the stringing sock or board over or through the stringing sheave.

(8) Live-line bare-hand work is prohibited.

(9) When winches, trucks, or tractors are being used to raise poles, materials, to pull in wires, to pull slack or in any

other operation, there shall be an operator at the controls unless the machinery or process is stopped.

(10) Leadworkers shall designate an employee to give signals when required.

(11) Raising poles, towers or fixtures in the close proximity of high voltage conductors shall be done under the supervision of a qualified electrical employee.

(12) Employees shall not crawl over insulator strings but shall use a platform or other approved device to work from when making dead ends or doing other work beyond strings of insulators, at such distance that they cannot reach the work from the pole or fixture. While working on the platform or other device, they shall be secured with safety straps or a rope to prevent falling. The provision of this subsection does not apply to extra high voltage bundle conductors when the use of such equipment may produce additional hazard. Climbing over dead end assemblies is permissible only after they have been completed and pinned in the final position.

(13) Towers and structures. The following requirements apply to work performed on towers or other structures which support overhead lines.

(a) The employer shall ensure that no employee is under a tower or structure while work is in progress, except where the employer can demonstrate that such a working position is necessary to assist employees working above.

(b) Tag lines or other similar devices shall be used to maintain control of tower sections being raised or positioned, unless the employer can demonstrate that the use of such devices would create a greater hazard.

(c) The loadline may not be detached from a member or section until the load is safely secured.

(d) No one (~~must~~) shall be permitted to remain in the footing while equipment is being spotted for placement.

(e) A designated employee must be utilized to determine that required clearance is maintained in moving equipment under or near energized lines.

(14) All conductors, subconductors, and overhead ground conductors must be bonded to the tower at any isolated tower where it may be necessary to complete work on the transmission line.

(15) A transmission clipping crew shall have a minimum of two structures clipped in between the crew and the conductor being sagged.

(16) While on patrol at night and operating a motor vehicle on public (~~highways~~) roadways, there shall be two employees, at least one of whom shall be a (~~journey level lineworker or otherwise~~) qualified electrical employee. If repair to line or equipment is found to be of such nature as to require two (~~lineworkers~~) qualified electrical employees, work shall not proceed until additional help has been obtained provided that in cases of emergency where delay would increase the danger to life, limb, or substantial property, one employee may clear the hazard without assistance.

(17) Except during emergency restoration procedures, work shall be discontinued when adverse weather conditions would make the work hazardous in spite of the work practices required by this section.

Note: (C)Thunderstorms in the immediate vicinity, high winds, snow storms, and ice storms are examples of adverse weather conditions that are presumed to make this work too hazardous to perform, except under emergency conditions.

AMENDATORY SECTION (Amending WSR 99-09-080, filed 4/20/99, effective 8/1/99)

**WAC 296-45-455 Line-clearance tree-trimming operations.** This section provides additional requirements for line-clearance tree-trimming operations and for equipment used in these operations.

This section does not apply to qualified electrical employees.

(1) Before an employee climbs, enters, or works around any tree, a determination shall be made of the nominal voltage of electric power lines posing a hazard to employees. However, a determination of the maximum nominal voltage to which an employee will be exposed may be made instead, if all lines are considered as energized at this maximum voltage.

(2) There shall be a second line-clearance tree trimmer within normal (~~((that is))~~), unassisted(~~(( ))~~) voice communication under any of the following conditions:

(a) If a line-clearance tree trimmer is to approach more closely than 10 feet (305 cm) any conductor or electrical apparatus energized at more than 600 volts; or

(b) If branches or limbs being removed are closer to lines energized at more than 600 volts than the distances listed in Table (~~(1, Table 4, and Table 5)) 2, located in WAC 296-45-325; or~~

(c) If roping is necessary to remove branches or limbs (~~(from)) near~~ such conductors or apparatus.

(3) Line-clearance tree trimmers shall maintain the minimum approach distances from energized conductors given in Table (~~(1, Table 4, and Table 5)) 2, located in WAC 296-45-325.~~

(4) Branches that are contacting exposed energized conductors or equipment or that are within the distances specified in Table (~~(1, Table 4, and Table 5)) 2, located in WAC 296-45-325 may be removed only through the use of insulating equipment.~~

Note: A tool constructed of a material that the employer can demonstrate has insulating qualities meeting WAC 296-45-305(1) are considered as insulated under this section if the tool is clean and dry.

(5) Ladders, platforms, and aerial devices may not be brought closer to an energized part than the distances listed in Table (~~(1, Table 4, and Table 5)) 2, located in WAC 296-45-325.~~

(6) Line-clearance tree-trimming work may not be performed when adverse weather conditions make the work hazardous in spite of the work practices required by this section. Each employee performing line-clearance tree-trimming work in the aftermath of a storm or under similar emergency conditions shall be trained in the special hazards related to this type of work.

Note: Thunderstorms in the immediate vicinity, high winds, snow storms, and ice storms are examples of adverse weather conditions that are presumed to make line-clearance tree-trimming work too hazardous to perform safely.

(7) A tree trimmer may climb out of a basket into a tree or from a tree back into the basket so long as he is properly tied into the tree during the entire maneuver and the employer can demonstrate that this is the safest way to perform the work.

AMENDATORY SECTION (Amending WSR 98-07-009, filed 3/6/98, effective 5/6/98)

**WAC 296-45-45505 Brush chippers.** (1) Brush chippers shall be equipped with a locking device in the ignition system.

(2) Access panels for maintenance and adjustment of the chipper blades and associated drive train shall be in place and secure during operation of the equipment. Servicing and maintenance shall be performed according to chapter 296-803 WAC, Lockout/tagout (control of hazardous energy).

(3) Brush chippers not equipped with a mechanical infeed system shall be equipped with an infeed hopper of length sufficient to prevent employees from contacting the blades or knives of the machine during operation.

(4) Trailer chippers detached from trucks shall be chocked or otherwise secured.

(5) Each employee in the immediate area of an operating chipper feed table shall wear personal protective equipment as required by (~~(Subpart 4)) WAC 296-45-25505~~ of this (~~(Part)) chapter.~~

AMENDATORY SECTION (Amending WSR 09-10-077, filed 5/5/09, effective 7/1/09)

**WAC 296-45-475 Substations.** This section provides additional requirements for substations and for work performed in them.

(1) Access and working space. Sufficient access and working space shall be provided and maintained about electric equipment to permit ready and safe operation and maintenance of such equipment.

Note: Guidelines for the dimensions of access and working space about electric equipment in substations are contained in American National Standard-National Electrical Safety Code, ANSI (~~((E-1997)) C2-2012~~. Installations meeting the ANSI provisions comply with WAC 296-45-475(1). An installation that does not conform to this ANSI standard will, nonetheless, be considered as complying with WAC 296-45-475(1) if the employer can demonstrate that the installation provides ready and safe access based on the following evidence:

(a) That the installation conforms to the edition of ANSI C2 that was in effect at the time the installation was made;

(b) That the configuration of the installation enables employees to maintain the minimum approach distances required by WAC 296-45-325(5) while they are working on exposed, energized parts; and

(c) That the precautions taken when work is performed on the installation provide protection equivalent to the protection that would be provided by access and working space meeting ANSI (~~((E-1997)) C2-2012~~.

(d) Precaution must be taken to prevent accidental operation of relays or other protective devices due to jarring, vibration, or improper wiring.

(2) Draw-out-type circuit breakers. When draw-out-type circuit breakers are removed or inserted, the breaker shall be in the open position. The control circuit shall also be rendered inoperative, if the design of the equipment permits.

(3) Substation fences. Conductive fences around substations must be grounded. When a substation fence must be expanded or removed fence continuity must be maintained and bonding must be used to prevent electrical discontinuity. A temporary fence affording similar protection when the site is unattended, must be provided. Adequate interconnection with ground must be maintained between temporary fence and permanent fence.

(4) Guarding of rooms containing electric supply equipment.

(a) Rooms and spaces in which electric supply lines or equipment are installed shall meet the requirements of subsection (4)(b) through (e) of this section under the following conditions:

(i) If exposed live parts operating at 50 to 150 volts to ground are located within 8 feet of the ground or other working surface inside the room or space;

(ii) If live parts operating at 151 to 600 volts and located within 8 feet of the ground or other working surface inside the room or space are guarded only by location, as permitted under subsection (5)(a) of this section; or

(iii) If live parts operating at more than 600 volts are located within the room or space, unless:

(A) The live parts are enclosed within grounded, metal-enclosed equipment whose only openings are designed so that foreign objects inserted in these openings will be deflected from energized parts; or

(B) The live parts are installed at a height above ground and any other working surface that provides protection at the voltage to which they are energized corresponding to the protection provided by an 8-foot height at 50 volts.

(b) The rooms and spaces shall be so enclosed within fences, screens, partitions, or walls as to minimize the possibility that unqualified persons will enter.

(c) Signs warning unqualified persons to keep out shall be displayed at entrances to the rooms and spaces.

(d) Entrances to rooms and spaces that are not under the observation of an attendant shall be kept locked.

(e) Unqualified persons may not enter the rooms or spaces while the electric supply lines or equipment are energized.

(5) Guarding of energized parts.

(a) Guards shall be provided around all live parts operating at more than 150 volts to ground without an insulating covering, unless the location of the live parts gives sufficient horizontal or vertical or a combination of these clearances to minimize the possibility of accidental employee contact.

Note: Guidelines for the dimensions of clearance distances about electric equipment in substations are contained in American National Standard-National Electrical Safety Code, ANSI ((~~C2-1997~~)) C2-2012. Installations meeting the ANSI provisions comply with subsection (5)(a) of this section. An installation that does not conform to this ANSI standard will, nonetheless, be considered as complying with subsection (5)(a) of this section if the employer can demonstrate that the installation provides sufficient clearance based on the following evidence:

(i) That the installation conforms to the edition of ANSI C2 that was in effect at the time the installation was made;

(ii) That each employee is isolated from energized parts at the point of closest approach; and

(iii) That the precautions taken when work is performed on the installation provide protection equivalent to the protection that would be provided by horizontal and vertical clearances meeting ANSI ((~~C2-1997~~)) C2-2012.

(b) Except for fuse replacement and other necessary access by qualified ((~~persons~~)) electrical employees, the guarding of energized parts within a compartment shall be maintained during operation and maintenance functions to prevent accidental contact with energized parts and to prevent tools or other equipment from being dropped on energized parts.

(c) When guards are removed from energized equipment, barriers shall be installed around the work area to prevent employees who are not working on the equipment, but who are in the area, from contacting the exposed live parts.

(6) Substation entry.

(a) Upon entering an attended substation, each employee other than those regularly working in the station shall report his or her presence to the employee in charge in order to receive information on special system conditions affecting employee safety.

(b) The job briefing required by WAC 296-45-135 shall cover such additional subjects as the location of energized equipment in or adjacent to the work area and the limits of any deenergized work area.

(c) Nonqualified persons may only approach exposed energized electrical equipment located in substations or switch yards up to the distances set forth in Table((~~s-1 through 4~~)) 2, located in WAC 296-45-325, when under the direct supervision of a qualified ((~~person~~)) electrical employee acting as a safety watch. The safety watch will make sure that the nonqualified person does not encroach or take conductive objects closer to exposed energized parts than set forth in Table((~~s-1 through 4~~)) 2, located in WAC 296-45-325.

(i) Nonqualified persons must have hazard recognition training and attend a documented tailgate meeting prior to entering the substation.

(ii) The safety watch must be a qualified electrical employee as defined by WAC 296-45-035.

(iii) The safety watch will have the responsibility and authority to monitor work on a continuous basis and/or stop work until the hazard is eliminated or protected.

(iv) The safety watch will maintain a direct line of sight and voice communications with all nonqualified persons under their direct supervision. If the safety watch cannot meet these requirements, additional safety watches must be

assigned or work must be stopped. Each safety watch will monitor no more than four persons.

(v) The safety watch will perform no other duties while acting as a safety watch.

AMENDATORY SECTION (Amending WSR 98-07-009, filed 3/6/98, effective 5/6/98)

**WAC 296-45-48515 Access and working space.** Sufficient access and working space shall be provided and maintained about electric equipment to permit ready and safe operation and maintenance of such equipment.

Note: Guidelines for the dimensions of access and workspace about electric equipment in generating stations are contained in American National Standard-National Electrical Safety Code, ANSI ((~~C2-1997~~) C2-2012). Installations meeting the ANSI provisions comply with this section. An installation that does not conform to this ANSI standard will, nonetheless, be considered as complying with this section if the employer can demonstrate that the installation provides ready and safe access based on the following evidence:

(1) That the installation conforms to the edition of ANSI C2 that was in effect at the time the installation was made;

(2) That the configuration of the installation enables employees to maintain the minimum approach distances required by this section while they work on exposed, energized parts; and

(3) That the precautions taken when work is performed on the installation provide protection equivalent to the protection that would be provided by access and working space meeting ANSI ((~~C2-1997~~) C2-2012).

AMENDATORY SECTION (Amending WSR 98-07-009, filed 3/6/98, effective 5/6/98)

**WAC 296-45-48525 Guarding of energized parts.** (1) Guards shall be provided around all live parts operating at more than 150 volts to ground without an insulating covering, unless the location of the live parts gives sufficient horizontal or vertical or a combination of these clearances to minimize the possibility of accidental employee contact.

Note: Guidelines for the dimensions of clearance distances about electric equipment in generating stations are contained in American National Standard-National Electrical Safety Code, ANSI ((~~C2-1997~~) C2-2012). Installations meeting the ANSI provisions comply with this section. An installation that does not conform to this ANSI standard will, nonetheless, be considered as complying with this section if the employer can demonstrate that the installation provides sufficient clearance based on the following evidence:

(a) That the installation conforms to the edition of ANSI C2 that was in effect at the time the installation was made;

(b) That each employee is isolated from energized parts at the point of closest approach; and

(c) That the precautions taken when work is performed on the installation provide protection equivalent to the protection that would be provided by horizontal and vertical clearances meeting ANSI ((~~C2-1997~~) C2-2012).

(2) Except for fuse replacement or other necessary access by qualified ((~~persons~~) electrical employees), the guarding of energized parts within a compartment shall be

maintained during operation and maintenance functions to prevent accidental contact with energized parts and to prevent tools or other equipment from being dropped on energized parts.

(3) When guards are removed from energized equipment, barriers shall be installed around the work area to prevent employees who are not working on the equipment, but who are in the area, from contacting the exposed live parts.

AMENDATORY SECTION (Amending WSR 98-07-009, filed 3/6/98, effective 5/6/98)

**WAC 296-45-545 Trolley maintenance, jumpering or bypassing.** (1) Energized trolley wire shall be jumpered when it is to be opened or cut.

(2) Reaching over trolley wire(s) or system(s). ((~~Lineworkers~~) Qualified electrical employees) shall not reach over trolley wire(s) unless properly protected by line hose or rubber blanket.

(3) Reaching across sectional insulators. ((~~Lineworkers~~) Qualified electrical employees) shall not reach across section insulator(s), insulated spacer(s) or insulated approach.

(4) Polarity on either side of sectionalizing breakers. Since the polarity on both sides of a sectionalizing insulator may be different, it is required that prior to performance of work, tests be performed with approved testing equipment to determine whether or not the polarity is the same or different on one side of the sectional insulator as compared with the other.

(5) Working on hangers. More than one truck crew shall not work on hangers attached to the same span at the same time, without rubber protection.

(6) Workers on hangers of opposite polarity. Trolley hangers and ears of opposite polarity shall not be worked on at the same time when trolley wire is energized.

(7) Checking electric switches. When electric switches are checked for operation, making it necessary to short circuit the contactor to each trolley wire, tools with insulated handles shall be used.

(8) Short circuit due to use of noninsulated or conductive long handled tools. When a hazard of short circuit exists, due to use of noninsulated or conductive long handled tools, approved protective rubber equipment shall be used as provided in this chapter.

(9) Trolley feeders. When work is to be performed on street railway trolley feeders where it is necessary for workers to work from metal or other grounded poles or fixtures or on poles or fixtures on which grounds are maintained, the feeders shall be deenergized unless the poles or fixtures are insulated before the work is started with approved protective devices in such manner that employees cannot become grounded while working on the feeders, and employees shall wear approved rubber gloves.

(10) Truck driver shall remain at tower controls while workers are working on towers except when the aerial manlift equipment has been properly chocked to prevent uncontrolled movement. Tower trucks shall be equipped with a reliable signaling device between the employees working on the tower and the truck driver.

(11) Working on truck towers. Employees shall not stand on tower gates or railings. Work shall not be done from plank(s) placed on tower railings.

(12) Tower truck railings. Towers shall have standard railings and toeboards around the tower and all railings shall be constructed of wood, fiberglass or other nonmetallic material. All railings shall be a vertical height of not less than 36 inches or more than 42 inches from the floor of the platform to the upper surface of the top rail. Intermediate railings shall be midway between the floor and the underside of the top rail. Tower gates shall be so constructed as to prevent accidental opening.

(13) Tower truck decks shall be kept clear of tools, wire and other materials and tools shall be kept in proper storage area when not in use.

(14) (~~Lineworkers~~) Qualified electrical employees shall not wear climbers or spurs while working on a tower truck.

## NEW SECTION

### **WAC 296-45-902 Appendix A—Working on exposed energized parts—Nonmandatory.**

Note: This appendix is identical to 29 C.F.R. 1910.269 Appendix B, Working on Exposed Energized Parts, however all references to live-line barehand work have been deleted since it is prohibited in Washington state.

#### **I. Introduction**

Electric utilities design electric power generation, transmission, and distribution installations to meet National Electrical Safety Code (NESC), ANSI C2, requirements. Electric utilities also design transmission and distribution lines to limit line outages as required by system reliability criteria<sup>1</sup> and to withstand the maximum overvoltage's impressed on the system. Conditions such as switching surges, faults, and lightning can cause overvoltages. Electric utilities generally select insulator design and lengths and the clearances to structural parts so as to prevent outages from contaminated line insulation and during storms. Line insulator lengths and structural clearances have, over the years, come closer to the minimum approach distances used by workers. As minimum approach distances and structural clearances converge, it is increasingly important that system designers and system operating and maintenance personnel understand the concepts underlying minimum approach distances.

The information in this appendix will assist employers in complying with the minimum approach-distance requirements contained in § 1910.269 (l)(3) and (q)(3). Employers must use the technical criteria and methodology presented in this appendix in establishing minimum approach distances in accordance with § 1910.269 (l)(3)(i) and Table R-3 and Table R-8. This appendix provides essential background information and technical criteria for the calculation of the required minimum approach distances for live-line work on electric power generation, transmission, and distribution installations.

Unless an employer is using the maximum transient overvoltage's specified in Table R-9 for voltages over 72.5 kilovolts, the employer must use persons knowledgeable in the techniques discussed in this appendix, and competent in the field

of electric transmission and distribution system design, to determine the maximum transient overvoltage.

#### **II. General**

*A. Definitions.* The following definitions from § 1910.269(x) relate to work on or near electric power generation, transmission, and distribution lines and equipment and the electrical hazards they present.

*Exposed ...* Not isolated or guarded.

*Guarded.* Covered, fenced, enclosed, or otherwise protected, by means of suitable covers or casings, barrier rails or screens, mats, or platforms, designed to minimize the possibility, under normal conditions, of dangerous approach or inadvertent contact by persons or objects.

**Note to the definition of "guarded":** Wires that are insulated, but not otherwise protected, are not guarded.

*Insulated.* Separated from other conducting surfaces by a dielectric (including air space) offering a high resistance to the passage of current.

**Note to the definition of "insulated":** When any object is said to be insulated, it is understood to be insulated for the conditions to which it normally is subjected. Otherwise, it is, for the purpose of this section, uninsulated.

*Isolated.* Not readily accessible to persons unless special means for access are used.

*Statistical sparkover voltage.* A transient overvoltage level that produces a 97.72-percent probability of sparkover (that is, two standard deviations above the voltage at which there is a 50-percent probability of sparkover).

*Statistical withstand voltage.* A transient overvoltage level that produces a 0.14-percent probability of sparkover (that is, three standard deviations below the voltage at which there is a 50-percent probability of sparkover).

*B. Installations energized at 50 to 300 volts.* The hazards posed by installations energized at 50 to 300 volts are the same as those found in many other workplaces. That is not to say that there is no hazard, but the complexity of electrical protection required does not compare to that required for high voltage systems. The employee must avoid contact with the exposed parts, and the protective equipment used (such as rubber insulating gloves) must provide insulation for the voltages involved.

*C. Exposed energized parts over 300 volts AC.* Paragraph (l)(3)(i) of § 1910.269 requires the employer to establish minimum approach distances no less than the distances computed by Table R-3 for AC systems so that employees can work safely without risk of sparkover.<sup>2</sup>

Unless the employee is using electrical protective equipment, air is the insulating medium between the employee and energized parts. The distance between the employee and an energized part must be sufficient for the air to withstand the maximum transient overvoltage that can reach the worksite under the working conditions and practices the employee is using. This distance is the minimum air insulation distance, and it is equal to the electrical component of the minimum approach distance.

Normal system design may provide or include a means (such as lightning arrestors) to control maximum anticipated transient overvoltage's, or the employer may use temporary devices (portable protective gaps) or measures (such as preventing automatic circuit breaker reclosing) to achieve the

same result. Paragraph (1)(3)(ii) of § 1910.269 requires the employer to determine the maximum anticipated per-unit transient overvoltage, phase-to-ground, through an engineering analysis or assume a maximum anticipated per-unit transient overvoltage, phase-to-ground, in accordance with Table R-9, which specifies the following maximums for ac systems:

- 72.6 to 420.0 kilovolts-3.5 per unit
- 420.1 to 550.0 kilovolts-3.0 per unit
- 550.1 to 800.0 kilovolts-2.5 per unit

See paragraph IV.A.2, later in this appendix, for additional discussion of maximum transient overvoltages.

D. *Types of exposures.* Employees working on or near energized electric power generation, transmission, and distribution systems face two kinds of exposures: Phase-to-ground and phase-to-phase. The exposure is phase-to-ground with respect to an energized part, when the employee is at ground potential.

**III. Determination of Minimum Approach Distances for AC Voltages Greater Than 300 Volts**

A. *Voltages of 301 to 5,000 volts.* Test data generally forms the basis of minimum air insulation distances. The lowest voltage for which sufficient test data exists is 5,000 volts, and these data indicate that the minimum air insulation distance at that voltage is 20 millimeters (1 inch). Because the minimum air insulation distance increases with increasing voltage, and, conversely, decreases with decreasing voltage, an assumed minimum air insulation distance of 20 millimeters will protect against sparkover at voltages of 301 to 5,000 volts. Thus, 20 millimeters is the electrical component of the minimum approach distance for these voltages.

B. *Voltages of 5.1 to 72.5 kilovolts.* For voltages from 5.1 to 72.5 kilovolts, the Occupational Safety and Health Administration bases the methodology for calculating the electrical component of the minimum approach distance on Institute of Electrical and Electronic Engineers (IEEE) Standard 4-1995, *Standard Techniques for High-Voltage Testing*. Table 1 lists the critical sparkover distances from that standard as listed in IEEE Std 516-2009, *IEEE Guide for Maintenance Methods on Energized Power Lines*.

TABLE 1 SPARKOVER DISTANCE FOR ROD-TO-ROD GAP	
60 Hz Rod-to-Rod spark-over (kV peak)	Gap spacing from IEEE Std 4-1995 (cm)
25 .....	2
36 .....	3
46 .....	4
53 .....	5
60 .....	6
70 .....	8
79 .....	10
86 .....	12
95 .....	14
104 .....	16

TABLE 1 SPARKOVER DISTANCE FOR ROD-TO-ROD GAP	
60 Hz Rod-to-Rod spark-over (kV peak)	Gap spacing from IEEE Std 4-1995 (cm)
112 .....	18
120 .....	20
143 .....	25
167 .....	30
192 .....	35
218 .....	40
243 .....	45
270 .....	50
322 .....	60

Source: IEEE Std 516-2009.

To use this table to determine the electrical component of the minimum approach distance, the employer must determine the peak phase-to-ground transient overvoltage and select a gap from the table that corresponds to that voltage as a withstand voltage rather than a critical sparkover voltage. To calculate the electrical component of the minimum approach distance for voltages between 5 and 72.5 kilovolts, use the following procedure:

1. Divide the phase-to-phase voltage by the square root of 3 to convert it to a phase-to-ground voltage.
2. Multiply the phase-to-ground voltage by the square root of 2 to convert the rms value of the voltage to the peak phase-to-ground voltage.
3. Multiply the peak phase-to-ground voltage by the maximum per-unit transient overvoltage, which, for this voltage range, is 3.0, as discussed later in this appendix. This is the maximum phase-to-ground transient overvoltage, which corresponds to the withstand voltage for the relevant exposure.<sup>3</sup>
4. Divide the maximum phase-to-ground transient overvoltage by 0.85 to determine the corresponding critical sparkover voltage. (The critical sparkover voltage is 3 standard deviations (or 15 percent) greater than the withstand voltage.)
5. Determine the electrical component of the minimum approach distance from Table 1 through interpolation.

Table 2 illustrates how to derive the electrical component of the minimum approach distance for voltages from 5.1 to 72.5 kilovolts, before the application of any altitude correction factor, as explained later.

**TABLE 2  
CALCULATING THE ELECTRICAL COMPONENT OF MAD 751 V TO 72.5 KV**

Step	Maximum system phase-to-phase voltage (kV)			
	15	36	46	72.5
1. Divide by $\sqrt{3}$ .....	8.7	20.8	26.6	41.9
2. Multiply by $\sqrt{2}$ .....	12.2	29.4	37.6	59.2
3. Multiply by 3.0 .....	36.7	88.2	112.7	177.6
4. Divide by 0.85 .....	43.2	103.7	132.6	208.9
5. Interpolate from Table 1 .....	$3+(7.2/10)*1$	$14+(8.7/9)*2$	$20+(12.6/23)*5$	$35+(16.9/26)*5$
Electrical component of MAD (cm) .....	3.72	15.93	22.74	38.25

C. Voltages of 72.6 to 800 kilovolts. For voltages of 72.6 kilovolts to 800 kilovolts, this section bases the electrical component of minimum approach distances, before the application of any altitude correction factor, on the following formula:

**Equation 1 - For voltages of 72.6 kV to 800 kV**

$$D = 0.3048(C + a) V_{L-G} T$$

Where:

D = Electrical component of the minimum approach distance in air in meters;

C = A correction factor associated with the variation of gap sparkover with voltage;

a = A factor relating to the saturation of air at system voltages of 345 kilovolts or higher;<sup>4</sup>

$V_{L-G}$  = Maximum system line-to-ground rms voltage in kilovolts - It should be the "actual" maximum, or the normal highest voltage for the range (for example, 10 percent above the nominal voltage); and

T = Maximum transient overvoltage factor in per unit.

In Equation 1, C is 0.01: (1) For phase-to-ground exposures that the employer can demonstrate consist only of air across the approach distance (gap) and (2) for phase-to-phase exposures if the employer can demonstrate that no insulated tool spans the gap and that no large conductive object is in the gap. Otherwise, C is 0.011.

In Equation 1, the term a varies depending on whether the employee's exposure is phase-to-ground or phase-to-phase and on whether objects are in the gap. The employer must use the equations in Table 3 to calculate a. Sparkover test data with insulation spanning the gap form the basis for the equations for phase-to-ground exposures, and sparkover test data with only air in the gap form the basis for the equations for phase-to-phase exposures. The phase-to-ground equations result in slightly higher values of a, and, consequently, produce larger minimum approach distances, than the phase-to-phase equations for the same value of  $V_{Peak}$ .

**TABLE 3  
EQUATIONS FOR CALCULATING THE SURGE FACTOR, a**

Phase-to-ground exposures			
$V_{Peak} = T_{L-G} V_{L-G} \sqrt{2}$ .....	635 kV or less 0	635.1 to 915 kV	915.1 to 1,050 kV ( $V_{Peak}$ -645)/135,000
a .....		$(V_{Peak} - 635)/140,000$	
$V_{Peak} = T_{L-G} V_{L-G} \sqrt{2}$ .....	More than 1,050 kV		
a .....	$(V_{Peak} - 675)/125,000$		
Phase-to-phase exposures <sup>1</sup>			
$V_{Peak} = (1.35T_{L-G} + 0.45)V_{L-G} \sqrt{2}$ ..	630 kV or less 0	630.1 to 848 kV ( $V_{Peak}$ -630)/155,000	848.1 to 1,131 kV ( $V_{Peak}$ -633.6)/152,207
a .....			
$V_{Peak} = (1.35T_{L-G} + 0.45)V_{L-G} \sqrt{2}$ ..	1,131.1 to 1,485 kV	More than 1,485 kV ( $V_{Peak}$ -350.5)/203,666	
a .....	$(V_{Peak} - 628)/153,846$		

<sup>1</sup>Use the equations for phase-to-ground exposures (with  $V_{Peak}$  for phase-to-phase exposures) unless the employer can demonstrate that no insulated tool spans the gap and that no large conductive object is in the gap.

In Equation 1, T is the maximum transient overvoltage factor in per unit. As noted earlier, § 1910.269 (l)(3)(ii) requires the employer to determine the maximum anticipated per-unit transient overvoltage, phase-to-ground, through an engineering analysis or assume a maximum anticipated per-unit transient overvoltage, phase-to-ground, in accordance with Table

R-9. For phase-to-ground exposures, the employer uses this value, called  $T_{L-G}$ , as T in Equation 1. IEEE Std 516-2009 provides the following formula to calculate the phase-to-phase maximum transient overvoltage,  $T_{L-L}$ , from  $T_{L-G}$ :

$$T_{L-L} = 1.35T_{L-G} + 0.45$$

For phase-to-phase exposures, the employer uses this value as T in Equation 1.



D. *Provisions for inadvertent movement.* The minimum approach distance must include an "adder" to compensate for the inadvertent movement of the worker relative to an energized part or the movement of the part relative to the worker. This "adder" must account for this possible inadvertent movement and provide the worker with a comfortable and safe zone in which to work. Employers must add the distance for inadvertent movement (called the "ergonomic component of the minimum approach distance") to the electrical component to determine the total safe minimum approach distances used in live-line work.

The Occupational Safety and Health Administration based the ergonomic component of the minimum approach distance on response time-distance analysis. This technique uses an estimate of the total response time to a hazardous incident and converts that time to the distance traveled. For example, the driver of a car takes a given amount of time to respond to a "stimulus" and stop the vehicle. The elapsed time involved results in the car's traveling some distance before coming to a complete stop. This distance depends on the speed of the car at the time the stimulus appears and the reaction time of the driver.

In the case of live-line work, the employee must first perceive that he or she is approaching the danger zone. Then, the worker responds to the danger and must decelerate and stop all motion toward the energized part. During the time it takes to stop, the employee will travel some distance. This is the distance the employer must add to the electrical component of the minimum approach distance to obtain the total safe minimum approach distance.

At voltages from 751 volts to 72.5 kilovolts,<sup>5</sup> the electrical component of the minimum approach distance is smaller than the ergonomic component. At 72.5 kilovolts, the electrical component is only a little more than 0.3 meters (1 foot). An ergonomic component of the minimum approach distance must provide for all the worker's unanticipated movements. At these voltages, workers generally use rubber insulating gloves; however, these gloves protect only a worker's hands and arms. Therefore, the energized object must be at a safe approach distance to protect the worker's face. In this case, 0.61 meters (2 feet) is a sufficient and practical ergonomic component of the minimum approach distance.

For voltages between 72.6 and 800 kilovolts, employees must use different work practices during energized line work. Generally, employees use live-line tools (hot sticks) to perform work on energized equipment. These tools, by design, keep the energized part at a constant distance from the employee and, thus, maintain the appropriate minimum approach distance automatically.

The location of the worker and the type of work methods the worker is using also influence the length of the ergonomic component of the minimum approach distance. In this higher voltage range, the employees use work methods that more tightly control their movements than when the workers perform work using rubber insulating gloves. The worker, therefore, is farther from the energized line or equipment and must be more precise in his or her movements just to perform the work. For these reasons, this section adopts an ergonomic component of the minimum approach distance of 0.31 m (1 foot) for voltages between 72.6 and 800 kilovolts.

Table 4 summarizes the ergonomic component of the minimum approach distance for various voltage ranges.

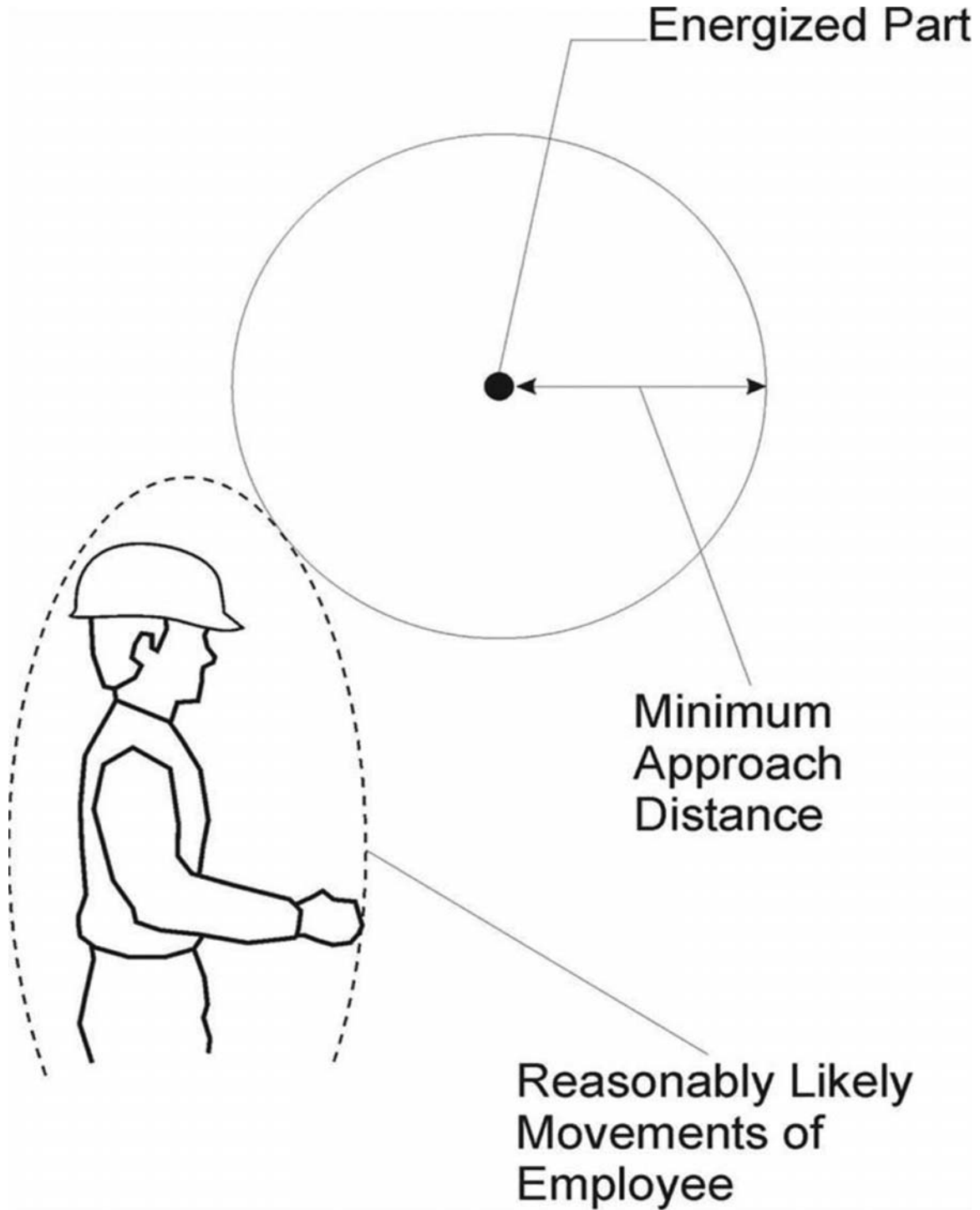
TABLE 4 ERGONOMIC COMPONENT OF MINIMUM APPROACH DISTANCE		
Voltage range (kV)	Distance	
	m	ft
0.301 to 0.750 . . . . .	0.31	1.0
0.751 to 72.5 . . . . .	0.61	2.0
72.6 to 800 . . . . .	0.31	1.0

Note: The employer must add this distance to the electrical component of the minimum approach distance to obtain the full minimum approach distance.

The ergonomic component of the minimum approach distance accounts for errors in maintaining the minimum approach distance (which might occur, for example, if an employee misjudges the length of a conductive object he or she is holding), and for errors in judging the minimum approach distance. The ergonomic component also accounts for inadvertent movements by the employee, such as slipping. In contrast, the working position selected to properly maintain the minimum approach distance must account for all of an employee's reasonably likely movements and still permit the employee to adhere to the applicable minimum approach distance. (See Figure 1.) Reasonably likely movements include an employee's adjustments to tools, equipment, and working positions and all movements needed to perform the work. For example, the employee should be able to perform all of the following actions without straying into the minimum approach distance:

- Adjust his or her hardhat;
- Maneuver a tool onto an energized part with a reasonable amount of overreaching or underreaching;
- Reach for and handle tools, material, and equipment passed to him or her; and
- Adjust tools, and replace components on them, when necessary during the work procedure.

The training of qualified employees required under § 1910.269 (a)(2), and the job planning and briefing required under § 1910.269(c), must address selection of a proper working position.



**Figure 1 - Maintaining the Minimum Approach Distance**

E. *Miscellaneous correction factors.* Changes in the air medium that forms the insulation influences the strength of an air gap. A brief discussion of each factor follows.

1. *Dielectric strength of air.* The dielectric strength of air in a uniform electric field at standard atmospheric conditions is approximately 3 kilovolts per millimeter.<sup>6</sup>

The pressure, temperature, and humidity of the air, the shape, dimensions, and separation of the electrodes, and the characteristics of the applied voltage (wave shape) affect the disruptive gradient.

2. *Atmospheric effect.* The empirically determined electrical strength of a given gap is normally applicable at standard atmospheric conditions (20°C, 101.3 kilopascals, 11 grams/cubic centimeter humidity). An increase in the density (humidity) of the air inhibits sparkover for a given air gap.

The combination of temperature and air pressure that results in the lowest gap sparkover voltage is high temperature and low pressure. This combination of conditions is not likely to occur. Low air pressure, generally associated with high humidity, causes increased electrical strength. An average air pressure generally correlates with low humidity. Hot and dry working conditions normally result in reduced electrical strength. The equations for minimum approach distances in Table R-3 assume standard atmospheric conditions.

3. *Altitude.* The reduced air pressure at high altitudes causes a reduction in the electrical strength of an air gap. An employer must increase the minimum approach distance by about 3 percent per 300 meters (1,000 feet) of increased altitude for altitudes above 900 meters (3,000 feet). Table R-5 specifies the altitude correction factor that the employer must use in calculating minimum approach distances.

**IV. Determining Minimum Approach Distances**

*A. Factors Affecting Voltage Stress at the Worksite.*

1. *System voltage (nominal).* The nominal system voltage range determines the voltage for purposes of calculating minimum approach distances. The employer selects the range in which the nominal system voltage falls, as given in the relevant table, and uses the highest value within that range in per unit calculations.

2. *Transient overvoltages.* Operation of switches or circuit breakers, a fault on a line or circuit or on an adjacent circuit, and similar activities may generate transient overvoltages on an electrical system. Each overvoltage has an associated transient voltage wave shape. The wave shape arriving at the site and its magnitude vary considerably.

In developing requirements for minimum approach distances, the Occupational Safety and Health Administration considered the most common wave shapes and the magnitude of transient overvoltages found on electric power generation, transmission, and distribution systems. The equations in Table R-3 for minimum approach distances use per-unit maximum transient overvoltages, which are relative to the nominal maximum voltage of the system. For example, a maximum transient overvoltage value of 3.0 per unit indicates that the highest transient overvoltage is 3.0 times the nominal maximum system voltage.

3. *Typical magnitude of overvoltages.* Table 5 lists the magnitude of typical transient overvoltages.

TABLE 5 MAGNITUDE OF TYPICAL TRANSIENT OVERVOLTAGES	
Cause	Magnitude (per unit)
Energized 200-mile line without closing resistors . . . . .	3.5
Energized 200-mile line with one-step closing resistor . . . . .	2.1
Energized 200-mile line with multistep resistor . . . . .	2.5
Reclosing with trapped charge one-step resistor . . . . .	2.2
Opening surge with single restrike . . . . .	3.0

TABLE 5 MAGNITUDE OF TYPICAL TRANSIENT OVERVOLTAGES	
Cause	Magnitude (per unit)
Fault initiation unfaulted phase . . . . .	2.1
Fault initiation adjacent circuit . . . . .	2.5
Fault clearing . . . . .	1.7 to 1.9

4. *Standard deviation-air-gap withstand.* For each air gap length under the same atmospheric conditions, there is a statistical variation in the breakdown voltage. The probability of breakdown against voltage has a normal (Gaussian) distribution. The standard deviation of this distribution varies with the wave shape, gap geometry, and atmospheric conditions. The withstand voltage of the air gap is three standard deviations (3s) below the critical sparkover voltage. (The critical sparkover voltage is the crest value of the impulse wave that, under specified conditions, causes sparkover 50 percent of the time. An impulse wave of three standard deviations below this value, that is, the withstand voltage, has a probability of sparkover of approximately 1 in 1,000.)

5. *Broken Insulators.* Tests show reductions in the insulation strength of insulator strings with broken skirts. Broken units may lose up to 70 percent of their withstand capacity. Because an employer cannot determine the insulating capability of a broken unit without testing it, the employer must consider damaged units in an insulator to have no insulating value. Additionally, the presence of a live-line tool alongside an insulator string with broken units may further reduce the overall insulating strength. The number of good units that must be present in a string for it to be "insulated" as defined by § 1910.269(x) depends on the maximum overvoltage possible at the worksite.

*B. Minimum Approach Distances Based on Known, Maximum-Anticipated Per-Unit Transient Overvoltages.*

1. *Determining the minimum approach distance for AC systems.* Under § 1910.269 (l)(3)(ii), the employer must determine the maximum anticipated per-unit transient overvoltage, phase-to-ground, through an engineering analysis or must assume a maximum anticipated per-unit transient overvoltage, phase-to-ground, in accordance with Table R-9. When the employer conducts an engineering analysis of the system and determines that the maximum transient overvoltage is lower than specified by Table R-9, the employer must ensure that any conditions assumed in the analysis, for example, that employees block reclosing on a circuit or install portable protective gaps, are present during energized work. To ensure that these conditions are present, the employer may need to institute new livework procedures reflecting the conditions and limitations set by the engineering analysis.

2. *Calculation of reduced approach distance values.* An employer may take the following steps to reduce minimum approach distances when the maximum transient overvoltage on the system (that is, the maximum transient overvoltage without additional steps to control overvoltages) produces unacceptably large minimum approach distances:

*Step 1.* Determine the maximum voltage (with respect to a given nominal voltage range) for the energized part.

*Step 2.* Determine the technique to use to control the maximum transient overvoltage. (See paragraphs IV.C and IV.D of this appendix.) Determine the maximum transient overvoltage that can exist at the worksite with that form of control in place and with a confidence level of 3s. This voltage is the withstand voltage for the purpose of calculating the appropriate minimum approach distance.

*Step 3.* Direct employees to implement procedures to ensure that the control technique is in effect during the course of the work.

*Step 4.* Using the new value of transient overvoltage in per unit, calculate the required minimum approach distance from Table R-3.

### *C. Methods of Controlling Possible Transient Overvoltage Stress Found on a System.*

1. *Introduction.* There are several means of controlling overvoltages that occur on transmission systems. For example, the employer can modify the operation of circuit breakers or other switching devices to reduce switching transient overvoltages. Alternatively, the employer can hold the overvoltage to an acceptable level by installing surge arresters or portable protective gaps on the system. In addition, the employer can change the transmission system to minimize the effect of switching operations. Section 4.8 of IEEE Std 516-2009 describes various ways of controlling, and thereby reducing, maximum transient overvoltages.

2. *Operation of circuit breakers.*<sup>7</sup> The maximum transient overvoltage that can reach the worksite is often the result of switching on the line on which employees are working. Disabling automatic reclosing during energized line work, so that the line will not be reenergized after being opened for any reason, limits the maximum switching surge overvoltage to the larger of the opening surge or the greatest possible fault-generated surge, provided that the devices (for example, insertion resistors) are operable and will function to limit the transient overvoltage and that circuit breaker restrikes do not occur. The employer must ensure the proper functioning of insertion resistors and other overvoltage-limiting devices when the employer's engineering analysis assumes their proper operation to limit the overvoltage level. If the employer cannot disable the reclosing feature (because of system operating conditions), other methods of controlling the switching surge level may be necessary.

Transient surges on an adjacent line, particularly for double circuit construction, may cause a significant overvoltage on the line on which employees are working. The employer's engineering analysis must account for coupling to adjacent lines.

3. *Surge arresters.* The use of modern surge arresters allows a reduction in the basic impulse-insulation levels of much transmission system equipment. The primary function of early arresters was to protect the system insulation from the effects of lightning. Modern arresters not only dissipate lightning-caused transients, but may also control many other system transients caused by switching or faults.

The employer may use properly designed arresters to control transient overvoltages along a transmission line and thereby reduce the requisite length of the insulator string and possibly the maximum transient overvoltage on the line.<sup>8</sup>

4. *Switching restrictions.* Another form of overvoltage control involves establishing switching restrictions, whereby the employer prohibits the operation of circuit breakers until certain system conditions are present. The employer restricts switching by using a tagging system, similar to that used for a permit, except that the common term used for this activity is a "hold-off" or "restriction." These terms indicate that the restriction does not prevent operation, but only modifies the operation during the livework activity.

### *D. Minimum Approach Distance Based on Control of Maximum Transient Overvoltage at the Worksite.*

When the employer institutes control of maximum transient overvoltage at the worksite by installing portable protective gaps, the employer may calculate the minimum approach distance as follows:

*Step 1.* Select the appropriate withstand voltage for the protective gap based on system requirements and an acceptable probability of gap sparkover.<sup>9</sup>

*Step 2.* Determine a gap distance that provides a withstand voltage<sup>10</sup> greater than or equal to the one selected in the first step.<sup>11</sup>

*Step 3.* Use 110 percent of the gap's critical sparkover voltage to determine the phase-to-ground peak voltage at gap sparkover ( $V_{PPG\ Peak}$ ).

*Step 4.* Determine the maximum transient overvoltage, phase-to-ground, at the worksite from the following formula:

$$T = \frac{V_{PPG\ Peak}}{V_{L-G}\sqrt{2}}.$$

*Step 5.* Use this value of  $T$ <sup>12</sup> in the equation in Table R-3 to obtain the minimum approach distance. If the worksite is no more than 900 meters (3,000 feet) above sea level, the employer may use this value of  $T$  to determine the minimum approach distance from Table 14 through Table 21.

Note: All rounding must be to the next higher value (that is, always round up).

### *Sample protective gap calculations.*

*Problem:* Employees are to perform work on a 500-kilovolt transmission line at sea level that is subject to transient overvoltages of 2.4 p.u. The maximum operating voltage of the line is 550 kilovolts. Determine the length of the protective gap that will provide the minimum practical safe approach distance. Also, determine what that minimum approach distance is:

*Step 1.* Calculate the smallest practical maximum transient overvoltage (1.25 times the crest phase-to-ground voltage):<sup>13</sup>

$$550kV \times \frac{\sqrt{2}}{\sqrt{3}} \times 1.25 = 561kV.$$

This value equals the withstand voltage of the protective gap.

Step 2. Using test data for a particular protective gap, select a gap that has a critical sparkover voltage greater than or equal to:

$$561kV \div 0.85 = 660kV$$

For example, if a protective gap with a 1.22-m (4.0-foot) spacing tested to a critical sparkover voltage of 665 kilovolts (crest), select this gap spacing.

Step 3. The phase-to-ground peak voltage at gap sparkover (VPPG Peak) is 110 percent of the value from the previous step:

$$665kV \times 1.10 = 732kV$$

This value corresponds to the withstand voltage of the electrical component of the minimum approach distance.

Step 4. Use this voltage to determine the worksite value of *T*:

$$T = \frac{732}{564} = 1.7 p.u.$$

Step 5. Use this value of *T* in the equation in Table R-3 to obtain the minimum approach distance, or look up the minimum approach distance in Table 14 through Table 21:

$$MAD = 2.29 \text{ m (7.6 ft)}$$

**E. Location of Protective Gaps.**

1. *Adjacent structures.* The employer may install the protective gap on a structure adjacent to the worksite, as this practice does not significantly reduce the protection afforded by the gap.

2. *Terminal stations.* Gaps installed at terminal stations of lines or circuits provide a level of protection; however, that level of protection may not extend throughout the length of the line to the worksite. The use of substation terminal gaps raises the possibility that separate surges could enter the line

at opposite ends, each with low enough magnitude to pass the terminal gaps without sparkover. When voltage surges occur simultaneously at each end of a line and travel toward each other, the total voltage on the line at the point where they meet is the arithmetic sum of the two surges. A gap installed within 0.8 km (0.5 mile) of the worksite will protect against such intersecting waves. Engineering studies of a particular line or system may indicate that employers can adequately protect employees by installing gaps at even more distant locations. In any event, unless using the default values for *T* from Table R-9, the employer must determine *T* at the worksite.

3. *Worksite.* If the employer installs protective gaps at the worksite, the gap setting establishes the worksite impulse insulation strength. Lightning strikes as far as 6 miles from the worksite can cause a voltage surge greater than the gap withstand voltage, and a gap sparkover can occur. In addition, the gap can sparkover from overvoltages on the line that exceed the withstand voltage of the gap. Consequently, the employer must protect employees from hazards resulting from any sparkover that could occur.

*F. Disabling automatic reclosing.* There are two reasons to disable the automatic-reclosing feature of circuit-interrupting devices while employees are performing live-line work:

- To prevent reenergization of a circuit faulted during the work, which could create a hazard or result in more serious injuries or damage than the injuries or damage produced by the original fault;
- To prevent any transient overvoltage caused by the switching surge that would result if the circuit were reenergized.

However, due to system stability considerations, it may not always be feasible to disable the automatic-reclosing feature.

**V. Minimum Approach-Distance Tables**

*A. Legacy tables.* Employers may use the minimum approach distances in Table 6 through Table 13 until March 31, 2015.

Voltage range phase to phase (kV)	Phase-to-ground exposure		Phase-to-phase exposure	
	m	ft	m	ft
0.05 to 1.0	Avoid Contact		Avoid Contact	
1.1 to 15.0	0.64	2.10	0.66	2.20
15.1 to 36.0	0.72	2.30	0.77	2.60
36.1 to 46.0	0.77	2.60	0.85	2.80
46.1 to 72.5	0.90	3.00	1.05	3.50
72.6 to 121	0.95	3.20	1.29	4.30
138 to 145	1.09	3.60	1.50	4.90
161 to 169	1.22	4.00	1.71	5.70
230 to 242	1.59	5.30	2.27	7.50
345 to 362	2.59	8.50	3.80	12.50
500 to 550	3.42	11.30	5.50	18.10
765 to 800	4.53	14.90	7.91	26.00

Note: The clear live-line tool distance must equal or exceed the values for the indicated voltage ranges.

<b>TABLE 7 MINIMUM APPROACH DISTANCES UNTIL MARCH 31, 2015-72.6 TO 121.0 KV WITH OVERVOLTAGE FACTOR</b>				
T (p.u.)	Phase-to-ground exposure		Phase-to-phase exposure	
	m	ft	m	ft
2.0 .....	0.74	2.42	1.09	3.58
2.1 .....	0.76	2.50	1.09	3.58
2.2 .....	0.79	2.58	1.12	3.67
2.3 .....	0.81	2.67	1.14	3.75
2.4 .....	0.84	2.75	1.17	3.83
2.5 .....	0.84	2.75	1.19	3.92
2.6 .....	0.86	2.83	1.22	4.00
2.7 .....	0.89	2.92	1.24	4.08
2.8 .....	0.91	3.00	1.24	4.08
2.9 .....	0.94	3.08	1.27	4.17
3.0 .....	0.97	3.17	1.30	4.25

Note 1: The employer may apply the distance specified in this table only where the employer determines the maximum anticipated per-unit transient over-voltage by engineering analysis. (Table 6 applies otherwise.)

Note 2: The distances specified in this table are the air and live-line tool distances.

<b>TABLE 8 MINIMUM APPROACH DISTANCES UNTIL MARCH 31, 2015-121.1 TO 145.0 KV WITH OVERVOLTAGE FACTOR</b>				
T (p.u.)	Phase-to-ground exposure		Phase-to-ground exposure	
	m	ft	m	ft
2.0 .....	0.84	2.75	1.24	4.08
2.1 .....	0.86	2.83	1.27	4.17
2.2 .....	0.89	2.92	1.30	4.25
2.3 .....	0.91	3.00	1.32	4.33
2.4 .....	0.94	3.08	1.35	4.42
2.5 .....	0.97	3.17	1.37	4.50
2.6 .....	0.99	3.25	1.40	4.58
2.7 .....	1.02	3.33	1.42	4.67
2.8 .....	1.04	3.42	1.45	4.75
2.9 .....	1.07	3.50	1.47	4.83
3.0 .....	1.09	3.58	1.50	4.92

Note 1: The employer may apply the distance specified in this table only where the employer determines the maximum anticipated per-unit transient over-voltage by engineering analysis. (Table 6 applies otherwise.)

Note 2: The distances specified in this table are the air and live-line tool distances.

<b>TABLE 9 MINIMUM APPROACH DISTANCES UNTIL MARCH 31, 2015-145.1 TO 169.0 KV WITH OVERVOLTAGE FACTOR</b>				
T (p.u.)	Phase-to-ground exposure		Phase-to-phase exposure	
	m	ft	m	ft
2.0 .....	0.91	3.00	1.42	4.67
2.1 .....	0.97	3.17	1.45	4.75
2.2 .....	0.99	3.25	1.47	4.83

TABLE 9 MINIMUM APPROACH DISTANCES UNTIL MARCH 31, 2015-145.1 TO 169.0 KV WITH OVERVOLTAGE FACTOR				
T (p.u.)	Phase-to-ground exposure		Phase-to-phase exposure	
	m	ft	m	ft
2.3 .....	1.02	3.33	1.50	4.92
2.4 .....	1.04	3.42	1.52	5.00
2.5 .....	1.07	3.50	1.57	5.17
2.6 .....	1.12	3.67	1.60	5.25
2.7 .....	1.14	3.75	1.63	5.33
2.8 .....	1.17	3.83	1.65	5.42
2.9 .....	1.19	3.92	1.68	5.50
3.0 .....	1.22	4.00	1.73	5.67

- Note 1: The employer may apply the distance specified in this table only where the employer determines the maximum anticipated per-unit transient over-voltage by engineering analysis. (Table 6 applies otherwise.)
- Note 2: The distances specified in this table are the air and live-line tool distances.

TABLE 10 MINIMUM APPROACH DISTANCES UNTIL MARCH 31, 2015-169.1 TO 242.0 KV WITH OVERVOLTAGE FACTOR				
T (p.u.)	Phase-to-ground exposure		Phase-to-ground exposure	
	m	ft	m	ft
2.0 .....	1.17	3.83	1.85	6.08
2.1 .....	1.22	4.00	1.91	6.25
2.2 .....	1.24	4.08	1.93	6.33
2.3 .....	1.30	4.25	1.98	6.50
2.4 .....	1.35	4.42	2.01	6.58
2.5 .....	1.37	4.50	2.06	6.75
2.6 .....	1.42	4.67	2.11	6.92
2.7 .....	1.47	4.83	2.13	7.00
2.8 .....	1.50	4.92	2.18	7.17
2.9 .....	1.55	5.08	2.24	7.33
3.0 .....	1.60	5.25	2.29	7.50

- Note 1: The employer may apply the distance specified in this table only where the employer determines the maximum anticipated per-unit transient over-voltage by engineering analysis. (Table 6 applies otherwise.)
- Note 2: The distances specified in this table are the air and live-line tool distances.

TABLE 11 MINIMUM APPROACH DISTANCES UNTIL MARCH 31, 2015-242.1 TO 362.0 KV WITH OVERVOLTAGE FACTOR				
T (p.u.)	Phase-to-ground exposure		Phase-to-ground exposure	
	m	ft	m	ft
2.0 .....	1.60	5.25	2.62	8.58
2.1 .....	1.65	5.42	2.69	8.83
2.2 .....	1.75	5.75	2.79	9.17
2.3 .....	1.85	6.08	2.90	9.50
2.4 .....	1.93	6.33	3.02	9.92
2.5 .....	2.03	6.67	3.15	10.33
2.6 .....	2.16	7.08	3.28	10.75

TABLE 11 MINIMUM APPROACH DISTANCES UNTIL MARCH 31, 2015-242.1 TO 362.0 KV WITH OVERVOLTAGE FACTOR				
T (p.u.)	Phase-to-ground exposure		Phase-to-ground exposure	
	m	ft	m	ft
2.7 .....	2.26	7.42	3.40	11.17
2.8 .....	2.36	7.75	3.53	11.58
2.9 .....	2.49	8.17	3.68	12.08
3.0 .....	2.59	8.50	3.81	12.50

Note 1: The employer may apply the distance specified in this table only where the employer determines the maximum anticipated per-unit transient over-voltage by engineering analysis. (Table 6 applies otherwise.)

Note 2: The distances specified in this table are the air and live-line tool distances.

TABLE 12 MINIMUM APPROACH DISTANCES UNTIL MARCH 31, 2015-362.1 TO 552.0 KV WITH OVERVOLTAGE FACTOR				
T (p.u.)	Phase-to-ground exposure		Phase-to-ground exposure	
	m	ft	m	ft
1.5 .....	1.83	6.00	2.24	7.33
1.6 .....	1.98	6.50	2.67	8.75
1.7 .....	2.13	7.00	3.10	10.17
1.8 .....	2.31	7.58	3.53	11.58
1.9 .....	2.46	8.08	4.01	13.17
2.0 .....	2.67	8.75	4.52	14.83
2.1 .....	2.84	9.33	4.75	15.58
2.2 .....	3.02	9.92	4.98	16.33
2.3 .....	3.20	10.50	5.23	17.17
2.4 .....	3.43	11.25	5.51	18.08

Note 1: The employer may apply the distance specified in this table only where the employer determines the maximum anticipated per-unit transient over-voltage by engineering analysis. (Table 6 applies otherwise.)

Note 2: The distances specified in this table are the air and live-line tool distances.

TABLE 13 MINIMUM APPROACH DISTANCES UNTIL MARCH 31, 2015-552.1 TO 800.0 KV WITH OVERVOLTAGE FACTOR				
T (p.u.)	Phase-to-ground exposure		Phase-to-ground exposure	
	m	ft	m	ft
1.5 .....	2.95	9.67	3.68	12.08
1.6 .....	3.25	10.67	4.42	14.50
1.7 .....	3.56	11.67	5.23	17.17
1.8 .....	3.86	12.67	6.07	19.92
1.9 .....	4.19	13.75	6.99	22.92
2.0 .....	4.55	14.92	7.92	26.00

Note 1: The employer may apply the distance specified in this table only where the employer determines the maximum anticipated per-unit transient over-voltage by engineering analysis. (Table 6 applies otherwise.)

Note 2: The distances specified in this table are the air and live-line tool distances.

*B. Alternative minimum approach distances.* Employers may use the minimum approach distances in Table 14 through Table 21 provided that the employer follows the notes to those tables.



**TABLE 14**  
**AC MINIMUM APPROACH DISTANCES-72.6 TO 121.0 KV**

T (p.u.)	Phase-to-ground exposure		Phase-to-ground exposure	
	m	ft	m	ft
1.5	0.67	2.2	0.84	2.8
1.6	0.69	2.3	0.87	2.9
1.7	0.71	2.3	0.90	3.0
1.8	0.74	2.4	0.93	3.1
1.9	0.76	2.5	0.96	3.1
2.0	0.78	2.6	0.99	3.2
2.1	0.81	2.7	1.01	3.3
2.2	0.83	2.7	1.04	3.4
2.3	0.85	2.8	1.07	3.5
2.4	0.88	2.9	1.10	3.6
2.5	0.90	3.0	1.13	3.7
2.6	0.92	3.0	1.16	3.8
2.7	0.95	3.1	1.19	3.9
2.8	0.97	3.2	1.22	4.0
2.9	0.99	3.2	1.24	4.1
3.0	1.02	3.3	1.27	4.2
3.1	1.04	3.4	1.30	4.3
3.2	1.06	3.5	1.33	4.4
3.3	1.09	3.6	1.36	4.5
3.4	1.11	3.6	1.39	4.6
3.5	1.13	3.7	1.42	4.7

**TABLE 15**  
**AC MINIMUM APPROACH DISTANCES-121.1 TO 145.0 KV**

T (p.u.)	Phase-to-ground exposure		Phase-to-ground exposure	
	m	ft	m	ft
1.5	0.74	2.4	0.95	3.1
1.6	0.76	2.5	0.98	3.2
1.7	0.79	2.6	1.02	3.3
1.8	0.82	2.7	1.05	3.4
1.9	0.85	2.8	1.08	3.5
2.0	0.88	2.9	1.12	3.7
2.1	0.90	3.0	1.15	3.8
2.2	0.93	3.1	1.19	3.9
2.3	0.96	3.1	1.22	4.0
2.4	0.99	3.2	1.26	4.1
2.5	1.02	3.3	1.29	4.2
2.6	1.04	3.4	1.33	4.4
2.7	1.07	3.5	1.36	4.5
2.8	1.10	3.6	1.39	4.6
2.9	1.13	3.7	1.43	4.7

TABLE 15 AC MINIMUM APPROACH DISTANCES-121.1 TO 145.0 KV				
T (p.u.)	Phase-to-ground exposure		Phase-to-ground exposure	
	m	ft	m	ft
3.0 .....	1.16	3.8	1.46	4.8
3.1 .....	1.19	3.9	1.50	4.9
3.2 .....	1.21	4.0	1.53	5.0
3.3 .....	1.24	4.1	1.57	5.2
3.4 .....	1.27	4.2	1.60	5.2
3.5 .....	1.30	4.3	1.64	5.4

TABLE 16 AC MINIMUM APPROACH DISTANCES-145.1 TO 169.0 KV				
T (p.u.)	Phase-to-ground exposure		Phase-to-ground exposure	
	m	ft	m	ft
1.5 .....	0.81	2.7	1.05	3.4
1.6 .....	0.84	2.8	1.09	3.6
1.7 .....	0.87	2.9	1.13	3.7
1.8 .....	0.90	3.0	1.17	3.8
1.9 .....	0.94	3.1	1.21	4.0
2.0 .....	0.97	3.2	1.25	4.1
2.1 .....	1.00	3.3	1.29	4.2
2.2 .....	1.03	3.4	1.33	4.4
2.3 .....	1.07	3.5	1.37	4.5
2.4 .....	1.10	3.6	1.41	4.6
2.5 .....	1.13	3.7	1.45	4.8
2.6 .....	1.17	3.8	1.49	4.9
2.7 .....	1.20	3.9	1.53	5.0
2.8 .....	1.23	4.0	1.57	5.2
2.9 .....	1.26	4.1	1.61	5.3
3.0 .....	1.30	4.3	1.65	5.4
3.1 .....	1.33	4.4	1.70	5.6
3.2 .....	1.36	4.5	1.76	5.8
3.3 .....	1.39	4.6	1.82	6.0
3.4 .....	1.43	4.7	1.88	6.2
3.5 .....	1.46	4.8	1.94	6.4

TABLE 17 AC MINIMUM APPROACH DISTANCES-169.1 TO 242.0 KV				
T (p.u.)	Phase-to-ground exposure		Phase-to-ground exposure	
	m	ft	m	ft
1.5 .....	1.02	3.3	1.37	4.5
1.6 .....	1.06	3.5	1.43	4.7
1.7 .....	1.11	3.6	1.48	4.9
1.8 .....	1.16	3.8	1.54	5.1
1.9 .....	1.21	4.0	1.60	5.2
2.0 .....	1.25	4.1	1.66	5.4

**TABLE 17**  
**AC MINIMUM APPROACH DISTANCES-169.1 TO 242.0 KV**

T (p.u.)	Phase-to-ground exposure		Phase-to-ground exposure	
	m	ft	m	ft
2.1 .....	1.30	4.3	1.73	5.7
2.2 .....	1.35	4.4	1.81	5.9
2.3 .....	1.39	4.6	1.90	6.2
2.4 .....	1.44	4.7	1.99	6.5
2.5 .....	1.49	4.9	2.08	6.8
2.6 .....	1.53	5.0	2.17	7.1
2.7 .....	1.58	5.2	2.26	7.4
2.8 .....	1.63	5.3	2.36	7.7
2.9 .....	1.67	5.5	2.45	8.0
3.0 .....	1.72	5.6	2.55	8.4
3.1 .....	1.77	5.8	2.65	8.7
3.2 .....	1.81	5.9	2.76	9.1
3.3 .....	1.88	6.2	2.86	9.4
3.4 .....	1.95	6.4	2.97	9.7
3.5 .....	2.01	6.6	3.08	10.1

**TABLE 18**  
**AC MINIMUM APPROACH DISTANCES-242.1 TO 362.0 KV**

T (p.u.)	Phase-to-ground exposure		Phase-to-ground exposure	
	m	ft	m	ft
1.5 .....	1.37	4.5	1.99	6.5
1.6 .....	1.44	4.7	2.13	7.0
1.7 .....	1.51	5.0	2.27	7.4
1.8 .....	1.58	5.2	2.41	7.9
1.9 .....	1.65	5.4	2.56	8.4
2.0 .....	1.72	5.6	2.71	8.9
2.1 .....	1.79	6.1	2.87	9.4
2.2 .....	1.87	6.1	3.03	9.9
2.3 .....	1.97	6.5	3.20	10.5
2.4 .....	2.08	6.8	3.37	11.1
2.5 .....	2.19	7.2	3.55	11.6
2.6 .....	2.29	7.5	3.73	12.2
2.7 .....	2.41	7.9	3.91	12.8
2.8 .....	2.52	8.3	4.10	13.5
2.9 .....	2.64	8.7	4.29	14.1
3.0 .....	2.76	9.1	4.49	14.7
3.1 .....	2.88	9.4	4.69	15.4
3.2 .....	3.01	9.9	4.90	16.1
3.3 .....	3.14	10.3	5.11	16.8
3.4 .....	3.27	10.7	5.32	17.5
3.5 .....	3.41	11.2	5.52	18.1

**TABLE 19**  
**AC MINIMUM APPROACH DISTANCES-362.1 TO 420.0 KV**

T (p.u.)	Phase-to-ground exposure		Phase-to-ground exposure	
	m	ft	m	ft
1.5	1.53	5.0	2.40	7.9
1.6	1.62	5.3	2.58	8.5
1.7	1.70	5.6	2.75	9.0
1.8	1.78	5.8	2.94	9.6
1.9	1.88	6.2	3.13	10.3
2.0	1.99	6.5	3.33	10.9
2.1	2.12	7.0	3.53	11.6
2.2	2.24	7.3	3.74	12.3
2.3	2.37	7.8	3.95	13.0
2.4	2.50	8.2	4.17	13.7
2.5	2.64	8.7	4.40	14.4
2.6	2.78	9.1	4.63	15.2
2.7	2.93	9.6	4.87	16.0
2.8	3.07	10.1	5.11	16.8
2.9	3.23	10.6	5.36	17.6
3.0	3.38	11.1	5.59	18.3
3.1	3.55	11.6	5.82	19.1
3.2	3.72	12.2	6.07	19.9
3.3	3.89	12.8	6.31	20.7
3.4	4.07	13.4	6.56	21.5
3.5	4.25	13.9	6.81	22.3

**TABLE 20**  
**AC MINIMUM APPROACH DISTANCES-420.1 TO 550.0 KV**

T (p.u.)	Phase-to-ground exposure		Phase-to-ground exposure	
	m	ft	m	ft
1.5	1.95	6.4	3.46	11.4
1.6	2.11	6.9	3.73	12.2
1.7	2.28	7.5	4.02	13.2
1.8	2.45	8.0	4.31	14.1
1.9	2.62	8.6	4.61	15.1
2.0	2.81	9.2	4.92	16.1
2.1	3.00	9.8	5.25	17.2
2.2	3.20	10.5	5.55	18.2
2.3	3.40	11.2	5.86	19.2
2.4	3.62	11.9	6.18	20.3
2.5	3.84	12.6	6.50	21.3
2.6	4.07	13.4	6.83	22.4
2.7	4.31	14.1	7.18	23.6
2.8	4.56	15.0	7.52	24.7
2.9	4.81	15.8	7.88	25.9

TABLE 20 AC MINIMUM APPROACH DISTANCES-420.1 TO 550.0 KV				
T (p.u.)	Phase-to-ground exposure		Phase-to-ground exposure	
	m	ft	m	ft
3.0 .....	5.07	16.6	8.24	27.0

TABLE 21 AC MINIMUM APPROACH DISTANCES-550.1 TO 800.0 KV				
T (p.u.)	Phase-to-ground exposure		Phase-to-ground exposure	
	m	ft	m	ft
1.5 .....	3.16	10.4	5.97	19.6
1.6 .....	3.46	11.4	6.43	21.1
1.7 .....	3.78	12.4	6.92	22.7
1.8 .....	4.12	13.5	7.42	24.3
1.9 .....	4.47	14.7	7.93	26.0
2.0 .....	4.83	15.8	8.47	27.8
2.1 .....	5.21	17.1	9.02	29.6
2.2 .....	5.61	18.4	9.58	31.4
2.3 .....	6.02	19.8	10.16	33.3
2.4 .....	6.44	21.1	10.76	35.3
2.5 .....	6.88	22.6	11.38	37.3

**Notes to Table 14 through Table 21:**

1. The employer must determine the maximum anticipated per-unit transient overvoltage, phase-to-ground, through an engineering analysis, as required by § 1910.269(l)(3)(ii), or assume a maximum anticipated per-unit transient overvoltage, phase-to-ground, in accordance with Table R-9.
2. For phase-to-phase exposures, the employer must demonstrate that no insulated tool spans the gap and that no large conductive object is in the gap.  
The worksite must be at an elevation of 900 meters (3,000 feet) or less above sea level.
- <sup>1</sup>Federal, state, and local regulatory bodies and electric utilities set reliability requirements that limit the number and duration of system outages.
- <sup>2</sup>Sparkover is a disruptive electric discharge in which an electric arc forms and electric current passes through air.
- <sup>3</sup>The withstand voltage is the voltage at which sparkover is not likely to occur across a specified distance. It is the voltage taken at the 3s point below the sparkover voltage, assuming that the sparkover curve follows a normal distribution.
- <sup>4</sup>Test data demonstrates that the saturation factor is greater than 0 at peak voltages of about 630 kilovolts. Systems operating at 345 kilovolts (or maximum system voltages of 362 kilovolts) can have peak maximum transient overvoltages exceeding 630 kilovolts. Table R-3 sets equations for calculating a based on peak voltage.
- <sup>5</sup>For voltages of 50 to 300 volts, Table R-3 specifies a minimum approach distance of "avoid contact." The minimum approach distance for this voltage range contains neither an electrical component nor an ergonomic component.
- <sup>6</sup>For the purposes of estimating arc length, § 1910.269 generally assumes a more conservative dielectric strength of 10 kilovolts per 25.4 millimeters, consistent with assumptions made in consensus standards such as the National Electrical Safety Code (IEEE C2-2012). The more conservative value accounts for variables such as electrode shape, wave shape, and a certain amount of overvoltage.
- <sup>7</sup>The detailed design of a circuit interrupter, such as the design of the contacts, resistor insertion, and breaker timing control, are beyond the scope of this appendix. The design of the system generally accounts for these features. This appendix only discusses features that can limit the maximum switching transient overvoltage on a system.
- <sup>8</sup>Surge arrester application is beyond the scope of this appendix. However, if the employer installs the arrester near the worksite, the application would be similar to the protective gaps discussed in paragraph IV.D of this appendix.
- <sup>9</sup>The employer should check the withstand voltage to ensure that it results in a probability of gap flashover that is acceptable from a system outage perspective. (In other words, a gap sparkover will produce a system outage. The employer should determine whether such an outage will impact overall system performance to an acceptable degree.) In general, the withstand voltage should be at least 1.25 times the maximum crest operating voltage.
- <sup>10</sup>The manufacturer of the gap provides, based on test data, the critical sparkover voltage for each gap spacing (for example, a critical sparkover voltage of 665 kilovolts for a gap spacing of 1.2 meters). The withstand voltage for the gap is equal to 85 percent of its critical sparkover voltage.
- <sup>11</sup>Switch steps 1 and 2 if the length of the protective gap is known.
- <sup>12</sup>IEEE Std 516-2009 states that most employers add 0.2 to the calculated value of T as an additional safety factor.
- <sup>13</sup>To eliminate sparkovers due to minor system disturbances, the employer should use a withstand voltage no lower than 1.25 p.u. Note that this is a practical, or operational, consideration only. It may be feasible for the employer to use lower values of withstand voltage.

AMENDATORY SECTION (Amending WSR 98-07-009, filed 3/6/98, effective 5/6/98)

**WAC 296-45-903 Appendix B—Protection from step and touch potentials—Nonmandatory.**

**Protection from Hazardous Differences in Electric Potential**

**I. "Introduction"**

((When a ground fault occurs on a power line, voltage is impressed on the "grounded" object faulting the line. The voltage to which this object rises depends largely on the voltage on the line, on the impedance of the faulted conductor, and on the impedance to "true," or "absolute," ground represented by the object. If the object causing the fault represents a relatively large impedance, the voltage impressed on it is essentially the phase-to-ground system voltage. However, even faults to well-grounded transmission towers or substation structures can result in hazardous voltages.<sup>(1)</sup> The degree of the hazard depends upon the magnitude of the fault current and the time of exposure.

*Footnote<sup>(1)</sup>* This appendix provides information primarily with respect to employee protection from contact between equipment being used and an energized power line. The information presented is also relevant to ground faults to transmission towers and substation structures; however, grounding systems for these structures should be designed to minimize the step and touch potentials involved.))

Current passing through an impedance impresses voltage across that impedance. Even conductors have some, albeit low, value of impedance. Therefore, if a "grounded"<sup>1</sup> object, such as a crane or deenergized and grounded power line, results in a ground fault on a power line, voltage is impressed on that grounded object. The voltage impressed on the grounded object depends largely on the voltage on the line, on the impedance of the faulted conductor, and on the impedance to "true," or "absolute," ground represented by the object. If the impedance of the object causing the fault is relatively large, the voltage impressed on the object is essentially the phase-to-ground system voltage. However, even faults to grounded power lines or to well-grounded transmission towers or substation structures (which have relatively low values of impedance to ground) can result in hazardous voltages.<sup>2</sup> In all cases, the degree of the hazard depends on the magnitude of the current through the employee and the time of exposure. This document discusses methods of protecting workers against the possibility that grounded objects, such as cranes and other mechanical equipment, will contact energized power lines and that deenergized and grounded power lines will become accidentally energized.

**II. "Voltage-gradient distribution"**

*A. Voltage-gradient distribution curve.*

((The dissipation of voltage from a grounding electrode (or from the grounded end of an energized grounded object) is called the ground potential gradient. Voltage drops associated with this dissipation of voltage are called ground potentials. Figure A is a typical voltage gradient distribution curve (assuming a uniform soil texture). This graph shows that voltage decreases rapidly with increasing distance from the

grounding electrode.)) Absolute, or true, ground serves as a reference and always has a voltage of 0 volts above ground potential. Because there is an impedance between a grounding electrode and absolute ground, there will be a voltage difference between the grounding electrode and absolute ground under ground-fault conditions. Voltage dissipates from the grounding electrode (or from the grounding point) and creates a ground potential gradient. The voltage decreases rapidly with increasing distance from the grounding electrode. A voltage drop associated with this dissipation of voltage is a ground potential. Figure A is a typical voltage-gradient distribution curve (assuming a uniform soil texture).

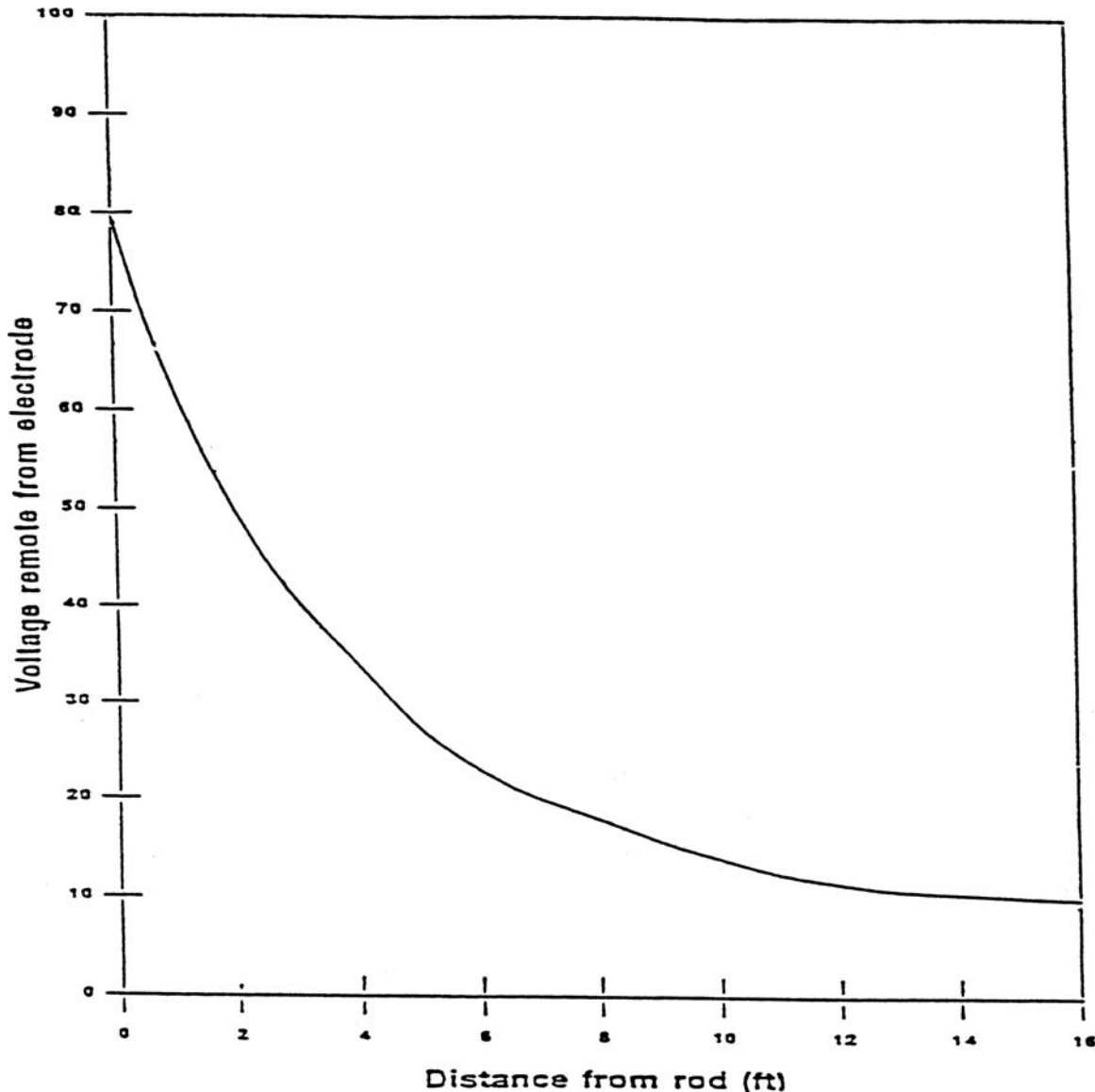


Figure A - Typical Voltage-Gradient Distribution Curve

B. Step and touch potentials. Figure A also shows that workers are at risk from step and touch potentials. Step potential is the voltage between the feet of a person standing near an energized grounded object (the electrode). In Figure A, the step potential is equal to the difference in voltage between two points at different distances from the electrode (where the points represent the location of each foot in relation to the electrode). A person could be at risk of injury during a fault simply by standing near the object.

Touch potential is the voltage between the energized grounded object (again, the electrode) and the feet of a person in contact with the object. In Figure A, the touch potential is equal to the difference in voltage between the electrode (which is at a distance of 0 meters) and a point some distance away from the electrode (where the point represents the location of the feet of the person in contact with the object). The touch potential could be nearly the full voltage across the

grounded object if that object is grounded at a point remote from the place where the person is in contact with it. For example, a crane grounded to the system neutral and that contacts an energized line would expose any person in contact with the crane or its uninsulated load line to a touch potential nearly equal to the full fault voltage.

Figure B illustrates step and touch potentials.

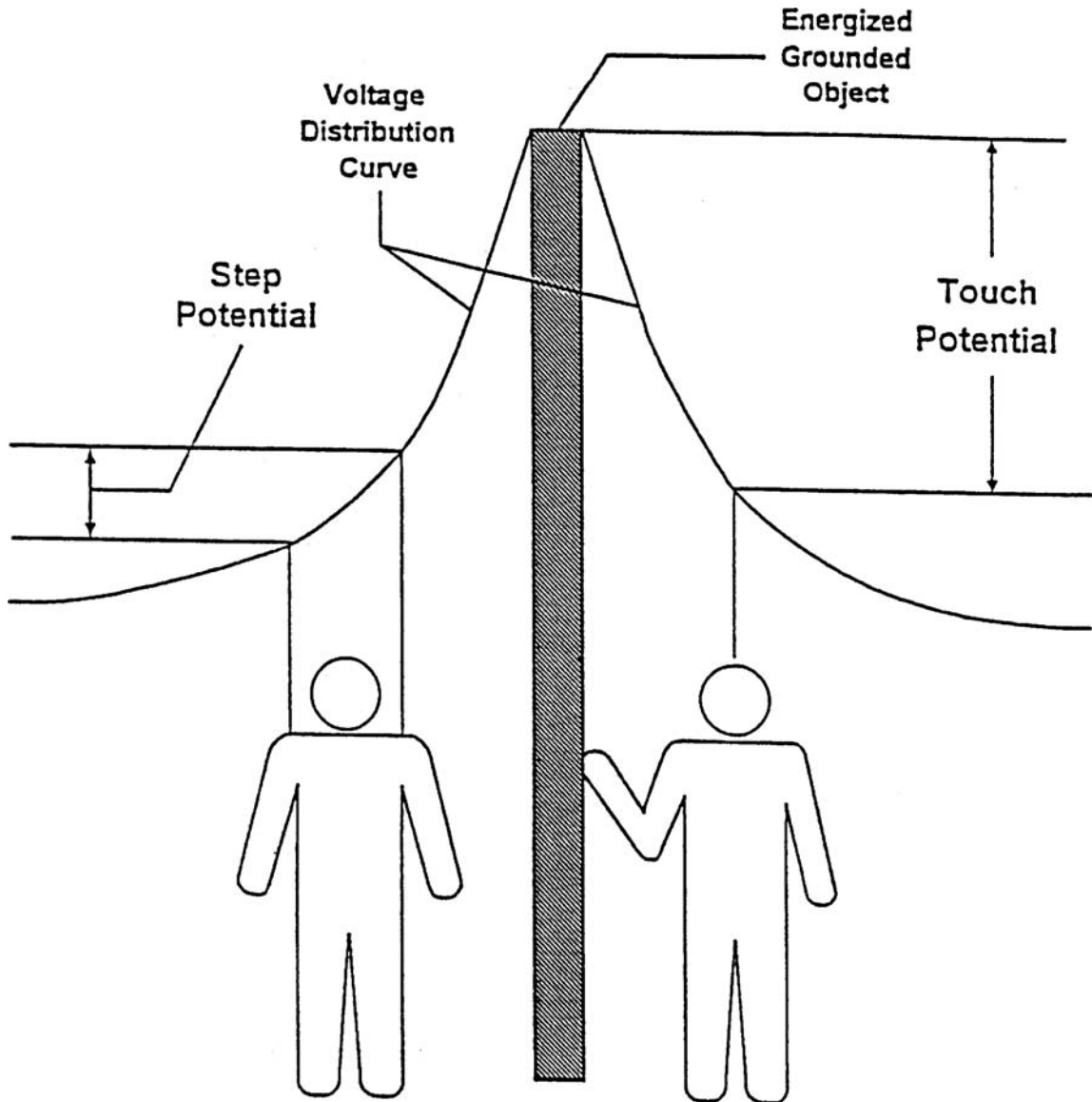


Figure B - Step and Touch Potentials

### **III. Protecting Workers From Hazardous Differences in Electrical Potential**

**A. Definitions.** The following definitions apply to Section III of this document:

**Bond.** The electrical interconnection of conductive parts designed to maintain a common electric potential.

**Bonding cable (bonding jumper).** A cable connected to two conductive parts to bond the parts together.

**Cluster bar.** A terminal temporarily attached to a structure that provides a means for the attachment and bonding of grounding and bonding cables to the structure.

**Ground.** A conducting connection between an electric circuit or equipment and the earth, or to some conducting body that serves in place of the earth.

**Grounding cable (grounding jumper).** A cable connected between a deenergized part and ground. Note that grounding cables carry fault current and bonding cables generally do

not. A cable that bonds two conductive parts but carries substantial fault current (for example, a jumper connected between one phase and a grounded phase) is a grounding cable.

**Ground mat (grounding grid).** A temporarily or permanently installed metallic mat or grating that establishes an equipotential surface and provides connection points for attaching grounds.

**B. Analyzing the hazard.** The employer can use an engineering analysis of the power system under fault conditions to determine whether hazardous step and touch voltages will develop. The analysis should determine the voltage on all conductive objects in the work area and the amount of time the voltage will be present. Based on the analysis, the employer can select appropriate measures and protective equipment, including the measures and protective equipment outlined in Section III of this document, to protect each



employee from hazardous differences in electric potential. For example, from the analysis, the employer will know the voltage remaining on conductive objects after employees install bonding and grounding equipment and will be able to select insulating equipment with an appropriate rating, as described in paragraph III.C.2 of this document.

C. Protecting workers on the ground. The employer may use several methods, including equipotential zones, insulating equipment, and restricted work areas, to protect employees on the ground from hazardous differences in electrical potential.

1. An equipotential zone will protect workers within it from hazardous step and touch potentials. (See Figure C.) Equipotential zones will not, however, protect employees located either wholly or partially outside the protected area. The employer can establish an equipotential zone for workers on the ground, with respect to a grounded object, through the use of a metal mat connected to the grounded object. The employer can use a grounding grid to equalize the voltage within the grid or bond conductive objects in the immediate work area to minimize the potential between the objects and between each object and ground. (Bonding an object outside the work area can increase the touch potential to that object, however.) Section III.D of this document discusses equipotential zones for employees working on deenergized and grounded power lines.

2. Insulating equipment, such as rubber gloves, can protect employees handling grounded equipment and conductors from hazardous touch potentials. The insulating equipment must be rated for the highest voltage that can be impressed on the grounded objects under fault conditions (rather than for the full system voltage).

3. Restricting employees from areas where hazardous step or touch potentials could arise can protect employees not directly involved in performing the operation. The employer must ensure that employees on the ground in the vicinity of transmission structures are at a distance where step voltages would be insufficient to cause injury. Employees must not handle grounded conductors or equipment likely to become energized to hazardous voltages unless the employees are within an equipotential zone or protected by insulating equipment.

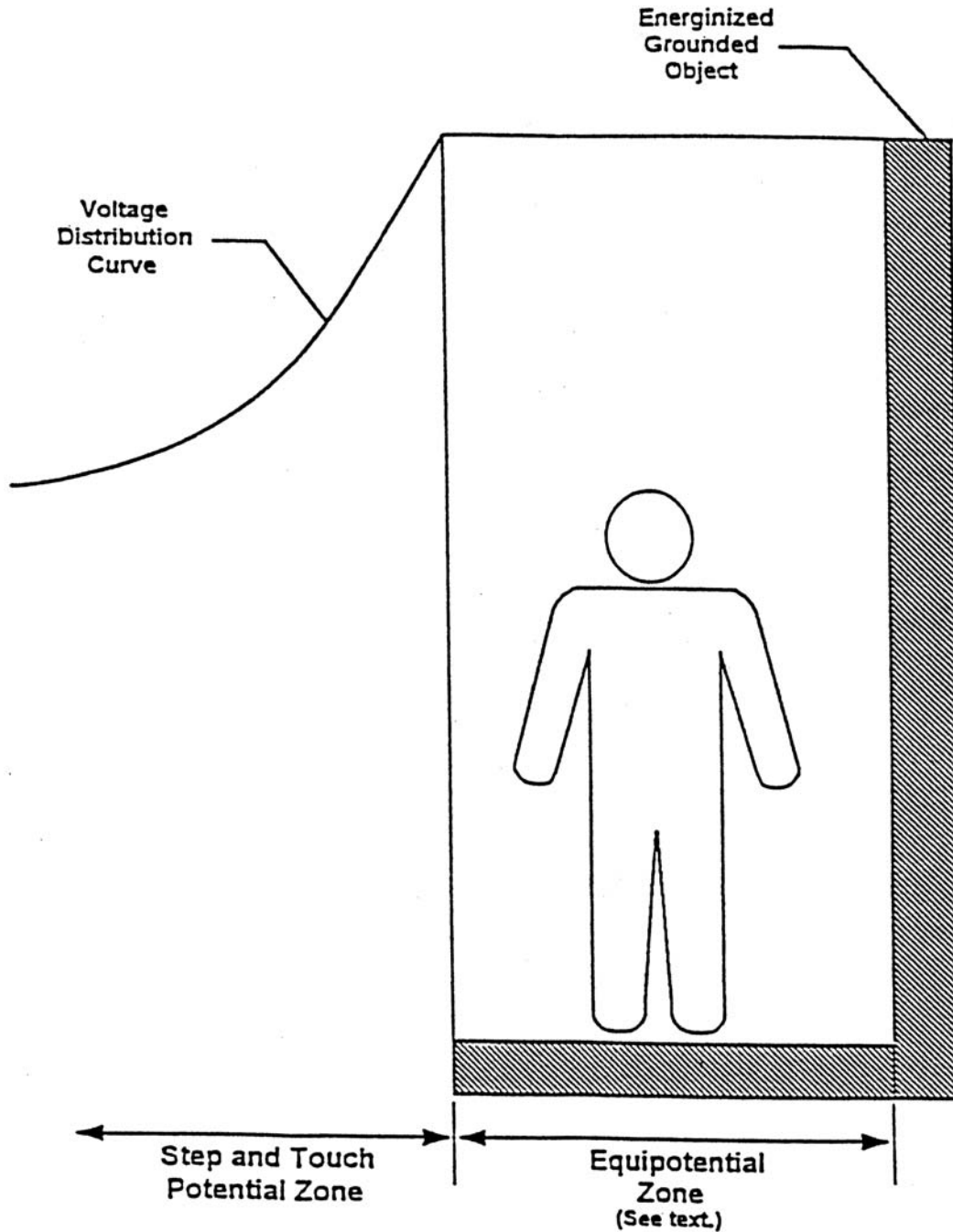


Figure C - Protection from Ground-Potential Gradients

D. Protecting employees working on deenergized and grounded power lines. This Section III.D of this document establishes guidelines to help employers comply with requirements in WAC 296-45-345 for using protective grounding to protect employees working on deenergized power lines. WAC 296-45-345 applies to grounding of transmission and distribution lines and equipment for the purpose of protecting workers. WAC 296-45-345(3) requires temporary protective grounds to be placed at such locations and arranged in such a manner that the employer can demonstrate

will prevent exposure of each employee to hazardous differences in electric potential.<sup>3</sup> Sections III.D.1 and III.D.2 of this document provide guidelines that employers can use in making the demonstration required by WAC 296-45-345(3). Section III.D.1 of this document provides guidelines on how the employer can determine whether particular grounding practices expose employees to hazardous differences in electric potential. Section III.D.2 of this document describes grounding methods that the employer can use in lieu of an engineering analysis to make the demonstration required by WAC

296-45-345(3). The department will consider employers that comply with the criteria in this document as meeting WAC 296-45-345(3).

Finally, Section III.D.3 of this document discusses other safety considerations that will help the employer comply with other requirements in WAC 296-45-345. Following these guidelines will protect workers from hazards that can occur when a deenergized and grounded line becomes energized.

1. *Determining safe body current limits.* This Section III.D.1 of this document provides guidelines on how an employer can determine whether any differences in electric potential to which workers could be exposed are hazardous as part of the demonstration required by WAC 296-45-345(3).

Institute of Electrical and Electronic Engineers (IEEE) Standard 1048-2003, IEEE Guide for Protective Grounding of Power Lines, provides the following equation for determining the threshold of ventricular fibrillation when the duration of the electric shock is limited:

$$I = \frac{116}{\sqrt{t}},$$

Where  $I$  is the current through the worker's body, and  $t$  is the duration of the current in seconds. This equation represents the ventricular fibrillation threshold for 95.5 percent of the adult population with a mass of 50 kilograms (110 pounds) or more. The equation is valid for current durations between 0.0083 to 3.0 seconds.

To use this equation to set safe voltage limits in an equipotential zone around the worker, the employer will need to assume a value for the resistance of the worker's body. IEEE Std 1048-2003 states that "total body resistance is usually taken as 1000  $\Omega$  for determining ... body current limits." However, employers should be aware that the impedance of a worker's body can be substantially less than that value. For instance, IEEE Std 1048-2003 reports a minimum hand-to-hand resistance of 610 ohms and an internal body resistance of 500 ohms. The internal resistance of the body better represents the minimum resistance of a worker's body when the skin resistance drops near zero, which occurs, for example, when there are breaks in the worker's skin, for instance, from cuts or from blisters formed as a result of the current from an electric shock, or when the worker is wet at the points of contact.

Employers may use the IEEE Std 1048-2003 equation to determine safe body current limits only if the employer protects workers from hazards associated with involuntary muscle reactions from electric shock (for example, the hazard to a worker from falling as a result of an electric shock). Moreover, the equation applies only when the duration of the electric shock is limited. If the precautions the employer takes, including those required by applicable standards, do not adequately protect employees from hazards associated with involuntary reactions from electric shock, a hazard exists if the induced voltage is sufficient to pass a current of 1 milliampere through a 500-ohm resistor. (The 500-ohm resistor represents the resistance of an employee. The 1-milliampere

current is the threshold of perception.) Finally, if the employer protects employees from injury due to involuntary reactions from electric shock, but the duration of the electric shock is unlimited (that is, when the fault current at the work location will be insufficient to trip the devices protecting the circuit), a hazard exists if the resultant current would be more than 6 milliamperes (the recognized let-go threshold for workers<sup>4</sup>).

2. *Acceptable methods of grounding for employers that do not perform an engineering determination.* The grounding methods presented in this section of this document ensure that differences in electric potential are as low as possible and, therefore, meet WAC 296-45-345(3) without an engineering determination of the potential differences. These methods follow two principles: (i) The grounding method must ensure that the circuit opens in the fastest available clearing time, and (ii) the grounding method must ensure that the potential differences between conductive objects in the employee's work area are as low as possible.

WAC 296-45-345(3) does not require grounding methods to meet the criteria embodied in these principles. Instead, the paragraph requires that protective grounds be "placed at such locations and arranged in such a manner that the employer can demonstrate will prevent exposure of each employee to hazardous differences in electric potential." However, when the employer's grounding practices do not follow these two principles, the employer will need to perform an engineering analysis to make the demonstration required by WAC 296-45-345(3).

i. *Ensuring that the circuit opens in the fastest available clearing time.* Generally, the higher the fault current, the shorter the clearing times for the same type of fault. Therefore, to ensure the fastest available clearing time, the grounding method must maximize the fault current with a low impedance connection to ground. The employer accomplishes this objective by grounding the circuit conductors to the best ground available at the worksite. Thus, the employer must ground to a grounded system neutral conductor, if one is present. A grounded system neutral has a direct connection to the system ground at the source, resulting in an extremely low impedance to ground. In a substation, the employer may instead ground to the substation grid, which also has an extremely low impedance to the system ground and, typically, is connected to a grounded system neutral when one is present. Remote system grounds, such as pole and tower grounds, have a higher impedance to the system ground than grounded system neutrals and substation grounding grids; however, the employer may use a remote ground when lower impedance grounds are not available. In the absence of a grounded system neutral, substation grid, and remote ground, the employer may use a temporary driven ground at the worksite.

In addition, if employees are working on a three-phase system, the grounding method must short circuit all three phases. Short circuiting all phases will ensure faster clearing and lower the current through the grounding cable connecting the deenergized line to ground, thereby lowering the voltage across that cable. The short circuit need not be at the worksite; however, the employer must treat any conductor that is not grounded at the worksite as energized because the

ungrounded conductors will be energized at fault voltage during a fault.

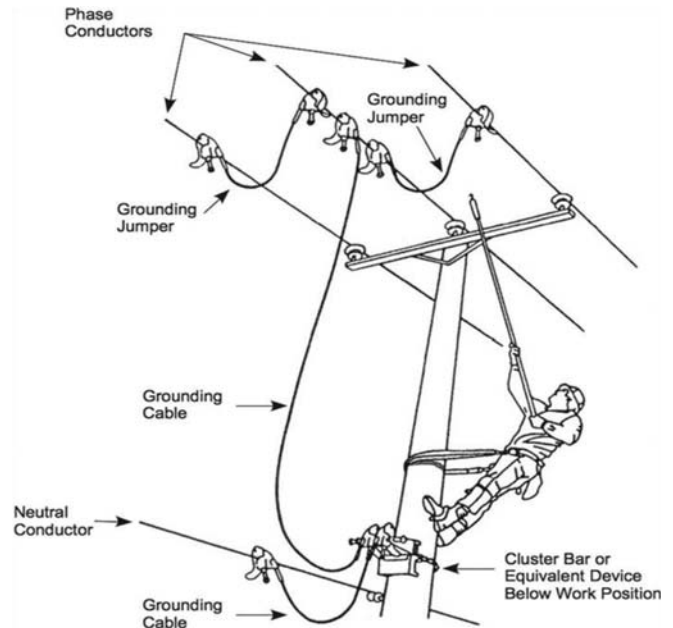
ii. Ensuring that the potential differences between conductive objects in the employee's work area are as low as possible. To achieve as low a voltage as possible across any two conductive objects in the work area, the employer must bond all conductive objects in the work area. This section of this document discusses how to create a zone that minimizes differences in electric potential between conductive objects in the work area.

The employer must use bonding cables to bond conductive objects, except for metallic objects bonded through metal-to-metal contact. The employer must ensure that metal-to-metal contacts are tight and free of contamination, such as oxidation, that can increase the impedance across the connection. For example, a bolted connection between metal lattice tower members is acceptable if the connection is tight and free of corrosion and other contamination. Figure D shows how to create an equipotential zone for metal lattice towers.

Wood poles are conductive objects. The poles can absorb moisture and conduct electricity, particularly at distribution and transmission voltages. Consequently, the employer must either: (1) Provide a conductive platform, bonded to a grounding cable, on which the worker stands or (2) use cluster bars to bond wood poles to the grounding cable. The employer must ensure that employees install the cluster bar below, and close to, the worker's feet. The inner portion of the wood pole is more conductive than the outer shell, so it is important that the cluster bar be in conductive contact with a metal spike or nail that penetrates the wood to a depth greater than or equal to the depth the worker's climbing gaffs will penetrate the wood. For example, the employer could mount the cluster bar on a bare pole ground wire fastened to the pole with nails or staples that penetrate to the required depth. Alternatively, the employer may temporarily nail a conductive strap to the pole and connect the strap to the cluster bar. Figure E shows how to create an equipotential zone for wood poles.

- Notes:
1. Employers must ground overhead ground wires that are within reach of the employee.
  2. The grounding cable must be as short as practicable; therefore, the attachment points between the grounding cable and the tower may be different from that shown in the figure.

**Figure D - Equipotential Zone for Metal Lattice Tower**



**Figure E - Equipotential Grounding for Wood Poles**

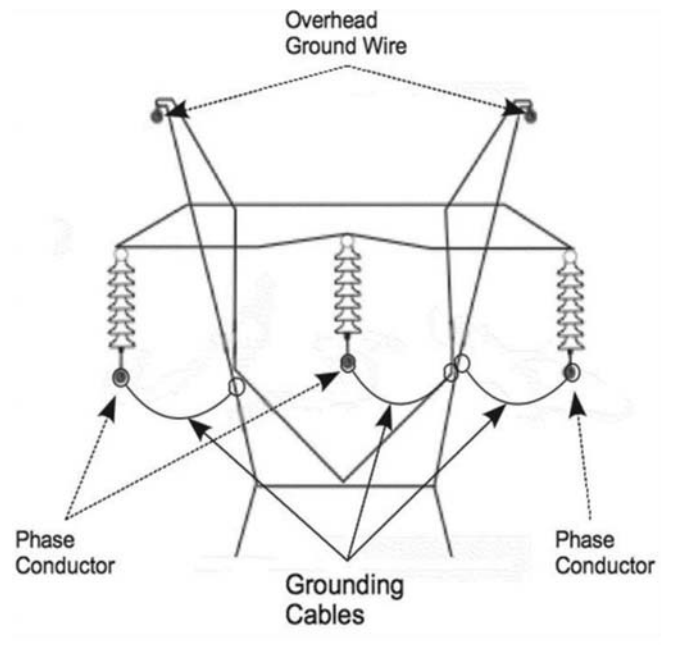
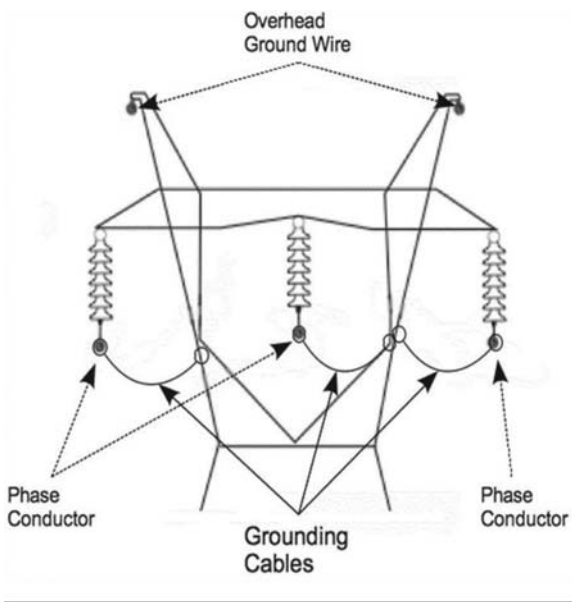


Figure reprinted with permission from Hubbell Power Systems, Inc. (Hubbell)

OSHA revised the figure from Hubbell's original.

For underground systems, employers commonly install grounds at the points of disconnection of the underground cables. These grounding points are typically remote from the manhole or underground vault where employees will be working on the cable. Workers in contact with a cable grounded at a remote location can experience hazardous potential differences if the cable becomes energized or if a fault occurs on a different, but nearby, energized cable. The fault current causes potential gradients in the earth, and a potential difference will exist between the earth where the worker is standing and the earth where the cable is grounded. Consequently, to create an equipotential zone for the worker, the employer must provide a means of connecting the deenergized cable to ground at the worksite by having the worker stand on a conductive mat bonded to the deenergized cable. If the cable is cut, the employer must install a bond across the opening in the cable or install one bond on each side of the opening to ensure that the separate cable ends are at the same potential. The employer must protect the worker from any hazardous differences in potential any time there is no bond between the mat and the cable (for example, before the worker installs the bonds).

3. Other safety-related considerations. To ensure that the grounding system is safe and effective, the employer should also consider the following factors:<sup>2</sup>

i. Maintenance of grounding equipment. It is essential that the employer properly maintain grounding equipment. Corrosion in the connections between grounding cables and clamps and on the clamp surface can increase the resistance of the cable, thereby increasing potential differences. In addition, the surface to which a clamp attaches, such as a conductor or tower member, must be clean and free of corrosion and oxidation to ensure a low-resistance connection. Cables must be free of damage that could reduce their current-carrying capacity so that they can carry the full fault current without failure. Each clamp must have a tight connection to the cable to ensure a low resistance and to ensure that the clamp does not separate from the cable during a fault.

ii. Grounding cable length and movement. The electromagnetic forces on grounding cables during a fault increase with increasing cable length. These forces can cause the cable to move violently during a fault and can be high enough to damage the cable or clamps and cause the cable to fail. In addition, flying cables can injure workers. Consequently, cable lengths should be as short as possible, and grounding cables that might carry high fault current should be in positions where the cables will not injure workers during a fault.

Notes: <sup>1</sup>This document generally uses the term "grounded" only with respect to grounding that the employer intentionally installs, for example, the grounding an employer installs on a deenergized conductor. However, in this case, the term "grounded" means connected to earth, regardless of whether or not that connection is intentional.

<sup>2</sup>Thus, grounding systems for transmission towers and substation structures should be designed to minimize the step and touch potentials involved.

<sup>3</sup>The protective grounding required by WAC 296-45-345 limits to safe values the potential differences between accessible objects in each employee's work environment. Ideally, a protective grounding system would create a true equipotential zone in which every point is at the same electric potential. In practice, current passing through the grounding and bonding elements creates potential differences. If these potential differences are hazardous, the employer may not treat the zone as an equipotential zone.

<sup>4</sup>Electric current passing through the body has varying effects depending on the amount of the current. At the let-go threshold, the current overrides a person's control over his or her muscles. At that level, an employee grasping an object will not be able to let go of the object. The let-go threshold varies from person to person; however, the recognized value for workers is 6 milliamperes.

<sup>5</sup>This document only discusses factors that relate to ensuring an equipotential zone for employees. The employer must consider other factors in selecting a grounding system that is capable of conducting the maximum fault current that could flow at the point of grounding for the time necessary to clear the fault, as required by WAC 296-45-345 (4)(a). IEEE Std 1048-2003 contains guidelines for selecting and installing grounding equipment that will meet WAC 296-45-345 (4)(a).

AMENDATORY SECTION (Amending WSR 98-07-009, filed 3/6/98, effective 5/6/98)

### **WAC 296-45-905 Appendix C—Methods of inspecting and testing wood poles—Nonmandatory.**

#### **I. "Introduction"**

When ~~((work is to be performed))~~ employees are to perform work on a wood pole, it is important to determine the condition of the pole before ~~employees climb~~ it ~~((is climbed))~~. The weight of the employee, the weight of equipment ~~((being))~~ to be installed, and other working stresses (such as the removal or retensioning of conductors) can lead to the failure of a defective pole or ~~((one))~~ a pole that is not designed to handle the additional stresses.<sup>(1)</sup> For these reasons, it is essential that ~~((an inspection and test of the condition of a wood pole be performed before it is climbed))~~, before an employee climbs a wood pole, the employer ascertains that the pole is capable of sustaining the stresses of the work. The determination that the pole is capable of sustaining these stresses includes an inspection of the condition of the pole.

Footnote<sup>(1)</sup>

((A properly guyed pole in good condition should, at a minimum, be able to handle the weight of an employee climbing it.)) If the employer finds the pole ~~((is found))~~ to be unsafe to climb or to work from, ~~((it must be secured))~~ the employer must secure the pole so that it does not fail while an employee is on it.

The employer can secure the pole ~~((can be secured))~~ by a line truck boom, by ropes or guys, or by lashing a new pole alongside it. If a new one is lashed alongside the defective pole, employees should work ~~((should be performed))~~ from the new one.

#### **II. "Inspection of wood poles"**

~~((Wood poles should be inspected by))~~ A qualified employee should inspect wood poles for the following conditions:<sup>(2)</sup>

*Footnote*<sup>(2)</sup> The presence of any of these conditions is an indication that the pole may not be safe to climb or to work from. The employee performing the inspection must be qualified to make a determination as to whether or not it is safe to perform the work without taking additional precautions.

#### A. General condition.

~~((The pole should be inspected for))~~ Buckling at the ground line ~~((and for))~~ or an unusual angle with respect to the ground ~~((Buckling and odd angles))~~ may indicate that the pole has rotted or is broken.

#### B. Cracks.

~~((The pole should be inspected for cracks.))~~ Horizontal cracks perpendicular to the grain of the wood may weaken the pole. Vertical ~~((ones))~~ cracks, although not normally considered to be a sign of a defective pole, can pose a hazard to the climber, and the employee should keep his or her gaffs away from them while climbing.

#### C. Holes.

Hollow spots and woodpecker holes can reduce the strength of a wood pole.

#### D. Shell rot and decay.

Rotting and decay are cutout hazards and are possible indications of the age and internal condition of the pole.

#### E. Knots.

One large knot or several smaller ones at the same height on the pole may be evidence of a weak point on the pole.

#### F. Depth of setting.

Evidence of the existence of a former ground line substantially above the existing ground level may be an indication that the pole is no longer buried to a sufficient extent.

#### G. Soil conditions.

Soft, wet, or loose soil around the base of the pole may indicate that the pole will not support any change ~~((s of))~~ in stress ~~((on the pole))~~.

#### H. Burn marks.

Burning from transformer failures or conductor faults could damage the pole so that it cannot withstand changes in mechanical stress ~~((changes))~~.

### III. "Testing of wood poles"

The following tests are recognized as acceptable methods of testing wood poles:

#### A. Hammer test.

Rap the pole sharply with a hammer weighing about 3 pounds (1.4 kg), starting near the ground line and continuing upwards circumferentially around the pole to a height of approximately 6 feet (1.8 meters). The hammer will produce a clear sound and rebound sharply when striking sound wood. Decay pockets will be indicated by a dull sound or a less pronounced hammer rebound. Also, prod the pole as near the ground line as possible using a pole prod or a screwdriver with a blade at least 5 inches (127 millimeters) long. If substantial decay is ~~((encountered))~~ present, the pole is ~~((considered))~~ unsafe.

#### B. Rocking test.

Apply a horizontal force to the pole and attempt to rock it back and forth in a direction perpendicular to the line. Exercise caution ~~((must be exercised))~~ to avoid causing power lines to swing together. Apply the force ~~((may be applied))~~ to the pole either by pushing with a pike pole or pulling the pole

with a rope. If the pole cracks during the test, it ~~((shall be considered))~~ is unsafe.

### NEW SECTION

## WAC 296-45-906 Appendix D—Protection from flames and electric arcs—Nonmandatory.

### I. Introduction

WAC 296-45-325(13) addresses protecting employees from flames and electric arcs. This section requires employers to: (1) Assess the workplace for flame and electric-arc hazards (WAC 296-45-325 (13)(a)); (2) estimate the available heat energy from electric arcs to which employees would be exposed (WAC 296-45-325 (13)(b)); (3) ensure that employees wear clothing that will not melt, or ignite and continue to burn, when exposed to flames or the estimated heat energy (WAC 296-45-325 (13)(c)); and (4) ensure that employees wear flame-resistant clothing<sup>1</sup> and protective clothing and other protective equipment that has an arc rating greater than or equal to the available heat energy under certain conditions (WAC 296-45-325 (13)(d) and (e)). This appendix contains information to help employers estimate available heat energy as required by WAC 296-45-325 (13)(b), select protective clothing and other protective equipment with an arc rating suitable for the available heat energy as required by WAC 296-45-325 (13)(e), and ensure that employees do not wear flammable clothing that could lead to burn injury as addressed by WAC 296-45-325 (13)(c) and (d).

### II. Assessing the Workplace for Flame and Electric-Arc Hazards

WAC 296-45-325 (13)(a) requires the employer to assess the workplace to identify employees exposed to hazards from flames or from electric arcs. This provision ensures that the employer evaluates employee exposure to flames and electric arcs so that employees who face such exposures receive the required protection. The employer must conduct an assessment for each employee who performs work on or near exposed, energized parts of electric circuits.

#### A. Assessment Guidelines.

*Sources electric arcs.* Consider possible sources of electric arcs, including:

- Energized circuit parts not guarded or insulated;
- Switching devices that produce electric arcs in normal operation;
- Sliding parts that could fault during operation (for example, rack-mounted circuit breakers); and
- Energized electric equipment that could fail (for example, electric equipment with damaged insulation or with evidence of arcing or overheating).

*Exposure to flames.* Identify employees exposed to hazards from flames. Factors to consider include:

- The proximity of employees to open flames; and
- For flammable material in the work area, whether there is a reasonable likelihood that an electric arc or an open flame can ignite the material.

*Probability that an electric arc will occur.* Identify employees exposed to electric-arc hazards. The department will consider an employee exposed to electric-arc hazards if there is a reasonable likelihood that an electric arc will occur in the

employee's work area, in other words, if the probability of such an event is higher than it is for the normal operation of enclosed equipment. Factors to consider include:

- For energized circuit parts not guarded or insulated, whether conductive objects can come too close to or fall onto the energized parts;
- For exposed, energized circuit parts, whether the employee is closer to the part than the minimum approach distance established by the employer (as permitted by WAC 296-45-325(4));

- Whether the operation of electric equipment with sliding parts that could fault during operation is part of the normal operation of the equipment or occurs during servicing or maintenance; and
- For energized electric equipment, whether there is evidence of impending failure, such as evidence of arcing or overheating.

*B. Examples.*

Table 1 provides task-based examples of exposure assessments.

<b>TABLE 1 EXAMPLE ASSESSMENTS FOR VARIOUS TASKS</b>		
Task		Is employee exposed to flame or electric arc hazard?
Normal operation of enclosed equipment, such as closing or opening a switch.	The employer properly installs and maintains enclosed equipment, and there is no evidence of impending failure.	No.
	There is evidence of arcing or overheating .....	Yes.
	Parts of the equipment are loose or sticking, or the equipment otherwise exhibits signs of lack of maintenance.	Yes.
Servicing electric equipment, such as racking in a circuit breaker or replacing a switch		Yes.
Inspection of electric equipment with exposed energized parts.	The employee is not holding conductive objects and remains outside the minimum approach distance established by the employer.	No.
	The employee is holding a conductive object, such as a flashlight, that could fall or otherwise contact energized parts (irrespective of whether the employee maintains the minimum approach distance).	Yes.
	The employee is closer than the minimum approach distance established by the employer (for example, when wearing rubber insulating gloves or rubber insulating gloves and sleeves).	Yes.
Using open flames, for example, in wiping cable splice sleeves . . . . .		Yes.

III. Protection Against Burn Injury

*A. Estimating Available Heat Energy.*

*Calculation methods.* WAC 296-45-325 (13)(b) provides that, for each employee exposed to an electric-arc hazard, the employer must make a reasonable estimate of the heat energy to which the employee would be exposed if an arc occurs. Table 2 lists various methods of calculating values of available heat energy from an electric circuit. The department does not endorse any of these specific methods. Each method requires the input of various parameters, such as fault current, the expected length of the electric arc, the distance from the arc to the employee, and the clearing time for the fault (that is, the time the circuit protective devices take to open the circuit and clear the fault). The employer can precisely determine some of these parameters, such as the fault current and the clearing time, for a given system. The employer will need to estimate other parameters, such as the length of the arc and the distance between the arc and the employee, because such parameters vary widely.

<b>TABLE 2 METHODS OF CALCULATING INCIDENT HEAT ENERGY FROM AN ELECTRIC ARC</b>
1. <i>Standard for Electrical Safety Requirements for Employee Workplaces</i> , NFPA 70E-2012, Annex D, "Sample Calculation of Flash Protection Boundary."

2. Doughty, T.E., Neal, T.E., and Floyd II, H.L., "Predicting Incident Energy to Better Manage the Electric Arc Hazard on 600 V Power Distribution Systems," *Record of Conference Papers IEEE IAS 45th Annual Petroleum and Chemical Industry Conference*, September 28-30, 1998.
3. *Guide for Performing Arc-Flash Hazard Calculations*, IEEE Std 1584-2002, 1584a-2004 (Amendment 1 to IEEE Std 1584-2002), and 1584b-2011 (Amendment 2: Changes to Clause 4 of IEEE Std 1584-2002).\*
4. ARCPRO, a commercially available software program developed by Kinectrics, Toronto, ON, CA.

\* This appendix refers to IEEE Std 1584-2002 with both amendments as IEEE Std 1584b-2011.

The amount of heat energy calculated by any of the methods is approximately inversely proportional to the square of the distance between the employee and the arc. In other words, if the employee is very close to the arc, the heat energy is very high; but if the employee is just a few more centimeters away, the heat energy drops substantially. Thus, estimating the distance from the arc to the employee is key to protecting employees.

The employer must select a method of estimating incident heat energy that provides a reasonable estimate of incident heat energy for the exposure involved. Table 3 shows which methods provide reasonable estimates for various exposures.

Incident-energy calculation method	600 V and Less <sup>2</sup>			601 V to 15 kV <sup>2</sup>			More than 15 kV		
	1Φ	3Φa	3Φb	1Φ	3Φa	3Φb	1Φ	3Φa	3Φb
NFPA 70E-2012 Annex D (Lee equation) . . . . .	Y-C	Y	N	Y-C	Y-C	N	N <sup>3</sup>	N <sup>3</sup>	N <sup>3</sup>
Doughty, Neal, and Floyd . . . . .	Y-C	Y	Y	N	N	N	N	N	N
IEEE Std 1584b-2011 . . . . .	Y	Y	Y	Y	Y	Y	N	N	N
ARCPRO . . . . .	Y	N	N	Y	N	N	Y	Y <sup>4</sup>	Y <sup>4</sup>

Key:

- 1Φ: Single-phase arc in open air.
- 3Φa: Three-phase arc in open air.
- 3Φb: Three-phase arc in an enclosure (box).
- Y: Acceptable; produces a reasonable estimate of incident heat energy from this type of electric arc.
- N: Not acceptable; does not produce a reasonable estimate of incident heat energy from this type of electric arc.
- Y-C: Acceptable; produces a reasonable, but conservative, estimate of incident heat energy from this type of electric arc.

- Notes:
- <sup>1</sup> Although the department will consider these methods reasonable for enforcement purposes when employers use the methods in accordance with this table, employers should be aware that the listed methods do not necessarily result in estimates that will provide full protection from internal faults in transformers and similar equipment or from arcs in underground manholes or vaults.
  - <sup>2</sup> At these voltages, the presumption is that the arc is three-phase unless the employer can demonstrate that only one phase is present or that the spacing of the phases is sufficient to prevent a multiphase arc from occurring.
  - <sup>3</sup> Although the department will consider this method acceptable for purposes of assessing whether incident energy exceeds 2.0 cal/cm<sup>2</sup>, the results at voltages of more than 15 kilovolts are extremely conservative and unrealistic.
  - <sup>4</sup> The department will deem the results of this method reasonable when the employer adjusts them using the conversion factors for three-phase arcs in open air or in an enclosure, as indicated in the program's instructions.

*Selecting a reasonable distance from the employee to the arc.* In estimating available heat energy, the employer must make some reasonable assumptions about how far the employee will be from the electric arc. Table 4 lists reasonable distances from the employee to the electric arc. The distances in Table 4 are consistent with national consensus standards, such as the Institute of Electrical and Electronic Engineers' *National Electrical Safety Code*, ANSI/IEEE C2-2012, and *IEEE Guide for Performing Arc-Flash Hazard Calculations*, IEEE Std 1584b-2011. The employer is free to use other reasonable distances, but must consider equipment enclosure size and the working distance to the employee in selecting a distance from the employee to the arc. The department will consider a distance reasonable when the employer bases it on equipment size and working distance.

Class of equipment	Single-phase arc mm (inches)	Three-phase arc mm (inches)
Cable . . . . .	*NA	455 (18)
Low voltage MCCs and panelboards . . . . .	NA	455 (18)
Low-voltage switchgear . . . . .	NA	610 (24)



Class of equipment	Single-phase arc mm (inches)	Three-phase arc mm (inches)
5-kV switchgear . . . . .	NA	910 (36)
15-kV switchgear . . . . .	NA	910 (36)
Single conductors in air (up to 46 kilovolts), work with rubber insulating gloves . . . . .	380 (15)	NA
Single conductors in air, work with live-line tools . . . . .	$MAD - (2 \times kV \times 2.54)$	NA

\* NA = not applicable.  
 † The terms in this equation are:  
 MAD = The applicable minimum approach distance; and  
 kV = The system voltage in kilovolts.

*Selecting a reasonable arc gap.* For a single-phase arc in air, the electric arc will almost always occur when an energized conductor approaches too close to ground. Thus, an employer can determine the arc gap, or arc length, for these exposures by the dielectric strength of air and the voltage on the line. The dielectric strength of air is approximately 10 kilovolts for every 25.4 millimeters (1 inch). For example, at 50 kilovolts, the arc gap would be  $50 \div 10 \times 25.4$  (or  $50 \times 2.54$ ), which equals 127 millimeters (5 inches).

For three-phase arcs in open air and in enclosures, the arc gap will generally be dependent on the spacing between parts energized at different electrical potentials. Documents such as IEEE Std 1584b-2011 provide information on these distances. Employers may select a reasonable arc gap from Table 5, or they may select any other reasonable arc gap based on sparkover distance or on the spacing between (1) live parts at different potentials or (2) live parts and grounded parts (for example, bus or conductor spacings in equipment). In any event, the employer must use an estimate that reasonably resembles the actual exposures faced by the employee.

Class of equipment	Single-phase arc mm (inches)	Three-phase arc mm <sup>1</sup> (inches)
Cable . . . . .	NA <sup>2</sup> . . . . .	13 (0.5).
Low voltage MCCs and panelboards . . . . .	NA . . . . .	25 (1.0).
Low-voltage switchgear . . . . .	NA . . . . .	32 (1.25).
5-kV switchgear . . . . .	NA . . . . .	104 (4.0).
15-kV switchgear . . . . .	NA . . . . .	152 (6.0).
Single conductors in air (up to 46 kilovolts), work with rubber insulating gloves . . . . .	51 (2.0) . . . . .	Phase conductor spacing.
Single conductors in air, work with live-line tools . . . . .	$Voltage\ in\ kV \times 2.54$ (Voltage in kV $\times$ 0.1), but no less than 51 mm (2 inches).	Phase conductor spacing.

<sup>1</sup>Source: IEEE Std 1584b-2011.

<sup>2</sup>NA = not applicable.

*Making estimates over multiple system areas.* The employer need not estimate the heat-energy exposure for every job task performed by each employee. WAC 296-45-325 (13)(b) permits the employer to make broad estimates that cover multiple system areas provided that: (1) The employer uses reasonable assumptions about the energy-exposure distribution throughout the system, and (2) the estimates represent the maximum exposure for those areas. For example, the employer can use the maximum fault current and clearing time to cover several system areas at once.

*Incident heat energy for single-phase-to-ground exposures.* Table 6 and Table 7 provide incident heat energy levels for openair, phase-to-ground electric-arc exposures typical for

overhead systems.<sup>2</sup> Table 6 presents estimates of available energy for employees using rubber insulating gloves to perform work on overhead systems operating at 4 to 46 kilovolts. The table assumes that the employee will be 380 millimeters (15 inches) from the electric arc, which is a reasonable estimate for rubber insulating glove work. Table 6 also assumes that the arc length equals the sparkover distance for the maximum transient overvoltage of each voltage range.<sup>3</sup> To use the table, an employer would use the voltage, maximum fault current, and maximum clearing time for a system area and, using the appropriate voltage range and fault-current and clearing time values corresponding to the next higher values listed in the table, select the appropriate heat

energy (4, 5, 8, or 12 cal/cm<sup>2</sup>) from the table. For example, an employer might have a 12,470-volt power line supplying a system area. The power line can supply a maximum fault current of 8 kiloamperes with a maximum clearing time of 10 cycles. For rubber glove work, this system falls in the 4.0-to-15.0-kilovolt range; the next-higher fault current is 10 kA (the second row in that voltage range); and the clearing time is under 18 cycles (the first column to the right of the fault current column). Thus, the available heat energy for this part of the system will be 4 cal/cm<sup>2</sup> or less (from the column heading), and the employer could select protection with a 5-cal/cm<sup>2</sup> rating to meet WAC 296-45-325 (13)(e). Alternatively, an employer could select a base incident-energy value and ensure that the clearing times for each voltage range and fault current listed in the table do not exceed the corresponding clearing time specified in the table. For example, an employer that provides employees with arc-flash protective equipment rated at 8 cal/cm<sup>2</sup> can use the table to determine if any system area exceeds 8 cal/cm<sup>2</sup> by checking the clearing

time for the highest fault current for each voltage range and ensuring that the clearing times do not exceed the values specified in the 8-cal/cm<sup>2</sup> column in the table.

Table 7 presents similar estimates for employees using live-line tools to perform work on overhead systems operating at voltages of 4 to 800 kilovolts. The table assumes that the arc length will be equal to the sparkover distance<sup>4</sup> and that the employee will be a distance from the arc equal to the minimum approach distance minus twice the sparkover distance.

The employer will need to use other methods for estimating available heat energy in situations not addressed by Table 6 or Table 7. The calculation methods listed in Table 2 and the guidance provided in Table 3 will help employers do this. For example, employers can use IEEE Std 1584b-2011 to estimate the available heat energy (and to select appropriate protective equipment) for many specific conditions, including lowervoltage, phase-to-phase arc, and enclosed arc exposures.

**TABLE 6  
INCIDENT HEAT ENERGY FOR VARIOUS FAULT CURRENTS, CLEARING TIMES, AND VOLTAGES OF 4.0 TO 46.0 KV: RUBBER INSULATING GLOVE EXPOSURES INVOLVING PHASE-TO-GROUND ARCS IN OPEN AIR ONLY \* † ‡**

Voltage range (kV) **	Fault current (kA)	Maximum clearing time (cycles)			
		4 cal/cm <sup>2</sup>	5 cal/cm <sup>2</sup>	8 cal/cm <sup>2</sup>	12 cal/cm <sup>2</sup>
4.0 to 15.0	5	46	58	92	138
	10	18	22	36	54
	15	10	12	20	30
	20	6	8	13	19
15.1 to 25.0	5	28	34	55	83
	10	11	14	23	24
	15	7	8	13	20
	20	4	5	9	13
25.1 to 36.0	5	21	26	42	62
	10	9	11	18	26
	15	5	6	10	16
	20	4	4	7	11
36.1 to 46.0	5	16	20	32	48
	10	7	9	14	21
	15	4	5	8	13
	20	3	4	6	9

Notes:\* This table is for open-air, phase-to-ground electric-arc exposures. It is not for phase-to-phase arcs or enclosed arcs (arc in a box).  
 † The table assumes that the employee will be 380 mm (15 in.) from the electric arc. The table also assumes the arc length to be the sparkover distance for the maximum transient overvoltage of each voltage range, as follows:  
 4.0 to 15.0 kV 51 mm (2 in.)  
 15.1 to 25.0 kV 102 mm (4 in.)  
 25.1 to 36.0 kV 152 mm (6 in.)  
 36.1 to 46.0 kV 229 mm (9 in.)  
 ‡ The Occupational Safety and Health Administration calculated the values in this table using the ARCPRO method listed in Table 2.  
 \*\* The voltage range is the phase-to-phase system voltage.

<b>TABLE 7</b>					
<b>INCIDENT HEAT ENERGY FOR VARIOUS FAULT CURRENTS, CLEARING TIMES, AND VOLTAGES: LIVE-LINE TOOL EXPOSURES INVOLVING PHASE-TO-GROUND ARCS IN OPEN AIR ONLY * † ‡ #</b>					
Voltage range (kV) **	Fault current (kA)	Maximum clearing time (cycles)			
		4 cal/cm <sup>2</sup>	5 cal/cm <sup>2</sup>	8 cal/cm <sup>2</sup>	12 cal/cm <sup>2</sup>
4.0 to 15.0 .....	5	197	246	394	591
	10	73	92	147	220
	15	39	49	78	117
	20	24	31	49	73
15.1 to 25.0 .....	5	197	246	394	591
	10	75	94	150	225
	15	41	51	82	122
	20	26	33	52	78
25.1 to 36.0 .....	5	138	172	275	413
	10	53	66	106	159
	15	30	37	59	89
	20	19	24	38	58
36.1 to 46.0 .....	5	129	161	257	386
	10	51	64	102	154
	15	29	36	58	87
	20	19	24	38	57
46.1 to 72.5 .....	20	18	23	36	55
	30	10	13	20	30
	40	6	8	13	19
	50	4	6	9	13
72.6 to 121.0 .....	20	10	12	20	30
	30	6	7	11	17
	40	4	5	7	11
	50	3	3	5	8
121.1 to 145.0 .....	20	12	15	24	35
	30	7	9	15	22
	40	5	6	10	15
	50	4	5	8	11
145.1 to 169.0 .....	20	12	15	24	36
	30	7	9	15	22
	40	5	7	10	16
	50	4	5	8	12
169.1 to 242.0 .....	20	13	17	27	40
	30	8	10	17	25
	40	6	7	12	17
	50	4	5	9	13
242.1 to 362.0 .....	20	25	32	51	76
	30	16	19	31	47
	40	11	14	22	33
	50	8	10	16	25

**TABLE 7  
INCIDENT HEAT ENERGY FOR VARIOUS FAULT CURRENTS, CLEARING TIMES, AND VOLTAGES: LIVE-LINE TOOL EXPOSURES INVOLVING PHASE-TO-GROUND ARCS IN OPEN AIR ONLY \* † ‡ #**

Voltage range (kV) **	Fault current (kA)	Maximum clearing time (cycles)			
		4 cal/cm <sup>2</sup>	5 cal/cm <sup>2</sup>	8 cal/cm <sup>2</sup>	12 cal/cm <sup>2</sup>
362.1 to 420.0	20	12	15	25	37
	30	8	10	15	23
	40	5	7	11	16
	50	4	5	8	12
420.1 to 550.0	20	23	29	47	70
	30	14	18	29	43
	40	10	13	20	30
	50	8	9	15	23
550.1 to 800.0	20	25	31	50	75
	30	15	19	31	46
	40	11	13	21	32
	50	8	10	16	24

Notes:

- \* This table is for open-air, phase-to-ground electric-arc exposures. It is not for phase-to-phase arcs or enclosed arcs (arc in a box).
- † The table assumes the arc length to be the sparkover distance for the maximum phase-to-ground voltage of each voltage range. The table also assumes that the employee will be the minimum approach distance minus twice the arc length from the electric arc.
- ‡ The Occupational Safety and Health Administration calculated the values in this table using the ARCPRO method listed in Table 2.
- # For voltages of more than 72.6 kV, employers may use this table only when the minimum approach distance established under WAC 296-45-325(4) is greater than or equal to the following values:  
 72.6 to 121.0 kV 1.02 m.  
 121.1 to 145.0 kV 1.16 m.  
 145.1 to 169.0 kV 1.30 m.  
 169.1 to 242.0 kV 1.72 m.  
 242.1 to 362.0 kV 2.76 m.  
 362.1 to 420.0 kV 2.50 m.  
 420.1 to 550.0 kV 3.62 m.  
 550.1 to 800.0 kV 4.83 m.
- \*\* The voltage range is the phase-to-phase system voltage.

**B. Selecting Protective Clothing and Other Protective Equipment.**

WAC 296-45-325 (13)(e) requires employers, in certain situations, to select protective clothing and other protective equipment with an arc rating that is greater than or equal to the incident heat energy estimated under WAC 296-45-325 (13)(b). Based on laboratory testing required by ASTM F1506-10a, the expectation is that protective clothing with an arc rating equal to the estimated incident heat energy will be capable of preventing second-degree burn injury to an employee exposed to that incident heat energy from an electric arc. Note that actual electric-arc exposures may be more or less severe than the estimated value because of factors such as arc movement, arc length, arcing from reclosing of the system, secondary fires or explosions, and weather conditions. Additionally, for arc rating based on the fabric's arc thermal performance value<sup>5</sup> (ATPV), a worker exposed to incident energy at the arc rating has a 50-percent chance of just barely receiving a second-degree burn. Therefore, it is possible (although not likely) that an employee will sustain a second-degree (or worse) burn wearing clothing conforming to WAC 296-45-325 (13)(e) under certain circumstances. However, reasonable employer estimates and maintaining

appropriate minimum approach distances for employees should limit burns to relatively small burns that just barely extend beyond the epidermis (that is, just barely a second degree burn). Consequently, protective clothing and other protective equipment meeting WAC 296-45-325 (13)(e) will provide an appropriate degree of protection for an employee exposed to electric-arc hazards.

WAC 296-45-325 (13)(e) does not require arc-rated protection for exposures of 2 cal/cm<sup>2</sup> or less. Untreated cotton clothing will reduce a 2-cal/cm<sup>2</sup> exposure below the 1.2- to 1.5-cal/cm<sup>2</sup> level necessary to cause burn injury, and this material should not ignite at such low heat energy levels. Although WAC 296-45-325 (13)(e) does not require clothing to have an arc rating when exposures are 2 cal/cm<sup>2</sup> or less, WAC 296-45-325 (13)(d) requires the outer layer of clothing to be flame resistant under certain conditions, even when the estimated incident heat energy is less than 2 cal/cm<sup>2</sup>, as discussed later in this appendix.

Additionally, it is especially important to ensure that employees do not wear undergarments made from fabrics listed in the note to WAC 296-45-325 (13)(c) even when the outer layer is flame resistant or arc rated. These fabrics can melt or ignite easily when an electric arc occurs. Logos and name

tags made from nonflame-resistant material can adversely affect the arc rating or the flame resistant characteristics of arc-rated or flame resistant clothing. Such logos and name tags may violate WAC 296-45-325 (13)(c), (d) and (e).

WAC 296-45-325 (13)(e) requires that arc-rated protection cover the employee's entire body, with limited exceptions for the employee's hands, feet, face, and head. WAC 296-45-325 (13)(e)(i) provides that arc-rated protection is not necessary for the employee's hands under the following conditions:

- For any estimated incident heat energy . . . . .
- If the estimated incident heat energy does not exceed 14 cal/cm<sup>2</sup> . . . . .

- When the employee is wearing rubber insulating gloves with protectors.
- When the employee is wearing heavy-duty leather work gloves with a weight of at least 407 gm/m<sup>2</sup> (12 oz/yd<sup>2</sup>).

WAC 296-45-325 (13)(e)(ii) provides that arc-rated protection is not necessary for the employee's feet when the employee is wearing heavy-duty work shoes or boots. Finally, WAC 296-45-325 (13)(e)(iii), (iv) and (v) require arc-rated head and face protection as follows:

Exposure	Minimum head and face protection		
	None*	Arc-rated faceshield with a minimum rating of 8 cal/cm <sup>2</sup> *	Arc-rated hood or faceshield with balaclava
Single-phase, open air	2-8 cal/cm <sup>2</sup> . . . . .	9-12 cal/cm <sup>2</sup> . . . . .	13 cal/cm <sup>2</sup> or higher †.
Three-phase . . . . .	2-4 cal/cm <sup>2</sup> . . . . .	5-8 cal/cm <sup>2</sup> . . . . .	9 cal/cm <sup>2</sup> or higher ‡.

\* These ranges assume that employees are wearing hardhats meeting the specifications in WAC 296-800-16055 or 296-155-205, as applicable.  
 † The arc rating must be a minimum of 4 cal/cm<sup>2</sup> less than the estimated incident energy. Note that WAC 296-45-325 (13)(e)(v) permits this type of head and face protection, with a minimum arc rating of 4 cal/cm<sup>2</sup> less than the estimated incident energy, at any incident energy level.  
 ‡ Note that WAC 296-45-325 (13)(e) permits this type of head and face protection at any incident energy level.

**IV. Protection Against Ignition**

WAC 296-45-325 (13)(c) prohibits clothing that could melt onto an employee's skin or that could ignite and continue to burn when exposed to flames or to the available heat energy estimated by the employer under WAC 296-45-325 (13)(b). Meltable fabrics, such as acetate, nylon, polyester, and polypropylene, even in blends, must be avoided. When these fibers melt, they can adhere to the skin, thereby transferring heat rapidly, exacerbating burns, and complicating treatment. These outcomes can result even if the meltable fabric is not directly next to the skin. The remainder of this section focuses on the prevention of ignition.

WAC 296-45-325 (13)(e) generally requires protective clothing and other protective equipment with an arc rating greater than or equal to the employer's estimate of available heat energy. As explained earlier in this appendix, untreated cotton is usually acceptable for exposures of 2 cal/cm<sup>2</sup> or less.<sup>6</sup> If the exposure is greater than that, the employee generally must wear flame-resistant clothing with a suitable arc rating in accordance with WAC 296-45-325 (13)(d) and (e). However, even if an employee is wearing a layer of flame-resistant clothing, there are circumstances under which flammable layers of clothing would be uncovered, and an electric arc could ignite them. For example, clothing ignition is possible if the employee is wearing flammable clothing under the flame-resistant clothing and the underlayer is uncovered because of an opening in the flame-resistant clothing. Thus, for purposes of WAC 296-45-325 (13)(c), it is important for the employer to consider the possibility of clothing ignition even when an employee is wearing flame-resistant clothing with a suitable arc rating.

Under WAC 296-45-325 (13)(c), employees may not wear flammable clothing in conjunction with flame-resistant cloth-

ing if the flammable clothing poses an ignition hazard.<sup>7</sup> Although outer flame-resistant layers may not have openings that expose flammable inner layers, when an outer flame-resistant layer would be unable to resist breakopen,<sup>8</sup> the next (inner) layer must be flame-resistant if it could ignite.

Nonflame-resistant clothing can ignite even when the heat energy from an electric arc is insufficient to ignite the clothing. For example, nearby flames can ignite an employee's clothing; and, even in the absence of flames, electric arcs pose ignition hazards beyond the hazard of ignition from incident energy under certain conditions. In addition to requiring flame-resistant clothing when the estimated incident energy exceeds 2.0 cal/cm<sup>2</sup>, WAC 296-45-325 (13)(d) requires flame-resistant clothing when: The employee is exposed to contact with energized circuit parts operating at more than 600 volts (WAC 296-45-325 (13)(d)(i)), an electric arc could ignite flammable material in the work area that, in turn, could ignite the employee's clothing (WAC 296-45-325 (13)(d)(ii)), and molten metal or electric arcs from faulted conductors in the work area could ignite the employee's clothing (WAC 296-45-325 (13)(d)(iii)). For example, grounding conductors can become a source of heat energy if they cannot carry fault current without failure. The employer must consider these possible sources of electric arcs<sup>9</sup> in determining whether the employee's clothing could ignite under WAC 296-45-325 (13)(d)(iii).

<sup>1</sup> Flame-resistant clothing includes clothing that is inherently flame resistant and clothing chemically treated with a flame retardant. (See ASTM F1506-10a, *Standard Performance Specification for Flame Resistant Textile Materials for Wearing Apparel for Use by Electrical Workers Exposed to Momentary Electric Arc and Related Thermal Hazards*, and ASTM F1891-12 *Standard Specification for Arc and Flame Resistant Rainwear*.)

- 2 The Occupational Safety and Health Administration used metric values to calculate the clearing times in Table 6 and Table 7. An employer may use English units to calculate clearing times instead even though the results will differ slightly.
- 3 The Occupational Safety and Health Administration based this assumption, which is more conservative than the arc length specified in Table 5, on Table 410-2 of the 2012 NESC.
- 4 The dielectric strength of air is about 10 kilovolts for every 25.4 millimeters (1 inch). Thus, the employer can estimate the arc length in millimeters to be the phase-to-ground voltage in kilovolts multiplied by 2.54 (or voltage (in kilovolts)  $\times$  2.54).
- 5 ASTM F1506-10a defines "arc thermal performance value" as "the incident energy on a material or a multilayer system of materials that results in a 50% probability that sufficient heat transfer through the tested specimen is predicted to cause the onset of a second-degree skin burn injury based on the Stoll [footnote] curve, cal/cm<sup>2</sup>." The footnote to this definition reads: "Derived from: Stoll, A. M., and Chianta, M. A., 'Method and Rating System for Evaluations of Thermal Protection,' Aerospace Medicine, Vol 40, 1969, pp. 1232-1238 and Stoll, A. M., and Chianta, M. A., 'Heat Transfer through Fabrics as Related to Thermal Injury,' Transactions-New York Academy of Sciences, Vol 33(7), Nov. 1971, pp. 649-670."
- 6 See WAC 296-45-325 (13)(d)(i), (ii) and (iii) for conditions under which employees must wear flame-resistant clothing as the outer layer of clothing even when the incident heat energy does not exceed 2 cal/cm<sup>2</sup>.
- 7 WAC 296-45-325 (13)(c) prohibits clothing that could ignite and continue to burn when exposed to the heat energy estimated under WAC 296-45-325 (13)(b).
- 8 Breakopen occurs when a hole, tear, or crack develops in the exposed fabric such that the fabric no longer effectively blocks incident heat energy.
- 9 Static wires and pole grounds are examples of grounding conductors that might not be capable of carrying fault current without failure. Grounds that can carry the maximum available fault current are not a concern, and employers need not consider such grounds a possible electric arc source.

#### NEW SECTION

#### **WAC 296-45-907 Appendix E—Work-positioning equipment inspection guidelines—Nonmandatory.**

##### **I. Body Belts**

Inspect body belts to ensure that:

- A. The hardware has no cracks, nicks, distortion, or corrosion;
- B. No loose or worn rivets are present;
- C. The waist strap has no loose grommets;
- D. The fastening straps are not 100-percent leather; and
- E. No worn materials that could affect the safety of the user are present.

##### **II. Positioning Straps**

Inspect positioning straps to ensure that:

- A. The warning center of the strap material is not exposed;
- B. No cuts, burns, extra holes, or fraying of strap material is present;
- C. Rivets are properly secured;
- D. Straps are not 100-percent leather; and
- E. Snaphooks do not have cracks, burns, or corrosion.

##### **III. Climbers**

Inspect pole and tree climbers to ensure that:

- A. Gaffs are at least as long as the manufacturer's recommended minimums (generally 32 and 51 millimeters (1.25

and 2.0 inches) for pole and tree climbers, respectively, measured on the underside of the gaff);

Note: Gauges are available to assist in determining whether gaffs are long enough and shaped to easily penetrate poles or trees.

- B. Gaffs and leg irons are not fractured or cracked;
- C. Stirrups and leg irons are free of excessive wear;
- D. Gaffs are not loose;
- E. Gaffs are free of deformation that could adversely affect use;
- F. Gaffs are properly sharpened; and
- G. There are no broken straps or buckles.

#### NEW SECTION

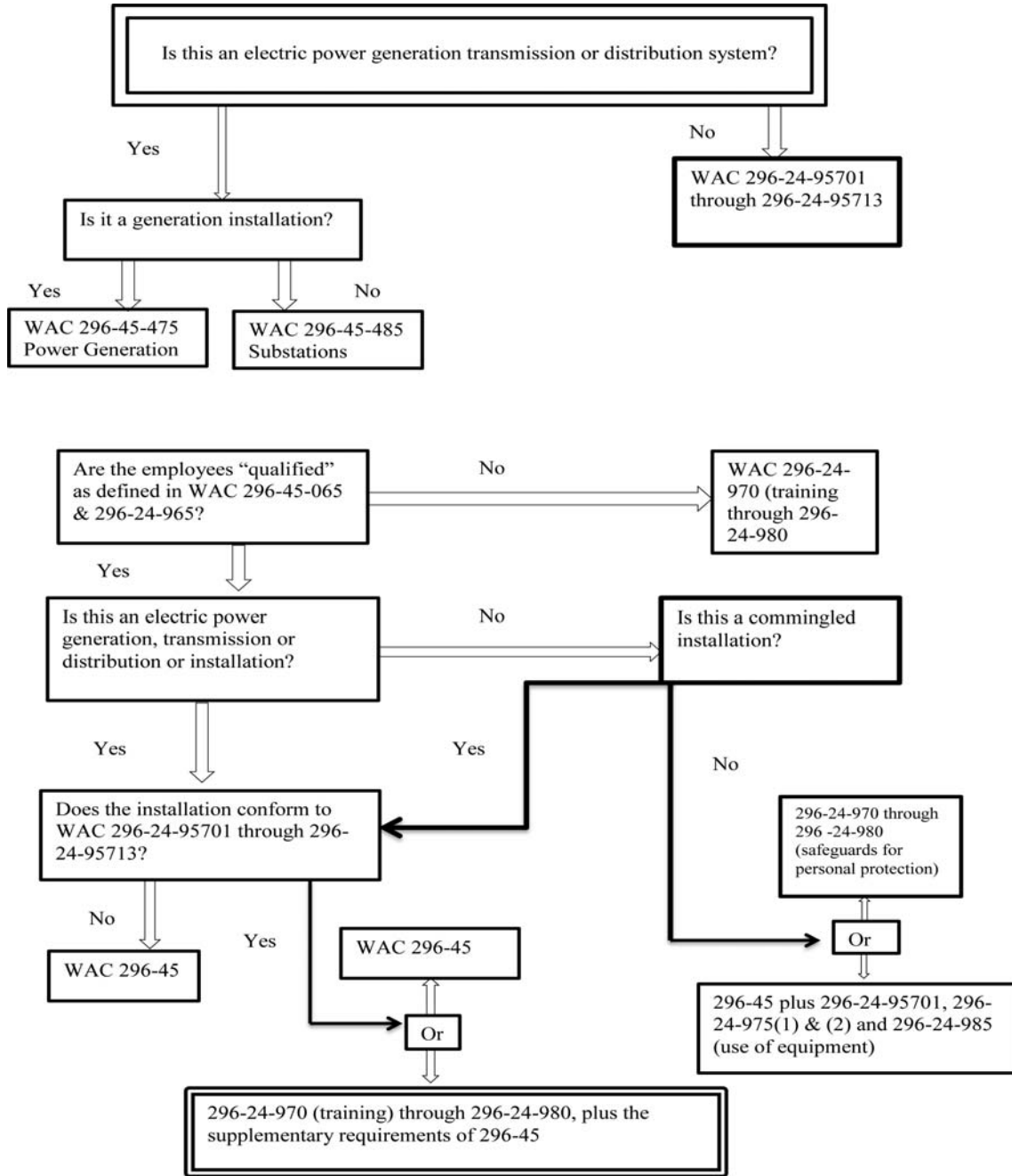
#### **WAC 296-45-908 Appendix F—Other Applicable safety and health Washington administrative codes.**

- Chapter 296-24 WAC, General safety and health standards;
- Chapter 296-27 WAC, Recordkeeping and reporting;
- Chapter 296-32 WAC, Safety standards for telecommunications;
- Chapter 296-36 WAC, Safety standards—Compressed air work;
- Chapter 296-37 WAC, Standards for commercial diving operations;
- Chapter 296-52 WAC, Safety standards for possession, handling, and use of explosives;
- Chapter 296-54 WAC, Safety standards—Logging operations;
- Chapter 296-56 WAC, Safety standards—Longshore, stevedore and waterfront related operations;
- Chapter 296-59 WAC, Safety standards for ski area facilities and operations;
- Chapter 296-62 WAC, General occupational health standards;
- Chapter 296-63 WAC, Right to know fee assessment;
- Chapter 296-65 WAC, Asbestos removal and encapsulation;
- Chapter 296-67 WAC, Safety standards for process safety management of highly hazardous chemicals;
- Chapter 296-78 WAC, Safety standards for sawmills and woodworking operations;
- Chapter 296-79 WAC, Safety Standards for pulp, paper, and paperboard mills and converters;
- Chapter 296-99 WAC, Safety standards for grain handling facilities;
- Chapter 296-115 WAC, Safety requirements for charter boats;
- Chapter 296-155 WAC, Safety standards for construction work;
- Chapter 296-301 WAC, Safety standards for the textile industry;
- Chapter 296-303 WAC, Safety standards for laundry machinery and operations;
- Chapter 296-304 WAC, Safety standards for ship repairing, shipbuilding, and shipbreaking;
- Chapter 296-305 WAC, Safety standards for firefighters;
- Chapter 296-307 WAC, Safety standards for agriculture;
- Chapter 296-360 WAC, Discrimination, pursuant to RCW 49.17.160;
- Chapter 296-800 WAC, Safety and health core rules;

Chapter 296-802 WAC, Employee medical and exposure records;  
Chapter 296-803 WAC, Lockout/tagout (control of hazardous energy);  
Chapter 296-806 WAC, Machine safety;  
Chapter 296-807 WAC, Portable power tools;  
Chapter 296-809 WAC, Confined spaces;  
Chapter 296-811 WAC, Fire brigades;  
Chapter 296-816 WAC, Protecting trade secrets;  
Chapter 296-817 WAC, Hearing loss prevention (noise);  
Chapter 296-818 WAC, Abrasive blasting;  
Chapter 296-823 WAC, Occupational exposure to blood-borne pathogens;  
Chapter 296-824 WAC, Emergency response;  
Chapter 296-826 WAC, Anhydrous ammonia;  
Chapter 296-828 WAC, Hazardous chemicals in laboratories;  
Chapter 296-829 WAC, Helicopters used as lifting machines;  
Chapter 296-832 WAC, Late night retail worker crime prevention;  
Chapter 296-833 WAC, Temporary housing for workers;  
Chapter 296-835 WAC, Dipping and coating operations (dip tanks);  
Chapter 296-839 WAC, Content and distribution of material safety data sheets (MSDSs) and label information;  
Chapter 296-841 WAC, Airborne contaminants;  
Chapter 296-842 WAC, Respirators;  
Chapter 296-843 WAC, Hazardous waste operations;  
Chapter 296-848 WAC, Arsenic;  
Chapter 296-849 WAC, Benzene;  
Chapter 296-855 WAC, Ethylene oxide;  
Chapter 296-856 WAC, Formaldehyde;  
Chapter 296-860 WAC, Railroad clearances and walkways in private rail yards and plants;  
Chapter 296-863 WAC, Forklifts and other powered industrial trucks;  
Chapter 296-864 WAC, Split (multi-piece) rim and single-piece rim wheels;  
Chapter 296-865 WAC, Motor vehicles;  
Chapter 296-869 WAC, Elevating work platforms;  
Chapter 296-870 WAC, Powered platforms;  
Chapter 296-874 WAC, Scaffolds;  
Chapter 296-876 WAC, Ladders, portable and fixed;  
Chapter 296-878 WAC, Safety standards for window cleaning;  
Chapter 296-900 WAC, Administrative rules;  
Chapter 296-901 WAC, Globally harmonized system for hazard communication.

NEW SECTION

WAC 296-45-909 Appendix G—Flow chart—Nonmandatory.



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

NEW SECTION

WAC 296-45-910 Appendix H—Reference documents. The references contained below provide information that can be helpful in understanding and complying with the requirements contained in this chapter. The national consensus standards referenced below contain detailed specifica-

tions that employers may follow in complying with the more performance-based requirements of this chapter. Except as specifically noted in this chapter, however, the department will not necessarily deem compliance with the national consensus standards to be compliant with the provisions of this chapter.



**ANSI/SIA A92.2-2009**, American National Standard for Vehicle-Mounted Elevating and Rotating Aerial Devices.

**ANSI Z133-2012**, American National Standard Safety Requirements for Arboricultural Operations-Pruning, Trimming, Repairing, Maintaining, and Removing Trees, and Cutting Brush.

**ANSI/IEEE Std 935--1989**, IEEE Guide on Terminology for Tools and Equipment to Be Used in Live Line Working.

**ASME B20.1-2012**, Safety Standard for Conveyors and Related Equipment.

**ASTM D120-09**, Standard Specification for Rubber Insulating Gloves.

**ASTM D149-09 (2013)**, Standard Test Method for Dielectric Breakdown Voltage and Dielectric Strength of Solid Electrical Insulating Materials at Commercial Power Frequencies.

**ASTM D178-01 (2010)**, Standard Specification for Rubber Insulating Matting.

**ASTM D1048-12**, Standard Specification for Rubber Insulating Blankets.

**ASTM D1049-98 (2010)**, Standard Specification for Rubber Insulating Covers.

**ASTM D1050-05 (2011)**, Standard Specification for Rubber Insulating Line Hose.

**ASTM D1051-08**, Standard Specification for Rubber Insulating Sleeves.

**ASTM F478-09**, Standard Specification for In-Service Care of Insulating Line Hose and Covers.

**ASTM F479-06 (2011)**, Standard Specification for In-Service Care of Insulating Blankets.

**ASTM F496-08**, Standard Specification for In-Service Care of Insulating Gloves and Sleeves.

**ASTM F711-02 (2007)**, Standard Specification for Fiberglass-Reinforced Plastic (FRP) Rod and Tube Used in Live Line Tools.

**ASTM F712-06 (2011)**, Standard Test Methods and Specifications for Electrically Insulating Plastic Guard Equipment for Protection of Workers.

**ASTM F819-10**, Standard Terminology Relating to Electrical Protective Equipment for Workers.

**ASTM F855-09**, Standard Specifications for Temporary Protective Grounds to Be Used on De-energized Electric Power Lines and Equipment.

**ASTM F887-12<sup>e1</sup>**, Standard Specifications for Personal Climbing Equipment.

**ASTM F914/F914M-10**, Standard Test Method for Acoustic Emission for Aerial Personnel Devices Without Supplemental Load Handling Attachments.

**ASTM F1116-03 (2008)**, Standard Test Method for Determining Dielectric Strength of Dielectric Footwear.

**ASTM F1117-03 (2008)**, Standard Specification for Dielectric Footwear.

**ASTM F1236-96 (2012)**, Standard Guide for Visual Inspection of Electrical Protective Rubber Products.

**ASTM F1430/F1430M-10**, Standard Test Method for Acoustic Emission Testing of Insulated and Non-Insulated Aerial Personnel Devices with Supplemental Load Handling Attachments.

**ASTM F1505-10**, Standard Specification for Insulated and Insulating Hand Tools.

**ASTM F1506-10a**, Standard Performance Specification for Flame Resistant and Arc Rated Textile Materials for Wearing Apparel for Use by Electrical Workers Exposed to Momentary Electric Arc and Related Thermal Hazards.

**ASTM F1564-13**, Standard Specification for Structure-Mounted Insulating Work Platforms for Electrical Workers.

**ASTM F1701-12**, Standard Specification for Unused Polypropylene Rope with Special Electrical Properties.

**ASTM F1742-03 (2011)**, Standard Specification for PVC Insulating Sheeting.

**ASTM F1796-09**, Standard Specification for High Voltage Detectors-Part 1 Capacitive Type to be Used for Voltages Exceeding 600 Volts AC.

**ASTM F1797-09<sup>e1</sup>**, Standard Test Method for Acoustic Emission Testing of Insulated and Non-Insulated Digger Derricks.

**ASTM F1825-03 (2007)**, Standard Specification for Clampstick Type Live Line Tools.

**ASTM F1826-00 (2011)**, Standard Specification for Live Line and Measuring Telescoping Tools.

**ASTM F1891-12**, Standard Specification for Arc and Flame Resistant Rainwear.

**ASTM F1958/F1958M-12**, Standard Test Method for Determining the Ignitability of Non-flame-Resistant Materials for Clothing by Electric Arc Exposure Method Using Mannequins.

**ASTM F1959/F1959M-12**, Standard Test Method for Determining the Arc Rating of Materials for Clothing.

**IEEE Stds 4-1995, 4a-2001 (Amendment to IEEE Standard Techniques for High-Voltage Testing)**, IEEE Standard Techniques for High-Voltage Testing.

**IEEE Std 62-1995**, IEEE Guide for Diagnostic Field Testing of Electric Power Apparatus-Part 1: Oil Filled Power Transformers, Regulators, and Reactors.

**IEEE Std 80-2000**, Guide for Safety in AC Substation Grounding.

**IEEE Std 100-2000**, The Authoritative Dictionary of IEEE Standards Terms Seventh Edition.

**IEEE Std 516-2009**, IEEE Guide for Maintenance Methods on Energized Power Lines.

**IEEE Std 524-2003**, IEEE Guide to the Installation of Overhead Transmission Line Conductors.

**IEEE Std 957-2005**, IEEE Guide for Cleaning Insulators.

**IEEE Std 1048-2003**, IEEE Guide for Protective Grounding of Power Lines.

**IEEE Std 1067-2005**, IEEE Guide for In-Service Use, Care, Maintenance, and Testing of Conductive Clothing for Use on Voltages up to 765 kV AC and  $\pm 750$  kV DC.

**IEEE Std 1307-2004**, IEEE Standard for Fall Protection for Utility Work.

**IEEE Stds 1584-2002, 1584a-2004 (Amendment 1 to IEEE Std 1584-2002), and 1584b-2011 (Amendment 2: Changes to Clause 4 of IEEE Std 1584-2002)**, IEEE Guide for Performing Arc-Flash Hazard Calculations.

**IEEE C2-2012**, National Electrical Safety Code.

**NFPA 70E-2012**, Standard for Electrical Safety in the Workplace.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-45-901 Appendix A—Nonmandatory.

**WSR 16-01-043**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
(Veterinary Board of Governors)  
[Filed December 9, 2015, 2:55 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-21-010.

Title of Rule and Other Identifying Information: WAC 246-933-420 Basic requirement amount, the veterinary board of governors (board) proposes to update the veterinary continuing education rules to allow no more than ten hours of complementary or alternative veterinary medicine (CAVM) in any three year reporting period.

Hearing Location(s): Washington State Department of Health, Town Center 3, Conference Room 265, 243 Israel Road S.E., Tumwater, WA 98501, on March 7, 2016, at 10:00 a.m.

Date of Intended Adoption: March 7, 2016.

Submit Written Comments to: Lorelei Walker, Program Manager, P.O. Box 47852, 111 Israel Road S.E., Tumwater, WA 98501, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by February 29, 2016.

Assistance for Persons with Disabilities: Contact Lorelei Walker by February 29, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board has observed an increase in the volume of continuing education courses related to CAVM. The board's current rules related to continuing education do not address criteria for the approval of CAVM courses. Revising rules will provide clarity to licensees and continuing education providers regarding how many hours of CAVM continuing education are allowed.

Reasons Supporting Proposal: The board would like to propose rules that limit how much CAVM continuing education is allowed in order to ensure practitioners receive continuing education that includes a foundation in conventional medicine, with opportunities to pursue complementary and alternative coursework.

Statutory Authority for Adoption: RCW 18.92.030.

Statute Being Implemented: RCW 18.92.030.

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

Name of Proponent: Department of health, veterinary board of governors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Lorelei Walker, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4947.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule

would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Lorelei Walker, P.O. Box 47852, 111 Israel Road S.E., Tumwater, WA 98501, phone (360) 236-4947, fax (360) 236-2901, e-mail [loralei.walker@doh.wa.gov](mailto:loralei.walker@doh.wa.gov).

December 4, 2015  
Ethan C. Nelson, DVM, Chair  
Veterinary Board of Governors

AMENDATORY SECTION (Amending WSR 07-19-130, filed 9/19/07, effective 10/20/07)

**WAC 246-933-420 Basic requirement—Amount.** Continuing veterinary medical education consists of programs of learning which contribute directly to the advancement or enhancement of skills in the practice of veterinary medicine, surgery and dentistry. Licensed veterinarians must complete thirty hours of continuing veterinary medical education every three years (~~as required~~) in compliance with chapter 246-12 WAC, Part 7. No more than ten hours can be earned in practice management courses in any three-year reporting period. No more than ten hours can be earned in courses related to complementary or alternative veterinary medicine in any three-year reporting period.

**WSR 16-01-067**  
**PROPOSED RULES**  
**DEPARTMENT OF REVENUE**  
[Filed December 14, 2015, 8:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-14-119.

Title of Rule and Other Identifying Information: WAC 458-20-102 (Rule 102) Reseller permits provides information about reseller permits. The department of revenue issues reseller permits to businesses that make wholesale purchases, such as retailers, wholesalers, manufacturers, and qualified contractors.

Hearing Location(s): Capital Plaza Building, 4th Floor Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA, on January 26, 2016, at 10:00 a.m.

Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

*Call-in option can be provided upon request no later than three days before the hearing date.*

Date of Intended Adoption: February 2, 2016.

Submit Written Comments to: Gayle Carlson, Department of Revenue, Interpretations and Technical Advice Division, P.O. Box 47453, Olympia, WA 98504-7453, e-mail [GayleC@dor.wa.gov](mailto:GayleC@dor.wa.gov), by January 26, 2016.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm, (360) 725-7499, or Renee Cosare, (360) 725-7514, no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing a general update to Rule 102 by removing outdated and past statute information. In addition the following is being added:

- A reference to WAC 458-20-192 Indians—Indian country; and
- A new example (Example 3) explaining that services performed on foreclosed properties are retail sales.

Reasons Supporting Proposal: To improve the readability of the rule by removing past statute information.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Gayle Carlson, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1576; Implementation and Enforcement: Marcus Glasper, 1025 Union Avenue S.E., Suite #500, Olympia, WA, (360) 534-1615.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules do not impose any new performance requirements or administrative burden on any small business not required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are not significant legislative rules as defined by RCW 34.05.328.

December 14, 2015

Kevin Dixon

Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-12-021, filed 5/24/11, effective 6/24/11)

**WAC 458-20-102 Reseller permits.** (1) **Introduction.** This ~~((section))~~ rule provides information about reseller permits issued by the department of revenue (department). ~~((Effective January 1, 2010, reseller permits replaced resale certificates as the documentation necessary to substantiate the wholesale nature of a sales transaction.))~~ The department issues reseller permits ((are issued)) to businesses that make wholesale purchases, such as retailers, wholesalers, manufacturers, and qualified contractors. The permits allow the businesses to purchase certain items or services ((at wholesale)) without paying retail sales tax. ((Additional information can be found on the department's internet site: <http://dor.wa.gov>.

~~(a) **What other sections provide related information?** The following sections may contain additional relevant information:~~

~~•) (a) **Other rules that may apply.** Readers may want to refer to other rules for additional information, including those in the following list:~~

~~(i) WAC 458-20-101 (Tax registration and tax reporting) for information on who is required to register and file returns;~~

~~(ii) WAC 458-20-10201 (Application process and eligibility requirements for reseller permits) for ~~((more))~~ informa-~~

tion about the application process and eligibility requirements for obtaining a reseller permit;

~~((•) (iii) WAC 458-20-10202 (Brief adjudicative proceedings for matters related to reseller permits) for ~~((more))~~ information about the procedures for appealing the denial of an application for a reseller permit; ~~((and~~~~

~~•)) (iv) WAC 458-20-102A (Resale certificates)~~((, which explains the))~~ for information about resale certificate documentation requirements for wholesale sales occurring before January 1, 2010; and~~

(v) WAC 458-20-192 (Indian-Indian country) for information on the extent of the state's authority to regulate and impose tax in Indian country.

(b) **Examples.** ~~((This section contains examples which))~~ Examples found in this rule identify a number of facts and then state a conclusion. ~~((The))~~ These 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.

(2) **What is a reseller permit?** A reseller permit is a document issued to a business by the department that the business provides to a seller to substantiate a wholesale purchase. Each reseller permit contains a unique identifying number. Businesses should keep the original permit and make and distribute copies of the permit to sellers from whom they make wholesale purchases as described in subsection (6) of this ~~((section))~~ rule. Sellers ~~((can))~~ may store copies of reseller permits in either paper or electronic format.

The reseller permit document issued by the department contains an optional, blank "Notes" section in which the permit holder ~~((can))~~ may provide additional information, such as a description of the items or services the permit holder wishes to purchase at wholesale.

(3) **Who may use a reseller permit?** The buyer may authorize any person in its employ to use a copy of the buyer's reseller permit on the buyer's behalf. However, misuse of the reseller permit subjects the buyer to:

- Revocation of the reseller permit;
- Penalties as provided in RCW 82.32.290 and 82.32.291; and
- Tax, interest, and any other penalties imposed by law.

The buyer is responsible for educating all persons authorized to use the reseller permit on the proper use of the buyer's reseller permit.

(4) **How long is a reseller permit effective?** Except as otherwise provided in this subsection, a reseller ~~((permits are))~~ permit is generally valid for a period of forty-eight months from the date of issuance, renewal, or reinstatement.

(a) **Conditions when permit is effective for twenty-four months.** A reseller permit is valid for ~~((a))~~ an initial period of twenty-four months and may be renewed for a period of forty-eight months, ~~((effective July 1, 2010,))~~ if the permit is issued to a taxpayer who:

(i) Is not required to be registered with the department under RCW 82.32.030;

(ii) Has been registered with the department under RCW 82.32.030 for a continuous period of less than one year as of the date that the department received the taxpayer's application for a reseller permit;

(iii) Was on nonreporting status as authorized under RCW 82.32.045~~((4))~~ at the time ~~((that))~~ the department received the taxpayer's application for a reseller permit or to renew or reinstate a reseller permit;

(iv) Has filed excise tax returns reporting no business activity for purposes of retail sales and business and occupation (B&O) taxes for the twelve-month period immediately preceding the date that the department received the taxpayer's application for a reseller permit or to renew or reinstate a reseller permit; or

(v) Has failed to file excise tax returns covering any part of the twelve-month period immediately preceding the department's receipt of the taxpayer's application for a reseller permit or to renew or reinstate a reseller permit.

(b) **Federally recognized Indian tribe.** The provisions of (a) of this subsection do not apply to reseller permits issued to any business owned by a federally recognized Indian tribe or by an enrolled member of a federally recognized Indian tribe, if the business does not engage in any business activity that subjects the business to the B&O tax (chapter 82.04 RCW). ~~((Permits))~~ A permit issued to such ~~((businesses are))~~ business is valid for forty-eight months from the date of issuance, renewal, or reinstatement.

(c) **Contractors.** ~~((Except as otherwise provided in this subsection (c), until June 20, 2013,))~~ A reseller permit issued, renewed, or reinstated to a "contractor" as defined in WAC 458-20-10201~~((302) will be)~~ (101) is valid for a period of ~~((twelve))~~ twenty-four months from the date of issuance, renewal, or reinstatement.

~~((i) Beginning July 1, 2013, reseller permits issued, renewed, or reinstated to a contractor will be valid for a period of twenty four months from the date of issuance, renewal, or reinstatement.~~

~~((ii) However, the department may issue, renew, or reinstate permits for a period of twenty four months beginning July 1, 2011, if the department is satisfied that the contractor is entitled to make purchases at wholesale and that issuing or renewing the reseller permit in this manner is unlikely to jeopardize collection of sales taxes due based on the criteria discussed in WAC 458-20-10201(305).))~~

(d) **Renewal of reseller permit.** An application~~((s))~~ to renew a reseller permit cannot be made more than ninety days before the expiration of the reseller permit.

(e) **Business ownership change.** A new reseller permit is required whenever a change in the ownership of the buyer's business requires a new tax registration. ~~((See WAC 458-20-101 Tax registration and tax reporting.))~~ The new business may not make purchases under the authority of the reseller permit issued to the business before the change in ownership.

(f) **Revoked or invalid reseller permit.** Purchases may not be made under the authority of a reseller permit that has been revoked by the department or is otherwise invalid. For more information about reseller permit revocation or other invalidation of reseller permits, see subsection (14) of this ~~((section))~~ rule.

(5) **Sales at wholesale.** All sales are treated as retail sales unless the seller takes from the buyer a copy of a reseller permit, a uniform exemption certificate authorized by RCW 82.04.470, or obtains the data elements ~~((as))~~ described in subsection (7) of this ~~((section))~~ rule. Reseller permits may

only be used for sales at wholesale and generally may not be used as proof of entitlement to retail sales tax exemptions otherwise provided by law.

(6) **When may a buyer use a reseller permit?** The buyer may use a reseller permit only when making wholesale purchases. (See RCW 82.04.060 for additional information.) The reseller permit may not be used when making tax-exempt retail purchases.

(7) **Seller's responsibilities.** The seller has the burden of proving that the buyer had a reseller permit at the time of sale. A seller may meet ~~((its))~~ that burden by taking from the buyer, at the time of sale or within one hundred twenty days after the sale, a copy of ~~((a))~~ the reseller permit issued to the buyer by the department under RCW 82.32.780 or 82.32.783.

(a) **Registered buyer.** In lieu of a copy of a reseller permit issued by the department, pursuant to RCW 82.04.470 a seller may accept from a buyer that is **required** to be registered with the department under RCW 82.32.030:

(i) A properly completed uniform exemption certificate approved by the streamlined sales and use tax agreement governing board; or

(ii) Any other exemption certificate ~~((as may be))~~ authorized by the department and properly completed by the buyer.

(b) **Inclusion of reseller permit number.** Certificates authorized in (a)~~((i) and (ii))~~ of this subsection must include the reseller permit number issued by the department to the buyer.

(c) **Seller not required to verify buyer's registration.** A seller ~~((who))~~ that accepts exemption certificates authorized in (a) of this subsection is not required to verify with the department whether the buyer is required to be registered with the department under RCW 82.32.030. ~~((It must be noted, however, that))~~ Nothing in (c) of this subsection ~~((e))~~ may be construed to modify any of the provisions of RCW 82.08.050.

(d) **Buyer not required to be registered.** In lieu of a copy of a reseller permit issued by the department, pursuant to RCW 82.04.470 a seller may accept from a buyer that is **not required** to be registered with the department under RCW 82.32.030:

(i) A properly completed uniform sales and use tax exemption certificate developed by the multistate tax commission;

(ii) A properly completed uniform exemption certificate approved by the streamlined sales and use tax agreement governing board; or

(iii) Any other exemption certificate ~~((as may be))~~ authorized by the department and properly completed by the buyer.

The Streamlined Sales and Use Tax Agreement Certificate of Exemption and the Multistate Tax Commission Uniform Sales and Use Tax Exemption Certificate ~~((can))~~ may each be obtained on the department's ~~((internet))~~ web site at ~~((http://dor.wa.gov))~~ dor.wa.gov.

(e) **Seller not required to verify buyer's requirement to be registered.** A seller ~~((who))~~ that accepts a uniform exemption certificate authorized in (d) of this subsection is not required to verify with the department whether the buyer is required to be registered with the department under RCW 82.32.030. ~~((It must be noted, however, that))~~ Nothing in this

subsection (7)(e) may be construed to modify any of the provisions of RCW 82.08.050.

(f) **Data elements.** In lieu of obtaining a reseller permit or the documentation in (a) or (d) of this subsection, RCW 82.08.050(~~(7)~~) authorizes a seller to capture the relevant data elements as allowed under the streamlined sales and use tax agreement. "Data elements" are the information required to be supplied on the actual Streamlined Sales and Use Tax Agreement Certificate of Exemption including: Name, address, type of business, reason for exemption, reseller permit number as applicable in this rule, identification number required by the state to which the sale is sourced, state and country issuing identification number, and if a paper form is used, ~~(a)~~ the signature of the purchaser. See Streamlined Sales Tax Governing Board, Inc. Rule 317.1(~~(A)~~) for more information.

(g) **The term "reseller permit."** For purposes of this ~~(section)~~ rule, unless otherwise specified, the term "reseller permit" hereinafter contemplates all of the following: A copy of a reseller permit, a uniform exemption certificate authorized by RCW 82.04.470 as described in (a) and (d) of this subsection, or data elements as described in (f) of this subsection.

(h) **Seller must provide documentation or information.** If the seller has not obtained a reseller permit or the documentation described in (a), (b), (d), or (f) of this subsection, the seller is liable for the tax due unless it ~~(can sustain the burden of proving that a sale is a wholesale sale by demonstrating)~~ proves by establishing facts and circumstances that show the sale was properly made at wholesale. The department will consider all evidence presented by the seller, including the circumstances of the sales transaction itself, when determining whether the seller has met its burden ~~(of proof)~~. It is the seller's responsibility to provide the information necessary to evaluate the facts and circumstances of all sales transactions for which reseller permits ~~(are)~~ were not obtained. Facts and circumstances that should be considered include, but are not necessarily limited to, the following:

- The nature of the buyer's business. The items being purchased at wholesale must be consistent with the buyer's business. For example, a buyer having a business name of "Ace Used Cars" would generally not be expected to be in the business of selling furniture;
- The nature of the items sold. The items sold must be of a type that would normally be purchased at wholesale by the buyer; and
- Additional documentation. Other available documents, such as purchase orders and shipping instructions, should be considered in determining whether they support a finding that the sales are sales at wholesale.

(i) **Annual electronic verification.** ~~(Notwithstanding anything in)~~ Per RCW 82.04.470 ~~(to the contrary,)~~ a seller ~~(who)~~ that maintains records establishing that it uses electronic means to verify, at least once per calendar year, the validity of its customers' reseller permits need not take a copy of a reseller permit or other documentation or the data elements as authorized in (a), (d), or (f) of this subsection for wholesale sales to those customers with valid reseller permits as confirmed by the department for all sales occurring within twelve months following the date that the seller last electron-

ically verified the validity of its customers' reseller permits, using the department's reseller permit verification system. A seller that meets the requirements of this subsection will be deemed to have met its burden of proving a sale is a wholesale sale rather than a retail sale.

(j) ~~(Can)~~ **May a seller request a refund for sales tax paid out-of-pocket after obtaining appropriate documentation?** If the seller is required to make payment to the department, and later is able to ~~(present the department with)~~ prove through proper documentation or ~~(prove)~~ by facts and circumstances that the sales in question ~~(are)~~ were wholesale sales, the seller may in writing request a refund of the taxes paid along with the applicable interest. Both the request and the documentation or proof that the sales in question ~~(are)~~ were wholesale sales must be submitted to the department within the statutory time limitations provided by RCW 82.32.060. ~~(See WAC 458-20-229 Refunds.) However,~~ For information on requesting refunds see WAC 458-20-229. In the event of an audit, refer to (m) of this subsection ~~(in the event of an audit situation)~~.

(k) **Timing requirements for single orders with multiple billings.** If a single order or contract will result in multiple billings to the buyer, and a reseller permit was not obtained by the seller or on file with the seller at the time the order was placed or the contract entered, the seller may obtain a reseller permit ~~(must be received by the seller)~~ within one hundred twenty days after the first billing. For example, a subcontractor entering into a construction contract for which it has not received a reseller permit must obtain it within one hundred twenty days of the initial construction draw request, even though the construction project may not be completed at that time and additional draw requests will follow.

(l) **Proof of wholesale sales obtained, from a buyer not required to be registered, after one hundred twenty days have passed from sale date.** If proof that a sale was a wholesale sale is obtained more than one hundred twenty days after the sale or sales in question, the nonregistered buyer must specifically identify the sale or sales to which it applies. Certificates, such as a uniform exemption certificate, ~~(used)~~ must be accompanied by other documentation signed by the buyer specifically identifying the sales in question and stating that the provisions of the accompanying certificate apply. A nonspecific certificate that is not obtained within one hundred twenty days is generally not, in and of itself, acceptable proof of the wholesale nature of the sales in question. The certificate and/or required documentation must be obtained within the statutory time limitations provided by RCW 82.32.050.

(m) **Additional time to secure documentation in an audit (situation).** If ~~(in event of)~~ during an audit the department discovers that the seller has not secured, as described in this subsection, the necessary certificates and/or documentation, the seller will generally be allowed one hundred twenty days in which to obtain and present appropriate certificates and/or documentation, or prove by facts and circumstances the sales in question ~~(are)~~ were wholesale sales. The time allotted to the seller will commence from the date the auditor initially provides the seller with the results of the auditor's wholesale sales review. The department will not

~~delay processing ((of)) the audit report ((will not be delayed)) as a result of the seller's failure within the allotted time to secure and present appropriate documentation, or its inability to prove by facts and circumstances that the sales in question were wholesale sales.~~

**(8) Department's reseller permit verification system.**

Pursuant to RCW 82.32.785, the department has developed a system available on its ~~((internet))~~ web site that allows sellers to voluntarily verify whether their customers' reseller permits are valid. Sellers are ~~((under no obligation))~~ not obligated to use the verification system. The system is accessible at the ~~((department's internet site: http://dor.wa.gov))~~ department's web site at [dor.wa.gov](http://dor.wa.gov). Information available on the system includes the name of the permit holder, the status of the reseller permit, and the expiration date of the permit.

**(9) Penalty for improper use of reseller permit.** If any buyer improperly uses a reseller permit number, reseller permit, or other documentation authorized under RCW 82.04.470 to purchase items or services at retail without payment of sales tax that ~~((was))~~ is legally due on the purchase, the department must assess against that buyer a penalty of fifty percent of the tax due on the improperly purchased item or service. See RCW 82.32.291. This penalty is in addition to all other taxes, penalties, and interest due, and ~~((can be imposed))~~ applies even if there was no intent to evade the payment of retail sales tax. The penalty will be assessed by the department and applies only to the buyer. However, see subsection (13) of this ~~((section))~~ rule for situations in which the department must waive the penalty.

**(a) Improper use of reseller permit.** A buyer that purchases items or services at retail without payment of sales tax legally due on the purchase is deemed to have improperly used a reseller permit number, reseller permit, or other documentation authorized under RCW 82.04.470 to purchase the items or services without payment of sales tax and is subject to the penalty described above in this subsection if the buyer:

(i) Furnished to the seller a reseller permit number, a reseller permit or copy of a reseller permit, or other documentation authorized under RCW 82.04.470 to avoid payment of sales tax legally due on the purchase; or

(ii) ~~((Made the purchase))~~ Purchased from a seller that had previously used electronic means to verify the validity of the buyer's reseller permit with the department and, as a result, did not require the buyer to provide a copy of its reseller permit or furnish other documentation authorized under RCW 82.04.470 to document the wholesale nature of the purchase. In such cases, the buyer bears the burden of proving that the purchases made without payment of sales tax were qualified purchases or the buyer remitted deferred sales tax directly to the department. The buyer not realizing that sales tax was not paid at the time of purchase is not reason for waiving the penalty.

Persons ~~((who purchase))~~ purchasing articles or services for dual purposes (i.e., some for their own consumption and some for resale) should refer to subsection (12) of this ~~((section))~~ rule to determine whether they may furnish a reseller permit to the seller.

**(b) Examples.**

(i) **Example 1.** During a routine audit examination of a jewelry store, the department discovers that a dentist has fur-

nished a reseller permit for the purchase of a necklace. The "Notes" section of the reseller permit indicates that in addition to operating a dentistry practice, the dentist also sells jewelry. The jewelry store correctly accepted the reseller permit as appropriate documentation.

Upon further investigation, the department finds that the dentist is not engaged in selling jewelry. The department will impose the retail sales tax, interest, and the fifty percent penalty for improper use of the reseller permit against the dentist.

(ii) **Example 2.** M&M Plumbing Supply (M&M) has several regular customers ~~((who))~~ that make purchases at wholesale. M&M uses the department's reseller permit verification system to find all regular customers that have a reseller permit. M&M keeps the required data elements in its system and begins to make wholesale sales to all customers the system shows have a reseller permit. While it is best for sellers to ensure customers intend to purchase at wholesale, in this case, M&M has satisfied its requirement to ensure that customers making wholesale purchases have reseller permits. It is the customer's responsibility to review purchase invoices to ensure that deferred sales tax is paid if the purchase is not a valid wholesale purchase. If the customer does not pay the tax due on the next tax return, the misuse penalty will be assessed.

(iii) **Example 3.** ABC Bank hired Sam's Clean-Up Services (Sam's) to provide a variety of services at properties they had foreclosed on and owned. Sam's has provided services such as securing the sites, winterizing, and making safety repairs. Other services provided included lawn and yard services, debris removal, cleaning fixtures, repairing walls and painting. These types of services on foreclosed properties are generally retail sales and the use of a reseller permit by ABC Bank is a misuse of it. The department will impose the retail sales tax, interest, and the fifty percent penalty for improper use of the reseller permit.

**(10) Sales to nonresident buyers.** If the buyer is a nonresident ~~((who is))~~, not engaged in business in this state and is not required to be registered with the department under RCW 82.32.030 but buys articles here for the purpose of resale in the regular course of business outside this state, the seller may accept the following from the buyer in lieu of a reseller permit:

(a) A properly completed uniform sales and use tax exemption certificate developed by the multistate tax commission; or

(b) A properly completed uniform exemption certificate approved by the streamlined sales and use tax agreement governing board. Nonresident buyers who are not required to be registered with the department under RCW 82.32.030 ~~((are nonetheless eligible to))~~ also may apply for and receive a reseller permit. For more information about the application process and eligibility requirements for reseller permits, see WAC 458-20-10201 ~~((Application process and eligibility requirements for reseller permits))~~.

**(11) Sales to farmers.** Farmers selling agricultural products only at wholesale are generally not required to register with the department. (See WAC 458-20-101 Tax registration and tax reporting.)

(a) **Registered farmers.** Farmers who are required to be registered with the department must obtain a reseller permit

to substantiate wholesale purchases. In lieu of a copy of a reseller permit issued by the department, a seller may accept from a registered farmer (~~(that is registered with the department)~~) a properly completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions as long as that certificate includes the reseller permit number issued by the department to the farmer. See RCW 82.04.470.

(b) **Unregistered farmers.** Farmers not required to be registered with the department may provide, and the seller may accept, any of the following documents to substantiate the wholesale nature of a purchase in lieu of a reseller permit:

(i) A Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions;

(ii) A properly completed uniform sales and use tax exemption certificate developed by the multistate tax commission; or

(iii) A properly completed uniform exemption certificate approved by the streamlined sales and use tax agreement governing board.

Farmers who are not required to be registered with the department (~~(are nonetheless eligible to)~~) may apply for and receive a reseller permit. For more information about the application process and eligibility requirements for reseller permits, see WAC 458-20-10201 (~~(Application process and eligibility requirements for reseller permits)~~).

(12) **Purchases for dual purposes.** A buyer normally engaged in both consuming and reselling certain types of tangible personal property, and not able to determine at the time of purchase whether the particular property purchased will be consumed or resold, must purchase according to the general nature of the buyer's business. RCW 82.08.130. If the buyer principally consumes the articles in question, the buyer should not give a reseller permit for any part of the purchase. If the buyer principally resells the articles, the buyer may furnish a reseller permit for the entire purchase. For the purposes of this subsection, the term "principally" means greater than fifty percent.

(a) **Deferred sales tax liability.** If the buyer gives a reseller permit for all purchases and thereafter consumes some of the articles purchased, the buyer must remit the deferred sales tax on the value of the article used to the department. The deferred sales tax liability should be reported under the use tax classification on the buyer's excise tax return.

(i) Buyers making purchases for dual purposes under the provisions of a reseller permit must remit deferred sales tax on all products or services they consume. If the buyer fails to make a good faith effort to remit this tax liability, the penalty for the misuse of a reseller permit will be assessed (~~(. This penalty will apply to)~~) on the unremitted portion of the deferred sales tax liability.

A buyer will generally be considered to be making a good faith effort to report its deferred sales tax liability if the buyer discovers a minimum of eighty percent of (~~(the)~~) its deferred sales tax liability within one hundred twenty days of purchase, and remits the full amount of the discovered tax liability (~~(upon)~~) on the next excise tax return. However, the penalty will not be assessed if the buyer does not satisfy (~~(this)~~) the eighty percent threshold (~~(and)~~) but can show by other facts and circumstances that it made a good faith effort

to report (~~(the)~~) its tax liability (~~(, the penalty will not be assessed)~~). Likewise, if the department can show by other facts and circumstances that the buyer did not make a good faith effort in remitting its tax liability the penalty will be assessed, even if the eighty percent threshold is satisfied.

(ii) (~~(The following)~~) **Example 4.** This example illustrates the use of a reseller permit for dual-use purchases.

BC Contracting operates (~~(both)~~) as both a prime contractor and speculative builder of residential homes. BC Contracting purchases building materials from seller that are principally incorporated into projects upon which BC acts as a prime contractor. BC provides seller with a reseller permit and purchases all building materials at wholesale. BC must remit deferred sales tax (~~(upon)~~) for all building materials incorporated into the speculative projects to be considered to be properly using its reseller permit.

(b) **Tax paid at source deduction.** If the buyer (~~(has)~~) does not (~~(provided)~~) provide a reseller permit to the seller but (~~(has paid)~~) pays retail sales tax on all articles of tangible personal property, and subsequently resells a portion of the articles, the buyer must collect (~~(the)~~) retail sales tax from its retail customers as provided by law. When reporting these sales on the excise tax return, the buyer may then claim a deduction to recover the sales tax paid for the property resold.

(i) This deduction may be claimed under the retail sales tax classification only. It must be identified as a "taxable amount for tax paid at source" deduction on the deduction detail worksheet, which must be filed with the excise tax return. Failure to properly identify the deduction may result in the disallowance of the deduction. When completing the local sales tax portion of the tax return, the deduction must be computed at the local sales tax rate paid to the seller, and credited to the seller's tax location code.

(ii) (~~(The following)~~) **Example 5.** This example illustrates the tax paid at source deduction (~~(on or after July 1, 2008)~~).

A seller is located in Spokane (~~(, Washington)~~) and purchases equipment parts for dual purposes from a supplier located in Seattle (~~(, Washington)~~). The supplier ships the parts to Spokane. The seller does not furnish a reseller permit for the purchase, and remits retail sales tax to the supplier at the Spokane tax rate. A portion of these parts are sold and shipped to a customer in Kennewick, with retail sales tax collected at the Kennewick tax rate. The seller must report the amount of the sale to the customer on its excise tax return and compute the local sales tax liability using the Kennewick location code (0302) and rate. The seller (~~(would)~~) then should claim the tax paid at source deduction for the cost of the parts resold to the customer (~~(and compute)~~), computing the local sales tax credit using the Spokane location code (3210) and rate.

(iii) The department will allow the claim for deduction (~~(will be allowed)~~) only if the taxpayer keeps and preserves records in support of the deduction that include the names of the persons from whom it purchased such articles (~~(were purchased)~~), the dates of the purchases, the types of articles, the amounts of the purchases and the amounts of tax (~~(that was)~~) it paid.

(iv) Should the buyer resell the articles at wholesale, or under other situations where retail sales tax is not to be col-

lected, the claim for the tax paid at source deduction on a particular excise tax return may result in a credit. In such cases, the department will issue a credit notice that may be used against future tax liabilities. ~~((However))~~ Alternatively, a taxpayer may request in writing a refund from the department.

(13) **Waiver of penalty for misuse of reseller permits.** The department will waive the penalty imposed for misuse of reseller permits ~~((upon finding))~~ if it finds that the use of the reseller permit number, reseller permit, or other documentation authorized under RCW 82.04.470 to purchase items or services by a person not entitled to use the reseller permit for that purpose was due to circumstances beyond the control of the buyer or if the reseller permit number, reseller permit, or other documentation authorized under RCW 82.04.470 was properly used for purchases for dual purposes and the buyer made a good faith effort to report deferred sales tax. ~~((However,))~~ The use of a reseller permit to purchase items or services for personal use outside of the business does not qualify for the waiver or cancellation of the penalty. The penalty also will not be waived merely because the buyer was not aware of either the proper use of the reseller permit or the penalty. In all cases the burden of proving the facts is ~~((upon))~~ on the buyer.

**Example 6.** During a routine audit examination of a computer dealer, ~~((it is discovered))~~ the department discovers that a reseller permit was obtained from a bookkeeping service. ~~((Upon))~~ On further investigation it is discovered that the bookkeeping service had no knowledge of the use of the reseller permit, and had made no payment to the computer dealer. The employee who furnished the reseller permit had purchased the computer for personal use, and had personally ~~((made payment to))~~ paid the computer dealer.

The fifty percent penalty for the misuse of the reseller permit will be waived for the bookkeeping service. The bookkeeping service had no knowledge of the purchase ~~((or))~~ and unauthorized use of the reseller permit. However, the department will impose the taxes, interest, and the fifty percent penalty for the misuse of the reseller permit against the employee.

(14) **Reseller permit revocation or other invalidation.** A reseller permit is no longer valid if the permit holder's certificate of registration is revoked, the department closes the permit holder's tax reporting account ~~((is closed by the department))~~, or the permit holder otherwise ceases to engage in business.

(a) **Closing of an account.** A taxpayer who ceases to engage in business will have its tax reporting account closed by the department. The account can be closed per the request of the taxpayer or administratively by the department. The department will administratively close a tax reporting account if a taxpayer has not reported any gross income or filed a return within the last two years. For more information about administrative closure and reopening of taxpayer accounts, see WAC 458-20-101.

(b) **Reseller permit revocation.** The department may revoke a reseller permit of a taxpayer for any of the following reasons:

(i) The taxpayer used or allowed or caused its reseller permit to be used to purchase any item or service without payment of sales tax, ~~((but))~~ and the taxpayer or other pur-

chaser was not entitled to use the reseller permit for the purchase;

(ii) The department issued the reseller permit to the taxpayer in error;

(iii) The department determines that the taxpayer is no longer entitled to make purchases at wholesale; or

(iv) The department determines that revocation of the reseller permit would be in the best interest of collecting taxes due under Title 82 RCW.

(c) **Use of invalidated or revoked reseller permit.** The department will provide written notice to a taxpayer whose reseller permit has been revoked or whose tax reporting account has been administratively closed by the department as discussed in (a) of this subsection ~~((will receive notice of the revocation or invalidation in writing))~~. The revocation or invalidation is effective on the date specified in the revocation or invalidation notice. Use of a revoked or invalidated permit will result in the fifty percent penalty for improper use of a reseller permit as discussed in subsection (9) of this ~~((section))~~ rule.

(d) **Reinstatement of reseller permit.** A taxpayer ~~((who wishes))~~ wishing to have its reseller permit reinstated after invalidation or revocation must apply to the department. For more information about the application process for reseller permits, see WAC 458-20-10201 ~~((Application process and eligibility requirements for reseller permits))~~.

(e) **Requests for reinstatement.** The department may refuse to reinstate a reseller permit revoked under (b)(i) of this subsection until all taxes, penalties, and interest due on any improperly purchased item or service have been paid in full. In the event a taxpayer whose reseller permit has been revoked under (b)(i) of this subsection reorganizes, the new business resulting from the reorganization is not entitled to receive a reseller permit from the department until all taxes, penalties, and interest due on any improperly purchased item or service have been paid in full.

(f) **Business reorganization.** For purposes of this subsection, "reorganize" or "reorganization" means:

(i) The transfer ~~((, however affected,))~~ of a majority of the assets of one business to another business, however affected, where any of the persons having an interest in the ownership or management in the former business maintain an ownership or management interest in the new business, either directly or indirectly;

(ii) A mere change in identity or form of ownership, however affected; or

(iii) The new business is a mere continuation of the former business based on significant shared features such as owners, personnel, assets, or general business activity.

(15) **Request for copies.** A person must, upon request of the department, provide ~~((the department with))~~ paper or electronic copies of all reseller permits, or other documentation as authorized in RCW 82.04.470, accepted by that person during the period specified by the department to substantiate wholesale sales. If, instead of the documentation specified in this subsection, the seller has retained the relevant data elements from such permits or other documentation authorized in RCW 82.04.470, as allowed under the streamlined sales and use tax agreement, the seller must provide such data elements to the department.



**WSR 16-01-068**  
**PROPOSED RULES**  
**HEALTH CARE AUTHORITY**  
 (Washington Apple Health)  
 [Filed December 14, 2015, 8:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-05-025.

Title of Rule and Other Identifying Information: WAC 182-514-0230 Washington apple health—MAGI-based long-term care—Purpose, 182-514-0235 Definitions, 182-514-0240 MAGI-based long-term care—General eligibility, 182-514-0245 MAGI-based long-term care—Resource eligibility, 182-514-0250 Washington apple health—MAGI-based long-term care for adults age nineteen and older, 182-514-0255 Washington apple health—MAGI-based long-term care program for young adults nineteen and twenty years of age, 182-514-0260 Washington apple health—MAGI-based long-term care for children age eighteen and younger, 182-514-0263 Non-SSI-related institutional medically needy coverage for pregnant women and persons under twenty-one, and 182-514-0270 When an involuntary commitment to Eastern or Western State Hospital is covered by Washington apple health.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at [http://www.hca.wa.gov/documents/directions\\_to\\_csp.pdf](http://www.hca.wa.gov/documents/directions_to_csp.pdf) or directions can be obtained by calling (360) 725-1000), on January 26, 2016, at 10:00 a.m.

Date of Intended Adoption: Not sooner than January 27, 2016.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax (360) 586-9727, by 5:00 p.m. on January 26, 2016.

Assistance for Persons with Disabilities: Contact Amber Lougheed, TTY (800) 848-5429 or (360) 725-1349 or e-mail [amber.lougheed@hca.wa.gov](mailto:amber.lougheed@hca.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending these rules to comply with federal guidance, improve clarity, and update policy.

Reasons Supporting Proposal: The changes will provide accurate information in a format that is easier to read.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1408; Implementation and Enforcement: Mick Pettersen, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-0913.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed filing does not impose a disproportionate cost on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

December 14, 2015

Wendy Barcus  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-06-068, filed 2/28/14, effective 3/31/14)

**WAC 182-514-0230** (~~Washington apple health—MAGI-based long-term care program.~~) **Purpose.** (1) ~~((The sections that follow describe the))~~ This chapter describes eligibility requirements for the Washington apple health (WAH) modified adjusted gross income (MAGI)-based long-term care program (LTC) for children and adults who ~~((are admitted for a long-term stay to a medical institution, an inpatient psychiatric facility or an institution for mental diseases (IMD):~~

- ~~(a) WAC 182-514-0235 Definitions;~~
- ~~(b) WAC 182-514-0240 General eligibility requirements for the WAH MAGI-based long-term care program;~~
- ~~(c) WAC 182-514-0245 Resource eligibility for WAH MAGI-based long-term care program;~~
- ~~(d) WAC 182-514-0250 WAH MAGI-based long-term care programs for adults twenty-one years of age or older;~~
- ~~(e) WAC 182-514-0255 WAH MAGI-based long-term care program for young adults nineteen and twenty years of age;~~
- ~~(f) WAC 182-514-0260 WAH MAGI-based long-term care program for children eighteen years of age or younger;~~
- ~~(g) WAC 182-514-0265 How the agency or its designee determines how much of an institutionalized person's income must be paid towards the cost of care for the WAH MAGI-based long-term care program; and~~
- ~~(h) WAC 182-514-0270 When an involuntary commitment to Eastern or Western State Hospital is covered by Washington apple health.~~

~~(2) Recipients of a noninstitutional WAH children's program as described in WAC 182-505-0210 or 182-505-0211 do not need to submit a new application for long-term care coverage when admitted to an institution. The agency or its designee treats the admittance to the institution as a change of circumstances and determines eligibility based upon the anticipated length of stay))~~ have been admitted to an institution as defined in WAC 182-500-0050 for at least thirty days. The rules are stated in the following sections:

- (a) WAC 182-514-0240 General eligibility;
- (b) WAC 182-514-0245 Resource eligibility;
- (c) WAC 182-514-0250 Program for adults age nineteen and older;
- (d) WAC 182-514-0260 Program for children under age nineteen;
- (e) WAC 182-514-0263 Non-SSI-related institutional medically needy coverage for pregnant women and people age twenty and younger.
- (f) WAC 182-514-0270 Involuntary commitment to Eastern or Western State Hospital.

(2) A noninstitutional WAH program recipient does not need to submit a new application for LTC coverage if admitted to an institution under this section. Admission to an institution constitutes a change of circumstances. Eligibility is based on institutional status under WAC 182-513-1320.

(3) In this chapter, "medicaid agency" or "agency" means the Washington state health care authority and includes the agency's designee. See chapter 182-500 WAC for additional definitions.

(4) Income standards used in this chapter are listed at <http://www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx>.

AMENDATORY SECTION (Amending WSR 14-06-068, filed 2/28/14, effective 3/31/14)

**WAC 182-514-0240 (~~Washington apple health—General eligibility requirements for MAGI-based long-term care program.~~) General eligibility.** ~~((1) This section applies to applicants for long-term care (LTC) services under the Washington apple health (WAH) modified adjusted gross income (MAGI)-based LTC program. Additional rules may apply based upon a person's age at the time he or she applies for LTC services and whether the facility the person is admitted to is a medical institution, inpatient psychiatric facility, or an institution for mental diseases (IMD). Additional rules are described in WAC 182-514-0245 through 182-514-0265.~~

~~(2) The following requirements apply to be eligible for WAH MAGI-based LTC coverage under this section:~~

~~(a) Institutional status described in WAC 182-513-1320. A person meets institutional status if he or she is admitted to:~~

~~(i) A medical institution and resides, or is likely to reside, there for thirty days or longer, regardless of age;~~

~~(ii) An inpatient psychiatric facility or IMD and resides, or is likely to reside, there for thirty days or longer and is eighteen through twenty years of age; or~~

~~(iii) An inpatient psychiatric facility or IMD and resides, or is likely to reside, there for ninety days or longer and is seventeen years of age or younger.~~

~~(b) General eligibility requirements described in WAC 182-503-0505 (with the exception that subsections (3)(c) and (d) of that section do not apply to noncitizen applicants who are eligible under one of the WAH alien medical programs described in chapter 182-507 WAC) and the person meets the program requirements of one of the following:~~

~~(i) WAH for parents and caretaker relatives as described in WAC 182-505-0240, including anyone who receives extended health care coverage as described in WAC 182-523-0100;~~

~~(ii) WAH for kids as described in WAC 182-505-0210 (with the exception that for MAGI-based LTC services, a person is considered a child through the age of twenty one);~~

~~(iii) WAH for adults as described in WAC 182-505-0250;~~

~~(iv) WAH for pregnant women as described in WAC 182-505-0115; or~~

~~(v) WAH alien medical program as described in WAC 182-507-0110 (with the exception that for MAGI-based LTC services, alien medical coverage may be authorized for children through twenty one years of age) and:~~

~~(A) Have a qualifying emergency condition; and~~

~~(B) For payment for LTC services and room and board costs in the institution, request prior authorization from the aging and long-term support administration (AL TSA) if the person is admitted to a nursing facility.~~

~~(c) Have countable income below the applicable standard described in WAC 182-514-0250(4), 182-514-0255(3), or 182-514-0260(4); and~~

~~(d) Be assessed as needing nursing facility level of care as described in WAC 388-106-0355 if the admission is to a nursing facility. (This does not apply to nursing facility admissions under the hospice program.)~~

~~(3) Once the agency or its designee determines a person meets institutional status, it does not count the income of parent(s), a spouse, or dependent child(ren) when determining countable income. Only income received by the person in his or her own name is counted for eligibility determination.~~

~~(4) A person who is not a United States citizen or a qualified alien does not need to provide or apply for a Social Security number or meet the citizenship requirements under WAC 182-503-0535 as long as the requirements in subsection (2) of this section are met.~~

~~(5) A person who meets the federal aged, blind or disabled criteria may qualify for institutional benefits with income of up to three hundred percent of the federal benefit rate (FBR). Rules relating to institutional eligibility for an aged, blind or disabled person are described in WAC 182-513-1315. A person who is SSI-related and who meets the eligibility criteria described in WAC 182-513-1316 may qualify for institutional benefits.~~

~~(6) If a person does not meet institutional status, the agency or its designee determines his or her eligibility for a noninstitutional WAH medical program. A person who is determined eligible for CN or medically needy (MN) coverage under a noninstitutional program who is admitted to a nursing facility for less than thirty days is approved for coverage for the nursing facility room and board costs, as long as the person is assessed by AL TSA as meeting nursing home level of care as described in WAC 388-106-0355.~~

~~(7) A person who is found eligible for the MAGI-based LTC program is not required to participate income or assets toward the cost of care in the post-eligibility treatment-of-income process that applies to an SSI-related applicant.)~~ (1) To be eligible for modified adjusted gross income (MAGI)-based long-term care (LTC) coverage under this section, a person must:

(a) Meet institutional status under WAC 182-513-1320;

(b) Meet the general eligibility requirements under WAC 182-503-0505, unless the applicant is a noncitizen, in which case WAC 182-503-0505 (3)(c) and (d) do not apply;

(c) Have countable income below the applicable standard described in WAC 182-514-0250(2) or 182-514-0260(3), unless the applicant is eligible as medically needy;

(d) Satisfy the program requirements in WAC 182-514-0250 and 182-514-0260; and

(e) Meet the nursing facility level of care under WAC 388-106-0355 if admitted to a nursing facility for nonhospice care. Hospice patients are exempt from this requirement.

(2) A person age nineteen or older who does not meet the citizenship or immigration requirements under WAC 182-

503-0535 to qualify for medicaid must meet the criteria in subsection (1) of this section and:

(a) Have a qualifying emergency condition and meet the requirements under WAC 182-507-0115 and 182-507-0120; or

(b) Meet the requirements under WAC 182-507-0125 if the person needs LTC coverage in a nursing facility.

(3) If a person meets institutional status, the medicaid agency counts only income received by the person or on behalf of the person when determining eligibility.

(4) A person who meets the federal aged, blind, or disabled criteria may qualify for coverage under chapter 182-513 WAC.

(5) A person who receives supplemental security income (SSI) is not eligible for the MAGI-based LTC program.

(6) If a person does not meet institutional status, the agency determines the person's eligibility for a noninstitutional medical program.

(7) A person eligible for categorically needy or medically needy coverage under a noninstitutional program who is admitted to a nursing facility for fewer than thirty days is only approved for coverage for the nursing facility room and board costs if the person meets the nursing facility level of care as described under WAC 388-106-0355.

(8) A MAGI-based LTC recipient is not required to pay toward the cost of care.

AMENDATORY SECTION (Amending WSR 14-06-068, filed 2/28/14, effective 3/31/14)

**WAC 182-514-0245** (~~Washington apple health—Resource eligibility for MAGI-based long-term care program.~~) **Resource eligibility.** ((1) There is no resource test for applicants or recipients of the Washington apple health (WAH) modified adjusted gross income (MAGI)-based long-term care (LTC) program.

(2) ~~The transfer of asset evaluation described in WAC 182-513-1363 does not apply to applicants or recipients who are eligible under the WAH MAGI-based LTC program.~~) Applicants for and recipients of the modified adjusted gross income (MAGI)-based long-term care program are exempt from the transfer-of-asset evaluation under WAC 182-513-1363, and there is no resource test.

AMENDATORY SECTION (Amending WSR 14-06-068, filed 2/28/14, effective 3/31/14)

**WAC 182-514-0250** (~~Washington apple health—MAGI-based long-term care~~) **Program for adults age ((twenty-one or) nineteen and older.** (1) ~~To qualify for coverage under the modified adjusted gross income (MAGI)-based long-term care (LTC) program under this section, a person ((twenty-one years of) age nineteen or older must ((meet the requirements in WAC 182-505-0250 to qualify for) be eligible for one of the following Washington apple health (WAH) ((modified adjusted gross income (MAGI)-based long-term care (LTC) coverage under this section) programs:~~

(a) WAC 182-505-0240 Washington apple health—Parents and caretaker relatives:

(b) WAC 182-523-0100 Washington apple health—Medical extension;

(c) WAC 182-505-0250 Washington apple health—MAGI-based adult medical;

(d) WAC 182-505-0115 Washington apple health—Eligibility for pregnant women; or

(e) WAC 182-507-0110 Washington apple health—Alien medical programs.

(2) The categorically needy (CN) income level ((CNH)) for health care coverage under this section is ((one hundred thirty-three percent of the federal poverty level. A person's countable income (after a standard five percentage point income disregard) must be at or below this amount to be eligible)) the applicable standard for the program the person receives after the standard five percentage point income disregard. See WAC 182-505-0100 for standards based on the federal poverty level.

(3) The medicaid agency determines countable income for ((categorically needy (CN)) coverage under this section ((is determined)) using ((the)) MAGI ((methodologies described in)) methodology under chapter 182-509 WAC.

(4) ((With the exception of an institutionalized pregnant woman, if the person's income exceeds the standards to be eligible under the WAH MAGI-based CN long-term care program, he or she is not eligible for medically needy coverage under this section.

(5) A person, age twenty-one through sixty-four years of age who is admitted to an institution for mental diseases (IMD) is not eligible for coverage under this section.) The agency approves CN coverage under this section for twelve calendar months.

(5) A person is ineligible for medically needy (MN) coverage under this section if the person's income exceeds CN eligibility standards, unless the person is age nineteen, twenty, or pregnant.

(6) If a person who is age nineteen, twenty, or pregnant is not eligible for CN coverage under this section, the agency determines eligibility for MN coverage under WAC 182-514-0263.

(7) A person who applies for or receives MAGI-based LTC coverage at Eastern or Western State Hospital in the month of his or her twenty-first birthday and who receives active inpatient psychiatric treatment that will likely continue through the person's twenty-first birthday is eligible for CN coverage until:

(a) The facility discharges the person; or

(b) The end of the month in which the person turns age twenty-two, whichever occurs first.

(8) Except for a person described in subsection (7) of this section, a person who is admitted to Eastern or Western State Hospital who is older than age twenty but younger than age sixty-five is not eligible for WAH coverage.

AMENDATORY SECTION (Amending WSR 14-06-068, filed 2/28/14, effective 3/31/14)

**WAC 182-514-0260** (~~Washington apple health—MAGI-based long-term care coverage for children eighteen years of age or younger.~~) **Program for children under age nineteen.** (1) ((Children eighteen years of age or

~~younger must meet the requirements in WAC 182-514-0240 to qualify for the Washington apple health (WAH) modified adjusted gross income (MAGI)-based long-term care (LTC) coverage under this section.~~

~~(2) When a child eighteen years of age or younger)) To qualify for the modified adjusted gross income (MAGI)-based long-term care (LTC) program under this section, a child under age nineteen must meet:~~

~~(a) The general eligibility requirements in WAC 182-514-0240; and~~

~~(b) Program requirements under WAC 182-505-0210 or 182-505-0117.~~

~~(2) If a child under age nineteen is eligible for the premium-based ((WAH for kids)) children's program ((as described in WAC 182-505-0210)) under WAC 182-505-0215, the medicaid agency ((or its designee)) redetermines ((his or her)) the child's eligibility ((using the provisions of)) under this section so that the child's family is not required to pay the premium.~~

~~(3) The categorically needy (CN) income level (((CNIL) for WAH)) for LTC coverage under this section is two hundred ten percent of the federal poverty level ((+))after ((a)) the standard five percentage point income disregard((+)).~~

~~(4) To determine countable income for ((categorically needy (+))CN((+)) coverage under this section ((is determined using the MAGI methodologies described in)), apply MAGI methodology under chapter 182-509 WAC.~~

~~(5) The agency ((or its designee)) approves CN ((health care)) coverage under this section for twelve calendar months (certification period). If the child is discharged from the facility before the end of ((his or her)) the certification period, the child remains continuously eligible for CN ((health care)) coverage through the ((end of the original)) certification ((date)) period, unless ((he or she)) the child ages out of the program, moves out of state, is incarcerated, or dies.~~

~~(6) If a child is not eligible for CN ((health care)) coverage under this section, the agency ((or its designee)) determines the child's eligibility for ((health care)) coverage under the ((WAH)) institutional medically needy (((MN))) program described in WAC ((182-513-1395)) 182-514-0263.~~

~~(7) ((MN coverage is only available for a child who meets the citizenship requirements under WAC 182-503-0535.~~

~~(8) The facility)) The institution where the child resides may submit an application on the child's behalf and may act as ((an)) the child's authorized representative if the child is:~~

~~(a) In a court-ordered, out-of-home placement under chapter 13.34 RCW; or~~

~~(b) Involuntarily committed to an inpatient treatment program by a court order under chapter 71.34 RCW.~~

~~((9) Children who are eligible for WAH MAGI based long-term care coverage under the provisions of this section may be required to contribute a portion of their income towards the cost of care as described in WAC 182-514-0265-))~~

#### NEW SECTION

#### **WAC 182-514-0263 Non-SSI-related institutional medically needy coverage for pregnant women and people age twenty and younger.**

(1) Medically needy (MN) coverage under this section is only available for people age twenty and younger or pregnant women. The medicaid agency determines a person who meets SSI-related criteria under WAC 182-512-0050 eligible for institutional MN coverage under WAC 182-513-1395. If a person meets requirements in both this section and WAC 182-513-1395, the person may choose which program to enroll in for coverage.

(2) A person whose income exceeds the categorically needy (CN) standards under WAC 182-514-0250 and 182-514-0260 is:

(a) Eligible for MN coverage with no spenddown if the person's countable income (CI) is equal to or less than the department-contracted daily rate times the number of days in the institution;

(b) Eligible for MN coverage after a spenddown under WAC 182-519-0110 is met if the person's CI is above the department-contracted daily rate times the number of days in the institution but less than the institution's private rate;

(c) Not eligible for payment of long-term care services provided by the institution if the person's CI exceeds the institution's private rate;

(d) Responsible for paying up to the monthly state rate for the facility as participation in the cost of care; and

(e) Allowed to keep a monthly personal needs allowance (PNA) of at least \$57.28. Current PNA and long-term care standards can be found at <http://www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx>.

(3) If a person's CI exceeds the institution's private rate, the agency determines eligibility for medical coverage under chapter 182-519 WAC.

AMENDATORY SECTION (Amending WSR 14-06-068, filed 2/28/14, effective 3/31/14)

**WAC 182-514-0270 ((When an)) Involuntary commitment to Eastern or Western State Hospital ((is covered by medicaid)).** (1) A person who is ((admitted)) involuntarily committed to Eastern or Western State Hospital ((for inpatient psychiatric treatment)) under chapter 71.34 RCW is eligible for categorically needy (CN) ((health care coverage in limited circumstances.

(2) To be eligible under this program, a person must:

(a) Be twenty years of age or younger, or sixty-five years of age or older)) coverage if the person:

(a) Is under age twenty-one;

(b) Meets institutional status under WAC 182-513-1320; and

(c) ((Be involuntarily committed to an inpatient treatment program by a court order under chapter 71.34 RCW;

(d) Have)) Has countable income below:

(i) Two hundred ten percent of the federal poverty level if ((age twenty years or younger; or

(ii) The SSI-related CN income level if age sixty-five years or older and have countable resources below the standard described in WAC 182-512-0010.

(3) A person who receives active psychiatric treatment in Eastern or Western State Hospital at the time of his or her twenty-first birthday continues to be eligible for CN health care coverage until the date he or she is discharged from the

facility or until the person's twenty-second birthday, whichever occurs first.

~~(4) A person between the age of twenty-one and sixty-five, with the exception of subsection (3) of this section, is not eligible for federally funded health care coverage through Washington apple health.) under age nineteen; or~~

~~(ii) One hundred thirty-three percent of the federal poverty level if age nineteen or twenty.~~

(2) A person who is involuntarily committed or receives MAGI-based long-term care coverage at Eastern or Western State Hospital in the month of the person's twenty-first birthday and receives active inpatient psychiatric treatment that will likely continue through the person's twenty-first birthday, is eligible for CN coverage until:

(a) The facility discharges the person; or

(b) The end of the month in which the person turns twenty-two, whichever occurs first.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 182-514-0235 Definitions.

WAC 182-514-0255 Washington apple health—MAGI-based long-term care program for young adults nineteen and twenty years of age.

#### WSR 16-01-085

##### WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF COMMERCE

(by the Code Reviser's Office)

[Filed December 15, 2015, 10:01 a.m.]

WAC 194-29-010, 194-29-020, 194-29-030, 194-29-040, 194-29-050, 194-29-060, 194-29-070 and 194-29-080, proposed by the department of commerce in WSR 15-12-119, appearing in issue 15-12 of the Washington State Register, which was distributed on June 17, 2015, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

#### WSR 16-01-086

##### PROPOSED RULES DEPARTMENT OF LICENSING

[Filed December 15, 2015, 10:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-04-060.

Title of Rule and Other Identifying Information: WAC 308-124A-700 Application for a license—Fingerprinting,

308-124A-727 Application as broker license for interim period, and 308-124A-775 Real estate fees.

Hearing Location(s): Department of Licensing, Business and Professions Division, 405 Black Lake Boulevard S.W., Building 2, Conference Room 209, Olympia, WA 98502, on January 28, 2016, at 1:00 p.m.

Date of Intended Adoption: January 29, 2016.

Submit Written Comments to: Jerry McDonald, 2000 4th Avenue West, Olympia, WA 98507, e-mail [jmcdonald@dol.wa.gov](mailto:jmcdonald@dol.wa.gov), fax (360) 570-7051, by January 27, 2016.

Assistance for Persons with Disabilities: Contact Sally Adams by January 27, 2016, TTY (360) 664-0116 or (360) 664-6526.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department will be using an outside vendor for taking and processing fingerprints for background checks. The change is necessary to describe licensee's responsibilities for providing fingerprints for background checks.

Reasons Supporting Proposal: This is a "LEAN" process improvement which will save time and money for the department and lower the cost of rolling fees for most applicants or licensees.

Statutory Authority for Adoption: RCW 18.85.171.

Statute Being Implemented: RCW 18.85.171.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jerry McDonald, 2000 4th Avenue West, Olympia, WA 98507, (360) 664-6525.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These are rules for individual licensees. The department of licensing and the real estate commission utilized stakeholders to participate in the rule making process.

A cost-benefit analysis is not required under RCW 34.05.328. The department of licensing is exempt from the provisions of this chapter.

December 15, 2015

Damon Monroe  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

**WAC 308-124A-700 Application for a license—Fingerprinting.** (1) New applicants applying for their first broker's license under chapter 18.85 RCW will be required to submit to a fingerprint ~~((and))~~ background check with the department's authorized vendor.

(2) Applicants applying for their first managing broker's license using alternative qualifications will be required to submit to a fingerprint ~~((and))~~ background check with the department's authorized vendor.

(3) Fingerprint ~~((cards and))~~ background checks are required for every active renewal every six years. If the department background check was within the last six years,

then no new background check is required to activate a license.

(4) An application submitted without the required fingerprint ((card)) background check is considered incomplete.

(5) ~~((When a fingerprint card is rejected, the licensee or applicant must submit to the department a new fingerprint card within twenty-one calendar days of written notice to the address of record with the real estate program. Failure to submit a new fingerprint card will result in a suspension of the real estate license until the fingerprint card is received by the department.~~

~~((6) If the fingerprint card is rejected, the applicant must pay a new fee for fingerprinting and background processing.)) When fingerprints are rejected, the department will contact the licensee or applicant via the e-mail address on file with the department. The licensee or applicant must follow the authorized vendor's procedures for resubmitting fingerprints within twenty-one calendar days of the date the department sends the e-mail. Failure to follow the vendor's fingerprint procedures within twenty-one days will result in a suspension of the real estate license until the vendor's fingerprint procedures are followed. The licensee or applicant will be responsible for any additional fees due.~~

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

**WAC 308-124A-727 Application as broker license for interim period.** Applicants for a broker's license may commence working on or after the postmark date of delivery to the department ~~((or on or after the date of hand delivery to the real estate program.))~~ of the following:

- (1) Notice of passing the examination;
- (2) License application form;
- (3) ~~((Fingerprint card))~~ Verification that the department's authorized vendor fingerprint process was followed; and
- (4) License ~~((and fingerprint))~~ fees.

The completed license application form shall serve as an interim license for a period up to forty-five days unless grounds exist to take disciplinary action against the license under RCW 18.235.130 and 18.85.361.

AMENDATORY SECTION (Amending WSR 10-15-055, filed 7/15/10, effective 8/15/10)

**WAC 308-124A-775 Real estate fees.** These fees are applicable to all original licenses, examination services, and fee generating services issued or performed after July 1, 2010, and all renewals for existing licenses with expiration date after July 1, 2010. The fees for an original license and renewal include a ten dollar fee which is assessed for the real estate research center for the real estate broker and the real estate managing broker licenses. The following fees shall be charged by the department of licensing:

Title of Fee	Fee
Real estate broker:	
Application/examination	\$138.25
Reexamination	138.25

Title of Fee	Fee
Original license	146.25
License renewal	146.25
Late renewal with penalty	172.75
Duplicate license	26.50
Certification	26.50
Name or address change, transfer or license activation	0.00
Real estate managing broker:	
Application/examination	\$138.25
Reexamination	138.25
Original license	210.00
License renewal	210.00
Late renewal with penalty	236.50
Duplicate license	26.50
Certification	26.50
Name or address change, transfer or license activation	0.00
Real estate firm and assumed name license:	
Original license	\$200.00
License renewal	200.00
Late renewal with penalty	226.50
Name or address change	0.00
Duplicate license	26.50
Certification	26.50
Real estate branch:	
Original license	\$189.50
License renewal	189.50
Late renewal with penalty	216.50
Certification	26.50
Duplicate license	26.50
Name or address change, transfer or license activation	0.00
Fingerprint processing	<del>((35.25))</del> <u>per vendor schedule</u>
Subsequent fingerprint processing	<del>((30.00))</del> <u>per vendor schedule</u>
Fingerprints rejected by the department, Washington state patrol or FBI <del>((will))</del> <u>may</u> necessitate subsequent fingerprint processing fees.	
<del>((Fingerprinting fee does not include the cost of obtaining prints. Applicants will be responsible for obtaining their fingerprints for their cards.))</del> <u>Fingerprint rolling fee per vendor schedule.</u>	

**WSR 16-01-099**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

[Filed December 16, 2015, 10:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-04-059.

Title of Rule and Other Identifying Information: WAC 308-124C-110 Accuracy and accessibility of records and 308-124C-115 Suit or complaint notification.

Hearing Location(s): Department of Licensing, Business and Professions Division, 405 Black Lake Boulevard S.W., Building 2, Conference Room 209, Olympia, WA 98502, on January 28, 2016, at 2:00 p.m.

Date of Intended Adoption: January 29, 2016.

Submit Written Comments to: Jerry McDonald, 2000 4th Avenue West, Olympia, WA 98507, e-mail [jmcdonald@dol.wa.gov](mailto:jmcdonald@dol.wa.gov), fax (360) 570-7051, by January 27, 2016.

Assistance for Persons with Disabilities: Contact Sally Adams by January 27, 2016, TTY (360) 664-0116 or (360) 664-6526.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To allow the retention of required records in electronic format and to describe notification responsibilities when a licensee has had any professional license disciplined by a governmental agency.

Reasons Supporting Proposal: These rule changes will allow designated brokers to keep records in electronic format and requires notification to the department when another governmental agency has disciplined a licensee.

Statutory Authority for Adoption: RCW 18.85.041.

Statute Being Implemented: RCW 18.85.361.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jerry McDonald, 2000 4th Avenue West, Olympia, WA 98507, (360) 664-6525.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These are rules for individual licensees. The department of licensing and the real estate commission utilized stakeholders to participate in the rule-making process.

A cost-benefit analysis is not required under RCW 34.05.328. The department of licensing is exempt from the provisions of this chapter.

December 16, 2015  
 Damon Monroe  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

**WAC 308-124C-110 Accuracy and accessibility of records.** (1) Accuracy. All required real estate records shall be accurate, posted and kept up to date.

(2) Location. All required real estate records shall be kept at an address where the real estate firm is licensed to maintain a real estate office. Transactions that have been closed for at least one year can be maintained at one central facility located in Washington. Transactions not stored at the firm location must be available upon demand of the department and maintained in a manner to be readily retrievable. A listing of all transactions must be maintained at the firm's licensed office for all the transactions stored at the remote facility. All records shall be retained and available for inspection by the director or the director's authorized representative for a minimum of three years.

(3) Alternative storage. Records may be stored (~~on permanent storage media, such as optical disk or microfilm, or other storage media, provided the retrieval process does not permit modification of the documents~~) electronically or on remote devices provided retrieval of all documents is immediate. Retrieval must be possible at the firm's licensed office and allow for viewing and printing (~~the document in its original form. The permanent media storage shall be nonerasable and prevent changes to the stored documents or records~~) of all documents. To include, but not limited to, initial listing agreement, price reductions or changes in status, initial offers, all counter offers, electronic communications, negotiations, trust account records, and final disposition of the transaction. The designated broker must maintain equipment at firm's location in good repair to allow viewing and printing upon demand by the department. The document storage (~~media~~) must be indexed to allow for immediate retrieval of all documents.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

**WAC 308-124C-115 Suit or complaint notification.**

Every licensee shall, within twenty days after service or knowledge thereof, notify the real estate program of the following:

(1) Any criminal complaint, information, indictment, or conviction (including a plea of guilty or nolo contendere) in which the licensee is named as a defendant.

(2) Entry of a civil court order, verdict, or judgment, against the licensee in any court of competent jurisdiction in which the subject matter therein involves any real estate or business-related activity by the licensee. Notification is required regardless of any pending appeal.

(3) Any professional license, certification, or permit held by the licensee which was fined, suspended, revoked, or refused by any governmental agency or entity or can limit the licensee's ability to practice an occupation or profession.

**WSR 16-01-100**  
**PROPOSED RULES**  
**LIQUOR AND CANNABIS**  
**BOARD**

[Filed December 16, 2015, 10:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-20-122.

Title of Rule and Other Identifying Information: WAC 314-03-040 Consumer orders, internet sales, and delivery for beer and/or wine gift delivery licenses.

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on February 10, 2016, at 10:00 a.m.

Date of Intended Adoption: February 24, 2016.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504, e-mail rules@lcb.wa.gov, fax (360) 664-9689 by February 10, 2016.

Assistance for Persons with Disabilities: Contact Karen McCall by February 10, 2016, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rules are needed to clarify the requirements for internet sales and delivery by beer and wine (B/W) gift delivery licensees.

Reasons Supporting Proposal: B/W gift delivery licensees have been taking internet orders and delivery product without a clear set of rules explaining the requirements for this activity.

Statutory Authority for Adoption: RCW 66.24.550.

Statute Being Implemented: RCW 66.24.550.

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

Name of Proponent: Washington state liquor and cannabis board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Becky Smith, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Justin Nordhorn, Chief Enforcement, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not required.

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

December 16, 2015  
Jane Rushford  
Chairman

#### NEW SECTION

**WAC 314-03-040 Consumer orders, internet sales, and delivery for beer and/or wine gift delivery licenses.** A beer and/or wine gift delivery licensee may accept orders for beer or wine from, and deliver beer or wine to, customers.

(1) **Resale.** Liquor shall not be for resale.

(2) **Stock location.** Liquor must come directly from a licensed retail location.

(3) **How to place an order.** Liquor may be ordered in person at a licensed location, by mail, telephone or internet, or by other similar methods.

(4) **Sales and payment.**

(a) Only a licensee or a licensee's direct employees may accept and process orders and payments. A contractor may not do so on behalf of a licensee, except for transmittal of

payment through a third-party service. A third-party service may not solicit customer business on behalf of a licensee.

(b) All orders and payments shall be fully processed before liquor transfers ownership or, in the case of delivery, leaves a licensed premises.

(c) **Payment method.** Payment methods include, but are not limited to: Cash, credit or debit card, check or money order, electronic funds transfer, or an existing prepaid account. An existing prepaid account may not have a negative balance.

(d) **Internet.** To sell liquor via the internet, a new license applicant must request internet-sales privileges in his or her application. An existing licensee must notify the board prior to beginning internet sales. A corporate entity representing multiple stores may notify the board in a single letter on behalf of affiliated licensees, as long as the liquor license numbers of all licensee locations utilizing internet sales privileges are clearly identified.

(5) **Delivery location.** Delivery shall be made only to a residence or business that has an address recognized by the United States postal service; however, the board may grant an exception to this rule at its discretion. A residence includes a hotel room, a motel room, or other similar lodging that temporarily serves as a residence.

(6) **Hours of delivery.** Liquor may be delivered each day of the week between the hours of 6:00 a.m. and 2:00 a.m. Delivery must be fully completed by 2:00 a.m.

(7) **Age requirement.**

(a) Per chapter 66.44 RCW, any person under twenty-one years of age is prohibited from purchasing, delivering, or accepting delivery of liquor.

(b) A delivery person must verify the age of the person accepting delivery before handing over liquor.

(c) If no person twenty-one years of age or older is present to accept a liquor order at the time of delivery, the liquor shall be returned.

(8) **Intoxication.** Delivery of liquor is prohibited to any person who shows signs of intoxication.

(9) **Containers and packaging.**

(a) Individual units of liquor must be factory sealed in bottles, cans or other like packaging. Delivery of growlers, jugs or other similar, nonfactory sealed containers is prohibited. For the purposes of this subsection, "factory sealed" means that a unit is in one hundred percent resalable condition, with all manufacturer's seals intact.

(b) The outermost surface of a liquor package, delivered by a third party, must have language stating that:

(i) The package contains liquor;

(ii) The recipient must be twenty-one years of age or older; and

(iii) Delivery to intoxicated persons is prohibited.

(10) **Required information.**

(a) Records and files shall be retained at the licensed premises. Each delivery sales record shall include the following:

(i) Name of the purchaser;

(ii) Name of the person who accepts delivery;

(iii) Street addresses of the purchaser and the delivery location; and

(iv) Time and date of purchase and delivery.



(b) A private carrier must obtain the signature of the person who receives liquor upon delivery.

(c) A sales record does not have to include the name of the delivery person, but it is encouraged.

(11) **Web site requirements.** When selling over the internet, all web site pages associated with the sale of liquor must display a licensee's registered trade name.

(12) **Accountability.** A licensee shall be accountable for all deliveries of liquor made on its behalf.

(13) **Violations.** The board may impose administrative enforcement action upon a licensee, or suspend or revoke a licensee's delivery privileges, or any combination thereof, should a licensee violate any condition, requirement or restriction.

### WSR 16-01-104

#### PROPOSED RULES

#### HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed December 16, 2015, 1:24 p.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 15-14-062.

Title of Rule and Other Identifying Information: Chapter 182-527 WAC, Estate recovery and liens during a client's lifetime.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at [http://www.hca.wa.gov/documents/directions\\_to\\_csp.pdf](http://www.hca.wa.gov/documents/directions_to_csp.pdf) or directions can be obtained by calling (360) 725-1000, on January 26, 2016, at 10:00 a.m.

Date of Intended Adoption: Not sooner than January 27, 2016.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax (360) 586-9727, by 5:00 p.m. on January 26, 2016.

Assistance for Persons with Disabilities: Contact Amber Lougheed by January 22, 2016, e-mail [amber.lougheed@hca.wa.gov](mailto:amber.lougheed@hca.wa.gov), (360) 725-1349, or TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending chapter 182-527 WAC to more clearly distinguish between rules that apply to TEFRA liens (liens filed during a client's lifetime) and rules that apply to estate recovery. Amendments to WAC 182-527-2742 support permanent rule making on an emergency rule filed as WSR 15-22-025, clarify that individual and family services (IFS), and community first choice (CFC) are subject to estate recovery, and remove Washington medicaid integration partnership (WMIP) because it has been discontinued.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1842; Implementation and Enforcement: Mick Pettersen, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-0913.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The joint administrative [rules] review committee has not requested the filing of a small business economic impact statement, and these rules do not impose a disproportionate cost impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

December 16, 2015

Wendy Barcus

Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-19-038, filed 9/11/13, effective 10/12/13)

**WAC 182-527-2730 Definitions.** The following definitions apply to this chapter:

**"Contract health service delivery area (CHSDA)"** means the geographic area within which contract health services will be made available by the Indian health service to members of an identified Indian community who reside in the area as identified in 42 C.F.R. Secs. 136.21(d) and 136.22.

~~("Domestic partner" see WAC 182-500-0025. When the terms "domestic partner" or "domestic partnership" are used in this chapter, they mean "state registered domestic partner" or "state registered domestic partnership.")~~

**"Estate"** means all property and any other assets that pass upon the client's death under the client's will or by intestate succession ~~((pursuant to))~~ under chapter 11.04 ~~((RCW or under chapter))~~ or 11.62 RCW. The value of the estate will be reduced by any valid liability against the ~~((decedent's property at the time of death))~~ client's property when the client died. An estate also includes:

(1) For a client who died after June 30, 1995, and before July 27, 1997, nonprobate assets as defined by RCW 11.02.-005, except property passing through a community property agreement; or

(2) For a client who died after July 26, 1997, and before September 14, 2006, nonprobate assets as defined by RCW 11.02.005.

(3) For a client who died on or after September 14, 2006, nonprobate assets as defined by RCW 11.02.005 and any life estate interest held by the ~~((recipient))~~ client immediately before death.

**"Heir"** means ~~((the decedent's surviving spouse and children (natural and adopted); or those persons who are entitled to inherit the decedent's property under a will properly executed under RCW 11.12.020 and accepted by the probate court as a valid will.~~

~~"Joint tenancy" means ownership of property held under circumstances that entitle one or more owners to the whole of the property on the death of the other owner(s), including, but not limited to, joint tenancy with right of survivorship)) a person entitled to inherit a deceased client's property under a valid will accepted by the court, or a person entitled to inherit under the Washington state intestacy statute. RCW 11.04.015.~~

~~"Life estate" means an ownership interest in a property only during the lifetime of the person((s)) owning the life estate. ((In some cases, the ownership interest lasts only until the occurrence of some specific event, such as remarriage of the life estate owner. A life estate owner may not have the legal title or deed to the property, but may have rights to possession, use, income and/or selling their life estate interest in the property.))~~

~~"Lis pendens" means a notice filed in public records warning that title to certain real property is in litigation and the outcome of the litigation may affect the title.~~

~~"Long-term care services (LTC)" means, for the purposes of this chapter only, the services administered directly or through contract by the department of social and health services (DSHS) for clients of the home and community services division of ((the department of social and health services)) DSHS((s)) and the developmental disabilities administration of DSHS including, but not limited to, nursing facility care and home and community services.~~

~~((("Medicaid" see WAC 182-500-0070.~~

~~"Medical assistance" see WAC 182-500-0070.~~

~~"Medicare savings programs" means the programs described in WAC 182-517-0300 that help a client pay some of the costs that medicare does not cover.))~~

~~"Property"((Examples include, but are not limited to, personal property, real property, title property, and trust property as described below.)) means everything a person owns, whether in whole or in part.~~

~~(1) "Personal property" means any ((property that is not classified as real, title, or trust property in the definitions provided here)) movable or intangible thing a person owns, whether in whole or in part;~~

~~(2) "Real property" means land and anything growing on, attached to, or ((erected thereon)) built on it, excluding anything that may be removed without injury to the land;~~

~~(3) ((("Title property" means, for the purposes of this chapter only, property with a title such as motor homes, mobile homes, boats, motoreycles, and vehicles.~~

~~(4)) "Trust property" means any type of property ((interest titled in, or held by, a trustee for the benefit of another person or entity.~~

~~"State only funded long term care" means the long-term care services that are financed with state funds only)) held in trust for the benefit of another.~~

~~"Qualified long-term care insurance partnership" means an agreement between the Centers for Medicare and Medicaid services (CMS)((s)) and the Washington state insurance commission which allows for the disregard of any assets or resources in an amount equal to the insurance benefit payments that are made to or on behalf of ((an individual)) a person who is a beneficiary under a long-term care insurance policy that has been determined by the Washington state~~

insurance commission to meet the requirements of section 1917 (b)(1)(C)(iii) of the act.

~~"Recover" or "recovery" means the agency or the agency's designee's receipt of funds to satisfy the client's debt.~~

## NEW SECTION

### **WAC 182-527-2734 Liens during a client's lifetime.**

For the purposes of this section, the term "agency" includes the agency's designee.

#### **(1) When the agency may file.**

(a) The agency may file a lien against the property of a Washington apple health client during the client's lifetime if:

(i) The client resides in a skilled nursing facility, intermediate care facility for individuals with an intellectual disability, or other medical institution under WAC 182-500-0050;

(ii) The agency has determined that the client cannot reasonably be expected to return home; and

(iii) None of the following people lawfully reside in the client's home:

(A) The client's spouse or state-registered domestic partner;

(B) The client's child who is age twenty or younger, or is blind or permanently disabled as defined in WAC 182-512-0050; or

(C) A client's sibling who has an equity interest in the home and who has been residing in the home for at least one year immediately before the client's admission to the medical institution.

(b) If the client returns home from the medical institution, the agency releases the lien.

(2) **Amount of the lien.** The agency may file a lien to recoup the cost of all non-MAGI-based and deemed eligible services under WAC 182-503-0510 it correctly purchased on the client's behalf, regardless of the client's age on the date of service.

#### **(3) Notice requirement.**

(a) Before the agency may file a lien under this section, it sends notice via first class mail to:

(i) The client's last known address;

(ii) The client's authorized representative, if any;

(iii) The address of the property subject to the lien; and

(iv) Any other person known to hold title to the property.

(b) The notice states:

(i) The client's name;

(ii) The agency's intent to file a lien against the client's property;

(iii) The county in which the property is located; and

(iv) How to request an administrative hearing.

#### **(4) Interest assessed on past-due debt.**

(a) Interest on a past-due debt accrues at a rate of one percent per month under RCW 43.17.240.

(b) A lien under this section becomes a past-due debt when the agency has recorded the lien in the county where the property is located and:

(i) Thirty days have passed since the property was transferred; or

(ii) Nine months have passed since the lien was filed.

(c) The agency may waive interest if reasonable efforts to sell the property have failed.

(5) **Administrative hearing.** An administrative hearing under this section is governed by WAC 182-527-2753.

#### NEW SECTION

**WAC 182-527-2738 Estate recovery—General right to recover.** For the purposes of this section, the term "agency" includes the agency's designee.

(1) **When the agency may file.** After a Washington apple health client has died, the medicaid agency may file liens to recover the cost of services subject to recovery that were correctly paid on the client's behalf.

(2) **Notice requirement.**

(a) Before the agency may file a lien under this section, it sends notice via first class mail as follows:

(i) If the estate has a personal representative, the agency sends notification to:

- (A) The personal representative; and
- (B) Any known title holder.

(ii) If the estate has known heirs but no personal representative, the agency sends notification to:

- (A) Any known heir; and
- (B) Any known title holder.

(iii) If the estate has no personal representative and no known heirs, the agency sends notification to:

- (A) The address listed on the title; and
- (B) Any known title holder.

(b) The notice states:

(i) The agency's intent to file a lien against the deceased client's property;

(ii) The amount the agency seeks to recover;

(iii) The deceased client's name, identification number, date of birth, and date of death;

(iv) The county in which the property is located; and

(v) How to request an administrative hearing.

(3) The agency may not recover from the client's estate so long as there remains:

(a) A surviving spouse; or

(b) A surviving child who:

(i) Is age twenty or younger; or

(ii) Is blind or disabled as defined in WAC 182-512-0050.

(4) **Interest assessed on past-due debt.**

(a) Interest on a past-due debt accrues at a rate of one percent per month under RCW 43.17.240.

(b) A lien under this section becomes a past-due debt when the agency has recorded the lien in the county where the property is located and nine months have passed since the lien was recorded or a creditor's claim was filed, whichever is sooner.

(c) The agency may waive interest if reasonable efforts to sell the property have failed.

(5) **Administrative hearing.** An administrative hearing under this section is governed by WAC 182-527-2753.

AMENDATORY SECTION (Amending WSR 13-19-038, filed 9/11/13, effective 10/12/13)

**WAC 182-527-2740 (~~Age when recovery applies.~~) Estate recovery—Age-related limitations.** (~~The client's age and the date when services were received determine whether the client's estate is liable for the cost of medical services provided. Subsection (1) of this section covers liability for medicaid services and subsection (2) covers liability for state only funded long term care services. An estate may be liable under both subsections.~~

~~(1) For a client who on July 1, 1994 was:~~

~~(a) Age sixty five or older, the client's estate is liable for medicaid services that were subject to recovery and provided on and after the date the client became age sixty five or after July 26, 1987, whichever is later;~~

~~(b) Age fifty five through sixty four years of age, the client's estate is liable for medicaid services that were subject to recovery and provided on and after July 1, 1994; or~~

~~(c) Under age fifty five, the client's estate is liable for medicaid services that were subject to recovery and provided on and after the date the client became age fifty five.~~

~~(2) Regardless of the client's age when the services were provided, the client's estate is liable for state only funded long term care services provided to:~~

~~(a) Clients of the home and community services division of the department of social and health services (DSHS) on and after July 1, 1995; and~~

~~(b) Clients of the developmental disabilities administration of DSHS on and after June 1, 2004.) For the purposes of this section, the term "agency" includes the agency's designee.~~

~~(1) **Liability for medicaid services.**~~

~~(a) Beginning July 26, 1987, a client's estate is liable for medicaid services subject to recovery that were provided on or after the client's sixty-fifth birthday.~~

~~(b) Beginning July 1, 1994, a client's estate is liable for medicaid services subject to recovery that were provided on or after the client's fifty-fifth birthday.~~

~~(2) **Liability for state-only-funded long-term care services.**~~

~~(a) A client's estate is liable for all state-only-funded long-term care services provided by the home and community services division of the department of social and health services (DSHS) on or after July 1, 1995.~~

~~(b) A client's estate is liable for all state-only-funded long-term care services provided by the developmental disabilities administration of DSHS on or after June 1, 2004.~~

AMENDATORY SECTION (Amending WSR 14-20-091, filed 9/29/14, effective 10/30/14)

**WAC 182-527-2742 (~~Services subject to recovery.~~) Estate recovery—Service-related limitations.** (~~The medicaid agency or its designee considers the medical services the client received and the dates when the services were provided to the client, to determine whether the client's estate is liable for the cost of medical services provided. Subsection (1) of this section covers liability for medicaid services, subsection (2) of this section covers liability for state only funded long term care services (LTC), and subsection (3) of~~

this section covers liability for all other state-only funded services. An estate can be liable under any of these subsections:

- (1) The client's estate is liable for:
  - (a) All medicaid services provided from July 26, 1987, through June 30, 1994;
  - (b) The following medicaid services provided after June 30, 1994, and before July 1, 1995:
    - (i) Nursing facility services;
    - (ii) Home and community-based services; and
    - (iii) Hospital and prescription drug services provided to a client while receiving nursing facility services or home and community-based services;
  - (c) The following medicaid services provided after June 30, 1995, and before June 1, 2004:
    - (i) Nursing facility services;
    - (ii) Home and community-based services;
    - (iii) Adult day health;
    - (iv) Medicaid personal care;
    - (v) Private duty nursing administered by the aging and long-term support administration (AL TSA) of the department of social and health services (DSHS); and
    - (vi) Hospital and prescription drug services provided to a client while receiving services described under (c)(i), (ii), (iii), (iv), or (v) of this subsection;
  - (d) The following services provided on and after June 1, 2004, through December 31, 2009:
    - (i) All medicaid services, including those services described in subsection (c) of this section;
    - (ii) Medicare savings programs services for individuals also receiving medicaid;
    - (iii) Medicare premiums only for individuals also receiving medicaid; and
    - (iv) Premium payments to managed care organizations;
  - (e) The following services provided on or after January 1, 2010, through December 31, 2013:
    - (i) All medicaid services except those described in (d)(ii) and (iii) of this subsection;
    - (ii) All institutional medicaid services described in (e) of this subsection;
    - (iii) Premium payments to managed care organizations; and
    - (iv) The client's proportional share of the state's monthly contribution to the centers for medicare and medicaid services (CMS) to defray the costs for outpatient prescription drug coverage provided to a person who is eligible for medicare Part D and medicaid; and
  - (f) The following services provided after December 31, 2013:
    - (i) Nursing facility services, including those provided in a developmental disabilities administration (DDA) residential habilitation center (RHC);
    - (ii) Home and community-based services authorized by AL TSA or DDA, as follows:
      - (A) Community options program entry system (COPES);
      - (B) New Freedom consumer directed services (NFCDS);
      - (C) Basic Plus waiver;
      - (D) CORE waiver;
      - (E) Community protection waiver;

- (F) Children's intensive in-home behavioral support (CHBS) waiver;
  - (G) Medicaid personal care;
  - (H) Residential support waiver;
  - (iii) The portion of the Washington apple health (WAH) managed care premium used to pay for LTC services under the program of all-inclusive care for the elderly (PACE) authorized by AL TSA;
  - (iv) The portion of the WAH managed care premium used to pay for LTC services under the Washington medicaid integration partnership (WMIP) authorized by AL TSA or DDA;
  - (v) Roads to community living (RCL) demonstration project;
  - (vi) Personal care services funded under Title XIX or XXI;
  - (vii) Private duty nursing administered by AL TSA or DDA;
  - (viii) Intermediate care facility for individuals with intellectual disabilities (ICF/ID) services provided in either a private community setting or in an RHC; and
  - (ix) Hospital and prescription drug services provided to a client while receiving services under subsection (1)(f)(i) through (viii) of this section.
- (2) The client's estate is liable for all state-only funded LTC services (excluding the services listed in subsection (3)(a) through (d) of this section) and related hospital and prescription drug services provided to:
- (a) Clients of the home and community services division of DSHS on and after July 1, 1995; and
  - (b) Clients of the DDA on and after June 1, 2004.
- (3) The client's estate is liable for all state-only funded services provided regardless of the age of the client at the time the services were provided, with the following exceptions:
- (a) State-only funded adult protective services (APS);
  - (b) Supplemental security payment (SSP) authorized by DDA;
  - (c) Offender reentry community safety program (ORCSP); and
  - (d) Volunteer chore services.) For the purposes of this section, the term "agency" includes the agency's designee. The agency's payment for the following services is subject to recovery:
    - (1) State-only funded services, except:
      - (a) Adult protective services;
      - (b) Offender reentry community safety program services;
      - (c) Supplemental security payments (SSP) authorized by the developmental disabilities administration (DDA); and
      - (d) Volunteer chore services.
    - (2) For dates of service beginning January 1, 2014:
      - (a) Basic Plus waiver services;
      - (b) Community first choice (CFC) services;
      - (c) Community option program entry system (COPES) services;
      - (d) Community protection waiver services;
      - (e) Core waiver services;
      - (f) Hospice services;

(g) Intermediate care facility for individuals with intellectual disabilities services provided in either a private community setting or in a rural health clinic;

(h) Individual and family services;

(i) Medicaid personal care services;

(j) New Freedom consumer directed services;

(k) Nursing facility services;

(l) Personal care services funded under Title XIX or XXI;

(m) Private duty nursing administered by the aging and long-term support administration (AL TSA) or the DDA;

(n) Residential habilitation center services;

(o) Residential support waiver services;

(p) Roads to community living demonstration project services;

(q) The portion of the managed care premium used to pay for AL TSA-authorized long-term care services under the program of all-inclusive care for the elderly (PACE); and

(r) The hospital and prescription drug services provided to a client while the client was receiving services listed in this subsection.

(3) For dates of service beginning January 1, 2010, through December 31, 2013:

(a) Medicaid services;

(b) Premium payments to managed care organizations (MCOs); and

(c) The client's proportional share of the state's monthly contribution to the Centers for Medicare and Medicaid Services to defray the costs for outpatient prescription drug coverage provided to a person who is eligible for Medicare Part D and Medicaid.

(4) For dates of service beginning June 1, 2004, through December 31, 2009:

(a) Medicaid services;

(b) Medicare premiums for people also receiving Medicaid;

(c) Medicare savings programs (MSPs) services for people also receiving Medicaid; and

(d) Premium payments to MCOs.

(5) For dates of service beginning July 1, 1995, through May 31, 2004:

(a) Adult day health services;

(b) Home and community-based services;

(c) Medicaid personal care services;

(d) Nursing facility services;

(e) Private duty nursing services; and

(f) The hospital and prescription drug services provided to a client while the client was receiving services listed in this subsection.

(6) For dates of service beginning July 1, 1994, through June 30, 1995:

(a) Home and community-based services;

(b) Nursing facility services; and

(c) The hospital and prescription drug services provided to a client while the client was receiving services listed in this subsection.

(7) For dates of service beginning July 26, 1987, through June 30, 1994: Medicaid services.

(8) For dates of service through December 31, 2009. If a client was eligible for the MSP, but not otherwise Medicaid

eligible, the client's estate is liable only for any sum paid to cover Medicare premiums and cost-sharing benefits.

(9) For dates of service beginning January 1, 2010. If a client was eligible for Medicaid and the MSP, the client's estate is not liable for any sum paid to cover medical assistance cost-sharing benefits.

#### NEW SECTION

**WAC 182-527-2746 Estate recovery—Asset-related limitations.** For the purposes of this section, the term "agency" includes the agency's designee.

(1) **Before July 25, 1993.** For services received before July 25, 1993, that are subject to recovery, the agency may exempt:

(a) The first fifty thousand dollars of the estate's value at the time of the client's death; and

(b) Sixty-five percent of the remaining value of the estate.

(2) **July 24, 1993, through June 30, 1994.** For services that are subject to recovery that were received on or after July 25, 1993, through June 30, 1994, the agency exempts two thousand dollars' worth of personal property.

(3) **Life estate.**

(a) The agency may file a lien against a client's life estate interest in real property.

(b) The agency's lien against the property may not exceed the value of the client's life estate. Under this subsection, value means the fair market value of the property multiplied by the life estate factor that corresponds to the client's age on the client's last birthday. For a list of life estate factors, see the life estate and remainder interest tables maintained by the Social Security Administration.

(c) The agency may not enforce a lien under this subsection against any property right that vested before July 1, 2005.

(4) **Joint tenancy.**

(a) The agency may file a lien against property in which a client was a joint tenant when the client died.

(b) The agency's lien against the property may not exceed the value of the client's interest in the property. Under this subsection, value means the fair market value of the property divided by the number of joint tenants on the day the client died.

(c) The agency may not enforce a lien under this subsection against any property right that vested before July 1, 2005.

(5) **Qualified long-term care partnership.**

(a) Assets designated as protected by a qualified long-term care partnership (QLTCP) policy issued after November 30, 2011, may be disregarded for estate recovery purposes if:

(i) The insured person's estate is the recipient of the estate recovery exemption; or

(ii) The insured person holds title to property which is potentially subject to a predeath lien and that person asserts the property is protected under the QLTCP policy.

(b) A person must provide clear and convincing evidence to the office of financial recovery that the asset in question was designated as protected, including:

(i) Proof of a valid QLTCP policy;

(ii) Verification from the LTC insurance company of the dollar amount paid out by the policy; and

(iii) A current department of social and health services QLTCP asset designation form when the QLTCP policy paid out more than was previously designated.

(c) The insured person's estate must provide clear and convincing evidence proving an asset is protected before the final recovery settlement.

**(6) Rules specific to American Indians and Alaska natives.**

(a) Certain properties belonging to American Indians/Alaska natives (AI/AN) are exempt from estate recovery if at the time of death:

(i) The deceased client was enrolled in a federally recognized tribe; and

(ii) The estate or heir documents the deceased client's ownership interest in trust or nontrust real property and improvements located on a reservation, near a reservation as designated and approved by the Bureau of Indian Affairs of the U.S. Department of the Interior, or located:

(A) Within the most recent boundaries of a prior federal reservation; or

(B) Within the contract health service delivery area boundary for social services provided by the deceased client's tribe to its enrolled members.

(b) Protection of trust and nontrust property under subsection (4) of this section is limited to circumstances when the real property and improvements pass from an Indian (as defined in 25 U.S.C. Chapter 17, Sec. 1452(b)) to one or more relatives (by blood, adoption, or marriage), including Indians not enrolled as members of a tribe and non-Indians, such as spouses and stepchildren, that their tribe would nonetheless recognize as family members, to a tribe or tribal organization and/or to one or more Indians.

(c) Certain AI/AN income and resources (such as interests in and income derived from tribal land and other resources currently held in trust status and judgment funds from the Indian Claims Commission and the U.S. Claims Court) are exempt from estate recovery by other laws and regulations.

(d) Ownership interests in or usage rights to items that have unique religious, spiritual, traditional, and/or cultural significance or rights that support subsistence or a traditional life style according to applicable tribal law or custom.

(e) Government reparation payments specifically excluded by federal law in determining eligibility are exempt from estate recovery as long as such funds have been kept segregated and not commingled with other countable resources and remain identifiable.

**AMENDATORY SECTION** (Amending WSR 13-19-038, filed 9/11/13, effective 10/12/13)

**WAC 182-527-2750 Estate recovery—Delay of recovery for undue hardship.** ~~((The medicaid agency or its designee delays recovery under this section when the agency or its designee determines that recovery would cause an undue hardship for an heir. This delay is limited to the period during which the undue hardship exists. The undue hardship must exist at the time of the client's death in order to be con-~~

~~sidered for a delay of recovery.)) For the purposes of this section, the term "agency" includes the agency's designee.~~

~~(1) If an undue hardship exists at the time of the client's death, an heir may ask the agency to delay recovery.~~

~~(a) Undue hardship exists only when:~~

~~((a) The estate subject to adjustment or)) (i) The property subject to recovery is the sole income-producing asset of ((one or more heirs and income is limited;~~

~~(b)) an heir;~~

~~(ii) Recovery would deprive an heir of shelter and the heir ((lacks the financial means to obtain and maintain)) cannot afford alternative shelter; or~~

~~((c)) (iii) The client is survived by a state-registered domestic partner.~~

~~((2)) (b) Undue hardship does not exist ((when:~~

~~(a) The adjustment or recovery of the decedent's cost of assistance would merely cause the heir inconvenience or restrict his or her lifestyle; or~~

~~(b) The undue hardship was created as a result of estate planning methods by which the heir or deceased client divested, transferred or otherwise encumbered assets, in whole or in part, to avoid recovery from the estate.~~

~~(3) When a delay in recovery is not granted, the agency or its designee provides notice to the person who requested the delay of recovery. The agency's or its designee's notice includes information on how to request an administrative hearing to contest the agency's or its designee's denial.~~

~~(4) When a delay of recovery is granted under subsection (1)(a) or (b) of this section, the agency or its designee may revoke the delay of recovery if the heir(s):~~

~~(a) Fails to supply timely information and resource declaration when requested by the agency or its designee;~~

~~(b) Sells, transfers, or encumbers title to the property;~~

~~(c) Fails to reside full time on the premises;~~

~~(d) Fails to pay property taxes and utilities when due;~~

~~(e) Fails to identify the state of Washington as the primary payee on the property insurance policies. The person granted the delay of recovery must provide the agency or its designee with documentation of the coverage status on an annual basis;~~

~~(f) Have a change in circumstances under subsection (1) of this section for which the delay of recovery due to undue hardship was granted; or~~

~~(g) Dies.~~

~~(5) When a delay of recovery is granted due to undue hardship, the agency or its designee has the option to:~~

~~(a) Apply a lien; and/or~~

~~(b) Accept a payment plan.~~

~~(6) A person may request an administrative hearing to contest the agency's or its designee's denial of delay of recovery due to undue hardship when that person suffered a loss because the delay was not granted.~~

~~(7) A request for an administrative hearing under this section must:~~

~~(a) Be in writing;~~

~~(b) State the basis for contesting the agency's or its designee's denial of the request for a delay of recovery due to an undue hardship;~~

~~(c) Include a copy of the agency's or its designee's denial;~~

~~(d) Be signed by the requester and include the requester's address and telephone number; and~~

~~(e) Be served, as described in WAC 182-527-2870, on the office of financial recovery (OFR) within twenty-eight calendar days of the date that the agency or its designee sent the decision denying the request for a delay of recovery.~~

~~(8) Upon receiving a request for an administrative hearing, the agency or its designee notifies persons known to have title to the property and other assets of the time and place of the administrative hearing.~~

~~(9) An adjudicative proceeding held under this section is governed by chapters 34.05 RCW and 182-526 WAC and this section. If a provision in this section conflicts with a provision in chapter 182-526 WAC, the provision in this section governs)) if the client or the heir created circumstances to avoid estate recovery.~~

(2) If the agency determines recovery would cause an undue hardship for an heir, the agency may delay recovery until the hardship no longer exists.

(3) If the agency denies an heir's request to delay recovery, the agency notifies the heir in writing. The notice includes instructions on how to request a hearing.

(4) If the agency grants a delay of recovery under this section, the heir must:

(a) Timely comply with any agency request for information or records;

(b) Not sell, transfer, or encumber the property;

(c) Reside on the property;

(d) Timely pay property taxes and utilities;

(e) Insure the property for its fair market value;

(f) Name the state of Washington as the primary payee on the property insurance policy;

(g) Provide the agency with a copy of the property insurance policy upon request;

(h) Continue to satisfy the requirements in subsection (1) of this section.

(5) If the heir dies, or violates any provision of subsection (4) of this section, the agency may begin recovery.

(6) If the agency denies the request, the heir may request an administrative hearing under WAC 182-527-2753.

#### NEW SECTION

**WAC 182-527-2753 Hearings.** For the purposes of this section, the term "agency" includes the agency's designee.

(1) An administrative hearing to contest action under this chapter determines only:

(a) In the case of a lien filed during the client's lifetime under WAC 182-527-2734:

(i) Whether the client can reasonably be expected to return home from the medical institution;

(ii) Whether the client, or the client's estate, holds legal title to the identified property; and

(iii) Whether the client received services subject to recovery.

(b) In the case of a lien filed after the client's death:

(i) The cost the agency correctly paid for services subject to recovery;

(ii) Whether the client, or the client's estate, holds legal title to the identified property; and

(ii) Whether the agency's denial of an heir's request for a delay of recovery for undue hardship under WAC 182-527-2750 was correct.

(2) A request for an administrative hearing must:

(a) Be in writing;

(b) State the basis for contesting the agency's proposed action;

(c) Be signed by the requestor and include the client's name, the requestor's address and telephone number; and

(d) Within twenty-eight days of the date on the agency's notice, be served to the office of financial recovery either:

(i) In person at the Office of Financial Recovery, 712 Pear St. S.E., Olympia, WA 98504-0001; or

(ii) By certified mail, return receipt requested, to Office of Financial Recovery, P.O. Box 9501, Olympia, WA 98507-9501.

(3) Upon receiving a request for an administrative hearing, the office of administrative hearings notifies any known titleholder of the time and place of the administrative hearing.

(4) An administrative hearing under this subsection is governed by chapters 34.05 RCW and 182-526 WAC and this section. If a provision in this section conflicts with a provision in chapter 182-526 WAC, the provision in this section governs.

(5) Disputed assets must not be distributed while in litigation.

(6) Absent an administrative or court order to the contrary, the agency may file a lien twenty-eight calendar days after the date the agency mailed notice of its intent to file a lien.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 182-527-2700 Purpose.

WAC 182-527-2733 Estate liability.

WAC 182-527-2737 Deferring recovery.

WAC 182-527-2754 Assets not subject to recovery and other limits on recovery.

WAC 182-527-2790 Filing liens.

WAC 182-527-2810 Life estates and joint tenancy.

WAC 182-527-2820 Liens prior to death.

WAC 182-527-2830 Request for notice of transfer or encumbrance.

WAC 182-527-2840 Termination of request for notice of transfer or encumbrance.

WAC 182-527-2850 Notice of transfer or encumbrance.

WAC 182-527-2860 Interest assessed on past due debt.

WAC 182-527-2870 Serving notices on the office of financial recovery (OFR).

**WSR 16-01-113**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Developmental Disabilities Administration)  
 [Filed December 17, 2015, 12:09 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-19-018.

Title of Rule and Other Identifying Information: The department plans to adopt new rules in chapter 388-845 WAC related to wellness education that the Centers for Medicare and Medicaid Services (CMS) has agreed to add to our Basic Plus waiver and Core waiver.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>), on January 26, 2016, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 27, 2016.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., January 26, 2016.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by January 12, 2016, TTY (360) 664-6178, (360) 664-6092, or e-mail Kildaja@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Basic Plus waiver and Core waiver both provide home and community-based services to individuals as an alternative to placement in an intermediate care facility for individuals with intellectual disabilities. CMS approved an amendment that removes personal care services from those waivers, as those services are available through the state's 1915(k) Community First Choice option program in the medicaid state plan. The CMS amendments also added a new service, wellness education, to both the Basic and Core waivers which provides wellness information to participants designed to assist them in achieving goals identified during their person-centered planning process. These rules will support the CMS decision and be in compliance with C.F.R. 441.510(d).

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 71A.12.030 General authority of secretary—Rule adoption.

Statute Being Implemented: C.F.R. 441.510 Eligibility (d).

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

Name of Proponent: [DSHS], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Bob Beckman, DDA, P.O. Box 45310, Olympia, 98504-5310, (360) 725-3445.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules do not impact small businesses or nonprofits. They only impact DSHS clients.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules do not meet the definition of a "significant legislative rule" under RCW 34.05.328 (5)(c)(iii) because they do not impose penalties or sanctions, affect a license or permit, or create or amend a policy or regulatory program.

December 16, 2016  
 Katherine I. Vasquez  
 Rules Coordinator

### Wellness Education

#### NEW SECTION

##### **WAC 388-845-2280 What is wellness education?**

Wellness education provides you with monthly individualized printed educational materials designed to assist you in managing health related issues and achieving wellness goals identified in your person-centered service plan that address your health and safety issues. Individualized educational materials are developed by the state, other content providers and the contracted wellness education provider. This service is available on the Basic Plus and Core Waivers.

#### NEW SECTION

**WAC 388-845-2283 How are my wellness educational materials selected?** Individualized educational materials are selected for you by the wellness education provider's algorithm and are based on your DDA assessment. Goals, diagnoses, treatments, conditions and other factors identified in your DDA assessment provide the basis for the algorithm to select educational materials for you. These goals, diagnoses, treatments, conditions and other factors may include, but are not limited to the following:

- (1) Diabetes - IDDM;
- (2) Diabetes - NIDDM;
- (3) COPD;
- (4) Cardiovascular disease;
- (5) Rheumatoid arthritis;
- (6) Traumatic brain injury;
- (7) Cerebral palsy;
- (8) Alzheimer's disease;
- (9) Anxiety disorder;
- (10) Asthma;
- (11) Autism;
- (12) Stroke;
- (13) Congestive heart failure;
- (14) Decubitus ulcer;
- (15) Depression;
- (16) Emphysema;
- (17) GERD;
- (18) Hypertension;
- (19) Hypotension;
- (20) Down's syndrome;
- (21) Fragile X syndrome;
- (22) Prader-Willi;
- (23) ADD;
- (24) ADHD;
- (25) Post-traumatic stress disorder;



- (26) Asperger's syndrome;
- (27) Hepatitis;
- (28) Paraplegia;
- (29) Quadriplegia;
- (30) Fetal alcohol syndrome/fetal alcohol effect;
- (31) Epilepsy;
- (32) Seizure disorder;
- (33) Sleep apnea;
- (34) Urinary tract infection;
- (35) Multiple sclerosis;
- (36) Falls;
- (37) Smoking;
- (38) Alcohol abuse;
- (39) Substance abuse;
- (40) Bowel incontinence;
- (41) Bladder incontinence;
- (42) Diabetic foot care;
- (43) Pain daily;
- (44) Sleep issues;
- (45) BMI = or greater than 25;
- (46) BMI less than 18.5;
- (47) Skin care (pressure ulcers, abrasions, burns, rashes);
- (48) Seasonal allergies;
- (49) Edema;
- (50) Poor balance;
- (51) Recent loss/grieving;
- (52) Conflict management;
- (53) Importance of regular dental visits;
- (54) ADA diet;
- (55) Cardiac diet;
- (56) Celiac diet;
- (57) Low sodium diet;
- (58) Goals; and
- (59) Parkinson's Disease.

#### NEW SECTION

**WAC 388-845-2285 Are there limits to wellness education?** Wellness education is a once a month service. In the basic plus waiver, you are limited to the aggregate service expenditure limits defined in WAC 388-845-0210.

#### NEW SECTION

**WAC 388-845-2290 Who are qualified providers of wellness education?** The wellness education provider must have the ability and resources to:

- 1) Receive and manage client data in compliance with all applicable federal HIPPA regulations, state law and rules and ensure client confidentiality and privacy;
- 2) Translate materials into the preferred language of the participant;
- 3) Ensure that materials are targeted to the participant's assessment and person-centered service plan;
- 4) Manage content sent to participants to prevent duplication of materials;
- 5) Deliver newsletters and identify any undeliverable client/representative addresses prior to each monthly mailing and manage any returned mail in a manner that ensures participants receive the monthly information; and
- 6) Contract with ALISA or DDA to provide this service.

**WSR 16-01-120**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed December 18, 2015, 8:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-22-072.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-466-0150 Refugee employment and training services.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>), on January 26, 2016, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 27, 2016.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., January 26, 2016.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant by January 12, 2015 [2016], phone (360) 664-6092, TTY (360) 664-6178, or e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule change amends language to allow more exemption criteria for refugee employment and training requirements.

Reasons Supporting Proposal: The department is proposing to amend this rule to create new exemption criteria for refugee employment and training requirements.

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

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jennie Fitzpatrick, P.O. Box 45470, Olympia, WA 98504-5470, (360) 725-4648.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rule and concluded that no new costs will be imposed on small businesses affected by them. The preparation of a comprehensive small business economic impact statement is not required under RCW 19.85.030.

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

December 15, 2015  
 Katherine I. Vasquez  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-18-004, filed 8/22/13, effective 10/1/13)

**WAC 388-466-0150 Refugee employment and training services. (1) What are refugee employment and training services?**

Refugee employment and training services provided to eligible refugees may include information and referral, employment oriented case management, job development, job placement, job retention, wage progression, skills training, on-the-job training, counseling and orientation, English as a second language, and vocational English training.

**(2) Am I required to participate in refugee employment and training services?**

If you are receiving refugee cash assistance (RCA) you are required to participate in refugee employment and training services, unless you are exempt.

**(3) How do I know if I am exempt from mandatory employment and training requirements?**

~~((a))~~ You may be exempt from participation in employment and training requirements if you are:

(a) An adult with a severe and chronic disability as defined below:

~~(i) ((You are needed in the home to personally provide care for your child under three months of age (see WAC 388-310-0300);))~~ You have been assessed by a DSHS SSI facilitator as likely to be approved for SSI and are required to apply for SSI. Your SSI application status may be verified through the SSI facilitator and/or state data exchange; or

(ii) Your disability is a severe and chronic mental, physical, emotional, or cognitive impairment that prevents you from working and is expected to last at least twelve months. Your disability must be verified by documentation from a behavioral health organization (BHO), and/or regional service area (RSA), or evidence from another medical or mental health professional; or

(b) Required to be in the home to care for another adult with disabilities when:

(i) The adult with disabilities cannot be left alone for significant periods of time;

(ii) No adult other than yourself is available and able to provide the care;

(iii) The adult with the disability is related to you;

(iv) You are unable to participate in work activities because you are required to be in the home to provide care; and

(v) The disability and your need to care for your disabled adult relative is verified by documentation from the developmental disabilities administration (DDA), division of vocational rehabilitation (DVR), home and community services (HCS), division of behavioral health and recovery (DBHR), and/or a behavioral health organization (BHO), and/or regional service area (RSA), or evidence from another medical or mental health professional.

~~((ii) You are))~~ (c) Sixty years of age or older.

~~((b) You can not be exempt from work and training requirements solely because of an inability to communicate in English))~~

(d) Unable to participate in work activities because you are the victim of family violence.

**(4) If I am required to participate, what do I have to do?**

You are required to:

(a) Register with your employment service provider;

(b) Accept and participate in all employment opportunities, training or referrals, determined appropriate by the department.

**(5) What happens if I do not follow these requirements?**

If you refuse without good reason to cooperate with the requirements, you are subject to the following penalties:

(a) If you are applying for refugee cash assistance, you will be ineligible for thirty days from the date of your refusal to accept work or training opportunity; or

(b) If you are already receiving refugee cash assistance, your cash benefits will be subject to financial penalties.

(c) The department will notify your voluntary agency (VOLAG) if financial penalties take place.

**(6) What are the penalties to my grant?**

The penalties to your grant are:

(a) If the assistance unit includes other individuals as well as yourself, the cash grant is reduced by the sanctioned refugee's amount for three months after the first occurrence. For the second occurrence the financial penalty continues for the remainder of the sanctioned refugee's eight-month eligibility period.

(b) If you are the only person in the assistance unit your cash grant is terminated for three months after the first occurrence. For the second occurrence, your grant is terminated for the remainder of your eight-month eligibility period.

**(7) How can I avoid the penalties?**

You can avoid the penalties, if you accept employment or training before the last day of the month in which your cash grant is closed.

**(8) What is considered a good reason for not being able to follow the requirements?**

You have a good reason for not following the requirements if it was not possible for you to stay on the job or to follow through on a required activity due to an event outside of your control. See WAC 388-310-1600(3) for examples.

**WSR 16-01-122**

**PROPOSED RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed December 18, 2015, 9:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-06-056.

Title of Rule and Other Identifying Information: The department is adding the following new sections to chapter 388-110 WAC, Contracted residential care services: WAC 388-110-222 Enhanced adult residential care physical requirements and 388-110-242 Adult residential care physical requirements.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>), on January 26, 2016, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 27, 2016.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., January 26, 2016.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by January 12, 2016, phone (360) 664-6092, TTY (360) 664-6178, or e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing these rules to comply with federal legislation around home and community-based service waivers (42 C.F.R. 441.302).

Reasons Supporting Proposal: These rules are needed to comply with federal regulations.

Statutory Authority for Adoption: Chapter 74.39A RCW.

Statute Being Implemented: Chapter 70.128 RCW.

Rule is necessary because of federal law, 42 C.F.R. 441.302.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Christi Pederson, P.O. Box 45600, Olympia, WA 98513, (360) 725-2327; Implementation: Candace Goehring, P.O. Box 45600, Olympia, WA 98513, (360) 725-2401; and Enforcement: Bett Schlemmer, P.O. Box 45600, Olympia, WA 98513, (360) 725-2404.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 (3), a small business economic impact statement is not required for rules adopting or incorporating, by reference without material change, Washington state statutes or federal statutes or regulations.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b)(iii), a cost-benefit analysis is not required for rules adopting or incorporating, by reference without material change, Washington state statutes or federal statutes or regulations.

December 17, 2015  
Katherine I. Vasquez  
Rules Coordinator

#### NEW SECTION

**WAC 388-110-222 Enhanced adult residential care physical requirements** Effective July 1, 2015, the contractor must ensure that, at the resident's choice, each resident has the ability to lock his/her unit door, unless otherwise indicated in the resident's NSA.

#### NEW SECTION

**WAC 388-110-242 Adult residential care physical requirements** Effective July 1, 2015, the contractor must ensure that, at the resident's choice, each resident has the ability to lock his/her unit door, unless otherwise indicated in the resident's NSA.

**WSR 16-01-123**  
**PROPOSED RULES**  
**SECRETARY OF STATE**  
[Filed December 18, 2015, 9:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-22-106.

Title of Rule and Other Identifying Information: Corporations filing of records.

Hearing Location(s): Corporations and Charities Division, 801 Capitol Way South, Olympia, WA, (360) 725-0378, on January 26, 2016, at 9 a.m.

Date of Intended Adoption: February 23, 2016.

Submit Written Comments to: Pam Floyd, Director, Corporations Division, Office of the Secretary of State, P.O. Box 40234, Olympia, WA 98504, e-mail pam.floyd@sos.wa.gov, fax (360) 586-4989.

Assistance for Persons with Disabilities: Contact Pam Floyd by January 25, 2016, (360) 725-0378.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updates to implement new law from 2015.

Chapter 434-55 WAC, repealed due to SB 5387 of the 2015 legislative session, combining limited partnership filing provisions in one chapter with other entities.

Chapter 434-130 WAC, repealed due to SB 5387 of the 2015 legislative session, combining limited liability companies filing with other business entities.

Chapter 434-135 WAC, repealed due to SB 5387 of the 2015 legislative session, combining limited liability partnerships filing provisions with other business entities.

Chapter 434-112 WAC, has been updated to include limited liability companies, limited partnerships, and limited liability partnerships.

Statutory Authority for Adoption: Chapter 176, Laws of 2015 (HUB) and chapters 11.110, 18.100, 19.77, 23.86, 23.90, 23B.01, 24.03, 24.06, 25.10, 25.15, 43.07, 46.64 RCW.

Statute Being Implemented: Chapter 176, Laws of 2015(HUB) codified as chapter 23.95 RCW.

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

Name of Proponent: [Secretary of state], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Pam Floyd, P.O. Box 40234, Olympia, WA 98504-0234, (360) 725-0378.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

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

December 18, 2015  
Mark Neary  
Assistant Secretary of State

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

- WAC 434-55-010 Purpose and authority.
- WAC 434-55-016 Office hours.
- WAC 434-55-040 Document filing standards.
- WAC 434-55-050 Statement of name reservation.
- WAC 434-55-052 Transfer of name reservation.
- WAC 434-55-055 Pre-October 1, 1982, limited partnership filings.
- WAC 434-55-056 Filing a certificate of limited partnership—Designation as a limited liability limited partnership.
- WAC 434-55-057 Electronic filing.
- WAC 434-55-058 Filing an annual report.
- WAC 434-55-059 Filing a statement of change.
- WAC 434-55-060 Document filing fees—Limited partnerships.
- WAC 434-55-065 In-person or expedited service—Special fees.
- WAC 434-55-066 Miscellaneous charges—Special service fees.
- WAC 434-55-080 Registered office address—Requirements.

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

- WAC 434-130-010 Purpose and authority.
- WAC 434-130-055 Online services.
- WAC 434-130-060 Registered office address—Requirements.
- WAC 434-130-070 Annual reports—Due date.
- WAC 434-130-080 In-person or expedited counter service—Special fees.
- WAC 434-130-090 [Miscellaneous] fees.
- WAC 434-130-100 Miscellaneous fees.

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

- WAC 434-135-010 Purpose and authority.
- WAC 434-135-090 Annual notice—Due date—Whom notified.
- WAC 434-135-150 Initial registration—Form of content.
- WAC 434-135-160 Annual notice—Form of content.
- WAC 434-135-170 Amended notice—Form of content.
- WAC 434-135-190 Fees.

**WSR 16-01-124****PROPOSED RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Behavioral Health and Service Integration Administration)

[Filed December 18, 2015, 9:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-18-070.

Title of Rule and Other Identifying Information: The department is proposing to create the following new sections in chapter 388-865 WAC: WAC 388-865-0900 Competency evaluation and restoration treatment services—General, 388-865-0910 Competency evaluation and restoration treatment services—Certification and fee requirements, 388-865-0920 Competency evaluation and restoration treatment services—Administrative policies and procedures, 388-865-0930 Competency evaluation and restoration treatment services—Agency staff requirements, 388-865-0940 Competency evaluation and restoration treatment services—Individual participant rights, 388-865-0950 Competency evaluation and restoration treatment services—Admission and initial assessment, 388-865-0960 Competency evaluation and restoration treatment services—Individual service plan, and 388-865-0970 Competency evaluation and restoration treatment services—Seclusion and restraint.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>), on January 26, 2016, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 27, 2016.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax (360) 664-6185, by 5:00 p.m., January 26, 2016.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by January 12, 2016, TTY (360) 664-6178, (360) 664-6094, or e-mail [Kildaja@dshs.wa.gov](mailto:Kildaja@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed new sections in chapter 388-865 WAC comply with 2E2SSB 5177 (chapter 7, Laws of 2015) which requires, in part, the department to develop alternative locations and increased access to competency evaluation and restoration treatment services under chapter 10.77 RCW.

Reasons Supporting Proposal: To comply with 2E2SSB 5177 (chapter 7, Laws of 2015). This permanent rule replaces the emergency rule currently in effect.

Statutory Authority for Adoption: Chapter 10.77 RCW, RCW 71.24.035 and 74.08.090.

Statute Being Implemented: Chapter 10.77 RCW, RCW 71.24.035 and 74.08.090.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, P.O. Box 45330, Olympia, WA 98504-5330, (360) 725-1342; Implementation and Enforcement: Tony O'Leary, P.O. Box 45330, Olympia, WA 98504-5330, (360) 725-1039.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 (3), a small business economic impact statement is not required for rules with content dictated by statute.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b)(v), rules, the content of which is explicitly and specifically dictated by statute, do not require a cost-benefit analysis.

December 16, 2015  
Katherine I. Vasquez  
Rules Coordinator

#### NEW SECTION

**WAC 388-865-0900 Competency evaluation and restoration treatment services—General.** (1) WAC 388-865-0900 through 388-865-0970 contains rules for agencies to gain and maintain certification to provide competency evaluation and restoration treatment services. When used in these rules, "agency" means:

- (a) A residential treatment facility (RTF);
- (b) A general hospital;
- (c) A private psychiatric hospital; or
- (d) An inpatient evaluation and treatment facility.

(2) Competency evaluation and restoration treatment services may be provided to an individual by an agency when the agency meets:

- (a) The certification and fee requirements in WAC 388-865-0910;
- (b) The administrative policy and procedure requirements in WAC 388-865-0920;
- (c) The agency staff requirements in WAC 388-865-0930;
- (d) The individual participant rights requirements in WAC 388-865-0940;
- (e) The admission and initial assessment requirements in WAC 388-865-0950;

(f) The individual service plan requirements in WAC 388-865-0960;

(g) The seclusion and restraint requirements in WAC 388-865-0970;

(h) The agency is willing and able to provide treatment to the individual; and

(i) All applicable federal, state, tribal, and local codes and ordinances.

(3) WAC 388-865-0900 through 388-865-0970 does not apply to state psychiatric hospitals as defined in chapter 72.23 RCW, to facilities owned or operated by the department of veterans affairs, or to other agencies of the United States government.

#### NEW SECTION

**WAC 388-865-0910 Competency evaluation and restoration treatment services—Certification and fee requirements.** (1) An agency described in WAC 388-865-0900(1) may provide competency evaluation and restoration treatment services to individuals under chapter 10.77 RCW when the department's division of behavioral health and recovery (DBHR) certifies the services. To obtain certification for these services, the agency must:

(a) Be licensed by the department of health as:

- (i) A residential treatment facility consistent with chapter 246-337 WAC;
- (ii) A general hospital consistent with chapter 246-320 WAC;
- (iii) A private psychiatric hospital consistent with chapter 246-322 WAC; or
- (iv) An inpatient evaluation and treatment facility as provided in WAC 388-865-0511(1) and consistent with chapter 246-337 WAC.

(b) Demonstrate to DBHR that the minimum requirements in WAC 388-865-0900 through 388-865-0970 have been met;

(c) Successfully complete a provisional and annual on-site review conducted by DBHR staff that determines the agency is in compliance with the minimum standards of WAC 388-865-0900 through 388-865-0970 and chapter 10.77 RCW; and

(d) Pay the required certification fees:

- (i) Ninety dollars, per bed, due at the time of initial application; and
- (ii) Ninety dollars, per bed, due twelve months after the date of the initial application approval and annually thereafter.

(2) The agency must include the fees specified in subsection (1)(d) of this section with the initial application or a twelve month renewal application, as applicable.

(a) Payment of fees must be made by check, bank draft, electronic transfer, or money order, payable to the department of social and health services, and mailed to the department at the address listed on the applicable application packet or form.

(b) The department may refund one-half of the initial application fee or renewal application fee if an application is withdrawn before certification.

(c) The department will not refund fees when certification is denied, revoked, or suspended.

(3) For behavioral health agency licensure fees, program-specific certification fees, and other fees charged by the department, see WAC 388-877-0365.

#### NEW SECTION

**WAC 388-865-0920 Competency evaluation and restoration treatment services—Administrative policies and procedures.** (1) In order to provide competency evaluation and restoration treatment services, an agency described in WAC 388-865-0900(1) must develop, implement, and maintain administrative policies and procedures that:

- (a) Are in accordance with chapter 10.77 RCW;
- (b) Meet any applicable court orders; and
- (c) Meet the minimum requirements of WAC 388-865-0900 through 388-865-0970.

(2) The administrative policies and procedures must include at least the following:

(a) A description of the competency evaluation and restoration treatment services to be provided, ages of individuals to be served, and length of stay criteria.

(b) An organizational structure that includes clear lines of authority for management and clinical supervision.

(c) Designation of a psychiatrist as the professional person in charge of clinical services at the agency.

(d) A quality management plan to monitor, collect data, and develop improvements to meet the requirements of WAC 388-865-0900 through 388-865-0970.

(e) A policy management structure that establishes:

(i) Procedures for maintaining and protecting an individual's clinical record consistent with chapter 70.02 RCW, "Medical Records Health Care Information Access and Disclosure Act" and the Health Insurance Portability and Accountability Act (HIPAA);

(ii) Procedures for maintaining adequate fiscal accounting records consistent with generally accepted accounting principles (GAAP);

(iii) Procedures for management of human resources to ensure that an individual receives individualized treatment or care by adequate numbers of staff members who are qualified and competent to carry out their assigned responsibilities;

(iv) Procedures for admitting an individual needing competency evaluation and restoration treatment services, seven days a week, three hundred sixty-five days a year;

(v) Procedures to assure access to necessary medical treatment, emergency life-sustaining treatment, and medication;

(vi) Procedures to assure the protection of individual participant rights as described in WAC 388-865-0940;

(vii) Procedures to inventory and safeguard the personal property of the individual;

(viii) Procedures to assure that a mental health professional and licensed physician are available for consultation and communication with the direct patient care staff twenty-four hours a day, seven days a week;

(ix) Procedures to ensure that seclusion and restraint are used only to the extent necessary to ensure the safety of an

individual, and in accordance with WAC 246-322-180 and 246-337-110, whichever is applicable;

(x) Procedures to provide warning to an identified person and law enforcement when an adult has made a threat against an identified victim;

(xi) Procedures to provide notification to the appropriate prosecutor and law enforcement in the event of unauthorized leave; and

(xii) Procedures to assure the rights of each individual to make mental health advance directives, and agency protocols for responding to individual and agent requests consistent with RCW 71.32.150.

#### NEW SECTION

**WAC 388-865-0930 Competency evaluation and restoration treatment services—Agency staff requirements.**

(1) In order to provide competency evaluation and restoration treatment services, an agency described in WAC 388-865-0900(1) must ensure the clinical supervisor and other staff members employed by the agency are qualified for the position they hold and have the education, experience, and skills to perform the job requirements. Each staff member providing services must:

(a) Have a current job description.

(b) Have a current credential issued by the department of health for their scope of practice.

(c) Pass a Washington state patrol background check consistent with RCW 43.43.830 if the position requires contact with individuals receiving competency evaluation and restoration treatment services;

(d) Have an annual performance evaluation;

(e) Have an individualized annual training plan that includes at a minimum:

(i) The skills needed for the job description and the population served;

(ii) Methods of resident care;

(iii) Management of assaultive and self-destructive behaviors, including proper and safe use of seclusion and/or restraint procedures; and

(iv) Meeting the protocols developed by the department in WAC 388-865-0900 through 388-865-0970 and other applicable requirements in state and federal law.

(2) If the agency contracts a staff member(s) to provide direct competency evaluation and restoration treatment services to individuals, the agency and the contracted staff member must meet all the conditions in subsection (1) of this section.

#### NEW SECTION

**WAC 388-865-0940 Competency evaluation and restoration treatment services—Individual participant rights.**

(1) An agency described in WAC 388-865-0900(1) that meets the department's requirements to provide competency evaluation and restoration treatment services must develop a statement of individual participant rights to ensure an individual's rights are protected. The statement must incorporate at a minimum the following. You have the right to:

(a) Receive services without regard to race, creed, national origin, religion, gender, sexual orientation, age or disability;

(b) Practice the religion of choice as long as the practice does not infringe on the rights and treatment of others or the treatment services and, as an individual participant, the right to refuse participation in any religious practice;

(c) Be reasonably accommodated in case of sensory or physical disability, limited ability to communicate, limited English proficiency, and/or cultural differences;

(d) Be treated with respect, dignity and privacy, except that agency staff members may conduct reasonable searches to detect and prevent possession or use of contraband on the premises.

(e) Be free of any sexual harassment;

(f) Be free of exploitation, including physical and financial exploitation;

(g) Have all clinical and personal information treated in accord with state and federal confidentiality rules and laws;

(h) Review your clinical record in the presence of the administrator or the administrator's designee and be given an opportunity to request amendments or corrections;

(i) Receive a copy of the agency complaint and grievance procedures upon request and to lodge a complaint or grievance with the agency if you believe your rights have been violated; and

(j) File a complaint with the department when you feel the agency has violated a Washington Administrative Code (WAC) requirement that regulates facilities.

(2) Each agency must ensure the applicable individual participant rights described in subsection (1) of this section are:

(a) Provided in writing to each individual on or before admission;

(b) Posted in public areas;

(c) Available in alternative formats for an individual who is blind;

(d) Translated to a primary or preferred language identified by an individual who does not speak English as the primary language, and who has a limited ability to read, speak, write, or understand English; and

(e) Available to any individual upon request.

(3) Each agency must ensure all research concerning an individual whose cost of care is publicly funded is done in accordance with chapter 388-04 WAC, protection of human research subjects, and other applicable state and federal rules and laws.

(4) In addition to the requirements in this section, each agency enrolled as a medicare and/or medicaid provider must ensure an individual seeking or participating in competency evaluation and/or restoration treatment services, or the person legally responsible for the individual is informed of the medicaid rights at time of admission and in a manner that is understandable to the individual or legally responsible person.

#### NEW SECTION

#### **WAC 388-865-0950 Competency evaluation and restoration treatment services—Admission and initial**

**assessment.** (1) In order to provide competency evaluation and restoration treatment services, an agency described in WAC 388-865-0900(1) must ensure that for each individual admitted for treatment, the agency obtains and includes in the individual's clinical record:

(a) A copy of the court order and the charging documents. If the order is for competency restoration treatment and the competency evaluation was provided by a qualified expert or professional person who was not designated by the secretary, a copy of all previous court orders related to competency or criminal insanity provided by the state and a copy of any evaluation reports must be included.

(b) A copy of the discovery packet, including a statement of the individual's criminal history.

(c) A copy of the individual's medical clearance information.

(2) The agency is responsible for the individual's initial assessment. The initial assessment must be:

(a) Conducted in person; and

(b) Completed by a professional appropriately credentialed or qualified to provide mental health services as determined by state law.

(3) The initial assessment must include and document:

(a) The individual's:

(i) Identifying information;

(ii) Specific barriers to competence;

(iii) Medical provider's name or medical providers' names;

(iv) Medical concerns;

(v) Medications currently taken;

(vi) Brief mental health history; and

(vii) Brief substance use history, including tobacco use.

(b) The identification of any risk of harm to self and others, including suicide and/or homicide.

(c) Treatment recommendations or recommendations for additional program-specific assessment.

(4) To determine the nature of the disorder and the treatment necessary, the agency must ensure that the individual receives the following assessments and document in the client's record the date each was provided:

(a) A health assessment of the individual's physical condition to determine if the individual needs to be transferred to an appropriate hospital for treatment;

(b) An examination and medical evaluation within twenty-four hours by a physician, advanced registered nurse practitioner, or physician assistant;

(c) A psychosocial evaluation by a mental health professional; and

(d) A competency to stand trial evaluation conducted by a licensed psychologist, or a copy of a competency to stand trial evaluation using the most recent competency evaluation, if an evaluation has already been conducted.

(5) The agency must also ensure the development of an individual service plan as described in WAC 388-865-0960.

#### NEW SECTION

**WAC 388-865-0960 Competency evaluation and restoration treatment services—Individual service plan.** (1) An agency described in WAC 388-865-0900(1) that meets

the department's requirements to provide competency evaluation and restoration treatment services must ensure each individual admitted to the agency for restoration treatment services has an individual service plan:

- (a) Completed within seven days of admission; and
- (b) Updated every ninety days.

(2) The individual's clinical record must contain copies of or documentation of the following:

(a) All diagnostic and therapeutic services prescribed by the attending clinical staff members;

(b) The individualized treatment plan that identifies specific targets and strategies for restoring competency to include periodic assessments of gains on these targets; and

(c) Participation of a multidisciplinary team that includes at a minimum:

(i) A physician, advanced registered nurse practitioner (ARNP), or physician assistant-certified (PA-C);

(ii) A nurse, if the person in (i) of this subsection is not an ARNP; and

(iii) A mental health professional.

(3) Participation of other multidisciplinary team members, which may include a psychologist and chemical dependency professional.

#### NEW SECTION

**WAC 388-865-0970 Competency evaluation and restoration treatment services—Seclusion and restraint.** (1) An individual receiving competency evaluation and/or restoration treatment services from an agency described in WAC 388-865-0900(1) has the right to be free from seclusion and restraint, including chemical restraint except as otherwise provided in this section or otherwise provided by law. The agency must:

(a) Develop, implement, and maintain policies and procedures to ensure that seclusion and restraint procedures are used only to the extent necessary to ensure the safety of an individual, and in accordance with WAC 246-322-180 and 246-337-110, whichever is applicable.

(b) Ensure that the use of seclusion or restraint occurs only when there is imminent danger to self or others and less restrictive measures have been determined to be ineffective to protect the individual or other from harm and the reasons for the determination are clearly documented in the individual's clinical record.

(c) Ensure staff members notify and receive authorization by a physician or advanced registered nurse practitioner (ARNP) within one hour of initiating an individual's seclusion or restraint.

(d) Ensure the individual is informed of the reasons for use of seclusion or restraint and the specific behaviors which must be exhibited in order to gain release from a seclusion or restraint procedure.

(e) Ensure that an appropriate clinical staff member(s) observes the individual at least every fifteen minutes and the observation is recorded in the individual's clinical record.

(f) If the use of seclusion or restraint exceeds twenty-four hours, ensure that a physician has assessed the individual and has written a new order if the intervention will be contin-

ued. This procedure must be repeated for each twenty-four hour period that seclusion or restraint is used.

(2) The agency must ensure all assessments and justification for the use of seclusion and/or restraint are documented in the individual's clinical record.

#### **WSR 16-01-129**

#### **PROPOSED RULES**

#### **SUPERINTENDENT OF PUBLIC INSTRUCTION**

(Student Transportation)

[Filed December 18, 2015, 11:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-14-125.

Title of Rule and Other Identifying Information: Chapter 392-141 WAC, Transportation—State allocation for operations.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Policy Conference Room, 600 South Washington, Olympia, WA 98504-7200, on February 2, 2015, at 10:30 a.m.

Date of Intended Adoption: February 4, 2016.

Submit Written Comments to: Allan J. Jones, Director, OSPI, Student Transportation, P.O. Box 47200, Olympia, WA 98504-7200, e-mail allan.jones@k12.wa.us, by February 2, 2016.

Assistance for Persons with Disabilities: Contact Kristin Murphy by January 26, 2016, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed revisions to the chapter would remove the definition of kindergarten routes, change the definition of district car routes to reflect current usage, define prior year expenditures and align usage of prior year expenditures through the chapter, remove the transition process language and make technical corrections.

Statutory Authority for Adoption: RCW 28A.150.290.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Allan J. Jones, OSPI, Student Transportation, (360) 725-6122; and Enforcement: JoLynn Berge, OSPI, Financial Resources and Governmental Relations, (360) 725-6300.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

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

December 7, 2015

Randy Dorn  
State Superintendent  
of Public Instruction



AMENDATORY SECTION (Amending WSR 15-11-075, filed 5/19/15, effective 6/19/15)

**WAC 392-141-310 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Superintendent" means the superintendent of public instruction.

(2) "District" means either a school district or an educational service district.

(3) "Charter school" means a public school operating under the provisions of chapter 28A.710 RCW.

(4) The definition of "school" includes learning centers or other agencies where educational services are provided.

(5) "Eligible student" means any student served by a district or charter school transportation program either by bus, district car, or individual arrangements meeting one or more of the following criteria:

(a) A student whose route stop is outside the walk area of the student's enrollment school site; or

(b) A student whose disability is defined by RCW 28A.155.020 and who is either not ambulatory or not capable of protecting his or her own welfare while traveling to or from school.

Districts determine which students are provided with transportation services; however, only eligible students qualify for funding under the operations allocation.

(6) "To and from transportation" means all transportation between route stops and schools both before and after the school day. To and from transportation includes transportation between home and school and transportation between schools, commonly referred to as shuttles. Transportation not authorized for state allocations under this definition includes, but is not limited to, transportation for students participating in nonacademic extended day programs, field trips, and extracurricular activities.

(7) "Home to school transportation" means all student transportation between route stops and schools both before and after the school day. Home to school transportation does not include transportation between schools.

(8) "Basic program transportation" means students transported between home and school for their basic education. Basic program transportation includes those students who qualify under RCW 28A.155.020 for special services and are capable of protecting his or her own welfare while traveling to or from school and those students who are enrolled in gifted or bilingual programs or homeless students that do not require specialized transportation. Also included in basic program transportation is transportation required to comply with the school choice provisions of the Elementary Secondary Education Act.

(9) "Special program transportation" means home to school transportation for one of the following specialized programs:

(a) Special education programs provided for by chapter 28A.155 RCW and where transportation as a related service is included on the student's individual education plan or where transportation is required under the provisions of Section 504 of the Rehabilitation Act of 1973; or

(b) Students who require special transportation to a bilingual program in a centralized location; or

(c) Students who require special transportation to a gifted program in a centralized location; or

(d) Students who require special transportation to their school of origin as required by the provisions of the McKinney-Vento Homeless Assistance Act; or

(e) Students who require special transportation to a district operated head start, district operated early childhood education assistance program, or other district operated early education program.

~~(10) ("Kindergarten route" means a school bus providing home to school transportation for basic education kindergarten students operated between the beginning and end of the school day.~~

~~(11))~~ "Private party contract" means the provision of home to school transportation service using a private provider (not in a school bus). Private party contracts shall require criminal background checks of drivers and other adults with unsupervised access to students and assurances that any students transported be provided with child safety restraint systems that are age and weight appropriate. Vehicles used must meet school bus specifications established in chapter 392-143 WAC if they have a manufacturer's design capacity of greater than ten passengers, including the driver. However, a vehicle manufactured to meet the federal specifications of a multifunction school activity bus may be used.

~~((12))~~ (11) "In lieu transportation" means a contract to provide home to school transportation with a parent, guardian or adult student, including transportation on rural roads to access a school bus stop.

~~((13))~~ (12) "Count period" is the three consecutive school day window used for establishing the reported student count on home to school routes.

~~((14))~~ (13) The school year is divided into three "report periods," as follows: September - October, November - January, and February - April. These report periods are also referred to respectively as the fall, winter and spring reports. The count period must not fall within five school days of the end of the report period.

~~((15))~~ (14) "Combined student count" is the total number of basic program or special program eligible student riders reported during each report period. The combined student counts for the determination of funding consist of the prorated basic program and special program student counts from the prior year's spring report and the current year's fall and winter reports. The prior school year's fall, winter and spring student counts are used for the determination of the efficiency rating. The combined student counts are prorated based on the number of months in the respective report period. For a charter school in the first year of operation, the current year fall count shall be used as the prior year spring count to determine the combined student count.

~~((16))~~ (15) "Average distance to school" means the average of the distances from each school bus stop measured by the shortest road path to the assigned student's school of enrollment.

~~((17))~~ (16) "Prorated average distance" is calculated by taking the average distance to school weighted by the number of months in the corresponding report period. The prorated average distance used in calculating district allocation consists of the prorated average distance from the prior year's

spring report and the current year's fall and winter reports. The prior school year's fall, winter and spring average distances are used for the determination of the efficiency rating.

~~((18))~~ (17) "Prorated number of destinations" is calculated by taking the number of learning centers a school district provides with home-to-school transportation service weighted by the number of months in the corresponding report period. The prorated number of destinations used in calculating district allocation consists of the prorated number of destinations from the prior year's spring report and the current year's fall and winter reports. The prior school year's fall, winter, and spring number of destinations are used for the determination of the efficiency rating.

~~((19))~~ (18) "Land area" is the area of the school district in square miles, excluding water and public lands, as determined by the superintendent. For educational service districts, the land area value will be determined by the superintendent from the contiguous area provided with transportation service.

~~((20))~~ (19) "Roadway miles" refers to the number of public roadway miles within the land area of the school district, as determined by the superintendent. For educational service districts, the roadway mile value will be determined by the superintendent from the roadway miles within the contiguous area provided with transportation service.

~~((21))~~ (20) "Walk area" is defined as the area around a school where the shortest safe walking route to school is less than one mile.

~~((22))~~ (21) "District car route" means ~~((home))~~ to and from school transportation where a district motor pool vehicle (not a school bus) is used to transport an eligible student or students. Any regularly scheduled home to school transportation in a district car is required to be driven by an authorized school bus driver.

~~((23))~~ (22) "District car allocation" is calculated by multiplying the total annual district car route mileage by the rate of reimbursement per mile that is authorized for state employees for the use of private motor vehicles in connection with state business in effect on September 1st of each year.

~~((24))~~ (23) A "low ridership district" is defined as a district with an annual student count less than two hundred eighteen students.

~~((25))~~ (24) A "nonhigh" district is defined as a district meeting the eligibility requirements for a nonhigh district as established by the superintendent of public instruction's school apportionment and financial services section.

~~((26))~~ (25) A "transportation cooperative" is defined as two or more districts sharing transportation operations administrative functions. An interdistrict agreement for the provision of maintenance services on school buses does not constitute a transportation cooperative for the purposes of this chapter, regardless if the agreement qualifies as a transportation cooperative under the provisions of chapter 392-346 WAC, unless shared operations administrative functions are also included in the interdistrict agreement. A transportation cooperative has the option of reporting as a single entity.

~~((27))~~ (26) "Alternate funding system" means an additional funding system as provided in RCW 28A.160.191, defined by OSPI to adjust the allocation for low enrollment school districts, nonhigh school districts, school districts par-

ticipating in interdistrict transportation cooperatives, and educational service districts operating special transportation services.

(27) "Prior year expenditures" means the total of school district transportation operations costs for to-and-from transportation for the prior school year. All revenue reported in transportation except for the state allocation for transportation operations is deducted from reported costs, including in lieu of depreciation allocations under the provisions of WAC 392-142-245 for districts contracting transportation services. Any adjustments as a result of audits or other adjustments to prior year costs shall not be included unless those adjustments are correcting the actual cost of transportation operations for the prior year. The basis for the prior year expenditures shall be the district financial statement. School districts are only required to report adjustments not reflected in the annual financial statement.

(28) "Expected allocation" means the initial amount of funding resulting from the regression analysis calculation.

(29) "Adjusted allocation" means the expected allocation plus any alternate funding system, calendar, or legislative adjustments.

(30) For a district, "actual allocation" means the lesser of the ~~((previous year's actual reported transportation))~~ prior year expenditures including adjustments by the legislature or the adjusted allocation. For a charter school, the actual allocation is a final amount to be allocated for transportation services using the process described in this chapter, plus any funding provided under chapter 392-142 WAC.

(31) "Efficiency evaluation" refers to the statistical evaluation of efficiency of a school district's transportation operation using linear programming of the data required by the funding formula and the number of buses used on home-to-school routes. Each school district is separately compared to an individualized statistical model of a district having similar site characteristics. The efficiency evaluation is expressed as a percentage efficiency rating.

(32) A district's "transportation funding percentage" is calculated by dividing the district's actual allocation by the district's ~~((approved to and from transportation))~~ prior year expenditures.

(33) The "state median percent funded" is determined by calculating each district's transportation funding percentage and taking the median value by sorting the total number of reporting districts in descending order and selecting the middle value. If there is an even number of districts, the bottom value in the top half shall be used.

AMENDATORY SECTION (Amending WSR 15-11-075, filed 5/19/15, effective 6/19/15)

**WAC 392-141-320 Reporting requirements.** (1) Reports shall be submitted by each district or charter school to the superintendent no later than the last business day in October, the first business day in February, and the first business day in May. These reports shall reflect to the extent practical the planned student transportation program for the entire report period and which is in operation during the ridership count period. The superintendent shall have the authority to make modifications or adjustments in accordance with the

intent of RCW 28A.160.150. Each district or charter school shall submit the data required on a timely basis as a condition to the continuing receipt of student transportation allocations.

(2) In each report period, districts shall report such operational data and descriptions, as required by the superintendent to determine the operations allocation for each district, including:

- (a) School bus route information;
- (b) Student count information; and
- (c) An update to the estimated total car mileage for the current school year.

(3) For the fall report, districts shall report to the superintendent as required:

(a) An annual school bus mileage report including the total to and from school bus miles for the previous school year, and other categories as requested;

(b) An annual report of each type of fuel purchased for student transportation service for the previous school year, including quantity and cost. This report shall be considered part of the district's annual financial statement for the purposes of RCW 28A.160.170(2); and

(c) An annual report as required by RCW 28A.300.540 of the number of students transported to their school of origin as required by the McKinney-Vento Homeless Assistance Act for the previous school year, and the total mileage and additional cost of such transportation. These costs may include, but are not limited to:

(i) Transportation service that serves only student(s) under McKinney-Vento. Districts may determine costs based upon route mileage and an average per mile cost for operation of the bus or vehicle. Driver time may be taken from actual driver costs records if such records are maintained, or may be determined using an average driver costs factor.

(ii) Incremental revisions in route at the start or end of a route to accommodate McKinney-Vento transportation, if separately identified, may be included based upon route mileage and an average per mile cost for operation of the bus or vehicle.

(iii) Costs for public transportation or other contracted services for transporting McKinney-Vento student(s).

(iv) Nondriver transportation staff positions whose job duties are predominately overseeing or routing services to McKinney-Vento students. If the position duties encompass other non-McKinney-Vento areas, then only the costs directly related to McKinney-Vento transportation shall be included and such costs shall be determined using federal time and effort reporting procedures.

No indirect or allocated costs may be included in this reporting.

(4) In each report period, charter schools shall report student counts.

AMENDATORY SECTION (Amending WSR 15-11-075, filed 5/19/15, effective 6/19/15)

**WAC 392-141-360 Operation allocation computation.** (1) The operation allocation shall be calculated using the following factors:

(a) The combined student count of basic program students;

(b) The combined student count of special program students;

(c) The district's prorated average distance;

(d) The district's total land area;

(e) The district's prorated number of destinations;

(f) If the district is a nonhigh district, the answer to the following question: Does the district provide transportation service for the high school students residing in the district?

(g) Any other district data element as described by the superintendent in the annual operations bulletin. In order for a data element to be included, it must be found to be statistically significant for two consecutive school years.

For each district, an expected allocation is determined using the coefficients resulting from a regression analysis of (a) through (g) of this subsection, evaluated statewide against the total of all school district's prior ~~((school year's total to and from transportation))~~ year expenditures. If a data element is determined not to be statistically significant, it shall not be included in the calculation of the allocation. The coefficients will be determined using the prior school year fall, winter, and spring reports and prior ~~((school))~~ year expenditures.

(2) For the calculation of the regression analysis coefficients, the ~~((allowable transportation))~~ prior year expenditures for each district shall be adjusted as required by the legislature.

(3) The adjusted allocation is the result of modifying the expected allocation by:

(a) Adding any district car mileage reimbursement; and

(b) Adding any adjustment resulting from the alternate funding systems identified in WAC 392-141-380; and

(c) Making any deduction resulting from an alternate school year calendar approved by the state board of education under the provisions of RCW 28A.305.141; and

(d) Making any adjustment as required by the legislature.

(4) Each district's actual allocation for student transportation operations is the lesser of the district's prior ~~((school year's total allowable student transportation))~~ year expenditures adjusted as required by the legislature or the adjusted allocation. ~~((Districts contracting for student transportation operations shall have any payments in lieu of depreciation under the provisions of WAC 392-142-245 deducted from the district's allowable transportation expenditures.))~~

(5) The funding assumption for the transportation operation allocation is that kindergarten through twelfth grade (K-12, or whatever grades are enrolled in district schools) school transportation services are provided by the district five days per week, to and from school, before and after the regular school day and operating one hundred eighty days per school year. K-12 service being provided on any other basis is subject to corresponding proration of the operation allocation.

AMENDATORY SECTION (Amending WSR 15-11-075, filed 5/19/15, effective 6/19/15)

**WAC 392-141-380 Alternate funding systems for low enrollment districts, nonhigh districts, districts participating in interdistrict transportation cooperatives, and educational service districts operating special transportation services.** ~~((After the transition period described in WAC 392-141-370,))~~ The superintendent shall adjust the amount of

the transportation operation allocation for low ridership, non-high, districts in interdistrict transportation cooperatives, and educational service districts operating special transportation services in the following manner:

(1) The district's prior school year's transportation funding percentage is compared to the state median percent funded;

(2) If the district's prior year transportation funding percentage is greater than the state median percent funded no adjustment is made; and

(3) If the district's prior year transportation funding percentage is less than the state median percent funded, the allocation shall be adjusted by the difference between the state median percent funded and the district's prior year transportation funding percentage.

**AMENDATORY SECTION** (Amending WSR 15-11-075, filed 5/19/15, effective 6/19/15)

**WAC 392-141-400 Efficiency evaluation review.** (1)

Each school district's efficiency evaluation will be reviewed annually by the regional transportation coordinators. If a school district's efficiency rating is less than ninety percent, the regional transportation coordinator shall review the school district's transportation operation to identify the factors impacting the ability of the school district to operate an efficient student transportation system. Such factors will include those within the school district's controls and those factors that are beyond the school district's control.

(2) Completed regional transportation coordinator reports on the review of school district efficiency evaluation will be provided to the legislature prior to December 1st of each year. School districts will be provided an opportunity to respond to the conclusions of the regional transportation coordinator evaluation and such comments will be included in the report to the legislature. Also included in the report are any actions identified by a school district in response to the regional transportation coordinator evaluation.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 392-141-370 Transition and hold harmless provisions.

**WSR 16-01-146**

**PROPOSED RULES**

**DEPARTMENT OF HEALTH**

[Filed December 21, 2015, 11:26 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: WAC 246-828-990 Hearing aid specialist, audiologist, speech-language pathologist, and speech-language pathology assistant fees and renewal cycle. Proposing to reduce application fees,

active license renewal fees, and active license late renewal penalties for these professions.

Hearing Location(s): Department of Health, 111 Israel Road S.E., Room 158, Tumwater, WA 98501, on February 8, 2016, at 1:00 p.m.

Date of Intended Adoption: February 15, 2016.

Submit Written Comments to: Sherry Thomas, Department of Health, P.O. Box 47850, Olympia, WA 98504-7850, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4626, by February 8, 2016.

Assistance for Persons with Disabilities: Contact Sherry Thomas by January 25, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Current licensing fees generate more revenue than is needed to cover the full cost of administering these licensing programs. In response, the department is proposing to reduce some fees. In addition, the department is proposing clarifications and formatting changes to make it easier for licensees to identify the fees they will be required to pay.

Reasons Supporting Proposal: RCW 43.70.250 requires the cost of each licensing program to be fully borne by the profession's members and licensing fees to be based on licensure costs. Reducing fees to the proposed levels will more closely align revenue with the program's expenses and enable reserves to be maintained should unanticipated events occur, such as increased disciplinary costs.

Statutory Authority for Adoption: RCW 43.70.250.

Statute Being Implemented: RCW 43.70.250.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Sherry Thomas, 111 Israel Road, Tumwater, WA 98501, (360) 236-4612; and Enforcement: Janette Benham, 111 Israel Road, Tumwater WA 98501, (360) 236-4857.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(f), a small business economic impact statement is not required for proposed rules that set or adjust fees or rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

December 17, 2015

John Wiesman, DrPH, MPH  
Secretary

**AMENDATORY SECTION** (Amending WSR 15-16-020, filed 7/24/15, effective 8/24/15)

**WAC 246-828-990 Hearing aid specialist, audiologist, speech-language pathologist, and speech-language pathology assistant fees and renewal cycle.** (1) Credentials must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) Practitioners must pay the following nonrefundable fees:

**Audiologist or Speech-Language Pathologist**

<b>Fee Type:</b>	<b>Fee</b>
<b>Interim permit</b>	
Application	\$165.00
Permit	140.00
<b>Initial license</b>	
Application	<del>((165.00))</del> <u>110.00</u>
License	<del>((140.00))</del> <u>95.00</u>
HEAL-WA* surcharge	16.00
<del>((Renewal</del>	<del>110.00</del>
HEAL-WA* surcharge	16.00
Inactive license	60.00
Late renewal penalty	90.00
Expired license reissuance	140.00
Expired inactive license reissuance	90.00
Certification of license	30.00
Duplicate license	30.00))
<b><u>Active license renewal</u></b>	
Renewal	<u>75.00</u>
Late renewal penalty	<u>50.00</u>
HEAL-WA* surcharge	<u>16.00</u>
Expired license reissuance	<u>140.00</u>
<b><u>Inactive license</u></b>	
Renewal	<u>60.00</u>
Expired license reissuance	<u>90.00</u>
<b><u>Verification of license</u></b>	<u>30.00</u>
<b><u>Duplicate license</u></b>	<u>30.00</u>

\* Surcharge applies to speech-language pathologists only. HEAL-WA is the health resources for Washington online library. See RCW 43.70.110.

**Hearing Aid Specialist**

<b>Fee Type:</b>	<b>Fee</b>
<del>((License application</del>	<del>\$165.00</del>
Initial license	140.00
Renewal	110.00
Inactive license	56.00
Late renewal penalty	90.00
Expired license reissuance	136.00
Expired inactive license reissuance	86.00
Certification of license	30.00
Duplicate license	30.00))
<b><u>Initial license</u></b>	

**Hearing Aid Specialist**

<b>Fee Type:</b>	<b>Fee</b>
Application	<u>\$110.00</u>
License	<u>95.00</u>
<b><u>Active license renewal</u></b>	
Renewal	<u>75.00</u>
Late renewal penalty	<u>50.00</u>
Expired license reissuance	<u>136.00</u>
<b><u>Inactive license renewal</u></b>	
Renewal	<u>56.00</u>
Expired license reissuance	<u>86.00</u>
<b><u>Verification of license</u></b>	<u>30.00</u>
<b><u>Duplicate license</u></b>	<u>30.00</u>

**Speech-Language Pathology Assistant**

<b>Fee Type:</b>	<b>Fee</b>
<del>((Application</del>	<del>\$125.00</del>
Renewal	70.00
Inactive credential	50.00
Late renewal penalty	50.00
Expired credential reissuance	50.00
Expired inactive credential reissuance	50.00
Certification of credential	15.00
Duplicate credential	15.00))
<b><u>Initial credential</u></b>	
Application	<u>\$85.00</u>
<b><u>Active credential renewal</u></b>	
Renewal	<u>45.00</u>
Late renewal penalty	<u>45.00</u>
Expired credential reissuance	<u>50.00</u>
<b><u>Inactive credential renewal</u></b>	
Renewal	<u>50.00</u>
Expired credential reissuance	<u>50.00</u>
<b><u>Verification of credential</u></b>	<u>15.00</u>
<b><u>Duplicate credential</u></b>	<u>15.00</u>

**WSR 16-01-149**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
 [Filed December 21, 2015, 11:49 a.m.]

Original Notice.  
 Preproposal statement of inquiry was filed as WSR 15-17-058.  
 Title of Rule and Other Identifying Information: Chapter 246-72 WAC, Medical marijuana consultant certificate, pro-

posing a new chapter establishing rules for a medical marijuana consultant certificate.

Hearing Location(s): Capital Event Center, Education [Educational] Service District 13 [113], 6005 Tyee Drive S.W., Tumwater, WA 98512, on January 26, 2016, at 2:00 p.m.

Date of Intended Adoption: February 9, 2016.

Submit Written Comments to: Cathie Tedrick, Washington State Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, e-mail <http://www3.doh.wa.gov/policy-review/>, fax (360) 236-2901, by January 26, 2016.

Assistance for Persons with Disabilities: Contact Cathie Tedrick by January 19, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose is to create new rules to establish a certificate for medical marijuana consultants as established by RCW 69.51A.290. The proposal is intended to create standards for people that can work in medically endorsed medical marijuana retail stores to provide assistance to patients with selecting products to best meet their needs. Authority is also given to the department to establish fees, training, renewals, and other requirements for this certification.

Reasons Supporting Proposal: RCW 69.51A.290 established a medical marijuana consultant certificate and authorized the department to adopt rules setting application, training, continuing education, fees and other standards for certificate applicants and holders. The legislature also authorized the department to adopt rules prescribing information that certificate holders may give to patients seeking medical marijuana products.

Statutory Authority for Adoption: RCW 69.51A.290.

Statute Being Implemented: RCW 69.51A.290.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Chris Baumgartner, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4819; and Enforcement: Dave Magby, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4660.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.-328. RCW 34.05.328 (5)(b)(v) exempts rules the content of which is explicitly and specifically dictated by statute.

A preliminary cost-benefit analysis may be obtained by contacting Cathie Tedrick, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4819, fax (360) 236-2901, e-mail [medicalmarijuana@doh.wa.gov](mailto:medicalmarijuana@doh.wa.gov).

December 17, 2015

John Wiesman, DrPH, MPH  
Secretary

## Chapter 246-72 WAC

### MEDICAL MARIJUANA CONSULTANT CERTIFICATE

#### NEW SECTION

**WAC 246-72-010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Approved training program" means a school, college, or program approved by the secretary that meets the requirements of this chapter.

(2) "Certificate holder" means a person holding a valid medical marijuana consultant certificate issued by the secretary.

(3) "Customer" means any patron of a retail outlet licensed under RCW 69.50.354 and holding a medical endorsement under RCW 69.50.375.

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

(5) "Marijuana product" means marijuana, marijuana concentrates, usable marijuana, and marijuana-infused products as defined in RCW 69.50.101.

(6) "Secretary" means the secretary of the department of health or the secretary's designee.

#### NEW SECTION

**WAC 246-72-020 Certificate requirements.** An applicant for a medical marijuana consultant certificate must submit to the department:

(1) An initial application on forms provided by the department;

(2) Fees required under WAC 246-72-110;

(3) Proof of successful completion of an approved training program;

(4) Proof of being age twenty-one or older. Acceptable forms of proof are a copy of the applicant's valid driver's license or other government-issued identification card, United States passport, or certified birth certificate;

(5) Proof of current CPR certification; and

(6) Any other documentation required by the secretary.

#### NEW SECTION

**WAC 246-72-030 Practice parameters.** (1) A certificate holder may only provide services when acting in the capacity of an owner, employee, or volunteer of a retail outlet licensed under RCW 69.50.354 and holding a medical endorsement under RCW 69.50.375.

(2) A certificate holder may:

(a) Assist a customer with the selection of marijuana products and other items sold at the retail outlet that may benefit the customer's medical condition;

(b) Describe the risks and benefits of marijuana products and other items sold at the retail outlet;

(c) Describe the risks and benefits of methods of administration of marijuana products sold at the retail outlet. Whenever practicable, a certificate holder shall encourage methods of administration other than smoking;

(d) Advise a customer about the safe handling and storage of marijuana products, including strategies to reduce access by minors; and

(e) Provide instruction and demonstration to a customer about proper use and application of marijuana products. However, nothing in this section allows a certificate holder to:

(i) Provide free samples of a marijuana product to a customer except pursuant to RCW 69.50.375;

(ii) Open or allow a customer to open a marijuana product on the premises; or

(iii) Consume or allow a customer to consume a marijuana product on the premises.

(3) When discussing a marijuana product with a customer, a certificate holder shall refer to the product using the cannabinoid profile labeling required by the Washington state liquor and cannabis board in addition to the represented strain name.

(4) A certificate holder shall not:

(a) Offer or undertake to diagnose or cure any human or animal disease, ailment, injury, infirmity, deformity, pain, or other condition, physical or mental, real or imaginary, by use of marijuana products or any other means or instrumentality;

(b) Recommend or suggest modification or elimination of any course of treatment that does not involve the medical use of marijuana products;

(c) Solicit or accept any form of remuneration directly or indirectly, overtly or covertly, in cash or any other form in return for recommending a certain product, producer, processor, clinic, or health care practitioner;

(d) Provide medical marijuana consultant services in any capacity other than as an owner, employee, or volunteer of retail outlets licensed under RCW 69.50.354 and holding a medical endorsement under RCW 69.50.375; or

(e) Provide medical marijuana consultant services at any location other than at retail outlets licensed under RCW 69.50.354 and holding a medical endorsement under RCW 69.50.375 for which the certificate holder serves as an owner, employee, or volunteer.

#### NEW SECTION

**WAC 246-72-040 Display of certificate.** (1) A certificate holder shall conspicuously display his or her certificate in his or her principal place of business.

(2) A certificate holder who owns, is employed by, or volunteers at more than one business location shall conspicuously display a duplicate certificate or an unaltered photocopy of his or her certificate in each business location.

#### NEW SECTION

**WAC 246-72-050 Cooperation with investigation.** (1) The secretary will notify an applicant or credential holder upon receipt of a complaint, except when the notification would impede an effective investigation. Upon request by the secretary, the applicant or credential holder shall submit a written statement about that complaint.

(2) An applicant or certificate holder must produce documents, records, or other items that are within his or her possession or control within twenty-one calendar days of service

of a request by the secretary. If the twenty-one calendar day limit results in a hardship upon the applicant or credential holder, he or she may request, for good cause, an extension not to exceed thirty additional calendar days.

(3) Failure to submit a full and complete written statement explaining the matter contained in a complaint pursuant to subsection (1) of this section or to comply with a request made pursuant to subsection (2) of this section may result in action by the secretary to refuse the application or revoke or suspend the certificate.

#### NEW SECTION

**WAC 246-72-060 Denial, suspension, and revocation of certificate.** The secretary has the power to deny, suspend, or revoke a certificate upon proof that:

(1) The certificate was procured through fraud, misrepresentation, or deceit.

(2) The applicant or certificate holder has violated or has permitted any employee or volunteer to violate any of the laws or rules of this state relating to drugs or controlled substances or has been convicted of a felony.

(3) The applicant or certificate holder has violated or has permitted any employee or volunteer to violate any part of chapter 69.50, 69.51A RCW, 314-55 WAC, or this chapter.

#### NEW SECTION

**WAC 246-72-070 Denial, suspension, and revocation of certificate—Procedure.** (1) The secretary will give written notice of the secretary's denial, suspension, or revocation of a certificate in accordance with RCW 43.70.115, chapters 34.05 RCW and 246-10 WAC.

(2) In any case of denial, suspension, or revocation of a certificate under the provisions of this chapter, the applicant or certificate holder has the right to an adjudicative proceeding and may file a request for an adjudicative proceeding consistent with chapter 246-10 WAC.

(3) A request for an adjudicative proceeding must be in writing, state the basis for contesting the adverse action, include a copy of the adverse notice and be served on and received by the department within twenty-eight days of the applicant's or certificate holder's receipt of the adverse notice. If a request for adjudicative proceeding is not received by the department within twenty-eight days of the date of the applicant's or certificate holder's receipt of the adverse notice, the secretary's decision is final.

#### NEW SECTION

**WAC 246-72-080 Renewals and updating license information.** (1) Certificates must be renewed every year on the certificate holder's birthday. Initial certificates issued within ninety days of the certificate holder's birthday do not expire until the person's next birthday.

(2) Renewals:

(a) Prior to the certificate expiration date, courtesy renewal notices are mailed to the address on file. Certificate holders must return the renewal notice when renewing their credential. Failure to receive a courtesy renewal notice does not relieve or exempt the renewal requirement.

(b) The certificate holder must attest to completion of annual certification requirements.

(c) Renewal fees are accepted by the department no sooner than ninety days prior to the expiration date.

(3) Duplicate certificate: A certificate holder may obtain a duplicate certificate by submitting a written request to the department and paying the fee as required in WAC 246-72-990.

(4) Name changes: It is the responsibility of each certificate holder to maintain his or her correct name on file with the department. Requests for name changes must be submitted in writing to the department along with documentation showing the name was legally changed.

(5) Address changes: It is the responsibility of each certificate holder to maintain his or her current address on file with the department. Requests for address changes may be made either by telephone or in writing. The mailing address on file with the department will be used for mailing of all official matters to the certificate holder.

#### NEW SECTION

**WAC 246-72-090 Expired certificate.** (1) A certificate holder may not practice at any time while his or her certificate is expired. The certificate is expired if the certificate holder does not renew on or before the expiration date. Any renewal that is postmarked or presented to the department after midnight on the expiration date is expired and is subject to a late renewal penalty fee.

(2) If the certificate has been expired for more than three months and less than three years, the certificate holder must:

- (a) Complete a late renewal application form;
- (b) Pay the renewal fee;
- (c) Pay the late renewal penalty fee;
- (d) Provide proof of successful completion of required continuing education under WAC 246-72-100;
- (e) Provide proof of current CPR certification; and
- (f) Provide any other documentation required by the secretary.

(3) If the certificate has been expired for three years or more, the certificate holder must:

- (a) Complete a new application form;
- (b) Pay the current application fee;
- (c) Retake and provide proof of successful completion of an approved training program within the prior six months;
- (d) Provide proof of current CPR certification; and
- (e) Provide any other documentation required by the secretary.

#### NEW SECTION

**WAC 246-72-100 Continuing education.** (1) Certificate holders must complete a minimum of ten hours of continuing education each year in order to renew the certificate.

(2) Continuing education hours may be earned through seminars, lectures, workshops, and professional conferences. Continuing education credits may be earned through in-person or distance learning. Distance learning includes correspondence courses, webinars, audio/video broadcasting, audio/video teleconferencing e-learning, or web casts. Acceptable topics are:

(a) Washington state laws and rules relating to marijuana;

(b) Science-based information about marijuana;

(c) Addiction and substance abuse;

(d) Communication skills;

(e) Professional ethics and values.

(3) Continuing education topics may not include:

(a) Business and management courses;

(b) Health care training unrelated to marijuana; or

(c) Any topic unrelated to the practice parameters of a medical marijuana consultant.

(4) Continuing education hours will not be carried over from one reporting period to another.

(5) A certificate holder must provide acceptable documentation of completion of continuing education hours upon request of the secretary or an audit. Acceptable forms of documentation are:

(a) Transcripts;

(b) Certificate of completion; or

(c) Other formal documentation which includes:

(i) Participant's name;

(ii) Course title;

(iii) Course content;

(iv) Date(s) of course;

(v) Provider's name(s); and

(vi) Signature of the program sponsor or course instructor. Distance learning courses are exempt from the signature requirement.

(6) A certificate holder must verify compliance by submitting a signed declaration of compliance.

(7) Up to twenty-five percent of certificate holders are randomly audited for continuing education compliance after the credential is renewed. It is the certificate holder's responsibility to submit documentation of completed continuing education activities at the time of the audit. Failure to comply with the audit documentation request or failure to supply acceptable documentation within sixty days may result in suspension or revocation of the certificate.

(8) A certificate holder must maintain records of continuing education completion for at least four years.

#### NEW SECTION

**WAC 246-72-110 Training program requirements.**

(1) Training programs must include:

(a) A minimum of twenty total instruction hours in the following subjects:

(i) Five hours about Washington state laws and rules relating to marijuana;

(ii) Two hours about qualifying conditions and the common symptoms of each;

(iii) Two hours about the short- and long-term positive and negative effects of cannabinoids;

(iv) Two hours about products that may benefit qualifying patients based on the patient's condition and any potential contraindications;

(v) Two hours about the risks and benefits of various routes of administration;

(vi) Two hours about safe handling of marijuana products, including strategies to reduce access by minors;



(vii) Two hours about customer privacy and rights;  
 (viii) Two hours about the risks and warning signs of overuse, abuse and addiction; and

(ix) One hour about ethics.

(b) An examination comprised of at least five questions for each hour of instruction must be given for each subject. The applicant must pass the examination for each subject with a minimum score of seventy percent. Questions must be randomly selected from a sufficient supply of questions to ensure the validity of the examination. The secretary reserves the right to approve or deny individual questions and answers.

(2) Training may be provided in-person or electronically. If the training is provided electronically, students must have real-time access to the instructor during at least half of the instruction hours for each subject.

(3) Instructors must have demonstrated knowledge and experience related to marijuana and:

(a) An active license to practice as a health care professional as defined in RCW 69.51A.010(2);

(b) An active license to practice law in the state of Washington; or

(c) A bachelor's degree or higher from an accredited college or university in agriculture, botany, or horticulture.

#### NEW SECTION

**WAC 246-72-120 Approval of training program.** The secretary will consider for approval any training program which meets the requirements as outlined in this chapter.

(1) The authorized representative of the training program shall request approval on a form provided by the department.

(2) The application for approval of a training program must include, but is not limited to, documentation required by the secretary pertaining to:

(a) Syllabus;

(b) Identification and qualifications of instructors;

(c) Training locations and facilities;

(d) Outline of curriculum plan specifying all subjects, and the length in hours each subject is taught;

(e) Class objectives;

(f) Whether the training will be provided in-person or electronically;

(g) Methods of evaluating the course and instructors by the training program and training participants; and

(h) Policies and procedures for maintaining training and testing records.

(3) Any training program that is required to be licensed by private vocational education under chapter 28C.10 RCW or Title 28B RCW, or any other statute, must complete these requirements before being considered by the secretary for approval.

(4) The secretary will evaluate the application and may conduct a site inspection of the training program prior to granting approval.

(5) Upon the evaluation of a complete application, the secretary will grant or deny approval.

(6) If the secretary notifies the training program of the secretary's intent to deny an application, the training program, through its authorized representative, may request an

adjudicative proceeding. A request for an adjudicative proceeding must be in writing, state the basis for contesting the adverse action, include a copy of the adverse notice and be served on and received by the department within twenty-eight days of the applicant's receipt of the adverse notice. The authorized representative of the training program may submit a new application for the secretary's consideration.

(7) Training and testing records must be kept for a minimum of three years. The secretary may audit the records at any time.

(8) The authorized representative of an approved training program shall notify the secretary in writing of all changes with respect to information provided in the application, including changes in instructors, within thirty days of such changes.

(9) The secretary may inspect or review an approved training program at reasonable intervals for compliance or to investigate a complaint. The secretary may withdraw approval if the secretary finds failure to comply with the requirements of statute, administrative rules, or representations in the application.

(10) If the secretary notifies an approved training program of the secretary's intent to revoke approval, the training program, through its authorized representative, may request an adjudicative proceeding. A request for an adjudicative proceeding must be in writing, state the basis for contesting the adverse action, include a copy of the adverse notice and be served on and received by the department within twenty-eight days of the applicant's or license holder's receipt of the adverse notice. If a request for adjudicative proceeding is not received by the department within twenty-eight days of the date of the training program's receipt of the adverse notice, the secretary's decision is final. The authorized representative of the training program must provide proof that the deficiencies which resulted in withdrawal of the secretary's approval have been corrected before requesting reapproval. Training programs seeking reapproval shall follow the requirements outlined in this section.

#### NEW SECTION

**WAC 246-72-130 Renewal of training program.** Training programs approved under this chapter must:

(1) Participate in the renewal process established by the department every two years. Failure to renew will result in automatic withdrawal of approval of the program; and

(2) Comply with any changes to this chapter or training standards and guidelines in order to maintain an approved status.

#### NEW SECTION

**WAC 246-72-140 Closure of an approved training program.** When a training program approved under this chapter closes, it shall notify the department in writing, stating the reason and the date of intended closing.

#### NEW SECTION

**WAC 246-72-990 Certificate fees.** (1) The following nonrefundable fees will be charged for certificates:

Title of Fee	Fee
Application for certificate	\$95.00
Renewal of certificate	\$90.00
Late renewal penalty	\$50.00
Expired certificate reissuance	\$50.00
Duplicate certificate	\$10.00
Verification of credential	\$15.00

(2) Refund of fees: Fees submitted with applications for initial certificates, renewal, and other fees are nonrefundable.

**WSR 16-01-164**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
[Filed December 22, 2015, 9:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-22-083.

Title of Rule and Other Identifying Information: Chapter 296-14 WAC, Industrial insurance—Pension tables, pension discount rate and mortality tables; amending WAC 296-14-8810.

Hearing Location(s): Department of Labor and Industries (L&I), 7273 Linderson Way S.W., Room: Auditorium, Tumwater, WA 98501, on January 26, 2016, at 2:30 p.m.

Date of Intended Adoption: February 16, 2016.

Submit Written Comments to: Suzy Campbell, P.O. Box 44208, Olympia, WA 98504-4208, e-mail [suzanne.campbell@lni.wa.gov](mailto:suzanne.campbell@lni.wa.gov), fax (360) 902-4960, by 5 p.m. on January 27, 2016.

Assistance for Persons with Disabilities: Contact Veronica Berets by January 19, 2016, at [Veronica.Berets@lni.wa.gov](mailto:Veronica.Berets@lni.wa.gov) or (360) 902-4252.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The pension discount rate is the interest rate used to account for the time value of money when evaluating the present value of future pension payments. Currently, WAC 296-14-8810 sets the pension discount rate at 6.4 percent. The department has worked with the workers' compensation advisory committee (WCAC) to develop a plan reducing the pension discount rate annually, through 2022, until it reaches 4.5 percent. The purpose of this rule making is to reduce the current pension discount rate to 6.3 percent in 2016.

Statutory Authority for Adoption: RCW 51.04.020, 51.44.070(1), 51.44.080.

Statute Being Implemented: RCW 51.44.070.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Suzy Campbell, Tumwater, Washington, (360) 902-5003; Implementation: Sandi Haerling, Tumwater, Washington,

(360) 902-5006; and Enforcement: Vickie Kennedy, Tumwater, Washington, (360) 902-4997.

No small business economic impact statement has been prepared under chapter 19.85 RCW. L&I is exempt from preparing a small business economic impact statement under RCW 19.85.025(3) referencing RCW 34.05.310 (4)(f) since the purpose of this rule making is to set or adjust fees pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. L&I is exempt from preparing a cost-benefit analysis under RCW 34.05.328 (5)(b)(vi) since the purpose of this rule making is to set or adjust fees pursuant to legislative standards.

December 22, 2015

Joel Sacks  
Director

AMENDATORY SECTION (Amending WSR 15-02-061, filed 1/6/15, effective 4/1/15)

**WAC 296-14-8810 Pension tables, pension discount rate and mortality tables.** (1) The department uses actuarially determined pension tables for calculating pension annuity values, required pension reserves, and actuarial adjustments to monthly benefit amounts.

(a) The department's actuaries calculate the pension tables based on:

- (i) Mortality tables from nationally recognized sources;
- (ii) The department's experience with rates of mortality, disability, and remarriage for annuity recipients; and
- (iii) A pension discount rate of ~~((6.4))~~ 6.3 percent.

(b) The department's actuaries periodically investigate whether updates to the mortality tables relied on or the department's experience with rates of mortality, disability, and remarriage by its annuity recipients warrant updating the department's pension tables.

(2) To obtain a copy of any of the department's pension tables, contact the department of labor and industries actuarial services.

**WSR 16-01-170**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
(Board of Psychology)  
[Filed December 22, 2015, 12:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-23-028.

Title of Rule and Other Identifying Information: Chapter 246-924 WAC, Examining board of psychology (board), WAC 246-924-358 Sexual misconduct, the board is proposing to amend the rule to clarify what forcible or nonconsensual acts are within the definition of sexual misconduct by a psychologist.

Hearing Location(s): Washington State Department of Health, Town Center Building #3, Room 265, 243 Israel

Road S.E., Tumwater, WA 98501, on January 29, 2016, at 3:00.

Date of Intended Adoption: January 29, 2016.

Submit Written Comments to: Kim-Boi Shadduck, Washington State Department of Health, Examining Board of Psychology, P.O. Box 47852, Olympia, WA 98504-7852, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by January 22, 2016.

Assistance for Persons with Disabilities: Contact Kim-Boi Shadduck by January 22, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule clarifies and updates the sexual misconduct rule to establish clearer standards of conduct for psychologists under the board's authority. It will also help psychologists understand what constitutes sexual misconduct with any person including people who are not patients, clients, or key third parties that involves force, intimidation, lack of consent, or a conviction of a sex offense listed in RCW 9.94A.030.

Reasons Supporting Proposal: Over time the board has realized a very serious category of sexual misconduct may not be captured by current rules; sexual misconduct by a psychologist against a person other than a patient, client, or key party. Some examples include sexual harassment of staff, incest, or other sexual assaults against family members, social acquaintances, or strangers. Updating the sexual misconduct rule will establish clearer standards of conduct and will help the board be consistent in its enforcement activities to more fully comply with RCW 18.130.062 and Executive Order 06-03.

Statutory Authority for Adoption: RCW 18.83.050, 18.130.050, and 18.130.062.

Statute Being Implemented: RCW 18.83.050 and 18.130.062.

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

Name of Proponent: Department of health, examining board of psychology, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kim-Boi Shadduck, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-2912.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(d), a small business economic impact statement is not required for proposed rules that only clarify the language of a rule without changing its effect.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(iv) exempts rules that only clarify the language of a rule without changing its effect. A preliminary cost-benefit analysis may be obtained by contacting Betty Moe, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4912, fax (360) 236-2901, e-mail [Betty.Moe@doh.wa.gov](mailto:Betty.Moe@doh.wa.gov).

December 22, 2015

T. Cahn, Ph.D., Board Chair  
Examining Board of Psychology

AMENDATORY SECTION (Amending WSR 07-23-126, filed 11/21/07, effective 12/22/07)

**WAC 246-924-358 Sexual misconduct.** (1) The following definitions apply to this section:

(a) "Health care information" means any information, whether oral or recorded in any form or medium that identifies or can readily be associated with the identity of, and relates to the health care of, a patient or client.

(b) "Key party" means immediate family members and others who would be reasonably expected to play a significant role in the health care decisions of the patient or client and includes, but is not limited to, the spouse, domestic partner, sibling, parent, child, guardian and person authorized to make health care decisions of the patient or client.

(c) "Legitimate health care purpose" means activities for examination, diagnosis, treatment, and personal care of patients or clients, including palliative care, as consistent with community standards of practice for the profession. The activity must be within the scope of practice of psychology.

(d) "Patient" or "client" means an individual who receives psychological services from a psychologist.

(2) A psychologist shall never engage, or attempt to engage, in sexual misconduct with a current patient, client, or key party, inside or outside the health care setting. Sexual misconduct shall constitute grounds for disciplinary action. Sexual misconduct includes, but is not limited to:

(a) Sexual intercourse;

(b) Touching the breasts, genitals, anus or any sexualized body part;

(c) Rubbing against a patient or client or key party for sexual gratification;

(d) Kissing;

(e) Hugging, touching, fondling or caressing of a romantic or sexual nature;

(f) Dressing or undressing in the presence of the patient, client or key party;

(g) Removing patient or client's clothing or gown or draping without emergent medical necessity;

(h) Encouraging masturbation or other sex act in the presence of the psychologist;

(i) Masturbation or other sex act by the psychologist in the presence of the patient, client or key party;

(j) Suggesting or discussing the possibility of a dating, sexual or romantic relationship after the professional relationship ends;

(k) Terminating a professional relationship for the purpose of dating or pursuing a romantic or sexual relationship;

(l) Soliciting a date with a patient, client or key party;

(m) Discussing the sexual history, preferences or fantasies of the psychologist;

(n) Any behavior, gestures, or expressions that may reasonably be interpreted as seductive or sexual;

(o) Making statements regarding the patient, client or key party's body, appearance, sexual history, or sexual orientation other than for psychological service purposes;

(p) Sexually demeaning behavior including any verbal or physical contact which may reasonably be interpreted as demeaning, humiliating, embarrassing, threatening or harming a patient, client or key party;

(q) Photographing or filming the body or any body part or pose of a patient, client, or key party, other than for psychological service purposes; and

(r) Showing a patient, client or key party sexually explicit photographs, other than for psychological service purposes.

(3) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent: or a conviction of a sex offense as defined in RCW 9.94A.030.

(4) A psychologist shall not:

(a) Offer to provide psychological services in exchange for sexual favors;

(b) Use health care information to contact the patient, client or key party for the purpose of engaging in sexual misconduct;

(c) Use health care information or access to health care information to meet or attempt to meet the psychologist's sexual needs.

~~((4))~~ (5) After the termination of the psychology services, the psychologist shall not engage, or attempt to engage, in the activities listed in subsection (2) of this section with a patient or client for five years or with a key party for two years.

~~((5))~~ (6) A psychologist shall never engage, or attempt to engage, in sexual misconduct with a former client, patient or key party even after the period of time described in subsection ~~((4))~~ (5) of this section if:

(a) There is a significant likelihood that the patient, client or key party will seek or require additional services from the psychologist; or

(b) There is an imbalance of power, influence, opportunity, and/or special knowledge of the professional relationship.

~~((6))~~ (7) When evaluating whether a psychologist is prohibited from engaging, or attempting to engage, in sexual misconduct, the board will consider factors, including but not limited to:

(a) Documentation of a formal termination and the circumstances of termination of the psychological services;

(b) Transfer of care to another health care provider;

(c) Duration of the psychological services;

(d) Amount of time that has passed since the last psychological services were provided to the patient or client;

(e) Communication between the psychologist and the patient or client between the last psychological services rendered and commencement of the personal relationship;

(f) Extent to which the patient's or client's personal or private information was shared with the psychologist;

(g) Nature of the patient's or client's mental health condition during and since the professional relationship; and

(h) The patient's or client's emotional dependence and vulnerability.

~~((7))~~ (8) Initiation or consent by patient, client or key party does not excuse or negate the psychologist's responsibility.

~~((8))~~ (9) These rules do not prohibit providing psychological services in case of emergency where the services cannot or will not be provided by another psychologist.

~~((9))~~ (10) Psychologists must not accept as therapy patients or clients persons with whom they have engaged in sexual contact or activity.

## WSR 16-01-172

### PROPOSED RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed December 22, 2015, 12:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-01-179.

Title of Rule and Other Identifying Information: The department is repealing the following sections in chapter 388-78A WAC, Assisted living facility licensing rules: WAC 388-78A-3390 Resident protection program—Individual defined, 388-78A-3400 Investigation of reports, 388-78A-3410 Resident protection program—Notice to the individual of preliminary finding, 388-78A-3420 Resident protection program—Notice to others of preliminary findings, 388-78A-3430 Resident protection program—Disputing a preliminary finding, 388-78A-3440 Hearing procedures to dispute preliminary finding, 388-78A-3450 Resident protection program—Finalizing a preliminary finding, 388-78A-3460 Resident protection program—Appeal of initial order, 388-78A-3470 Resident protection program—Reporting final findings, and 388-78A-3480 Resident protection program—Disclosure of investigative and finding information.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>), on January 26, 2016, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 27, 2016.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax (360) 664-6185, by 5:00 p.m., January 26, 2016.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by January 12, 2016, phone (360) 664-6092, TTY (360) 664-6178, or e-mail [KildaJA@dshs.wa.gov](mailto:KildaJA@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Resident client protection program (RCPP) has been moved into adult protective services and the rules will be administered under chapters 388-71 and 388-106 WAC. References to the RCPP would thus be incorrect and will be repealed from chapter 388-78A WAC. Residential care services is coordinating to eliminate these WAC sections at the same time home and community services is incorporating them into their WAC. The CR-102 for both divisions will be filed at the same time.

Reasons Supporting Proposal: Repealing the rules is beneficial to or supported by the regulated entities to prevent duplication of licensing rules.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Christi Pederson, P.O. Box 45600, Olympia, WA 98513, (360) 725-2327; Implementation: Candace Goehring, P.O. Box 45600, Olympia WA 98513, (360) 725-2401; and Enforcement: Bett Schlemmer, P.O. Box 45600, Olympia, WA 98513, (360) 725-2404.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 (3), a small business economic impact statement is not required for rules adopting or incorporating, by reference without material change, Washington state statutes or federal statutes or regulations.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b)(iii), a cost-benefit analysis is not required for rules adopting or incorporating, by reference without material change, Washington state statutes or federal statutes or regulations.

December 21, 2015  
Katherine I. Vasquez  
Rules Coordinator

### REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-78A-3390 Resident protection program—Individual defined.
- WAC 388-78A-3400 Investigation of reports.
- WAC 388-78A-3410 Resident protection program—Notice to the individual of preliminary finding.
- WAC 388-78A-3420 Resident protection program—Notice to others of preliminary findings.
- WAC 388-78A-3430 Resident protection program—Disputing a preliminary finding.
- WAC 388-78A-3440 Hearing procedures to dispute preliminary finding.
- WAC 388-78A-3450 Resident protection program—Finalizing a preliminary finding.
- WAC 388-78A-3460 Resident protection program—Appeal of initial order.
- WAC 388-78A-3470 Resident protection program—Reporting final findings.
- WAC 388-78A-3480 Resident protection program—Disclosure of investigative and finding information.

### **WSR 16-01-173**

#### **PROPOSED RULES**

#### **HEALTH CARE AUTHORITY**

(Washington Apple Health)

[Filed December 22, 2015, 1:15 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-09-072.

Title of Rule and Other Identifying Information: Chapter 182-538A WAC, Washington apple health fully integrated managed care; chapter 182-538B WAC, Behavioral health wraparound services; and chapter 182-538C WAC, Crisis-related behavioral health services.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at [http://www.hca.wa.gov/documents/directions\\_to\\_csp.pdf](http://www.hca.wa.gov/documents/directions_to_csp.pdf) or directions can be obtained by calling (360) 725-1000), on January 26, 2016, at 10:00 a.m.

Date of Intended Adoption: Not sooner than January 27, 2016.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax (360) 586-9727, by 5:00 p.m. on January 26, 2016.

Assistance for Persons with Disabilities: Contact Amber Loughheed by January 22, 2016, e-mail [amber.loughheed@hca.wa.gov](mailto:amber.loughheed@hca.wa.gov), (360) 725-1349, or TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is creating three WAC chapters to govern the Washington apple health fully integrated managed care program, which will go into effect April 1, 2016. The program integrates crisis, substance use disorder, physical health, and behavioral health services in fully integrated managed care regional service areas.

Reasons Supporting Proposal: SB 6312.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Sean Sullivan, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1344; Implementation and Enforcement: Becky McAninch-Dake, P.O. Box 45530, Olympia, WA 98504-5530, (360) 725-1642.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has determined that the proposed filing does not impose a disproportionate cost impact on small businesses or nonprofits.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

December 22, 2016 [2015]  
Wendy Barcus  
Rules Coordinator

### Chapter 182-538A WAC

## WASHINGTON APPLE HEALTH FULLY INTEGRATED MANAGED CARE (FIMC)

### NEW SECTION

**WAC 182-538A-040 Washington apple health fully integrated managed care.** (1) This chapter governs the services provided under the medicaid agency's Washington apple health fully integrated managed care (FIMC) medicaid contract.

(a) FIMC provides physical and behavioral health services to medicaid beneficiaries through managed care.

(b) FIMC includes enrollees receiving behavioral health services only (BHSO).

(c) FIMC services are available only through a contracted managed care organization (MCO) and its provider network.

(d) For behavioral health services provided to individuals outside of FIMC regional service areas, see chapters 388-865, 388-877, 388-877A, 388-877B, and 388-877C WAC.

(2) To provide physical and behavioral health services or BHSO under the FIMC medicaid contract, an MCO must contract with the agency.

(3) To be eligible to contract with the agency to provide FIMC services, the MCO must:

(a) Have a certificate of registration from the Washington state office of the insurance commissioner (OIC) that allows the MCO to provide the health care services;

(b) Accept the terms and conditions of the agency's contracts;

(c) Be able to meet the network and quality standards established by the agency;

(d) Successfully participate in an on-site readiness review conducted by the agency; and

(e) Be awarded a contract through a competitive process or an application process available to all qualified providers at the discretion of the agency.

(4) The agency reserves the right not to contract with any otherwise qualified MCO.

(5) Chapter 182-538 WAC applies to this chapter. If the rules are in conflict, this chapter takes precedence.

### NEW SECTION

**WAC 182-538A-050 Definitions.** The following definitions and abbreviations and those found in chapters 182-500 and 182-538 WAC apply to this chapter.

**"Administrative hearing"** means an adjudicative proceeding before an administrative law judge or a presiding officer that is governed by chapters 34.05 RCW and 182-526 WAC.

**"Appeal"** means a request for review of an action under WAC 182-538-110 and 42 C.F.R. Sec. 438.400(b).

**"Apple health adult coverage (AHAC)"** means the range of services available to people eligible to receive health

care coverage under the Washington apple health modified adjusted gross income (MAGI)-based adult coverage.

**"Behavioral health"** includes mental health, substance use disorders and conditions, and benefits related to treatment.

**"Behavioral health administrative services organization (BH-ASO)"** means an entity selected by the agency to administer behavioral health services and programs, including crisis services for all individuals in a defined regional service area, regardless of an individual's insurance status or ability to pay.

**"Behavioral health services only (BHSO)"** - The program in which enrollees only receive behavioral health benefits through a managed care delivery system.

**"Brief intervention treatment"** - Solution-focused and outcome-oriented cognitive and behavioral interventions intended to improve symptoms, resolve situational disturbances that are not amenable to resolution in a crisis service model of care, and which do not require long-term treatment to return the individual to previous higher levels of general functioning. This service is provided by or under the supervision of a mental health professional.

**"Crisis services"** - See WAC 182-538C-150.

**"Division of behavioral health and recovery (DBHR)"** means the department of social and health services designated state behavioral health authority to administer state-only, federal block grant, and medicaid-funded behavioral health programs.

**"End enrollment"** means ending the enrollment of an enrollee for one of the reasons outlined in WAC 182-538A-130.

**"Fully integrated managed care (FIMC)"** means the program covered by this chapter, under which behavioral health services are added to an agency managed care contract.

**"Mental health professional"** means:

(a) A psychiatrist, psychologist, psychiatric nurse, or social worker as defined in chapters 71.05 and 71.34 RCW;

(b) A person who is licensed by the department of health as a mental health counselor, mental health counselor associate, marriage and family therapist, or marriage and family therapist associate;

(c) A person with a master's degree or further advanced degree in counseling or one of the social behavioral sciences from an accredited college or university who has at least two years of experience in direct treatment of persons with mental illness or emotional disturbance that was gained under the supervision of a mental health professional and is recognized by the department of social and health services;

(d) A person who meets the waiver criteria of RCW 71.24.260, which was granted before 1986;

(e) A person who had an approved waiver to perform the duties of a mental health professional that was requested by the regional support network (RSN) and granted by the mental health division before July 1, 2001; or

(f) A person who has been granted a time-limited exception of the minimum requirements of a mental health professional by the department of social and health services consistent with WAC 388-865-0265.

**"Patient days of care"** means all voluntary patients and involuntarily committed patients under chapter 71.05 RCW, regardless of where in the state hospital the patients reside. Patients who are committed to the state hospital under chapter 10.77 RCW are not included in the patient days of care. Patients who are committed under RCW 10.77.088 by municipal or district courts after failed competency restoration and dismissal of misdemeanor charges are not counted in the patient days of care until a petition for ninety days of civil commitment under chapter 71.05 RCW has been filed in court. Patients who are committed under RCW 10.77.086 by a superior court after failed competency restoration and dismissal of felony charges are not counted in the patient days of care until the patient is civilly committed under chapter 71.05 RCW.

**"Regional service area (RSA)"** means a single county or multi-county grouping formed for the purpose of health care purchasing and designated by the agency and the department of social and health services.

**"Wraparound with intensive services (WISe)"** is a program that provides comprehensive behavioral health services and support to:

- (a) Medicaid-eligible people age twenty or younger with complex behavioral health needs; and
- (b) Their families.

#### NEW SECTION

**WAC 182-538A-060 Fully integrated managed care and choice.** (1) Except as provided in subsection (2) of this section, the medicaid agency requires a client to enroll in a fully integrated managed care (FIMC) managed care organization (MCO) when that client:

- (a) Is eligible;
  - (b) Resides in a mandatory enrollment FIMC regional service area; and
  - (c) Is not exempt from FIMC enrollment.
- (2)(a) American Indian and Alaska native (AI/AN) clients and their descendants may choose one of the following:
- (i) Enrollment with an FIMC MCO available in their regional service area;
  - (ii) Enrollment with a primary care case management (PCCM) provider through a tribal clinic or urban Indian center available in their area, which includes mandatory enrollment into a behavioral health services only (BHSO) MCO; or
  - (iii) The agency's fee-for-service system, which includes mandatory enrollment into a BHSO MCO.
- (b) To enroll with an FIMC MCO or PCCM provider, an AI/AN client may:
- (i) Call the agency's toll-free enrollment line at 800-562-3022;
  - (ii) Mail or fax the following to the agency's unit responsible for FIMC enrollment:
    - (A) Form HCA 13-664; or
    - (B) Form HCA 13-862 found online at <https://www.hca.wa.gov/medicaid/forms/pages/index.aspx>.
  - (iii) Enroll online through the Washington Healthplanfinder at <https://www.wahealthplanfinder.org>; or
  - (iv) Go to the ProviderOne client portal at <https://www.waproviderone.org/client> and follow the prompts.

(3) A client must enroll with an FIMC MCO available in the regional service area where the client resides.

(4) The agency enrolls all family members with the same FIMC MCO, if available.

(5) If a family member is enrolled in the patient review and coordination (PRC) program, that family member must follow the rules in WAC 182-501-0135.

(6) When a client requests enrollment with an FIMC MCO or PCCM provider, the agency enrolls a client effective the first day of the current month a client becomes eligible.

(7) To enroll with an FIMC MCO, a client may:

(a) Call the agency's toll-free enrollment line at 800-562-3022;

(b) Mail or fax the following to the agency's unit responsible for FIMC enrollment:

(i) Form HCA 13-664; or

(ii) Form HCA 13-862 found online at <https://www.hca.wa.gov/medicaid/forms/pages/index.aspx>.

(c) Enroll online through the Washington Healthplanfinder at <https://www.wahealthplanfinder.org>; or

(d) Go to the ProviderOne client portal at <https://www.waproviderone.org/client> and follow the prompts.

(8) The agency assigns a client who does not choose an FIMC MCO or PCCM provider as follows:

(a) If the client has a family member or members enrolled with an FIMC MCO, the client is enrolled with that FIMC MCO;

(b) If the client has a family member or members enrolled with a PCCM provider, the client is enrolled with that PCCM provider;

(c) The client is reenrolled within the previous six months with their prior MCO plan if:

(i) The agency identifies the prior MCO and the program is available; and

(ii) The client does not have a family member enrolled with an agency-contracted MCO or PCCM provider.

(d) If the client has a break in eligibility of less than two months, the client will be automatically reenrolled with his or her previous MCO or PCCM provider and no notice will be sent; or

(e) If the client cannot be assigned according to (a), (b), (c), or (d) of this subsection, the agency assigns the client according to agency policy.

(9) An FIMC enrollee's selection of a primary care provider (PCP) or assignment to a PCP occurs as follows:

(a) An FIMC enrollee may choose:

(i) A PCP or clinic that is in the enrollee's FIMC MCO's provider network and accepting new enrollees; or

(ii) A different PCP or clinic participating with the enrollee's FIMC MCO's provider network for different family members.

(b) The FIMC MCO assigns a PCP or clinic that meets the access standards described in the relevant managed care contract if the enrollee does not choose a PCP or clinic.

(c) An FIMC enrollee may change PCPs or clinics for any reason, provided the PCP or clinic is within the enrollee's FIMC MCO's provider network and accepting new enrollees.

(d) An FIMC enrollee may file a grievance with the FIMC MCO if the FIMC does not approve an enrollee's request to change PCPs or clinics.

(e) Enrollees required to participate in the agency's PRC program may be limited in their right to change PCPs (see WAC 182-501-0135).

NEW SECTION

**WAC 182-538A-067 Qualifications to become a managed care organization (MCO) in fully integrated managed care (FIMC) regional service areas.** (1) In addition to subsection (2) of this section, see WAC 182-538A-060 regarding qualifications to become a managed care organization (MCO) in fully integrated managed care (FIMC) regional service areas.

(2) An MCO must contract with an agency-contracted behavioral health administrative service organization (BH-ASO) that maintains an adequate provider network to deliver services to clients in FIMC regional service areas.

NEW SECTION

**WAC 182-538A-068 Qualifications to become a primary care case management (PCCM) provider in fully integrated managed care (FIMC) regional service areas.** See WAC 182-538-068 regarding qualifications to become a primary care case management (PCCM) provider in fully integrated managed care (FIMC) regional service areas.

NEW SECTION

**WAC 182-538A-070 Payments to managed care organizations (MCOs) in fully integrated managed care (FIMC) regional service areas.** (1) In addition to the rules in this section, see WAC 182-538-070 regarding payments to managed care organizations (MCOs) in fully integrated managed care (FIMC) regional service areas.

(2) The agency pays MCOs a service-based enhancement rate for wraparound with intensive services (WISE) administered by a certified WISE provider who holds a current behavioral health agency license issued by the division of behavioral health and recovery (DBHR) under chapter 388-877 WAC.

(3) For crisis services, the MCO must determine whether the individual receiving the services is eligible for Washington apple health or if the individual has other insurance coverage.

(4) The MCO pays a reimbursement for each state hospital patient day of care that exceeds the MCO daily allocation of state hospital beds based on a quarterly calculation of the bed usage.

(a) The agency bills the MCO quarterly for state hospital patient days of care exceeding the MCO daily allocation of state hospital beds and the established rate of reimbursement.

(b) An MCO using fewer patient days of care than its quarterly allocation of state hospital beds receives a portion of the reimbursement collected proportional to its share of the total number of patient days of care that were not used at the appropriate state hospital.

(5) The agency may:

(a) Impose intermediate sanctions under 42 C.F.R. 438.700 and corrective action for substandard rates of clinical

performance measures and for deficiencies found in audits and on-site visits;

(b) Require corrective action for findings for noncompliance with any contractual, state, or federal requirements;

(c) Impose sanctions for noncompliance with any contractual, state, or federal requirements not corrected; and

(d) Apply a monthly penalty assessment associated with poor performance on selected behavioral health performance measures.

NEW SECTION

**WAC 182-538A-071 Payments to primary care case management (PCCM) providers in fully integrated managed care (FIMC) regional service areas.** See WAC 182-538-071 for rules regarding payments to primary care case management (PCCM) providers in fully integrated managed care (FIMC) regional service areas.

NEW SECTION

**WAC 182-538A-095 Scope of care for fully integrated managed care (FIMC) and behavioral health services only (BHSO) enrollees.** (1) The rules in WAC 182-538-095 apply to this chapter. If the rules are in conflict, this chapter takes precedence.

(2) An enrollee in fully integrated managed care (FIMC) or behavioral health services only (BHSO) is eligible only for the scope services identified as covered in WAC 182-501-0060 and other program rules based on the enrollee's eligibility program, including the alternative benefit plan (ABP), categorically needy (CN), or medically needy (MN) programs.

(3) The managed care organization (MCO) covers services included under the FIMC medicaid contract for an FIMC or BHSO enrollee. An MCO may, at its discretion, cover services not required under the FIMC medicaid contract.

(4) The agency covers services identified as covered for an FIMC or BHSO enrollee that are not included in the FIMC medicaid contract.

(5) The MCO is not required to pay for services covered under the FIMC medicaid contract for an FIMC or BHSO enrollee if the services are:

(a) Determined not to be medically necessary for the enrollee as defined in WAC 182-500-0070;

(b) Received by the enrollee from a participating specialist that required prior authorization but were not prior authorized by the MCO;

(c) Nonemergency services received by the enrollee from nonparticipating providers that were not prior authorized by the MCO; or

(d) Received by the enrollee in a hospital emergency department for nonemergency medical conditions, except for a screening exam as described in WAC 182-538-100.

(6) The provider may bill the enrollee for noncovered services if the requirements of WAC 182-502-0160 are met.



NEW SECTION

**WAC 182-538A-100 Managed care emergency services for fully integrated managed care (FIMC) enrollees.** The managed care organization (MCO) covers emergency services for fully integrated managed care (FIMC) enrollees as described in WAC 182-538-100.

NEW SECTION

**WAC 182-538A-110 The grievance system for fully integrated managed care (FIMC) managed care organizations (MCOs).** Managed care enrollees in fully integrated managed care (FIMC) regional service areas may file grievances or appeal actions through the grievance system of managed care organizations (MCOs) as described in WAC 182-538-110.

NEW SECTION

**WAC 182-538A-111 The administrative hearing process for primary care case management (PCCM) enrollees in FIMC regional service areas.** See WAC 182-538-111 regarding the administrative hearing process for primary care case management enrollees in fully integrated managed care (FIMC) regional service areas.

NEW SECTION

**WAC 182-538A-120 Fully integrated managed care (FIMC) enrollee request for a second medical opinion.** Enrollees in fully integrated managed care (FIMC) regional service areas have a right to request a second medical opinion as described in WAC 182-538-120.

NEW SECTION

**WAC 182-538A-130 Exemptions and ending enrollment in fully integrated managed care (FIMC).** (1) Fully integrated managed care (FIMC) and behavioral health services only (BHSO) are mandatory for individuals in FIMC regional service areas. The medicaid agency enrolls a client into either FIMC or BHSO, depending on eligibility.

(2) WAC 182-538A-060 applies to disenrollment and choice.

(3) A client may end enrollment in FIMC if:

(a) The client has comparable coverage; or

(b) The client's request to end enrollment is approved by the agency under one of the following circumstances:

(i) The enrollee moves out of the FIMC regional service area;

(ii) Medically necessary care is unavailable from the MCO including, but not limited to, when:

(A) The MCO does not, because of moral or religious objections, deliver the service the enrollee seeks; or

(B) The enrollee needs related services performed at the same time and not all related services are available within the network and the enrollee's primary care provider or another provider determines receiving the services separately would subject the enrollee to unnecessary risk.

(4) If an enrollee ends enrollment in FIMC, the agency enrolls the enrollee in BHSO if the enrollee is eligible.

NEW SECTION

**WAC 182-538A-140 Fully integrated managed care (FIMC) quality of care.** WAC 182-538-140 applies to fully integrated managed care (FIMC) regional service areas.

NEW SECTION

**WAC 182-538A-150 Apple health foster care program in fully integrated managed care regional service areas.** The following apply to foster care enrollees in fully integrated managed care (FIMC) regional service areas:

(1) WAC 182-538-150; and

(2) WAC 182-538A-190.

NEW SECTION

**WAC 182-538A-160 Program integrity requirements.** (1) Chapters 182-502A and 182-520 WAC apply to this chapter. If the rules are in conflict, this chapter takes precedence.

(2) To comply with program integrity standards, including fraud and abuse, a managed care organization (MCO) must:

(a) Collect data on enrollees, providers, and services provided to enrollees through an encounter data system in a standardized format as specified by the agency for:

(i) Audits;

(ii) Investigations;

(iii) Identifications of improper payments and other program integrity activities;

(iv) Federal reporting (42 C.F.R. Sec. 438.242 (b)(1)); and

(v) Service verification.

(b) Perform ongoing analysis of utilization, claims, billing, and encounter data to detect overpayments;

(c) Disclose MCO ownership and control;

(d) Disclose any change in ownership of the MCO's subcontractors or providers that are not individual practitioners or a group of practitioners;

(e) Provide information on persons convicted of crimes through agreements with subcontractors and providers;

(f) Include program integrity requirements in the MCO's provider education program; and

(g) Verify provider compliance with all program integrity requirements in the fully integrated managed care (FIMC) medicaid contract.

(3) When an MCO has concluded a credible allegation of provider fraud has occurred, the MCO must make a referral to the medicaid fraud control unit within five business days of determination.

(4) The MCO must notify the department of social and health services office of fraud and accountability (OFA) of any cases in which the MCO believes there is a serious likelihood of enrollee fraud.

(5) The MCO is prohibited from paying for goods and services furnished by excluded persons with agency funds (see Social Security Act (SSA) Section 1903 (i)(2) of the act;

42 C.F.R. Sec. 455.104, 42 C.F.R. Sec. 455.106, and 42 C.F.R. Sec. 1001.1901(b)).

(6) See chapter 182-538B WAC and WAC 182-538A-160 for program integrity requirements for substance abuse prevention and treatment (SAPT) block grant funds.

#### NEW SECTION

**WAC 182-538A-170 Notice requirements.** The notice requirements in chapter 182-518 WAC apply to fully integrated managed care (FIMC) and behavioral health only (BHSO) enrollees in FIMC regional service areas.

#### NEW SECTION

**WAC 182-538A-180 Rights and protections.** (1) Individuals have medicaid-specific rights when applying for, eligible for, or receiving medicaid-funded health care services.

(2) All applicable statutory and constitutional rights apply to all medicaid individuals including, but not limited to:

- (a) The participant rights under WAC 388-877-0600;
- (b) Applicable necessary supplemental accommodation services including, but not limited to:
  - (i) Arranging for or providing help to complete and submit forms to the agency;
  - (ii) Helping individuals give or get the information the agency needs to decide or continue eligibility;
  - (iii) Helping to request continuing benefits;
  - (iv) Explaining the reduction in or ending of benefits;
  - (v) Assisting with requests for administrative hearings;
- and
- (vi) On request, reviewing the agency's decision to terminate, suspend, or reduce benefits.
- (c) Receiving the name, address, telephone number, and any languages offered other than English of providers in a managed care organization (MCO);
- (d) Receiving information about the structure and operation of the MCO and how health care services are delivered;
- (e) Receiving emergency care, urgent care, or crisis services;
- (f) Receiving poststabilization services after receiving emergency care, urgent care, or crisis services that result in admittance to a hospital;
- (g) Receiving age-appropriate and culturally appropriate services;
- (h) Being provided a qualified interpreter and translated material at no cost to the individual;
- (i) Receiving requested information and help in the language or format of choice;
- (j) Having available treatment options and explanation of alternatives;
- (k) Refusing any proposed treatment;
- (l) Receiving care that does not discriminate against an individual;
- (m) Being free of any sexual exploitation or harassment;
- (n) Making an advance directive that states the individual's choices and preferences for health care services under 42 C.F.R., 489 Subpart I;
- (o) Choosing a contracted health care provider;

- (p) Requesting and receiving a copy of health care records;
- (q) Being informed the cost for copying, if any;
- (r) Being free from retaliation;
- (s) Requesting and receiving policies and procedures of the MCO as they relate to health care rights;
- (t) Receiving services in an accessible location;
- (u) Receiving medically necessary services in accordance with the early and periodic screening, diagnosis, and treatment (EPSDT) program under WAC 182-534-0100, if the individual is age twenty or younger;
- (v) Being treated with dignity, privacy, and respect;
- (w) Receiving treatment options and alternatives in a manner that is appropriate to an individual's condition;
- (x) Being free from seclusion and restraint;
- (y) Receiving a second opinion from a qualified health care professional within an MCO provider network at no cost or having one arranged outside the network at no cost, as provided in 42 C.F.R. Sec. 438.206(3);
- (z) Receiving medically necessary health care services outside of the MCO if those services cannot be provided adequately and timely within the MCO;
  - (aa) Filing a grievance with the MCO if the individual is not satisfied with a service;
  - (bb) Receiving a notice of action so that an individual may appeal any decision by the MCO that:
    - (i) Denies or limits authorization of a requested service;
    - (ii) Reduces, suspends, or terminates a previously authorized service; or
    - (iii) Denies payment for a service, in whole or in part.
  - (cc) Filing an appeal if the MCO fails to provide health care services in a timely manner as defined by the state or act within the time frames in 42 C.F.R. Sec. 438.408(b); and
  - (dd) Requesting an administrative hearing if an appeal is not resolved in an individual's favor.

#### NEW SECTION

**WAC 182-538A-190 Behavioral health services only (BHSO).** This section applies to enrollees receiving behavioral health services only (BHSO) under the fully integrated managed care (FIMC) medicaid contract.

- (1) The medicaid agency requires eligible clients in FIMC regional service areas to enroll in the BHSO program.
- (2) A BHSO enrollee in an FIMC regional service area may change managed care organizations (MCOs) but may not disenroll from the BHSO program.
- (3) For BHSO enrollees, the MCO covers the behavioral health benefit included in the FIMC medicaid contract.
- (4) WAC 182-538-110 applies to BHSO enrollees in FIMC regional service areas.
- (5) The agency assigns the BHSO enrollee to an MCO available in the area where the client resides.
- (6) A BHSO enrollee may change MCOs for any reason with the change becoming effective according to the agency's managed care policy.
- (7) The agency ends enrollment in BHSO managed care when the enrollee becomes eligible for any third-party health care coverage comparable to BHSO.

## Chapter 182-538B WAC

**BEHAVIORAL HEALTH WRAPAROUND SERVICES**NEW SECTION

**WAC 182-538B-040 Behavioral health wraparound services.** (1) This chapter governs nonmedicaid funded behavioral health services provided under the medicaid agency's behavioral health services wraparound contract.

(2) Washington apple health fully integrated managed care (FIMC) behavioral health wraparound services are:

(a) Not covered by medicaid funding and are funded by state-only federal block grant services (GFS/SAPT) funding.

(b) Available only through a managed care organization (MCO) contracted to provide FIMC services or behavioral health services only (BHSO).

(3) The MCO provides contracted nonmedicaid funded behavioral health wraparound services to medicaid enrollees in an FIMC regional service area:

(a) Within available resources;

(b) Based on medical necessity; and

(c) In order of priority to populations as identified by state and federal authorities.

(4) When GFS/SAPT funding is exhausted, behavioral health wraparound services are no longer paid for and cannot be authorized regardless of medical necessity.

NEW SECTION

**WAC 182-538B-050 Definitions.** The following definitions and those found in chapters 182-500, 182-538, and 182-538A WAC apply to this chapter, unless otherwise stated.

**"Action"** means the denial or limited authorization of a service covered under the behavioral health services wraparound contract based on medical necessity.

**"Available resources"** means funds appropriated for the purpose of providing behavioral health wraparound services.

(a) This includes:

(i) Federal funds, except those provided according to Title XIX of the Social Security Act; and

(ii) State funds appropriated by the legislature for the purpose of providing services under the behavioral health administrative services organization contract.

(b) This does not include funds appropriated for the purpose of operating and administering the state psychiatric hospitals.

NEW SECTION

**WAC 182-538B-110 Grievance system.** (1) This section contains information about the managed care organization (MCO) grievance system for enrollees under the behavioral health services wraparound contract in fully integrated managed care (FIMC) regional service areas.

(a) The MCO must have a grievance system to allow enrollees to file grievances and seek review of an MCO action as defined in this chapter.

(b) The agency's hearing rules in chapter 182-526 WAC apply to administrative hearings requested by an enrollee to

review the resolution of an enrollee's appeal of an MCO action.

(c) If a conflict exists between the requirements of this chapter and other rules, the requirements of this chapter take precedence.

(d) The MCO's policies and procedures regarding the grievance system must be approved by the agency.

(e) The MCO must maintain records of grievances and appeals.

(2) MCO grievance system. The MCO grievance system includes:

(a) A grievance process for addressing complaints about any matter that is not an action, which is called a grievance;

(b) An appeals process to address an enrollee's request for review of an MCO action;

(c) Access to an independent review by an independent review organization (IRO) under RCW 48.43.535 and WAC 182-526-0200;

(d) Access to the agency's administrative hearing process for review of an MCO's resolution of an appeal; and

(e) Allowing enrollees and their authorized representatives to file grievances and appeals orally or in writing. An MCO cannot require enrollees to provide written follow up for a grievance or an appeal the MCO received orally.

(3) The MCO grievance process.

(a) An enrollee or enrollee's authorized representative may file a grievance with an MCO. A provider may not file a grievance on behalf of an enrollee without the enrollee's written consent.

(b) An enrollee does not have a right to an administrative hearing in regards to the disposition of a grievance.

(c) The MCO must acknowledge receipt of each grievance either orally or in writing within two business days.

(d) The MCO must notify enrollees of the disposition of grievances within five business days of determination.

(4) The MCO appeals process.

(a) An enrollee, the enrollee's authorized representative, or a provider acting on behalf of the enrollee with the enrollee's written consent may appeal an MCO action.

(b) An MCO treats oral inquiries about appealing an action as an appeal to establish the earliest possible filing date for the appeal. The MCO confirms the oral appeal in writing.

(c) An MCO must acknowledge receipt of each appeal to both the enrollee and the requesting provider within three calendar days. The appeal acknowledgment letter sent by the MCO serves as written confirmation of an appeal filed orally by an enrollee.

(d) An appeal of an MCO action must be filed within ninety calendar days of the date on the MCO's notice of action.

(e) The MCO will not be obligated to continue services pending the results of an appeal or subsequent administrative hearing.

(f) The MCO appeals process:

(i) Provides the enrollee a reasonable opportunity to present evidence and allegations of fact or law, both in person and in writing;

(ii) Provides the enrollee and the enrollee's authorized representative opportunity before and during the appeals process to examine the enrollee's case file, including medical

records and any other documents and records considered during the appeals process; and

(iii) Includes as parties to the appeal:

(A) The enrollee and the enrollee's authorized representative; and

(B) The legal representative of the deceased enrollee's estate.

(g) The MCO ensures that the individuals making decisions on appeals:

(i) Were not involved in any previous level of review or decision making; and

(ii) Are health care professionals who have appropriate clinical expertise in treating the enrollee's condition or disease if deciding either of the following:

(A) An appeal of an action involving medical necessity;

or

(B) An appeal that involves any clinical issues.

(h) Time frames for resolution of appeals.

(i) An MCO resolves each appeal and provides notice as expeditiously as the enrollee's health condition requires and no longer than three calendar days after the day the MCO receives the appeal.

(ii) The MCO may extend the time frame by an additional fourteen calendar days if:

(A) The enrollee requests the extension; or

(B) The MCO determines additional information is needed and delay is in the interests of the enrollee.

(i) Notice of resolution of appeal. The notice of the resolution of the appeal must:

(i) Be in writing and be sent to the enrollee and the requesting provider;

(ii) Include the results of the resolution of the appeal process and the date it was completed; and

(iii) Include information on the enrollee's right to request an agency administrative hearing and how to do so as provided in the agency hearing rules in WAC 182-526-0200, if the appeal is not resolved wholly in favor of the enrollee.

(5) Administrative hearing.

(a) Only an enrollee or enrollee's authorized representative may request an administrative hearing. A provider may not request a hearing on behalf of an enrollee.

(b) If an enrollee does not agree with the MCO's resolution of an appeal, the enrollee may file a request for an agency administrative hearing based on the rules in this section and the agency hearing rules in WAC 182-526-0200.

(c) An MCO is an independent party and responsible for its own representation in any administrative hearing, independent review, appeal to the board of appeals, and any subsequent judicial proceedings.

(d) An enrollee must exhaust the appeals process within the MCO's grievance system before requesting an administrative hearing with the agency.

(6) Effect of reversed resolutions of appeals. If an MCO, a final order as defined in chapter 182-526 WAC, or an independent review organization (IRO) reverses a decision to deny or limit services, the MCO must authorize or provide the disputed services promptly and as expeditiously as the enrollee's health condition requires.

(7) Grievance system termination. When available resources are exhausted, any appeals process, independent

review, or administrative hearing process related to a request to authorize a service will be terminated, since services cannot be authorized without funding regardless of medical necessity.

#### NEW SECTION

**WAC 182-538B-170 Notice requirements.** Chapter 182-518 WAC applies to notice requirements in fully integrated managed care (FIMC) regional service areas.

#### NEW SECTION

**WAC 182-538B-210 Program integrity requirements for substance abuse prevention and treatment block grant.** (1) The department of social and health services monitors:

(a) Substance abuse and mental health services administration (SAMHSA) block grant fund expenditures; and

(b) Substance abuse prevention and treatment (SAPT) block grant funds.

(2) A managed care organization (MCO) and its contractors work with the medicaid agency and the department to develop:

(a) Policies;

(b) Procedures;

(c) Reporting relationships; and

(d) Data collection processes and systems.

### Chapter 182-538C WAC

#### CRISIS-RELATED BEHAVIORAL HEALTH SERVICES

#### NEW SECTION

**WAC 182-538C-040 Behavioral health services.** (1) This chapter governs crisis-related and other behavioral health services provided under the medicaid agency's behavioral health administrative services organization (BH-ASO) contract.

(2) The BH-ASO contracts with the agency to provide behavioral health services within a fully integrated managed care (FIMC) regional service area.

(a) The BH-ASO provides the following services to all individuals, regardless of insurance status, income level, ability to pay, and county of residence:

(i) Mental health crisis services; and

(ii) Operation of a behavioral health ombuds.

(b) The BH-ASO may provide substance use disorder crisis services within available resources to all individuals, regardless of the individual's insurance status, income level, ability to pay, and county of residence.

(c) The BH-ASO provides the following services to individuals who are not eligible for medicaid coverage and are involuntarily or voluntarily detained under chapter 71.05 or 71.34 RCW, RCW 70.96A.140, or a less restrictive alternative (LRA) court order:

(i) Evaluation and treatment services;

(ii) Substance use disorder residential treatment services;

and

(iii) Outpatient behavioral services, under an LRA court order.

(d) To be eligible to contract with the agency, the BH-ASO must:

(i) Accept the terms and conditions of the agency's contracts; and

(ii) Be able to meet the network and quality standards established by the agency.

(e) Services related to the administration of chapters 71.05 and 71.34 RCW and RCW 70.96A.140.

(3) The BH-ASO may provide contracted noncrisis behavioral health services to individuals in an FIMC regional service area:

(a) Within available resources;

(b) Based on medical necessity; and

(c) In order of priority to populations as identified by state and federal authorities.

(4) Within an FIMC regional service area, the BH-ASO is a subcontractor with all FIMC managed care organizations (MCOs) to provide crisis services for medicaid enrollees and the administration of involuntary treatment acts under RCW 70.96A.140 or chapter 71.05 or 71.34 RCW.

(5) For medicaid funded services subcontracted for by FIMC managed care organizations (MCOs) to the BH-ASO:

(a) Grievances and appeals must be filed with the FIMC MCO; and

(b) The grievance system rules in chapter 182-538 WAC apply instead of the grievance system rules in this chapter.

#### NEW SECTION

**WAC 182-538C-050 Definitions.** The definitions and abbreviations in this section and those found in chapter 182-500 WAC apply to this chapter. If conflict exists, this chapter takes precedence.

**"Action"** means the denial or limited authorization of a service covered under the behavioral health administrative services organization (BH-ASO) contract based on medical necessity.

**"Available resources"** means funds appropriated for the purpose of providing community behavioral health programs.

(a) This includes:

(i) Federal funds, except those provided according to Title XIX of the Social Security Act; and

(ii) State funds appropriated by the legislature for the purpose of providing services under the BH-ASO contract.

(b) This does not include funds appropriated for the purpose of operating and administering the state psychiatric hospitals.

**"Behavioral health"** means mental health and substance use disorder conditions and related benefits.

**"Behavioral health administrative services organization (BH-ASO)"** means an entity selected by the medicaid agency to administer behavioral health programs, including crisis services for individuals in a fully integrated managed care regional service area. The BH-ASO administers crisis services for all individuals in its defined regional service area, regardless of an individual's ability to pay.

**"Complaint"** - See "grievance."

**"Crisis"** means an actual or perceived urgent or emergent situation that occurs when:

(a) An individual's stability or functioning is disrupted; and

(b) There is an immediate need to resolve the situation to prevent:

(i) A serious deterioration in the individual's mental or physical health; or

(ii) The need for referral to a significantly higher level of care.

**"Fully integrated managed care (FIMC)"** means the program under which a managed care organization provides:

(a) Physical health services funded by medicaid; and

(b) Behavioral health services funded by other available resources as defined in this chapter.

**"Grievance"** means an expression of dissatisfaction made by or on behalf of an individual and referred to a behavioral health administrative services organization (BH-ASO) about any matter other than an action.

**"Less restrictive alternative (LRA)"** means court-ordered outpatient treatment in a setting less restrictive than total confinement.

**"Noncrisis services"** means services funded by non-medicaid funding sources that are provided to individuals who are not enrolled in Washington apple health or otherwise eligible for medicaid. These services may be provided at the discretion of the behavioral health administrative services organization (BH-ASO) within available resources, such as:

(a) Crisis stabilization;

(b) Outpatient mental health or substance use disorder services; and

(c) Withdrawal management.

**"Patient days of care"** means all voluntary patients and involuntarily committed patients under chapter 71.05 RCW, regardless of where in the state hospital the patients reside. Patients who are committed to the state hospital under chapter 10.77 RCW are not included in the patient days of care. Patients who are committed under RCW 10.77.088 by municipal or district courts after failed competency restoration and dismissal of misdemeanor charges are not counted in the patient days of care until a petition for ninety days of civil commitment under chapter 71.05 RCW has been filed in court. Patients who are committed under RCW 10.77.086 by a superior court after failed competency restoration and dismissal of felony charges are not counted in the patient days of care until the patient is civilly committed under chapter 71.05 RCW.

**"Regional service area"** means a single county or multi-county grouping formed for the purpose of health care purchasing and designated by the agency and the department of social and health services.

#### NEW SECTION

**WAC 182-538C-070 Payment.** (1) For crisis services, the behavioral health administrative services organization (BH-ASO) must determine whether the individual receiving the services is eligible for Washington apple health or if the individual has any other form of insurance coverage.

(2) For individuals receiving crisis services who do not have other insurance coverage, the BH-ASO is responsible for the cost of those services.

(3) The BH-ASO administers and pays for the evaluation of involuntary detention or involuntary treatment under chapters 71.05 and 71.34 RCW and RCW 70.96A.140.

(4) The BH-ASO pays a reimbursement for each state hospital patient day of care that exceeds the BH-ASO daily allocation of state hospital beds based on a quarterly calculation of the bed usage by the BH-ASO.

(a) The medicaid agency bills the BH-ASO quarterly for state hospital patient days of care exceeding the BH-ASO daily allocation of state hospital beds and the established rate of reimbursement.

(b) The BH-ASO using fewer patient days of care than its quarterly allocation of state hospital beds will receive a portion of the reimbursement collected proportional to its share of the total number of patient days of care that were not used at the appropriate state hospital.

#### NEW SECTION

**WAC 182-538C-110 Grievance system for behavioral health administrative services organizations (BH-ASOs).** (1) This section applies to the behavioral health administrative service organization (BH-ASO) grievance system for individuals within fully integrated managed care (FIMC) regional service areas.

(a) The BH-ASO must have a grievance system to allow an individual to file a grievance and seek review of a BH-ASO action as defined in this chapter.

(b) The agency's hearing rules in chapter 182-526 WAC apply to administrative hearings requested by an individual to review resolution of an appeal of a BH-ASO action.

(c) If a conflict exists between the requirements of this chapter and other rules, the requirements of this chapter take precedence.

(d) The BH-ASO must maintain records of grievances and appeals.

(2) The BH-ASO grievance system. The BH-ASO grievance system includes:

(a) A process for addressing a complaint about any matter that is not an action, which is called a grievance;

(b) An appeals process to address an individual's request for review of a BH-ASO action as defined in this chapter; and

(c) Access to the agency's administrative hearing process for an individual to seek review of a BH-ASO's resolution of an appeal.

(3) The BH-ASO grievance process.

(a) An individual or an individual's authorized representative may file a complaint with a BH-ASO. A provider may not file a complaint on behalf of an individual without written consent.

(b) There is no right to an administrative hearing in regards to the disposition of a complaint.

(c) The BH-ASO must notify individuals of the disposition of grievances within five business days of determination.

(4) The BH-ASO appeals process.

(a) An individual, the individual's authorized representative, or the provider acting with the individual's written consent may appeal a BH-ASO action.

(b) A BH-ASO must treat oral inquiries about appealing an action as an appeal to establish the earliest possible filing date for the appeal. The oral appeal must be confirmed in writing by the BH-ASO.

(c) The BH-ASO must acknowledge receipt of each appeal to both the individual and the provider requesting the service within three calendar days. The appeal acknowledgment letter sent by the BH-ASO serves as written confirmation of an appeal filed orally by an individual.

(d) An appeal of a BH-ASO action must be filed within ninety calendar days of the date of the notice of action.

(e) The BH-ASO will not be obligated to continue services pending the results of an appeal or subsequent administrative hearing.

(f) The BH-ASO appeals process:

(i) Provides the individual a reasonable opportunity to present evidence and allegations of fact or law, both in person and in writing;

(ii) Provides the individual and the individual's authorized representative opportunity before and during the appeals process to examine the individual's case file, including medical records and any other documents and records considered during the appeals process; and

(iii) Includes as parties to the appeal:

(A) The individual;

(B) The individual's legal representative; or

(C) The authorized representative of the deceased individual's estate.

(g) The BH-ASO ensures the individuals making decisions on appeals:

(i) Were not involved in any previous level of review or decision making; and

(ii) Are health care professionals with appropriate clinical expertise in treating the individual's condition or disease if deciding any of the following:

(A) An appeal of an action; or

(B) A grievance or appeal that involves any clinical issues.

(h) Time frames for resolution of appeals.

(i) A BH-ASO resolves each appeal and provides notice as expeditiously as the individual's health condition requires and no longer than three calendar days after the BH-ASO receives the appeal.

(ii) The BH-ASO may extend the time frame by fourteen additional calendar days if:

(A) The individual requests the extension; or

(B) The BH-ASO determines additional information is needed and the delay is in the interests of the individual.

(i) Notice of resolution of appeal. The notice of the resolution of the appeal must:

(i) Be in writing and be sent to the individual and the provider requesting the services;

(ii) Include the results of the resolution process and the date it was completed; and

(iii) Include notice of the right to request an administrative hearing and how to do so as provided in the agency hear-

ing rules in chapter 182-526 WAC, if the appeal is not resolved wholly in favor of the individual.

(5) Administrative hearings.

(a) Only an individual or an individual's authorized representative may request an administrative hearing. A provider may not request a hearing on behalf of an individual.

(b) If an individual does not agree with the BH-ASO's resolution of an appeal, the individual may file a request for an agency administrative hearing based on this section and the agency hearing rules in chapter 182-526 WAC.

(c) The BH-ASO is an independent party and responsible for its own representation in any administrative hearing, appeal to the board of appeals, and any subsequent judicial proceedings.

(d) An individual must exhaust the appeals process within the BH-ASO's grievance system before requesting an administrative hearing with the agency.

(6) Effect of reversed resolutions of appeals. If the BH-ASO's decision not to provide services is reversed by the BH-ASO on appeal or through a final order from the administrative hearing process, the BH-ASO must authorize or provide the disputed services promptly and as expeditiously as the individual's health condition requires.

(7) Grievance system termination. When available resources are exhausted, any appeals or administrative hearing process related to a request for authorization of a noncrisis service will be terminated, since noncrisis services cannot be authorized without funding regardless of medical necessity.

#### NEW SECTION

**WAC 182-538C-220 Covered crisis mental health services.** (1) Crisis mental health services are intended to stabilize an individual in crisis to:

(a) Prevent further deterioration;

(b) Provide immediate treatment and intervention in a location best suited to meet the needs of the individual; and

(c) Provide treatment services in the least restrictive environment available.

(2) Crisis mental health services include:

(a) Crisis telephone support under WAC 388-877A-0230;

(b) Crisis outreach services under WAC 388-877A-0240;

(c) Crisis stabilization services under WAC 388-877A-0260;

(d) Crisis peer support services under WAC 388-877A-0270; and

(e) Emergency involuntary detention services under WAC 388-877A-0280.

(3) A facility providing any crisis mental health service to an individual must:

(a) Be licensed by the department of social and health services as a behavioral health agency;

(b) Be certified by the department of social and health services to provide crisis mental health services;

(c) Have policies and procedures to support and implement the:

(i) Program-specific requirements in WAC 388-877A-0230 through 388-877A-0280 for each crisis mental health service provided; and

(ii) Department of corrections access to confidential mental health information requirements in WAC 388-865-0600 through 388-865-0640.

(4) A BH-ASO or its subcontractor providing crisis mental health services only is not required to meet the initial assessment, individual service plan, and clinical record requirements in WAC 388-877-0610, 388-877-0620, and 388-877-0640.

(5) A BH-ASO or its subcontractor must ensure crisis mental health services:

(a) Are, with the exception of stabilization services, available twenty-four hours a day, seven days a week;

(b) Include family members, significant others, and other relevant treatment providers, as necessary, to provide support to the individual in crisis; and

(c) Are provided in a setting that is safe for the individual and staff members of the BH-ASO and its subcontractor.

#### NEW SECTION

**WAC 182-538C-230 Covered substance use disorder detoxification services.** (1) Chemical dependency detoxification services are provided to an individual to assist in the process of withdrawal from psychoactive substances in a safe and effective manner.

(2) A facility providing detoxification services to an individual must:

(a) Be a facility licensed by the department of health under one of the following:

(i) Chapter 246-320 WAC;

(ii) Chapter 246-322 WAC;

(iii) Chapter 246-324 WAC; or

(iv) Chapter 246-337 WAC.

(b) Be licensed by the department of social and health services as a behavioral health agency;

(c) Meet the applicable behavioral health agency licensure, certification, administration, personnel, clinical requirements, and behavioral health services administrative requirements; and

(d) Have policies and procedures to support and implement the applicable requirements in WAC 388-877B-0110 through 388-877B-0130.

(3) A BH-ASO or its subcontractor agency must:

(a) Provide counseling to each individual that addresses the individual's:

(i) Chemical dependency and motivation; and

(ii) Continuing care needs and need for referral to other services.

(b) Maintain a list of resources and referral options that can be used by staff members to refer an individual to appropriate services.

(c) Post any rules and responsibilities for individuals receiving treatment, including information on potential use of increased motivation interventions or sanctions, in a public place in the facility.

(d) Provide tuberculosis screenings to individuals for the prevention and control of tuberculosis.

(e) Provide HIV/AIDS information and include a brief risk intervention and referral as indicated.

**WSR 16-01-176**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Long-Term Support Administration)  
[Filed December 22, 2015, 1:29 p.m.]

Continuance of WSR 15-10-092.

Preproposal statement of inquiry was filed as WSR 15-01-180.

Title of Rule and Other Identifying Information: The department is repealing the following sections in chapter 388-76 WAC, Adult family home minimum licensing requirements: WAC 388-76-11000 Resident protection program—Investigation of reports, 388-76-11004 Resident protection program—Individual defined, 388-76-11005 Resident protection program—Notice to individual of preliminary finding, 388-76-11010 Resident protection program—Notice to others of preliminary finding, 388-76-11015 Resident protection program—Disputing a preliminary finding, 388-76-11020 Resident protection program—Hearing procedures to dispute preliminary finding, WAC 388-76-11025 Resident protection program—Finalizing a preliminary finding, 388-76-11030 Resident protection program—Appeal of the initial order or finding, 388-76-11035 Resident protection program—Reporting final findings, and 388-76-11040 Resident protection program—Disclosure of investigative and finding information.

The department is amending WAC 388-76-10000 Definitions, 388-76-10685 Bedrooms, 388-76-10655 Physical restraints, and 388-76-10660 Chemical restraints.

The department is creating WAC 388-76-10463 Medication—Psychopharmacologic.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>), on January 26, 2016, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 27, 2016.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax (360) 664-6185, by 5:00 p.m., January 26, 2016.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by January 12, 2016, phone (360) 664-6092, TTY (360) 664-6178, or e-mail [KildaJA@dshs.wa.gov](mailto:KildaJA@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Resident client protection program (RCPP) has been moved into adult protective services and the rules will be administered under chapters 388-71 and 388-106 WAC. References to RCPP would thus be incorrect and will be repealed from chapter

388-76 WAC. Residential care services is coordinating to eliminate these WAC sections at the same time home and community services is incorporating them into their WAC. The CR-102 for both divisions will be filed at the same time. Repealing the rules is beneficial to or supported by the regulated entities to prevent duplication of licensing rules.

Also, the department is amending rules to comply with Center for Medicare and Medicaid Services (CMS) new requirements for home and community-based services regulations (42 C.F.R. 441.302). As a part of the state's transition plan to comply with the new rules, CMS has requested WAC be changed to ensure resident rights are being addressed.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: Chapter 70.128 RCW.

Statute Being Implemented: Chapter 70.128 RCW.

Rule is necessary because of federal law, 42 C.F.R. 441.302.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Christi Pederson, P.O. Box 45600, Olympia, WA 98513, (360) 725-2327; Implementation: Candace Goehring, P.O. Box 45600, Olympia, WA 98513, (360) 725-2401; and Enforcement: Bett Schlemmer, P.O. Box 45600, Olympia, WA 98513, (360) 725-2404.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 (3), a small business economic impact statement is not required for rules adopting or incorporating, by reference without material change, Washington state statutes or federal statutes or regulations.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b)(iii), a cost-benefit analysis is not required for rules adopting or incorporating, by reference without material change, Washington state statutes or federal statutes or regulations.

December 18, 2015  
Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-03-037, filed 1/12/15, effective 2/12/15)

**WAC 388-76-10000 Definitions. "Abandonment"** means action or inaction by a person or entity with a duty of care for a frail elder or vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

**"Abuse"** means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult:

(1) In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain or mental anguish; and

(2) Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) **"Sexual abuse"** means any form of nonconsensual sexual contact, including but not limited to unwanted or inap-



appropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual contact may include interactions that do not involve touching, including but not limited to sending a resident sexually explicit messages, or cuing or encouraging a resident to perform sexual acts. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not consensual.

(b) **"Physical abuse"** means a willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or chemical or physical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.

(c) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(d) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

**"Adult family home"** means:

(1) A residential home in which a person or an entity is licensed to provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to a licensed operator, resident manager, or caregiver, who resides in the home.

(2) As used in this chapter, the term "entity" includes corporations, partnerships and limited liability companies, and the term "adult family home" includes the person or entity that is licensed to operate an adult family home.

**"Affiliated with an applicant"** means any person listed on the application as a partner, officer, director, resident manager, or majority owner of the applying entity, or is the spouse or domestic partner of the applicant.

**"Applicant"** means an individual, partnership, corporation, or other entity seeking a license to operate an adult family home.

**"Capacity"** means the maximum number of persons in need of personal or special care who are permitted to reside in an adult family home at a given time. The capacity includes:

(1) The number of related children or adults in the home who receive personal or special care and services; plus

(2) The number of residents the adult family home may admit and retain - The resident capacity. The capacity number listed on the license is the "resident capacity."

**"Caregiver"** means any person eighteen years of age or older responsible for providing direct personal or special care to a resident and who is not the provider, entity representative, a student or volunteer.

**"Dementia"** is defined as a condition documented through the assessment process required by WAC 388-76-10335.

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

**"Department case manager"** means the department authorized staff person or designee assigned to negotiate, monitor, and facilitate a care and services plan for residents receiving services paid for by the department.

**"Developmental disability"** means:

(1) A person who meets the eligibility criteria defined by the division of developmental disabilities under WAC 388-823-0040; or

(2) A person with a severe, chronic disability which is attributable to cerebral palsy or epilepsy, or any other condition, other than mental illness, found to be closely related to mental retardation which results in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation, and requires treatment or services similar to those required for these persons (i.e., autism); and

(a) The condition was manifested before the person reached age eighteen;

(b) The condition is likely to continue indefinitely; and

(c) The condition results in substantial functional limitations in three or more of the following areas of major life activities:

(i) Self-care;

(ii) Understanding and use of language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction; and

(vi) Capacity for independent living.

**"Direct supervision"** means oversight by a person who has demonstrated competency in the basic training and specialty training if required, or who has been exempted from the basic training requirements and is:

(1) On the premises; and

(2) Quickly and easily available to the caregiver.

**"Domestic partners"** means two adults who meet the requirements for a valid state registered domestic partnership as established by RCW 26.60.030 and who have been issued a certificate of state registered domestic partnership.

**"Financial exploitation"** means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.020(6).

**"Financial solvency"** means that the applicant or provider is able to meet debts or financial obligations with some money to spare.

**"Entity representative"** means the individual designated by a provider who is or will be responsible for the daily operation of the adult family home and who meets the requirements of this chapter and chapter 388-112 WAC.

**"Home"** means adult family home.

**"Imminent danger"** or **"immediate threat"** means serious physical harm to or death of a resident has occurred,

or there is a serious threat to the resident's life, health or safety.

**"Indirect supervision"** means oversight by a person who:

- (1) Has demonstrated competency in the basic training and specialty training if required; or
- (2) Has been exempted from the basic training requirements; and
- (3) Is quickly and easily available to the care giver, but not necessarily on-site.

**"Inspection"** means a review by department personnel to determine the health, safety, and well-being of residents, and the adult family home's compliance with this chapter and chapters 70.128, 70.129, 74.34 RCW, and other applicable rules and regulations. The department's review may include an on-site visit.

**"Management agreement"** means a written, executed agreement between the adult family home and another individual or entity regarding the provision of certain services on behalf of the adult family home.

**"Mandated reporter"** means an employee of the department, law enforcement, officer, social worker, professional school personnel, individual provider, an employee of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW. For the purpose of the definition of a mandated reporter, **"Facility"** means a residence licensed or required to be licensed under chapter 18.20 RCW (Assisted living facilities), chapter 18.51 RCW (Nursing homes), chapter 70.128 RCW (Adult family homes), chapter 72.36 RCW (Soldiers' homes), chapter 71A.20 RCW (Residential habilitation centers), or any other facility licensed by the department.

**"Medical device"** as used in this chapter, means any piece of medical equipment used to treat a resident's assessed need.

- (1) A medical device is not always a restraint and should not be used as a restraint;
- (2) Some medical devices have considerable safety risks associated with use; and
- (3) Examples of medical devices with known safety risks when used are transfer poles, Posey or lap belts, and side rails.

**"Medication administration"** means giving resident medications by a person legally authorized to do so, such as a physician, pharmacist or nurse.

**"Medication organizer"** is a container with separate compartments for storing oral medications organized in daily doses.

**"Mental illness"** is defined as an Axis I or II diagnosed mental illness as outlined in volume IV of the Diagnostic and Statistical Manual of Mental Disorders (a copy is available for review through the aging and disability services administration).

**"Minimal"** means violations that result in little or no negative outcome and/or little or no potential harm for a resident.

**"Moderate"** means violations that result in negative outcome and actual or potential harm for a resident.

**"Multiple facility provider"** means a provider who is licensed to operate more than one adult family home.

**"Neglect"** means:

- (1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or
- (2) An act or omission by a person or entity with duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

**"Nurse delegation"** means a registered nurse transfers the performance of selected nursing tasks to competent nursing assistants in selected situations. The registered nurse delegating the task retains the responsibility and accountability for the nursing care of the resident.

**"Over-the-counter medication"** is any medication that can be purchased without a prescriptive order, including but not limited to vitamin, mineral, or herbal preparations.

**"Permanent restraining order"** means a restraining order and/or order of protection issued either following a hearing, or by stipulation of the parties. A "permanent" order may be in force for a specific time period (for example, one year), after which it expires.

**"Personal care services"** means both physical assistance and/or prompting and supervising the performance of direct personal care tasks as determined by the resident's needs and does not include assistance with tasks performed by a licensed health professional.

**"Physical restraint"** means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, is used for discipline or convenience, and is not required to treat the resident's medical symptoms.

**"Placement agency"** is an "elder or vulnerable adult referral agency" as defined in chapter 18.330 RCW and means a business or person who receives a fee from or on behalf of a vulnerable adult seeking a referral to care services or supportive housing or who receives a fee from a care services provider or supportive housing provider because of any referral provided to or on behalf of a vulnerable adult.

**"Practitioner"** includes a physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant licensed in the state of Washington.

**"Prescribed medication"** refers to any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

**"Provider"** means:

- (1) Any person who is licensed to operate an adult family home and meets the requirements of this chapter; or
- (2) Any corporation, partnership, or limited liability company that is licensed under this chapter to operate an adult family home and meets the requirements of this chapter.

**"Psychopharmacologic medications"** means the class of prescription medications, which includes but is not limited

to antipsychotics, antianxiety medications, and antidepressants, capable of affecting the mind, emotions, and behavior.

**"Recurring"** or **"repeated"** means that the department has cited the adult family home for a violation of applicable licensing laws or rules and the circumstances of (1) and (2) of this definition are present:

(1) The department previously imposed an enforcement remedy for a violation of the same section of law or rule for substantially the same problem following any type of inspection within the preceding thirty-six months; or

(2) The department previously cited a violation under the same section of law or rule for substantially the same problem following any type of inspection on two occasions within the preceding thirty-six months.

(3) If the previous violation in (1) or (2) of this definition was pursuant to a law or rule that has changed at the time of the new violation, a citation to the equivalent current law or rule section is sufficient.

**"Resident"** means any adult unrelated to the provider who lives in the adult family home and who is in need of care. Except as specified elsewhere in this chapter, for decision-making purposes, the term "resident" includes the resident's surrogate decision maker acting under state law.

**"Resident manager"** means a person employed or designated by the provider to manage the adult family home and who meets the requirements of this chapter.

**"Serious"** means violations that result in one or more negative outcomes and significant actual harm to residents that does not constitute imminent danger; and/or, there is reasonable predictability of recurring actions, practices, situations or incidents with potential for causing significant harm to a resident.

**"Severity"** means the seriousness of a violation as determined by actual or potential negative outcomes for residents and subsequent actual or potential for harm. Outcomes include any negative effect on the resident's physical, mental or psychosocial well being (i.e., safety, quality of life, quality of care).

**"Significant change"** means:

(1) A lasting change, decline or improvement in the resident's baseline physical, mental or psychosocial status;

(2) The change is significant enough so the current assessment and/or negotiated care plan do not reflect the resident's current status; and

(3) A new assessment may be needed when the resident's condition does not return to baseline within a two week period of time.

**"Special care"** means care beyond personal care services as defined in this section.

**"Staff"** means any person who:

(1) Is employed or used by an adult family home, directly or by contract, to provide care and services to any resident.

(2) Staff must meet all of the requirements in this chapter and chapter 388-112 WAC.

**"Temporary restraining order"** means restraining order or order of protection that expired without a hearing, was dismissed following an initial hearing, or was dismissed by stipulation of the parties before an initial hearing.

**"Uncorrected"** means the department has cited a violation of WAC or RCW following an inspection and the violation remains uncorrected at the time of a subsequent inspection for the specific purpose of verifying whether such violation has been corrected.

**"Unsupervised"** means not in the presence of:

(1) Another employee or volunteer from the same business or organization; or

(2) Any relative or guardian of any of the children or individuals with developmental disabilities or vulnerable adults to which the employee, student or volunteer has access during the course of his or her employment or involvement with the business or organization.

**"Usable floor space"** means resident bedroom floor space exclusive of:

(1) Toilet rooms;

(2) Closets;

(3) Lockers;

(4) Wardrobes;

(5) Vestibules; and

(6) The space required for the door to swing if the bedroom door opens into the resident bedroom.

**"Water hazard"** means any body of water over twenty-four inches in depth that can be accessed by a resident, and includes but not limited to:

(1) In-ground, above-ground, and on-ground pools;

(2) Hot tubs, spas;

(3) Fixed-in-place wading pools;

(4) Decorative water features;

(5) Ponds; or

(6) Natural bodies of water such as streams, lakes, rivers, and oceans.

**"Willful"** means the deliberate or nonaccidental action or inaction by an individual that he/she knew or reasonably should have known could cause a negative outcome, including harm, injury, pain or anguish.

**"Vulnerable adult"** includes a person:

(1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself;

(2) Found incapacitated under chapter 11.88 RCW;

(3) Who has a developmental disability as defined under RCW 71A.10.020;

(4) Admitted to any facility;

(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW;

(6) Receiving services from an individual provider; or

(7) With a functional disability who lives in his or her own home, who is directing and supervising a paid personal aide to perform a health care task as authorized by RCW 74.39.050.

## NEW SECTION

**WAC 388-76-10463 Medication—Psychopharmacologic** For residents who are given psychopharmacologic medications, the adult family home must ensure:

(1) The resident assessment indicates that a psychopharmacologic medication is necessary to treat the resident's medical symptoms; and

(2) The drug is prescribed by a physician or health care professional with prescriptive authority; and

(3) The resident's negotiated care plan includes strategies and modifications of the environment and staff behavior to address the symptoms for which the medication is prescribed; and

(4) Changes in medication only occur when the prescriber decides it is medically necessary; and

(5) The resident has given informed consent for its use.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

**WAC 388-76-10655 Physical restraints.** The adult family home must ensure:

(1) Each resident's right to be free from physical restraints used for discipline or convenience;

(2) ~~((Less))~~ Prior to the use of a physical restraint, less restrictive alternatives have been tried and are documented in the resident's negotiated care plan; and

(3) That physical restraints used have been assessed as necessary to treat the resident's medical symptoms and addressed on the resident's negotiated care plan; and

(4) That if physical restraints are used to treat a resident's medical symptoms that the restraints are applied and immediately supervised on-site by a:

(a) Licensed registered nurse;

(b) Licensed practical nurse; or

(c) Licensed physician; and

(d) For the purposes of this subsection, immediate supervised means that the licensed person is in the home and quickly and easily available.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

**WAC 388-76-10660 Chemical restraints.** (1) For the purposes of this section "chemical restraint" means a ~~((psycho))~~ drug that is ~~((used))~~ given for discipline or convenience and not required to treat the resident's medical symptoms.

(2) The adult family home must ensure that each resident is free from chemical restraints~~((:~~

~~((a))~~ Each resident is free from chemical restraints used for discipline or convenience;

~~((b))~~ The resident assessment indicates that a chemical restraint is necessary to treat the resident's medical symptoms;

~~((c))~~ In situations when a psychopharmacological drug is used for a resident, the home must ensure that the:

~~((i))~~ Drug is prescribed by a physician or health care professional with prescriptive authority;

~~((ii))~~ Resident's negotiated care plan includes strategies and modifications of the environment and staff behavior to address the symptoms for which the medication is prescribed;

~~((iii))~~ Changes in medication only occur when the prescriber decides it is medically necessary; and

~~((iv))~~ Resident has given informed consent for its use).

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

**WAC 388-76-10685 Bedrooms.** The adult family home must:

(1) Ensure each resident's bedroom is an outside room, which allows entrance of natural light;

(2) Ensure window and door screens:

(a) Do not hinder emergency escape; and

(b) Prevent entrance of flies and other insects.

(3) Ensure each resident, including those using mobility aids such as wheelchairs and walkers has direct, unrestricted, and free access from the bedroom through doors, hallways and corridors to common use areas and other rooms used for care and services including bathrooms;

(4) Make separate bedrooms available for each sex;

(5) Make reasonable efforts to accommodate residents wanting to share the room;

(6) Provide each bedroom with a minimum usable floor space as required in WAC 388-76-10690.

(7) Give each resident the opportunity to have a lock on their door if they chose to unless having a locked door would be unsafe for the resident and this is documented in the resident's negotiated careplan.

~~((8))~~ (8) Ensure each bedroom has a closet or a wardrobe, armoire or reasonable facsimile thereof. Neither the closet nor wardrobe/armoire floor space will be considered a part of the room's usable square footage. The home must not remove a closet in order to provide additional floor space.

~~((9))~~ (9) Ensure no more than two residents to a bedroom;

~~((10))~~ (10) Unless the resident chooses to provide their own furniture and bedding, the home must provide each resident a bed thirty-six inches or more wide with:

(a) A clean, comfortable mattress;

(b) A waterproof cover for use when needed or requested by the resident;

(c) Clean sheets and pillow cases;

(d) Adequate clean blankets to meet the needs of each resident; and

(e) Clean pillows.

~~((11))~~ (11) Not use the upper bunk of double-deck beds for a resident's bed;

~~((12))~~ (12) Provide a call bell or intercom system if the provider, entity representative, resident manager or caregiver bedroom is not within hearing distance of each resident bedroom and the system is required by the department;

~~((13))~~ (13) Ensure that members of the household, other than residents, do not share bedrooms with residents; and

~~((14))~~ (14) Ensure a resident does not share a bedroom with a person under eighteen years of age, unless the person is the resident's own child.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-76-11000 Resident protection program—Investigation of reports.

- WAC 388-76-11004 Resident protection program—Individual defined.
- WAC 388-76-11005 Resident protection program—Notice to individual of preliminary finding.
- WAC 388-76-11010 Resident protection program—Notice to others of preliminary finding.
- WAC 388-76-11015 Resident protection program—Disputing a preliminary finding.
- WAC 388-76-11020 Resident protection program—Hearing procedures to dispute preliminary finding.
- WAC 388-76-11025 Resident protection program—Finalizing a preliminary finding.
- WAC 388-76-11030 Resident protection program—Appeal of the initial order or finding.
- WAC 388-76-11035 Resident protection program—Reporting final findings.
- WAC 388-76-11040 Resident protection program—Disclosure of investigative and finding information.

Reasons Supporting Proposal: To provide readers with current and accurate information.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1408; Implementation and Enforcement: Ann Myers, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1345.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed filing does not create a disproportionate impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

December 22, 2015

Wendy Barcus

Rules Coordinator

**WSR 16-01-178**  
**PROPOSED RULES**  
**HEALTH CARE AUTHORITY**  
 (Washington Apple Health)  
 [Filed December 22, 2015, 1:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-09-051.

Title of Rule and Other Identifying Information: WAC 182-500-0070 Medical assistance definition—M.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at [http://www.hca.wa.gov/documents/directions\\_to\\_csp.pdf](http://www.hca.wa.gov/documents/directions_to_csp.pdf) or directions can be obtained by calling (360) 725-1000), on January 26, 2016, at 10:00 a.m.

Date of Intended Adoption: Not sooner than January 27, 2016.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax (360) 586-9727, by 5:00 p.m. on January 26, 2016.

Assistance for Persons with Disabilities: Contact Amber Lougheed by January 22, 2016, e-mail [amber.lougheed@hca.wa.gov](mailto:amber.lougheed@hca.wa.gov), (360) 725-1349, or TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is striking the definition for "Medical assistance administration," adding definitions for "Medicaid agency" and medically needy income level, and making other changes to improve clarity.

AMENDATORY SECTION (Amending WSR 14-01-021, filed 12/9/13, effective 1/9/14)

**WAC 182-500-0070 Medical assistance definitions—**  
**M. "Medicaid"** ((is)) means the federal medical aid program under Title XIX of the Social Security Act ((under which) that provides health care ((is provided)) to eligible persons.

**"Medicaid agency"** means the state agency that administers the medicaid program. The Washington state health care authority (HCA) is the state's medicaid agency.

**"Medical assistance"** is the term the agency and its predecessors ((used prior to the implementation of the Affordable Care Act in Washington state)) use to mean all federal ((and/or)) or state-funded health care programs, or both, administered by the agency or its ((designee that are now known)) designees. Medical assistance programs are referred to as Washington apple health (WAH).

~~((**"Medical assistance administration (MAA)"** is the former organization within the department of social and health services authorized to administer the federally funded and/or state-funded health care programs that are now administered by the agency, formerly the medicaid purchasing administration (MPA), of the health and recovery services administration (HRSA).))~~

**"Medical care services (MCS)"** means the limited scope health care program financed by state funds for clients ((who meet the incapacity criteria defined in chapter 182-508 WAC or)) who are eligible for the ((Alcohol and Drug Addiction Treatment and Support Act (ADATSA) program)) aged, blind, or disabled (ABD) cash assistance or the housing and essential needs (HEN) referral program and not eligible for other WAH programs due to their citizenship or immigration status.

**"Medical consultant"** means a physician employed by or contracted ((by)) with the agency or the agency's designee.

**"Medical facility"** means a medical institution or clinic that provides health care services.

**"Medical institution"** See "institution" in WAC 182-500-0050.

**"Medical services card" or "services card"** means the card (~~issued by~~) the agency issues at the initial approval of a person's (~~Washington apple health (-)~~) WAH(()) benefit. The card identifies the person's name and medical services identification number(()) but is not proof of WAH eligibility (~~for WAH~~). The card may be replaced upon request if it is lost or stolen, but is not required to access health care through WAH.

**"Medically necessary"** is a term for describing requested service which is reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent worsening of conditions in the client that endanger life, or cause suffering or pain, or result in an illness or infirmity, or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction. There is no other equally effective, more conservative or substantially less costly course of treatment available or suitable for the client requesting the service. For the purposes of this section, "course of treatment" may include mere observation or, where appropriate, no medical treatment at all.

**"Medically needy (MN)" or "medically needy program (MNP)"** (~~is~~) means the state(-) and federally funded health care program available to (~~specific groups of persons~~) people who would be eligible as categorically needy (CN), except their monthly income is above the CN standard. Some long-term care clients with income (~~and/or~~) or resources above the CN standard may also qualify for MN.

**"Medically needy income level (MNIL)"** means the standard the agency uses to determine eligibility under the medically needy program. See WAC 182-519-0050.

**"Medicare"** (~~is the federal government health insurance program for certain aged or disabled persons under Titles II and XVIII of the Social Security Act. Medicare has four parts:~~

(1) **"Part A"** — ~~Covers medicare inpatient hospital services, post hospital skilled nursing facility care, home health services, and hospice care.~~

(2) **"Part B"** — ~~The supplementary medical insurance benefit (SMIB) that covers medicare doctors' services, outpatient hospital care, outpatient physical therapy and speech pathology services, home health care, and other health services and supplies not covered under Part A of medicare.~~

(3) **"Part C"** — ~~Covers medicare benefits for clients enrolled in a medicare advantage plan.~~

(4) **"Part D"** — ~~The medicare prescription drug insurance benefit.)~~ means the medical aid program under Titles II and XVIII of the Social Security Act.

**"Medicare assignment"** means the process by which a provider agrees to provide services to a medicare (~~beneficiary~~) client and accept medicare's payment for the services.

**"Medicare cost-sharing"** means out-of-pocket medical expenses related to services provided by medicare. For (~~medical assistance~~) WAH clients (~~who are~~) enrolled in medicare, cost-sharing may include Part A and Part B premiums, co-insurance, deductibles, and copayments for medicare

services. See chapter 182-517 WAC (~~for more information~~).

**"Minimum essential coverage"** means coverage (~~defined in Section 5000A(f) of Subtitle D of the Internal Revenue Code of 1986, as added by Section 1401 of the Affordable Care Act~~) under 26 U.S.C. Sec. 5000A(f).

**"Modified adjusted gross income (MAGI)"** means the adjusted gross income (~~(f)~~) as determined by the Internal Revenue Service under the Internal Revenue Code of 1986 (IRC)(()) increased by:

(1) Any amount excluded from gross income under (~~Section 911 of the IRC~~) 26 U.S.C. Sec. 911;

(2) Any amount of interest received or accrued by the (~~taxpayer~~) client during the taxable year which is exempt from tax; and

(3) Any amount of Title II Social Security income or Tier 1 railroad retirement (~~income which is~~) benefits excluded from gross income under (~~Section 86 of the IRC. See WAC 182-509-0300 through 182-509-0375 for additional rules regarding MAGI~~) 26 U.S.C. Sec. 86. See chapter 182-509 WAC.

## WSR 16-01-179

### PROPOSED RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed December 22, 2015, 1:49 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-19-135.

Title of Rule and Other Identifying Information: The department is amending WAC 388-106-0010 What definitions apply to this chapter? and 388-106-0135 What is the maximum number of hours of personal care services that I can receive for in-home services?; and adding a new section WAC 388-71-0552 What may happen if an individual provider (IP) claims more than the maximum hours assigned by the client in a work week?, to chapter 388-71 WAC, Home and community services and programs.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>), on February 9, 2016, at 10:00 a.m.

Date of Intended Adoption: Not earlier than February 10, 2016.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., February 9, 2016.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by January 26, 2016, phone (360) 664-6092, TTY (360) 664-6178, or e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending WAC 388-106-0010 What definitions apply to this chapter? and 388-106-0135 What is the maximum number of hours of personal care services that I can receive for in-home services?; and adding new section WAC 388-71-0552 What may happen if an IP claims more than the maximum hours assigned by the client in a work week? New United States Department of Labor rules may require the department to pay overtime to IPs. The proposed rules are one of a series of changes that will eventually enable the department to pay overtime while also maximizing the effective use of limited state resources. The proposed rules change the allocation of personal care hours from a monthly basis to a weekly basis. They also describe how the department may respond when IPs submit invoices for services that exceed the maximum weekly hours under a client's plan of care. The department anticipates additional rule making in 2016 as it moves toward the payment of overtime.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.39A.400.

Rule is necessary because of federal court decision, *Home Care Assoc. of America v. David Weil*.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Barbara Hanneman, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2525.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a small business economic impact statement is not required, as no new costs will be imposed on small businesses or nonprofits as a result of this rule amendment.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

December 18, 2015  
Katherine I. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 16-02 issue of the Register.

**WSR 16-01-180**  
**PROPOSED RULES**  
**UNIVERSITY OF WASHINGTON**

[Filed December 22, 2015, 1:55 p.m.]

Supplemental Notice to WSR 15-22-004.

Preproposal statement of inquiry was filed as WSR 14-16-085.

Title of Rule and Other Identifying Information: Chapter 478-120 WAC, Student conduct code for the University of Washington and 478-108-010 Matters subject to brief adjudication.

Hearing Location(s): University of Washington, Seattle Campus, Husky Union Building (HUB), Room 332, on January 26, 2016, at 12:00 noon.

Date of Intended Adoption: February 11, 2016.

Submit Written Comments to: Rebecca Goodwin Dear-dorff, University of Washington, Rules Coordination Office, Box 351210, Seattle, WA 98195, e-mail rules@uw.edu, by January 26, 2016.

Assistance for Persons with Disabilities: Contact the disability services office by January 12, 2016, TTY (206) 543-6452 or (206) 543-6450.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: **Background:** The proposed revisions to the existing student conduct code, chapter 478-120 WAC, are designed to clarify expectations for students while making the process more transparent and easier to navigate. Several of the new proposed sections draw heavily from the existing WAC chapter by pulling out important concepts or rights that were buried in multiple sections of the current conduct code into one section. This revised code clearly outlines student's rights and responsibilities while preserving the general procedures for imposing disciplinary sanctions through the informal hearing, the university disciplinary committees, the faculty appeal board, and the president's office. Revisions to the general procedures used in these sections are to reflect current practice.

Also included is an update to WAC 478-108-010, which lists those matters subject to a brief adjudicative process at the University of Washington, now including the proceedings before a university disciplinary committee.

**New Proposed Sections:**

- WAC 478-120-012 Preamble.  
This was formerly WAC 478-120-020(1) under standards of conduct. There have been no changes to the wording of this section. This is the foundational statement for the student conduct code and as such should be recognized as a stand-alone section.
- WAC 478-120-014 Definitions.  
This section provides explanations for terms previously used in the code or new terms that have been added to the code. This section provides a common language and understanding of terms used through the revised code.
- WAC 478-120-016 Statement of jurisdiction.  
In the current structure of chapter 478-120 WAC, Jurisdiction (WAC 478-120-050) appears later in the code and focuses on who can take action under the code rather than addressing under what terms and where the student conduct code applies to students. This proposed section moves to the front of the code information for students as to when the code starts applying to them (from the time of admission through the actual conferral of degree). It identifies where and under what circumstances, the University of Washington may take disciplinary action. Lastly, it preserves the ability of the colleges, schools, and programs to take academic action when students fail to uphold the professional standards of that academic discipline.
- WAC 478-120-024 Prohibited conduct.

This revision provides definitions and examples of the University of Washington's expectations for students. By bringing these rules into one section with separate, distinct subsections, this amended section allows for ease of navigation and tracking for compliance purposes.

- WAC 478-120-026 Reporting violations of the student conduct code and initiating conduct proceedings.  
In the current code this information was located in several different places. This new section brings these rules together in one section. It provides information for how a person reports an alleged violation of the student conduct code and to whom. It further clarifies that academic misconduct is the purview of the deans and directors, which had been the practice, but these amendments make this clearer. It also explains who has authority to take disciplinary action and how that authority is delegated.
- WAC 478-120-032 Participation of advisors and attorneys.  
The student conduct code has allowed for advisors and attorneys to participate and represent students in the formal adjudicative process. However, this was listed in several places in the code and it wasn't clear as to what the role of the advisor or attorney would hold in a brief adjudicative process, which includes both the informal hearing and the hearings before the university disciplinary committees. This new section makes clear that any party, (i.e. a respondent, or in cases of sexual misconduct, a complainant) may be accompanied by an advisor or attorney to any disciplinary proceeding.
- WAC 478-120-034 Service of notices and orders and time limits.  
This section clarifies that service will be provided to students electronically through their University of Washington e-mail address. This brings the code up to date with a change in Washington state's Administrative Procedure Act which now allows electronic service but requires that the university provide notice to students accordingly. This section serves that purpose. Additionally, the code has a number of time frames outlined; particularly important is the time frame for submitting a written petition for appeal or review. This section informs students how that time frame is calculated.
- WAC 478-120-036 Standard and burden of proof.  
Defines "preponderance of evidence" and establishes who has the burden to show by a preponderance of the evidence that a violation occurred.
- WAC 478-120-038 Interim measures.  
Under Title IX the University of Washington must take steps to reduce harassment and mitigate its effects. Interim measures are designed to separate parties, mitigate effects of harassment, and are not sanctions under the student conduct process.
- WAC 478-120-137 Supplementary provisions regarding sexual misconduct.  
This section was originally an emergency rule to bring the University of Washington into compliance with the requirements of Violence Against Women Act amendments to the Clery Act. Much of this supplementary section has been absorbed into other sections of this code, specifically the prohibited behaviors. However, this sec-

tion clarifies the process and procedures used at a faculty appeal board hearing and establishes that the faculty appeal board has the authority to hear the matter separate and distinct from "exceptional circumstances."

Reasons Supporting Proposal: The Graduate and Professional Student Senate (GPSS) passed Resolution 09 14-15 in support of the revised student conduct code on May 20, 2015; the Associated Students of the University of Washington Bothell passed Resolution 3, in support of the revision of the student conduct code on June 9, 2015; the Associated Students of the University of Washington Student Senate passed Resolution 22-3 in support of the proposed amendments to the student conduct code on October 27, 2015; and the University of Washington's Faculty Senate and the university president endorsed the proposed amendments to chapter 478-120 WAC through the Faculty Senate's Class B legislative action S-B 181 on November 30, 2015.

Statutory Authority for Adoption: RCW 28B.20.130.

Statute Being Implemented: RCW 28B.20.130 and chapter 28B.112 RCW.

Rule is necessary because of federal law, Amendments to the Student Assistance General Provisions regulations issued under the Higher Education Act of 1965, as amended (HEA); and changes made to the Clery Act by the Violence Against Women Reauthorization Act of 2013 (VAWA) (Pub. L. 113-4).

Name of Proponent: University of Washington, governmental.

Name of Agency Personnel Responsible for Drafting: Elizabeth Lewis, Director, Community Standards and Student Conduct, 447 Schmitz Hall, University of Washington, Seattle Campus, (206) 685-6194; Implementation and Enforcement: Denzil Suite, Vice-President for Student Life, 101 Gerberding Hall, University of Washington, Seattle Campus, (206) 543-4972, Bjong Wolf Yeigh, Chancellor, UW Bothell, UW1-260G University of Washington, Bothell Campus, (425) 352-5221, or Mark Pagano, Chancellor, UW Tacoma, GWP 312, University of Washington, Tacoma Campus, (253) 692-5646.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules do not impose a disproportionate impact on small businesses or affect a school district under Title 28A RCW.

A cost-benefit analysis is not required under RCW 34.05.328. The University of Washington does not consider this rule making to be a significant legislative rule.

December 22, 2015

Rebecca Goodwin Dearnorff

University of Washington

Director of Rules Coordination

AMENDATORY SECTION (Amending WSR 14-17-097, filed 8/19/14, effective 9/19/14)

**WAC 478-108-010 Matters subject to brief adjudication.** This rule is adopted in accordance with RCW 34.05.482 through 34.05.494, the provisions of which are hereby adopted. Brief adjudicative procedures shall be used in all matters related to:



- (1) Appeals from residency classifications under RCW 28B.15.013 as established in chapter 478-160 WAC;
- (2) Appeals from traffic and parking violations, and skateboard impoundment, as provided for in chapters 478-116, 478-117 and 478-118 WAC;
- (3) Challenges to contents of educational records as provided for in chapter 478-140 WAC;
- (4) Proceedings under the animal control policy as detailed in chapter 478-128 WAC;
- (5) Requests for reconsideration of admission decisions as provided for in WAC 478-160-060;
- (6) Appeals of library charges as provided in chapter 478-168 WAC;
- (7) Reviews of denials of public records requests as provided in chapter 478-276 WAC;
- (8) Federal financial aid appeals as provided for by federal law; ~~((and))~~
- (9) Collection of outstanding debts owed by students or employees; and
- (10) Disciplinary proceedings before a university disciplinary committee as provided in chapter 478-120 WAC.

AMENDATORY SECTION (Amending WSR 07-23-068, filed 11/19/07, effective 12/20/07)

**WAC 478-120-010 Student conduct code—Authority.** Pursuant to chapter 34.05 RCW and the authority granted by RCW 28B.20.130, the board of regents of the University of Washington has established the following ~~((regulations or))~~ rules regarding student conduct and student discipline.

NEW SECTION

**WAC 478-120-012 Preamble.** The University of Washington (university) is a public institution responsible for providing instruction in higher education, for advancing knowledge through scholarship and research, and for providing related services to the community. As a center of learning, the university also has the obligation to maintain conditions conducive to the freedom of inquiry and expression to the maximum degree compatible with the orderly conduct of its functions. For these purposes, the university is governed by rules, regulations, procedures, policies, and standards of conduct, including this conduct code, that safeguard its functions and protect the rights and freedoms of all members of the university community.

NEW SECTION

**WAC 478-120-014 Definitions.** For the purposes of this conduct code, the following definitions apply:

- (1) **"Advisor"** is a person selected by a respondent or a complainant to provide support and guidance in hearings under this conduct code.
- (2) **"Allegation of misconduct"** is any report of an alleged violation of this conduct code, which may include, but is not limited to, a police report, an incident report, a witness statement, other documentation, or a verbal report or written statement from a complainant or a third party.
- (3) **"Attorney"** is a person permitted to practice law in Washington state.

(4) **"Complainant"** is a student or another member of the university community who reports that a violation of this conduct code has been committed against him or her. In any case involving an allegation of sexual misconduct as defined in this conduct code, a complainant is afforded certain rights under this conduct code, but not limited to:

- (a) The right to be informed of all orders issued in the disciplinary case in which he or she is a complainant;
- (b) The right to appeal to the faculty appeal board an initial order issued by a conduct officer;
- (c) The right to request presidential review of an initial order issued by the faculty appeal board; and
- (d) The right to be accompanied to all hearings by an advisor and/or an attorney.

(5) **"Conduct officer"** is a university official who has the authority to initiate disciplinary proceedings, conduct investigations and informal hearings, and issue initial orders under this conduct code.

(6) **"FERPA"** refers to the federal Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g) and its implementing regulations (34 C.F.R. Part 99).

(7) **"Initial order"** refers to an initial written decision issued in a disciplinary matter by a conduct officer, a university disciplinary committee, or the faculty appeal board in accordance with the provisions of this conduct code.

(8) **"Parties"** means collectively the conduct officer and the respondent. In any case involving an allegation of sexual misconduct, any complainant may elect to participate as a party in accordance with the provisions of this conduct code.

(9) **"Proceedings"** means all processes related to the investigation and adjudication of a disciplinary matter under this conduct code including, but not limited to, investigations, informal and formal hearings, administrative review, and requests for reconsideration of a final order.

(10) **"Respondent"** is any student accused of misconduct under this conduct code. Each respondent is afforded certain rights including, but not limited to:

- (a) The right to be informed of all orders issued in the respondent's disciplinary case;
- (b) The right to appeal an initial order issued by a conduct officer and a university disciplinary committee;
- (c) The right to request a presidential review of an initial order issued by the faculty appeal board; and
- (d) The right to be accompanied to all hearings by an advisor and/or an attorney.

(11) **"Sexual misconduct"** includes committing, or aiding, soliciting, or attempting the commission of, the following prohibited conduct: Sexual assault, sexual harassment, sexual exploitation, indecent exposure, relationship violence, stalking, and domestic violence.

(12) **"Student"** is any person enrolled in or taking courses at or through the university, either full-time or part-time, including credit, noncredit, online, and nondegree courses, and any person who has been notified of acceptance for admission by the university. A student who withdraws from a course or from the university, or completes his or her courses after the date of an alleged violation, or who is not enrolled for a particular quarter or quarters, but has a continuing relationship with the university, is still considered a student for purposes of this conduct code.

(13) "**Student organization**" is a group of students that has complied with the requirements for university recognition or who otherwise are granted any rights or privileges by the university as a university affiliate. Student organizations include, but are not limited to, athletic teams or clubs, registered student organizations (RSOs), university service clubs, and sororities and fraternities. (Student organizations are also subject to the process and procedures outlined in the *RSO Policy Guide* and/or the organization's applicable recognition agreement.)

(14) "**University community**" includes all university students and employees. It also includes guests of and visitors to the university during the time they are present on university premises.

(15) "**University official**" is an employee of the university performing his or her assigned administrative, professional, or paraprofessional duties.

(16) "**University premises**" includes all of the university's campus buildings, grounds, and facilities, all of its extension and research locations, and all other university-leased, owned, or managed buildings, grounds, and facilities, including its global learning centers and study abroad program sites, as well as university sponsored and/or hosted online platforms.

#### NEW SECTION

**WAC 478-120-016 Statement of jurisdiction.** (1) This conduct code applies to all students from the time of admission through the actual conferral of a degree, including any period between terms of enrollment.

(2) The university shall have the authority to hold students accountable under this conduct code for misconduct that occurs on any university premises or in connection with any university-sponsored event or activity.

(3) The university may also hold students accountable under this conduct code for off campus misconduct (i.e., misconduct that does not occur on university premises or in the context of a university-sponsored event or activity) that the university reasonably determines adversely affects a university interest. Nothing in this subsection shall be construed as being intended to protect any person or class of persons from injury or harm.

(4) Disciplinary proceedings may be initiated under the conduct code regardless of whether or not the incident in question is the subject of criminal or civil proceedings.

(5) Nothing in this conduct code shall be construed to limit academic action that may be taken by schools, colleges, or programs against a respondent based on an established violation of this conduct code that demonstrates a failure to meet the academic and/or professional standards of the school, college, or program.

(6) Other departments or units of the university have proceedings separate and distinct from this conduct code. For example:

(a) Campus parking and traffic regulations are under the general jurisdiction of the transportation services department and the police department at the University of Washington Seattle campus and under the jurisdiction of public safety officers at the University of Washington Bothell and Tacoma

campuses. See chapters 478-116, 478-117 and 478-118 WAC.

(b) The library fines appeals committee has the authority to consider appeals of library charges. See chapter 478-168 WAC.

(7) Nothing in this conduct code will be construed to deny students their legally and/or constitutionally protected rights.

AMENDATORY SECTION (Amending WSR 13-14-002, filed 6/19/13, effective 7/20/13)

**WAC 478-120-020 Standards of conduct.** (1) ~~(The university is a public institution having special responsibility for providing instruction in higher education, for advancing knowledge through scholarship and research, and for providing related services to the community. As a center of learning, the university also has the obligation to maintain conditions conducive to freedom of inquiry and expression to the maximum degree compatible with the orderly conduct of its functions. For these purposes, the university is governed by the rules, regulations, procedures, policies, and standards of conduct that safeguard its functions and protect the rights and freedoms of all members of the academic community.~~

~~(2))~~ Admission to the university carries with it the presumption that students will conduct themselves as responsible members of the ~~((academic))~~ university community. As a condition of enrollment, all students assume responsibility to observe standards of conduct that will contribute to the pursuit of academic goals and to the welfare of the ~~((academic))~~ university community. That responsibility includes, but is not limited to:

(a) Practicing high standards of academic and professional honesty and integrity;

(b) Respecting the rights, privileges, and property of others ~~((members of the academic community and visitors to the campus, and refraining from any conduct that would interfere with university functions or endanger the health, welfare, or safety of other persons));~~

(c) Refraining from any conduct that would substantially disrupt or materially interfere with university operations;

(d) Refraining from any conduct that would cause harm to or endanger the health, safety, or welfare of other persons; and

(e) Complying with the rules, regulations, procedures, policies, standards of conduct, and orders of the university and its schools, colleges, ~~((and))~~ departments(-

~~(3) Specific instances of misconduct include, but are not limited to:~~

~~(a) Conduct that intentionally and substantially obstructs or disrupts teaching or freedom of movement or other lawful activities on university premises or in connection with any university sponsored event or activity and is not constitutionally and/or legally protected;~~

~~(b) Physical abuse of any person, or conduct intended to threaten imminent bodily harm or to endanger the health or safety of any person on university premises;~~

~~(c) Conduct on university premises constituting a sexual offense, whether forcible or nonforcible, such as rape, sexual assault, or sexual harassment;~~

~~(d) Malicious damage to or malicious misuse of university property, or the property of any person where such property is located on university premises;~~

~~(e) Refusal to comply with any lawful order to leave university premises or any portion thereof;~~

~~(f) Possession or use of firearms, explosives, dangerous chemicals or other dangerous weapons or instrumentalities on university premises, except for authorized university purposes, unless prior written approval has been obtained from the university chief of police, or any other person designated by the president of the university (see WAC 478-124-020 (2)(c)); (legal defense sprays are not covered by this section);~~

~~(g) The possession, use, distribution, or manufacture of controlled substances (as defined in chapter 69.50 RCW or Title 21 U.S.C. Sec. 802), or of alcohol, on university premises or during university-sponsored activities, where such possession, use, distribution, or manufacture is illegal under federal, state, or local law;~~

~~(h) Intentionally inciting others to engage immediately in any unlawful activity, which incitement leads directly to such conduct on university premises;~~

~~(i) Hazing, or conspiracy to engage in hazing, which includes:~~

~~(i) Any method of initiation into a student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group, that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending the university; and~~

~~(ii) Conduct associated with initiation into a student organization or living group, or any pastime or amusement engaged in with respect to an organization or living group not amounting to a violation of (i)(i) of this subsection, but including such conduct as humiliation by ritual act and sleep deprivation. Consent is no defense to hazing. Hazing does not include customary athletic events or other similar contests or competitions;~~

~~(j) Falsely reporting a violation of the student conduct code.~~

~~(4) Disciplinary action may be taken in accord with this chapter regardless of whether that conduct also involves an alleged or proven violation of law.~~

~~(5) An instructor has the authority to exclude a student from any class session in which the student is disorderly or disruptive. If the student persists in the disorderly or disruptive conduct, the instructor should report the matter to the dean of the school or college, or, at the University of Washington Bothell and Tacoma campuses, to the dean or director of the program in which the student is enrolled. (See WAC 478-120-030(3).)~~

~~(6) Nothing herein shall be construed to deny students their legally and/or constitutionally protected rights), units, and programs.~~

(2) The disciplinary sanctions specified in WAC 478-120-040 may be imposed on any student or student organization found to have committed, to have assisted with the commission of, or to have attempted to commit any act of misconduct that is in violation of the general standards of conduct in subsection (1) of this section, or any of the prohibited conduct specified in WAC 478-120-024.

## NEW SECTION

**WAC 478-120-024 Prohibited conduct.** Specific instances of misconduct include, but are not limited to:

(1) **Abuse of others.** Abuse of others includes assault and other forms of physical abuse of any person, or any conduct intended to threaten bodily harm or to endanger the health or safety of any person.

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

(a) Knowingly making false allegations of misconduct under this conduct code;

(b) Attempting to coerce a person not to make a report or to participate in proceedings under this conduct code;

(c) Attempting to influence the impartiality or participation of a member of a university disciplinary committee or the faculty appeal board, any conduct officer, or any reviewing officer; or

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

(3) **Academic misconduct.** Academic misconduct includes:

(a) "Cheating," which includes, but is not limited to:

(i) The use of unauthorized assistance in taking quizzes, tests, or examinations; or

(ii) The acquisition, use, or distribution of unpublished materials created by another student without the express permission of the original author(s).

(b) "Falsification," which is the intentional use or submission of falsified data, records, or other information including, but not limited to, records of internship or practicum experiences or attendance at any required event(s). Falsification also includes falsifying scientific and/or scholarly research.

(c) "Plagiarism," which is the submission or presentation of someone else's words, composition, research, or expressed ideas, whether published or unpublished, without attribution. Plagiarism includes, but is not limited to:

(i) The use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment; or

(ii) The unacknowledged use of materials prepared by another person or acquired from an entity engaging in the selling of term papers or other academic materials.

(d) Prohibited collaboration.

(e) Engaging in behavior specifically prohibited by an instructor in the course of class instruction or in a course syllabus.

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

(g) Taking deliberate action to destroy or damage another's academic work in order to gain an advantage for oneself or another.

(h) The recording of instructional content without the express permission of the instructor(s), and/or the dissemination or use of such unauthorized records.

(4) **Acts of dishonesty.** Acts of dishonesty include:

(a) Knowingly furnishing false information to any university official;

(b) Impersonating, or providing false information in the name of, any university official;

(c) Forging, altering, or misusing any university document or record, or instrument of identification;

(d) Falsely claiming an academic credential; and

(e) Providing dishonest or misleadingly incomplete information or answers on application forms or in response to other official university requests for information.

(5) **Aiding, solicitation, and attempt.** The following conduct is prohibited:

(a) Aiding or abetting another student or student organization in the commission of any misconduct prohibited by this conduct code;

(b) Requesting, hiring, or encouraging another person to commit any act of misconduct prohibited by this conduct code, either intending that the other person commit the misconduct or with the knowledge that the other person intends to commit the misconduct; or

(c) Attempting to commit any act of misconduct prohibited by this conduct code.

(6) **Alcohol violations.** The unlawful possession, use, distribution, or manufacture of alcohol is prohibited. A conduct officer may elect not to initiate disciplinary action under this subsection against a student who, while in the course of helping another student seek medical assistance, admits to the unlawful possession or use of alcohol. Generally, no disciplinary action under this subsection will be initiated against a complainant or another reporting student, who admits to the possession or use of alcohol (in violation of this subsection) in connection with an incident of sexual misconduct.

(7) **Computer abuses.** Computer abuses include, but are not limited to:

(a) Unauthorized use of university computer resources;

(b) Use of another person's university user name and/or password;

(c) Use of university computing facilities and resources to interfere with the work of another student, an instructor, or other university official;

(d) Use of university computing facilities or resources to send intimidating, harassing, or threatening messages;

(e) Use of a computer or software to interfere with normal operations of the university's computing systems;

(f) Use of the university's computing facilities or resources in violation of any law, including copyright laws; and

(g) Any violation of the university's computer use policies.

(8) **Creating a public nuisance in neighboring communities.** In furtherance of the university's interest in maintaining positive relationships with its surrounding communities, the university shall have the authority to hold students accountable under this conduct code for misconduct within any residential or commercial communities adjacent to a university campus as follows:

(a) A student or a student organization may be subject to disciplinary proceedings if the university is made aware that the student or student organization has been contacted by a law enforcement agency regarding, and is determined to have engaged in, conduct that is in violation of a state statute or municipal ordinance and has a direct quality of life impact on community residents or businesses, including, but not limited to: Creating a public nuisance due to noise, residential distur-

bance, intentional destruction of property, urinating in public, or criminal trespass.

(b) A first minor violation under (a) of this subsection will not subject the student or student organization to disciplinary sanctions under this conduct code; however, the student or student organization may receive a letter regarding the expectations of university community members as residents in the area. This letter shall constitute a warning that repeated misconduct under this subsection may result in the imposition of disciplinary sanctions.

(c) A second violation of this subsection will result in the initiation of disciplinary proceedings under this conduct code.

(9) **Discriminatory harassment.** Discriminatory harassment is language or conduct directed at a person because of the person's race, color, creed, religion, national origin, citizenship, sex, age, pregnancy, marital status, sexual orientation, gender identity or expression, disability, or veteran status 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 the person's ability to participate in or benefit from the university's programs, services, opportunities, or activities.

(10) **Disruption or obstruction.**

(a) Disruption or obstruction includes intentionally and substantially obstructing or disrupting, through words or conduct, the teaching or learning environment of any university educational setting, or any university functions or activities.

(b) An instructor has the authority to exclude a student from any individual class session or other academic activity in which the student is disorderly or disruptive and such conduct may also be subject of disciplinary proceedings under this conduct code.

(11) **Domestic violence.** Domestic violence includes:

(a) The infliction of physical harm, bodily injury, assault, or the fear of imminent physical harm, bodily injury or assault committed against a family or household member. Family or household members include:

(i) A current or former spouse or intimate partner;

(ii) A person with whom the person shares a child in common;

(iii) A person with whom one is cohabitating or has cohabitated; or

(iv) A person with whom one resides including a roommate, suitemate, or housemate.

(b) Sexual assault of one family or household member by another family or household member; or

(c) Stalking, as defined in subsection (23) of this section, of one family or household member by another family or household member.

(12) **Drug violations.**

(a) The possession, use, distribution, or manufacture of controlled substances (as defined in chapter 69.50 RCW or Title 21 U.S.C. Sec. 802) on university premises or during university sponsored activities where such possession, use, distribution, or manufacture is illegal under federal, state, or local law is prohibited.

(b) The possession, use, distribution, or growing of marijuana in all forms is prohibited on university premises or during university sponsored activities.

(c) A conduct officer may elect not to initiate disciplinary action under this subsection against a student who, while in the course of helping another student seek medical assistance, admits to the unlawful possession or use of drugs. Generally, no disciplinary action under this subsection will be initiated against a complainant or another reporting student, who admits to the use or possession of drugs (in violation of this subsection) in connection with an incident of sexual misconduct.

(13) **Failure to comply.** Failure to comply includes:

(a) Any failure to comply with the directions of a university official acting in the performance of his or her duties and/or the failure to identify oneself to a university official when requested to do so.

(b) Any failure to comply with the rules, regulations, procedures, policies, standards of conduct, or any order or directive of the university or any of its schools, colleges, and departments.

(c) Any failure to comply with any interim measures implemented pursuant to WAC 478-120-038.

(14) **Harassment or bullying.** Harassment or bullying is language or conduct 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 university's programs, services, opportunities, or activities.

(15) **Hazing.**

(a) Hazing includes any method of initiation into a student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group, that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person. Hazing activities may include, but are not limited to, encouraging or promoting the abuse of alcohol; striking another person whether by use of any object or any part of one's body; causing someone to experience excessive fatigue or physical and/or psychological shock; and causing someone to engage in degrading or humiliating games or activities that create a risk of serious mental, emotional, and/or physical harm. Consent of a victim or victims is not a defense to an allegation of hazing.

(b) Hazing does not include generally accepted practice, training, and conditioning activities, or activities reasonably designed to test a participant's ability to meet eligibility requirements for established athletic events such as intramural or club sports, intercollegiate athletics, or other similar contests or competitions.

(16) **Indecent exposure.** Indecent exposure includes the 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, or is against generally accepted standards of decency. Breast feeding or expressing breast milk is not indecent exposure.

(17) **Possession or use of firearms, explosives, dangerous chemicals, or other dangerous weapons.**

(a) Firearms, explosives, dangerous chemicals, or other dangerous weapons or instrumentalities are not permitted on university premises, except for authorized university purposes, or unless prior written approval has been obtained from the chief of the university police department, or any other university official designated by the president of the university.

(b) Firearms include, but are not limited to, what are commonly known as air guns or rifles, BB guns, and pellet guns, and any instrument used in the propulsion of shot, shell, bullets, or other harmful objects by:

(i) The action of gunpowder or other explosives;

(ii) The action of compressed air; or

(iii) The power of springs or other forms of propulsion.

(c) The exhibition or display of a replica or a dangerous weapon prohibited under this subsection is also prohibited if done in a manner, and at a time or place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.

(18) **Relationship violence.** Relationship violence, also referred to as "dating violence," is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

(a) The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(b) For the purposes of this definition, relationship or dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

(c) Relationship or dating violence does not include acts covered under the definition of domestic violence.

(19) **Retaliation.** Retaliation includes engaging or attempting to engage in any action, directly or indirectly, including through a third party, that is intended to harass, intimidate, or improperly influence any person who:

(a) Files a complaint, grievance, or allegation of misconduct under any university policy or rule or under any law;

(b) Participates in and/or cooperates with an investigation;

(c) Appears as a witness at a hearing; or

(d) Opposes an unlawful act, discriminatory practice, or policy.

(20) **Sexual assault.**

(a) Sexual assault is sexual contact with another person without, or that exceeds, that person's consent.

(b) For the purposes of this subsection, "sexual contact" includes:

(i) Any touching of another person for the purposes of sexual gratification; or

(ii) Any penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ, of another person.

(c) For the purposes of this subsection:

(i) "Consent" means that at the time of and throughout the sexual contact, there are actual words or conduct indicat-

ing freely given agreement between the parties to engage in the sexual contact.

(A) Past consent does not imply future consent.

(B) Consent given to one person does not imply consent given to another person.

(C) Consent to one sexual act does not imply consent to other sexual acts.

(D) Lack of resistance to sexual contact does not imply consent.

(E) Consent can be withdrawn at any time.

(ii) Consent cannot be given or granted by a person who, at the relevant time, cannot understand the facts, nature, extent, or implications of the sexual contact for any reason including, but not limited to, being asleep, unconscious, mentally or physically impaired due to an intellectual or other disability, or mentally or physically incapacitated due to the effects of drugs or alcohol.

(A) Indicators that a person may be incapacitated by drugs or alcohol and therefore, cannot grant consent include, but are not limited to: Stumbling, falling down, an inability to stand or walk on their own, slurred speech or incoherent communication, an inability to focus their eyes or confusion about what is happening around them, passing out, or vomiting.

(B) A failure to exhibit any of these behaviors does not necessarily mean that a person is capable of giving consent or is not incapacitated.

(d) Sexual contact is not consensual when force or coercion is threatened or used to gain acquiescence.

(i) Force includes the use of physical violence, physical force, threats, or intimidation to overcome resistance or gain agreement to sexual contact.

(ii) Coercion includes using pressure, deception, or manipulation to cause someone to agree to sexual contact against that person's will, without the use of physical force. Pressure can mean verbal or emotional pressure.

(e) Sexual assault also includes sexual contact with a person who is under the statutory age of consent in accordance with chapter 9A.44 RCW.

(f) Use of alcohol or drugs is not a valid defense to a violation of this subsection.

(21) **Sexual exploitation.** Sexual exploitation includes:

(a) Taking nonconsensual or abusive advantage of another for one's own sexual benefit, or for the sexual benefit of anyone other than the one being exploited;

(b) Compelling another by threat or force to engage in sexual conduct or activity;

(c) Transmitting, distributing, publishing, or threatening to transmit, distribute, or publish photos, video, or other recordings of a private and sexual nature where such transmission, publication, or distribution is without the consent of the subject(s) and is likely to cause emotional distress to the subject(s);

(d) Taking or making photographs, films, or digital images of the private body parts of another person without that person's consent;

(e) Causing or attempting to cause the impairment of another person to gain nonconsensual sexual advantage over that person;

(f) Prostituting another person;

(g) Knowingly allowing another to surreptitiously watch otherwise consensual sexual activity; or

(h) Taking, making, or directly transmitting nonconsensual video or audio recordings of sexual activity.

(22) **Sexual harassment.** Sexual harassment is language or conduct of a sexual nature 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 university's programs, services, opportunities, or activities.

(23) **Stalking.**

(a) Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(i) Fear for the person's safety or safety of others; or

(ii) Suffer substantial emotional distress.

(b) For the purposes of this subsection, "course of conduct" means two or more acts including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

(c) For the purposes of this subsection, "substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

(24) **Theft.** Theft is the taking of property or services without express permission of the owner. This includes, but is not limited to, taking, possessing, or aiding another to take university property or services, or property belonging to members of the university community.

(25) **Unauthorized keys, entry or use.** The unauthorized possession, duplication, or use of keys (including conventional keys, key cards, or alphanumeric passcodes) to any university premises is prohibited, as is the unauthorized entry upon or use of university premises or property. Providing keys to an unauthorized person or providing access to an unauthorized person is also prohibited.

(26) **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.

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

(27) **Vandalism.** Vandalism includes maliciously damaging or misusing university property, or the property of any member of the university community.

(28) **Violation of disciplinary sanctions.** The violation of any term or condition of any final disciplinary order issued under this conduct code, or the failure to complete a disciplinary sanction in the specified time frame, may be grounds for additional disciplinary action.

(29) **Violation of law.** Any conduct that would constitute a violation of any federal, state, or local criminal law

may be the subject of disciplinary proceedings under this conduct code.

#### NEW SECTION

##### **WAC 478-120-026 Reporting violations of the student conduct code and initiating conduct proceedings.** (1)

Persons who believe that a violation of this conduct code has been committed may contact and make a report to the vice-president for student life at University of Washington Seattle, or the chancellors of University of Washington Bothell or Tacoma, or their authorized delegates, which includes the director of community standards and student conduct at University of Washington Seattle, the dean of student affairs at University of Washington Bothell, and the dean of student engagement at University of Washington Tacoma.

(2) Violations involving academic misconduct should be reported to the dean of the appropriate school or college at the University of Washington Seattle, or the dean or program director at the University of Washington Bothell and Tacoma, or their authorized delegates.

(3) Only the following university officials may initiate disciplinary action under this conduct code:

(a) The vice-president for student life at University of Washington Seattle;

(b) The chancellors at University of Washington Bothell and Tacoma;

(c) Deans of a school or college (including the graduate school) at University of Washington Seattle; and

(d) Deans or directors of any school or program at University of Washington Bothell or Tacoma.

The above named university officials may delegate the authority to initiate disciplinary proceedings to members of their respective staffs and to students. They may also establish student or student-faculty-staff hearing bodies to advise or to act for them in disciplinary matters.

(4) The university may hold the granting or conferral of a respondent's degree if the respondent is the subject of a preliminary investigation or other disciplinary proceedings under this conduct code until at least the conclusion of all disciplinary proceedings.

#### AMENDATORY SECTION (Amending WSR 14-17-097, filed 8/19/14, effective 9/19/14)

##### **WAC 478-120-030 General procedures for disciplinary sanctions.** (1) This section describes the general process under the student conduct code for enforcing the university's rules, regulations, procedures, policies, standards of conduct, and orders. The specific procedures to be used at each step of the process are described in the following sections of this chapter. In all situations, whether handled formally or informally, basic standards of fairness will be observed in the determination of:

(a) ~~((The truth or falsity of the charges against the student;~~

~~((b)))~~ Whether the alleged misconduct violates this code; and if so,

~~((c)))~~ (b) The sanctions to be imposed, if any.

The criteria for judging student misconduct shall include, but not be limited to, the standards of conduct as

stated in ~~((WAC 478-120-020 and 478-120-025))~~ this conduct code. Informal hearings ~~((shall use the procedures in))~~ and hearings before the university disciplinary committees shall be conducted as brief adjudicative proceedings under chapter 34.05 RCW ~~((governing brief adjudicative proceedings))~~. Formal hearings conducted by the faculty appeal board shall follow the procedures required by chapter 34.05 RCW for formal adjudicative proceedings. Informal settlements may be conducted under the authority of RCW 34.05.-060.

~~((2))~~ ~~((Persons who believe that a violation of the student conduct code has been committed should contact the vice-president for student life at the University of Washington Seattle campus, or the chancellor of the University of Washington Bothell or Tacoma campuses, whichever is appropriate.~~

~~((3))~~ ~~Only the vice president for student life, the dean of the school or college at the University of Washington Seattle or, at the University of Washington Bothell and Tacoma campuses, the dean or director of the program in which a student is enrolled or the chancellors of the University of Washington Bothell and Tacoma campuses, may initiate disciplinary proceedings against a student under this code of conduct. (See WAC 478-120-050.) The deans, the vice president for student life, or the chancellors of the University of Washington Bothell and Tacoma campuses may delegate the authority to initiate disciplinary proceedings consistent with this chapter to members of their staffs and to students. They may also establish student or student-faculty hearing bodies to advise or to act for them in disciplinary matters. The person initiating a disciplinary proceeding shall be referred to as the initiating officer.~~

~~((4))~~ ~~The~~ ~~((initiating))~~ conduct officer will begin a disciplinary proceeding by holding, or directing a member of his or her staff to hold, an informal hearing with the ~~((student charged with misconduct. Based on this informal disciplinary hearing, the initiating officer may choose to exonerate the student, dismiss the action, impose an appropriate sanction, and/or refer the matter to the appropriate university disciplinary committee. (See WAC 478-120-065.) If the initiating officer identifies a potential or existing exceptional circumstance, as defined in WAC 478-120-100 (3)(b)(i);~~

~~"Exceptional circumstances exist when:~~

~~((A))~~ The sanction of dismissal has been recommended; or

~~((B))~~ The student has been charged with hazing; or

~~((C))~~ The sanction of restitution (in excess of three hundred dollars) has been recommended; or

~~((D))~~ Suspension has been recommended," ~~the matter shall be referred directly to the faculty appeal board. (See WAC 478-120-100.)~~

~~((5))~~ ~~Students))~~ respondent consistent with WAC 478-120-065.

(3) In cases not involving an allegation of sexual misconduct, respondents have the right to appeal any sanction imposed at an informal hearing to the appropriate university disciplinary committee, except that when such sanction identifies an existing or potential exceptional circumstance as defined in WAC 478-120-100 (3)(b)(i), the matter shall be referred ~~((directly))~~ to the faculty appeal board. Appeal rights

in cases involving an allegation of sexual misconduct are provided for in WAC 478-120-137.

~~((6)) (4)~~ Any decisions of the university disciplinary committees may be appealed to the faculty appeal board. ~~((All decisions of the university disciplinary committees identifying existing or potential exceptional circumstances as defined in WAC 478-120-100 (3)(b)(i) shall be referred directly to the faculty appeal board.))~~ In addition, the university disciplinary committees may, at any time, at their discretion, refer a matter ~~((directly))~~ to the faculty appeal board consistent with WAC 478-120-095. The faculty appeal board performs distinct functions. In most cases, the faculty appeal board conducts an administrative review. In certain cases ~~((defined))~~ as described in WAC 478-120-100(3) and 478-120-115(1), the faculty appeal board conducts a formal hearing.

~~((7)) (5)~~ Any decision based on a formal hearing conducted by the faculty appeal board may be appealed to the president of the university or the president's delegate for a final review. All orders of dismissal shall be reviewed by the president or the president's delegate. Orders entered by the president or the president's delegate are final. (See WAC 478-120-125.)

~~((8)) (6)~~ The president or delegate, or chancellors or their delegates, may take emergency disciplinary action when a student's conduct threatens the health, welfare, or safety of the university community or members thereof or poses an ongoing threat of substantially disrupting or materially interfering with university activities or operations. (See WAC 478-120-140.)

~~((9))~~ ~~When questions of mental or physical health are raised in conduct cases, the dean, the vice president for student life, the chancellors of the University of Washington Bothell and Tacoma campuses or their delegates, the university disciplinary committees, or the faculty appeal board may request the student to appear for examination before two physician consultants designated by the dean of the school of medicine. The physician consultants may call upon the student health center for any other professional assistance they deem necessary. After examining the student and/or consulting with the student's personal physician, the physician consultants shall make a recommendation to the dean, the vice president for student life, the chancellor of the University of Washington Bothell or Tacoma campuses, whichever is appropriate, or their delegates, the appropriate university disciplinary committee, or the faculty appeal board as to whether the case should be handled as a disciplinary matter or as a case for medical or other treatment. Any decision made based upon the recommendation of the physician consultants may be appealed in accordance with the provisions of this chapter.~~

~~((10)) (7)~~ The following persons conducting proceedings under this chapter shall have the authority to issue protective orders and subpoenas: Deans, or at the University of Washington Bothell and Tacoma campuses, the dean or director of the program in which the student is enrolled, the vice-president for student life, the chancellors of the University of Washington Bothell and Tacoma campuses, or the chairs of their respective university disciplinary committees, the chair

of the faculty appeal board, and the president or his or her delegate.

~~((11)) (8)~~ In a case involving an ~~((alleged))~~ allegation of sexual ((offense)) misconduct, the ~~((accuser))~~ complainant and the ~~((accused))~~ respondent are entitled to the same opportunities to have others present during a disciplinary hearing and they shall both be informed of the outcome of such disciplinary proceeding.

~~((12)) (9)~~ Any final order resulting from a disciplinary proceeding shall become a part of the ~~((student's))~~ respondent's disciplinary record ~~((, unless the student is exonerated. (See))~~ and be maintained in accordance with WAC 478-120-145.(~~0~~)

~~((13)) (10)~~ In accord with ~~((the Family Educational Rights and Privacy Act))~~ FERPA and pursuant to RCW 34.05.250, all hearings conducted under this chapter generally will be held in closed session out of respect for the privacy of all the students involved. However, the students involved may waive in writing this requirement and request a hearing in open session, and the ~~((initiating))~~ conduct officer or presiding officer shall conduct the hearing in a room that will accommodate a reasonable number of observers. The ~~((initiating))~~ conduct officer or presiding officer may exclude from the hearing room any persons who are disruptive of the proceedings and may limit the number who may attend the hearing in order to afford safety and comfort to the participants and orderliness to the proceedings. To ensure the privacy of all students involved, no cameras or recording devices shall be permitted except for the official recording by the university.

#### NEW SECTION

**WAC 478-120-032 Participation of advisors and attorneys.** Any party and, in any case involving an allegation of sexual misconduct, a complainant, may, at their own expense, be accompanied by an advisor and/or an attorney to any proceeding conducted under this conduct code. Persons admitted to practice law in the state of Washington may advise, but may not participate in an informal hearing and in a hearing before a university disciplinary committee, and may represent a party at a hearing before the faculty appeal board. The chair of a university disciplinary committee or the faculty appeal board or a conduct officer in an informal hearing has the discretion to impose reasonable conditions upon the participation of an advisor and/or an attorney.

#### NEW SECTION

**WAC 478-120-034 Service of notices and orders and time limits.** (1) Service of all university notices of hearing, initial orders, final orders, and orders on reconsideration shall be by electronic mail addressed to the respondent's, and in any case involving an allegation of sexual misconduct, the complainant's university-issued e-mail address, or such alternative e-mail address as may have been provided to the university in writing. Service by electronic mail is complete at the moment the e-mail is sent to such address. In the alternative, service of university notices of hearing, initial orders, final orders, and orders on reconsideration may also be accomplished by personal service or by posting it in the



United States mail, properly addressed, and postage prepaid. Service by mail is complete upon deposit in the United States mail.

(2) Students have an ongoing obligation to update their address via MyUW.

(3) The time limits for appealing an initial order shall be determined based upon the date of service of the initial order. The time limit for seeking judicial review of a final order shall be determined based upon the date of service of the final order, except as otherwise provided in this chapter.

(4) In computing any period of time under this conduct code, the day of service of any order, notice, or other document is not counted. The last day of the applicable period of time is counted. If the last day of the applicable period of time falls on a Saturday, Sunday, or official state holiday (which includes the day after Thanksgiving), the period ends on the next business day.

#### NEW SECTION

##### **WAC 478-120-036 Standard and burden of proof.**

The applicable standard of proof in all disciplinary hearings is the "preponderance of evidence" standard. This means that, in order for a respondent to be held responsible for a violation of this conduct code, the conduct officer, the university disciplinary committee, or the faculty appeal board must conclude, based on all of the evidence in the record, that it is more likely than not that the respondent engaged in an act or acts of misconduct. The burden of proof in a hearing before a university disciplinary committee or the faculty appeal board rests with the party seeking to establish that the violation occurred.

#### NEW SECTION

##### **WAC 478-120-038 Interim measures.**

(1) After receiving a report of alleged sexual misconduct or other serious misconduct, the university 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 a complainant, a respondent, a reporting student, other specified persons, and/or a specific student organization;

(b) Reassignment of on-campus housing; or

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

(2) Interim measures will remain in place until lifted or modified by the university official who implemented the interim measures.

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

AMENDATORY SECTION (Amending WSR 96-10-051, filed 4/29/96, effective 5/30/96)

**WAC 478-120-040 Disciplinary sanctions.** (1) One or more of the following disciplinary sanctions may be imposed for any violation((s of the student)) of this conduct code:

~~((1)) (a) Disciplinary ((warnings and reprimands— Action may be taken to warn or to reprimand a student for violation of university rules, regulations, procedures, policies, standards of conduct, or orders. Warnings and reprimands must always be made in writing and)) reprimand. A respondent may be issued a written reprimand. Reprimands shall include a statement that continuation or repetition of the specific conduct or other misconduct ((will normally result in one or more of the more serious)) may result in additional disciplinary sanctions((- Restitution, disciplinary probation, suspension, or dismissal)).~~

~~((2)) (b) Restitution((- An individual student)). A respondent may be required to make restitution for damage or other loss of property and for injury to persons. A failure to pay, or to make in writing university-approved arrangements to pay restitution, will result in ((cancellation of the student's registration and will prevent the student)) a hold being placed on the respondent's registration preventing the respondent from registering ((with)) at the university.~~

~~((3)) (c) Disciplinary probation((- A student)). A respondent may be placed on disciplinary probation (meaning formal conditions are imposed on ((a student's)) the respondent's continued attendance) ((for violation of university rules, regulations, procedures, policies, standards of conduct, or orders)). The time period ((and conditions, if any;)) for the disciplinary probation and any conditions shall be specified. Disciplinary probation serves as a warning to a ((student)) respondent that further misconduct will raise the question of suspension or dismissal from the university. Failure to fulfill conditions of the disciplinary probation in a timely manner will extend the probationary period (and the conditions) and may result in additional disciplinary sanctions, including possible suspension or dismissal.~~

~~(d) Loss of privileges. A respondent may be denied specified privileges for a designated period of time such as the privilege to participate in a particular campus activity and may be restricted from any or all university premises based on the misconduct for a specific duration.~~

~~((4)) (e) Suspension((- A student)). A respondent may be suspended (i.e., temporarily separated) from the university for ((violation of university rules, regulations, procedures, policies, standards of conduct, or orders. The time period and)) a specified period of time. Conditions((- if any, for the)) of suspension ((shall)) may be imposed and will be specified. Except as otherwise specified in the disciplinary order, all conditions must be fulfilled before the end of the suspension period. Failure to fulfill all conditions of suspension in a timely manner will extend the suspension period and any conditions, and may result in additional disciplinary sanctions. Suspension serves as a warning ((to a student)) that further misconduct will raise the question of dismissal from the university. The university may place a hold on a suspended student's registration and may withhold the conferral of the student's degree, during the suspension period.~~

~~((5)) (f) Dismissal((- A student's enrollment in)). A respondent may be dismissed (i.e., permanently separated) from the university ((may be terminated for violation of university rules, regulations, procedures, policies, standards of conduct, or orders.~~

~~(6) Forfeiture—~~).

(g) Sanctions for hazing. In addition to other sanctions, a student who participates in hazing of another shall forfeit any entitlement to state funded grants, scholarships, or awards for a specified period of time.

~~((7) A suspension or dismissal is considered a serious sanction and will be imposed only after the completion of the formal due process review provided for in this code.)~~ (2) In determining an appropriate sanction for a violation of this conduct code, the seriousness of the misconduct, the impact on the university community, and a respondent's past disciplinary record will be considered. The use of alcohol or drugs by a respondent will not be considered a mitigating factor in imposing discipline.

(3) If a respondent withdraws from the university (or fails to reenroll) before completing a sanction, the sanction must be completed prior to or upon the respondent's reenrollment, depending on the nature of the sanction. Completion of disciplinary sanctions may be considered in applications for readmission to the university.

AMENDATORY SECTION (Amending WSR 14-17-097, filed 8/19/14, effective 9/19/14)

**WAC 478-120-065 Informal disciplinary hearings.**

(1) A dean, the vice-president for student life, or, at the University of Washington Bothell and Tacoma campuses, the chancellors or the dean or director of the program in which the student is enrolled, or their delegates, may initiate a disciplinary proceeding by conducting, or directing a member of his or her staff to conduct, an informal hearing with the ~~((student accused of misconduct))~~ respondent. This informal disciplinary hearing may be nothing more than a face-to-face meeting between the ~~((initiating))~~ conduct officer or staff person and the ~~((student))~~ respondent, and no special notice of the meeting is required. The purpose of this informal disciplinary hearing is to provide an opportunity for the ~~((student))~~ respondent to respond to allegations of misconduct before disciplinary action is taken ~~((, and the student))~~. The respondent waives any rights to an informal hearing by his or her failure to attend and the conduct officer may place a hold on a respondent's registration and/or transcript, or make a decision and issue an initial order without the input of the respondent.

(2) During an informal disciplinary hearing, the ~~((student))~~ respondent must be provided with the following information:

(a) An explanation of the student conduct process;

(b) The alleged misconduct ((and the reasons for the university's belief that the student engaged in the misconduct));

~~((b))~~ (c) The specific section(s) of the student conduct code allegedly violated; and

~~((c))~~ (d) The possible sanctions that may be imposed.

(3) Following the informal disciplinary hearing, the conduct officer may conduct further investigation including, but not limited to, additional interviews of the complainant, the respondent, and any witnesses.

(4) Based on the findings of ((an)) the informal hearing and any further investigation, the ((initiating)) conduct officer shall enter in writing ((one of the following orders)):

(a) An order exonerating the ~~((student or))~~ respondent, dismissing the disciplinary proceeding if it appears that there has been no misconduct, or finding that a preponderance of the evidence does not establish a violation of this conduct code;

(b) An initial order (subject to appeal and/or review as provided in this conduct code), imposing ~~((a))~~ one or more of the disciplinary sanctions specified in WAC 478-120-040;

(c) An order referring the matter to the appropriate university disciplinary committee; and/or

(d) An order referring the matter ~~((directly))~~ to the faculty appeal board because exceptional circumstances as defined in WAC 478-120-100 (3)(b)(i) may exist.

~~((4))~~ (5)(a) If the initial order imposes a sanction and exceptional circumstances as defined in WAC 478-120-100 (3)(b)(i) exist, the matter shall be referred ((directly)) to the faculty appeal board and the ((student)) respondent, and in the case involving an allegation of sexual misconduct, a complainant, shall be informed that he or she has the right to request a formal hearing according to the procedures set forth in WAC 478-120-075(3). Supplemental procedures applicable to cases involving an allegation of sexual misconduct are set forth in WAC 478-120-137.

(b) If the initial order imposes a sanction, but exceptional circumstances do not exist and the case does not involve an allegation of sexual misconduct, then the ((student must)) respondent shall be informed that he or she has twenty-one calendar days from the date of the service of the initial order ~~((or twenty five calendar days from the date of the mailing of the initial order))~~ to request a hearing before the appropriate university disciplinary committee. If the ~~((student))~~ respondent chooses not to appeal, the order becomes the final order.

~~((5))~~ (6) Within ten days of the conclusion of the ((hearing and any associated)) conduct officer's investigation((s)), the ((student)) respondent, and in any case involving an allegation of sexual misconduct, the complainant, shall be provided with a written order which shall include a statement of the decision, the reasons for the decision, and information about appealing the decision. No unfavorable action may be taken against the ((student)) respondent until the ((student)) respondent has been given such notice and information. ((In a case involving an alleged sexual offense, both the accuser and the accused shall be informed of the outcome of that hearing.)) In a case where the ((student)) respondent is a minor, the disciplinary sanctions imposed may be reported to the ((student's)) respondent's parents or legal guardian at the discretion of the ((initiating)) conduct officer.

~~((6) A student may request a hearing by the appropriate university disciplinary committee at any time during these informal proceedings. If such a request is made, the matter shall be referred to the appropriate university disciplinary committee.)~~

(7) The official record of this informal hearing shall consist of all documents prepared or considered by the dean, the vice-president for student life, or, at the University of Washington Bothell and Tacoma campuses, the chancellors, or the dean or director of the program in which the ~~((student))~~ respondent is enrolled, or their delegates, with regard to the dispute at hand.

AMENDATORY SECTION (Amending WSR 14-17-097, filed 8/19/14, effective 9/19/14)

**WAC 478-120-075 Appeals.** Any initial order may be appealed by timely submission of a written petition to the appropriate body. An order only referring a matter from one hearing body to another, not determining the matter on its merits, is not an initial order.

(1) If ~~((a student does not appeal to))~~ no appeal is filed with the appropriate body within twenty-one days of service of the initial order ~~((or within twenty-five calendar days of the date when the university mailed the initial order to the student;-))~~ the right to appeal is waived and the order becomes final(-)

~~(a) All initial orders shall be hand delivered or delivered by mail.~~

~~(b) Any student involved in a disciplinary hearing is required to provide his or her current and accurate address to the office of the vice president for student life or the office of the chancellor for the University of Washington Bothell or Tacoma campuses, whichever is appropriate, or their delegates), except that any initial order imposing the sanction of dismissal shall be subject to review in accordance with WAC 478-120-125.~~

(2) All petitions for appeal must be made in writing to the appropriate authority (the appropriate chair of one of the university disciplinary committees (Seattle, Bothell or Tacoma), the chair of the faculty appeal board, or the president). The petition must state the reasons for the appeal and indicate points of disagreement with the initial order.

(3) If a student wishes to request a formal hearing before the faculty appeal board, the student's written petition for appeal must also state that a formal hearing is being requested and must identify the specific exceptional circumstances (as defined in WAC 478-120-100 (3)(b)(i)) warranting such a hearing. When conducting administrative reviews of ~~((informal hearings))~~ initial orders, the faculty appeal board shall make any inquiries necessary to ascertain whether the proceeding must be converted to a formal disciplinary hearing.

(4) Additional provisions regarding appeals in cases involving an allegation of sexual misconduct are set forth in WAC 478-120-137.

(5) After conducting the appropriate review, the appeal body ~~((or the president))~~ may sustain, reduce, or vacate the sanction imposed by the initial order, except if that review is in the form of a formal hearing before the faculty appeal board, that board may increase any sanction.

~~((5))~~ (6) Review by the president or the president's delegate shall be conducted in accordance with WAC 478-120-125.

(7) Only the president or the president's delegate may issue a final order of dismissal.

~~((6))~~ (8) Sanctions, if any, will be imposed only after an order becomes final, except for actions taken under WAC 478-120-140.

AMENDATORY SECTION (Amending WSR 14-17-097, filed 8/19/14, effective 9/19/14)

**WAC 478-120-085 The university disciplinary committees.** Each University of Washington campus shall have

its own university disciplinary committee. The university disciplinary committees shall consist of a nonvoting chair, at least three voting faculty members, and at least three voting student members. The committees shall be maintained for the purpose of providing hearings for disciplinary actions that have been initiated by the deans or, at the University of Washington Bothell and Tacoma campuses, the dean or director of the program in which a ~~((student))~~ respondent is enrolled, the vice-president for student life at the University of Washington Seattle campus, the chancellors of the University of Washington Bothell and Tacoma campuses, or their delegates.

(1) The president of the University of Washington Seattle campus and the chancellors of the University of Washington Bothell and Tacoma campuses shall designate a member of the faculty or administration to serve as chair of each respective university disciplinary committee for a term of one year. All chairs may be reappointed for consecutive terms.

(a) The chairs shall ensure that all procedural safeguards and guidelines are followed. Accordingly, the chairs shall decide all procedural questions that arise in relation to hearings, including rulings on evidence (as defined in WAC 478-120-095(3)) and challenges to the impartiality of committee members. The chairs shall have the discretion to regulate all aspects of the proceedings.

(b) The chairs shall take whatever steps are necessary to ensure that hearings are conducted in a safe and orderly manner.

(2) The ~~((three))~~ voting faculty members of each university disciplinary committee shall be selected ~~((at random from))~~ by the faculty senate at the University of Washington Seattle, or at the University of Washington Bothell and Tacoma campuses, their respective faculty assembly or organization to serve one-year terms. Voting faculty members may ~~((not))~~ be reappointed to consecutive terms.

~~((a) Panels of eligible faculty members shall be randomly selected to serve on the committees in the order in which they were selected, except that at the University of Washington Seattle each faculty member of the committees must represent a different faculty senate group.~~

~~((b))~~ Faculty members must have been members of the faculty for at least one year ~~((and hold the position of assistant professor or higher))~~ in order to be eligible to serve as voting members of the university disciplinary committees.

(3) The ~~((three))~~ voting student members of the university disciplinary committees shall be selected ~~((at random))~~ from each student body to serve one-year terms. Student members of the committees may not be reappointed.

(a) ~~((Panels of eligible))~~ For each university disciplinary committee, students shall be selected ~~((randomly from the entire full-time student body to serve as committee members or alternates in the order in which they were selected, except that))~~ from a pool of students who express interest in serving on the committee and at the University of Washington Seattle at least one member must be a professional or graduate student and the other ((two)) members must represent different undergraduate classes.

(b) To be eligible to serve on the university disciplinary committees, students must be full-time and in good standing with the university.

(4) In addition to the chairs, a quorum shall be two faculty members and two student members. The chairs shall select alternates from the panels of eligible faculty or students as needed to produce a quorum.

(5) Committee members may be disqualified from a particular hearing for bias, prejudice, conflict of interest, or any other reason which may prevent him or her from serving as an impartial judge of the matter before the committees.

(a) Committee members may excuse themselves for any of the causes set forth in this section by submitting a written statement to the appropriate committee chair stating facts and reasons for the disqualification.

(b) A student before any of the university disciplinary committees may challenge the impartiality of a committee member by written petition. The appropriate chair shall determine whether to grant the petition and excuse the committee member from the case, and shall state the facts and reasons for that determination in writing.

(c) Any person who has been delegated the authority to initiate disciplinary proceedings is disqualified from serving as a member of the university disciplinary committees.

(6) The appropriate chair may relieve a member of his or her university disciplinary committee from serving on that committee for a particular case, for a specific period of time, or for the rest of the year after the member submits a written request to the chair.

(7) Members of the university disciplinary committees shall begin their terms on the first day of classes of ~~((winter))~~ autumn quarter. Those terms shall expire on the first day of classes of the next ~~((winter))~~ autumn quarter, except that cases in process shall be continued until a decision is reached. ~~((The new panels of committee members shall be identified by the outgoing chairs, or by the person designated by the appropriate chair, through random procedures established by the chair.))~~

AMENDATORY SECTION (Amending WSR 14-17-097, filed 8/19/14, effective 9/19/14)

**WAC 478-120-095 Hearings before the university disciplinary committees.** The purpose of a hearing before a university disciplinary committee is to provide all parties with an opportunity to present evidence and argument before disciplinary sanctions are imposed on a ~~((student))~~ respondent. A university disciplinary committee may not hear any cases involving an allegation of sexual misconduct. Based on the evidence presented at this hearing, the committee shall determine whether the ~~((student))~~ respondent has engaged in the alleged misconduct. If there is a finding of misconduct, the committee shall then determine the appropriate sanction to be imposed.

(1) When a hearing is scheduled before a university disciplinary committee, the chair of the appropriate committee shall provide the ~~((student))~~ respondent with written notice of the following information:

(a) The time and place of the hearing;

(b) The allegations of misconduct against the ~~((student))~~ respondent;

(c) A list of all witnesses who may be called to testify;

(d) A description of all documentary and real evidence to be presented at the hearing, including a copy of ~~((his or her))~~ the respondent's disciplinary file; and

(e) The sanctions that may be imposed at the hearing if the allegations of misconduct are found to be true.

(2) The chair of each committee shall adhere to the following procedures at all disciplinary hearings:

(a) The ~~((student))~~ respondent shall be provided with a reasonable opportunity (at least seven days) to gather evidence, contact witnesses, and prepare a defense for the hearing.

(b) The ~~((student))~~ respondent may be accompanied by an advisor and/or an attorney of the ~~((student's))~~ respondent's choice.

(c) The ~~((student))~~ respondent is entitled to hear all testimony and examine all evidence that is presented at the hearing. In response, the ~~((student))~~ respondent may present evidence and witnesses on his or her own behalf and may ask questions of any other witnesses.

(d) No ~~((student))~~ respondent shall be compelled to give self-incriminating evidence.

(3) Evidence shall be admissible at the hearing if it is the type of evidence that reasonably prudent members of the university community would rely upon in the conduct of their affairs.

(4) The ~~((initiating))~~ conduct officer (the appropriate dean, or at the University of Washington Bothell and Tacoma campuses, dean or director of the program in which the ~~((student))~~ respondent is enrolled, the vice-president for student life, the chancellors of the University of Washington Bothell and Tacoma campuses, or their delegates) must prove by a preponderance of the evidence presented at the hearing that the ~~((student))~~ respondent has engaged in the alleged misconduct. The committee shall base its factual determination solely on the evidence presented at the hearing.

(a) Decisions of the university disciplinary committee will be made based on a simple majority vote of the committees.

(b) If a university disciplinary committee cannot reach a decision by simple majority vote, an order shall be entered referring the matter to the faculty appeal board. ~~((Where))~~ In cases where the faculty appeal board determines that exceptional circumstances may exist, the ~~((student))~~ respondent shall be notified of the right to request a formal hearing. Otherwise, the faculty appeal board shall ~~((conduct an administrative review as provided under WAC 478-120-100 (1) and (2)))~~ make a decision based upon its review of the record of the hearing before the university disciplinary committee.

(5) If at any time after a matter has been referred to a university disciplinary committee the appropriate chair determines that the matter should properly be before the faculty appeal board, the chair may refer the matter to the faculty appeal board and shall provide the ~~((student))~~ respondent with written notice of the referral ~~((and of the opportunity to request a formal hearing if exceptional circumstances exist. (See WAC 478-120-100 (3)(b)(i).)))~~. Any case involving an allegation of sexual misconduct shall be referred to the faculty appeal board.

(6) If the committee determines that the ~~((student))~~ respondent has violated the university's rules, regulations,

procedures, policies, standards of conduct, or orders, it shall then determine the appropriate sanction to be imposed. When determining the appropriate sanction, the committee shall ~~((review the evidence presented at the hearing and the student's past record of conduct at the university))~~ consider the factors listed in WAC 478-120-040(2).

(7) The chair of the appropriate university disciplinary committee shall provide the ~~((student))~~ respondent with a written statement of the committee's decision within ten days of the conclusion of the hearing. This written statement shall include the committee's factual findings, the conclusions that have been drawn from those findings, the reasons for those conclusions, and the sanctions, if any, to be imposed. If sanctions are imposed, the ~~((student))~~ respondent must also be informed of the appropriate procedures for appealing the committee's decision to the faculty appeal board. ~~((In a case involving an alleged sexual offense, both the accuser and the accused shall be informed of the outcome of the hearing.))~~ In a case where the ~~((student))~~ respondent is a minor, the written statement of the committee's decision may be reported to the ~~((student's))~~ respondent's parents or legal guardian at the discretion of the chair of the appropriate university disciplinary committee.

(8) This written statement of the committee's decision shall be the committee's initial order. If ~~((the student chooses not to))~~ no appeal is filed, the initial order of the appropriate university disciplinary committee becomes the final order at the end of the appeal period set forth in WAC 478-120-075(1) ~~((, except that orders of dismissal shall be referred to the president)).~~

(9) ~~((The student))~~ A respondent may choose to present evidence to the chair of the appropriate university disciplinary committee rather than at a hearing before the full committee. The ~~((student's))~~ respondent's waiver of the right to a hearing before a university disciplinary committee must be submitted in writing to the chair of the appropriate committee. The chair will submit the ~~((student's))~~ respondent's evidence and arguments to the full committee and the committee will make its decision based on the chair's report.

(10) All proceedings of the committees will be conducted with reasonable dispatch and be terminated as soon as possible, consistent with fairness to all parties involved. The chair shall have the discretion to continue the hearing.

(11) An adequate summary of the proceedings will be kept. Such a summary shall include all documents that were considered by the appropriate committee and may include ~~((a tape))~~ an audio recording of the testimony and any other documents related to the hearing.

~~((12) A report of a university disciplinary committee shall, upon written request and release by the student or students involved, and subject to the requirements of the Family Educational Rights and Privacy Act, be made available to members of the university community through the vice president for student life, or the office of the chancellor at the University of Washington Bothell or Tacoma campuses, whichever is appropriate, or their delegates.))~~

AMENDATORY SECTION (Amending WSR 07-23-068, filed 11/19/07, effective 12/20/07)

**WAC 478-120-100 Faculty appeal board.** There shall be a single faculty appeal board which will serve all University of Washington campuses. The faculty appeal board shall be composed of at least seven members of the faculty to be appointed by the chair of the faculty senate after consultation with the faculty council on student affairs, to include one faculty member from each of the University of Washington Bothell and Tacoma campuses. The chair of the faculty senate shall appoint one of the members to be the chair of the faculty appeal board. The faculty appeal board shall conduct either administrative reviews or formal hearings and the procedures to be used shall depend on the nature of the appeal before the board. Cases may be heard by the entire board or by panels of no fewer than three board members.

(1) The faculty appeal board may conduct an administrative review when exceptional circumstances do not exist or ~~((the))~~ a student has not requested a formal hearing in writing.

(2) The procedures for conducting such administrative review are set forth in WAC 478-120-105. The chair shall maintain a record of all administrative reviews conducted by the faculty appeal board. At a minimum, such a record shall include all documents that were considered by the board and may include ~~((a tape))~~ an audio recording of all testimony and all other documents related to the review.

(3) The faculty appeal board shall conduct a formal hearing when:

(a) The ~~((student))~~ respondent, and in a case involving an allegation of sexual misconduct, a complainant, requests a formal hearing before the faculty appeal board in writing setting forth the exceptional circumstances that exist (see below); and

(b) The chair reviews the student's written request and determines that exceptional circumstances do exist. Additionally, the faculty appeal board may conduct a formal hearing in other circumstances as the board deems appropriate. If the faculty appeal board does not conduct a formal hearing, it shall conduct an administrative review of the prior decision.

(i) Exceptional circumstances exist when:

(A) The sanction of dismissal has been recommended; or

(B) The ~~((student))~~ respondent has been charged with hazing; or

(C) The sanction of restitution (in excess of three hundred dollars) has been recommended; or

(D) Suspension has been recommended.

(ii) If the faculty appeal board decides not to grant a ~~((student's))~~ written request for a formal hearing, the chair shall provide the ~~((student))~~ parties with a written copy of the board's decision ~~((and a brief statement of the reasons for))~~ denying the ~~((petition))~~ request for a formal hearing within ninety days as specified in WAC 478-120-115~~((2))~~ (3).

(c) The faculty appeal board shall also conduct a formal hearing as provided in the supplemental provisions set forth in WAC 478-120-137 for cases involving an allegation of sexual misconduct.

(4) If a matter is referred directly to the faculty appeal board and there is no initial order, then the faculty appeal board shall determine whether exceptional circumstances

exist or could exist. If exceptional circumstances exist or could exist, then the board shall notify the ~~((student))~~ respondent and in any case involving an allegation of sexual misconduct, the complainant, in writing that he or she has twenty-one days from the date of service of the notice ~~((or twenty-five days from the date of mailing the notice))~~ to request a formal hearing. If ~~((the student fails to make such a))~~ no such request is made, any right to a formal hearing is waived.

(5) Formal hearings conducted by the faculty appeal board shall be according to the procedural guidelines set forth in WAC 478-120-115 and chapter 34.05 RCW.

(a) At the conclusion of the formal hearing, the faculty appeal board shall enter an initial order based on the findings of that hearing. That initial order shall include a written statement of the board's decision and the basis for that decision, including procedures for appealing the decision to the president or president's delegate. The initial order shall be provided to the ~~((student))~~ parties within ~~((ninety))~~ sixty days of the conclusion of the hearing unless the faculty appeal board determines that an extension of time (which shall not exceed thirty additional days) is warranted and informs the parties of such extension. In a case involving an ~~((alleged))~~ allegation of sexual ((offense)) misconduct, both the ~~((accuser and the accused))~~ respondent and the complainant shall be informed of the board's decision. In a case where the ~~((student))~~ respondent is a minor, the board's decision may be reported to the ~~((student's))~~ respondent's parents or legal guardian at the discretion of the ~~((initiating))~~ conduct officer.

(b) An initial order from a formal hearing may be appealed to the president of the university or the president's delegate for a final ~~((administrative))~~ review.

(c) If ~~((the student chooses not to))~~ no appeal is timely submitted, the initial order of the faculty appeal board shall become the final order, except that orders of dismissal entered by the faculty appeal board shall be reviewed by the president or the president's delegate in accordance with WAC 478-120-125.

(6) The record in cases in which the faculty appeal board conducts a formal hearing shall be as specified in WAC 478-120-115~~((+5))~~ (20).

(7) Board members may be disqualified from a particular formal hearing for bias, prejudice, conflict of interest, or any other reason which may prevent them from serving as impartial judges of the matter before the board.

(a) A committee member may excuse himself or herself for any of the causes set forth in this section by submitting a written statement to the board chair stating facts and reasons for the disqualification.

(b) A student before the faculty appeal board may challenge the impartiality of a board member by written petition. The chair shall determine whether to grant the petition and excuse the board member, stating the facts and reasons for the determination in writing.

(c) Faculty who have been delegated the authority to initiate disciplinary proceedings are disqualified from serving as members of the faculty appeal board.

(8) At the discretion of the chair, board members may be excused from a particular hearing on the basis of compelling

personal need after submitting a written request to the chair explaining the basis of the request.

AMENDATORY SECTION (Amending WSR 96-10-051, filed 4/29/96, effective 5/30/96)

**WAC 478-120-105 Administrative review by the faculty appeal board.** (1) The faculty appeal board may conduct administrative review when exceptional circumstances do not exist or ~~((the student has not requested a))~~ no formal hearing has been requested. When the faculty appeal board determines that administrative review is appropriate, the chair shall notify all parties of that decision. The notice to the parties shall include a statement of:

(a) The allegations of misconduct against the ~~((student))~~ respondent;

(b) The sanctions that were recommended by the ~~((initiating))~~ conduct officer or the university disciplinary committee, if any; and

(c) A date by which any voluntarily submitted written briefs or statements must be submitted.

(2) When the faculty appeal board conducts an administrative review, the board may base its review on:

(a) All documents and any recordings considered by the initiating officer or the university disciplinary committee; ~~((or))~~

(b) Oral and/or written argument ~~((of both parties; or))~~ submitted by any party; and

(c) Additional evidence.

(3) At the conclusion of its review, the faculty appeal board shall enter an order. An initial order may be appealed and a final order may not be appealed ~~((except that final orders of dismissal shall be reviewed by the president or the president's delegate))~~. The ~~((student shall be provided with a))~~ written order ((which)) shall include a ~~((written))~~ statement of the board's decision within ten days of the conclusion of the review and information on rights of appeal, if any. In a case involving an ~~((alleged sexual offense))~~ allegation of sexual misconduct, both the ~~((accuser and the accused))~~ respondent and any complainant shall be informed of the outcome of the review. In a case where the ~~((student))~~ respondent is a minor, the board's decision may be reported to the ~~((student's))~~ respondent's parents or legal guardian at the discretion of the chair of the faculty appeal board.

AMENDATORY SECTION (Amending WSR 96-10-051, filed 4/29/96, effective 5/30/96)

**WAC 478-120-115 Formal hearings before the faculty appeal board.** (1) The faculty appeal board shall conduct a formal hearing when exceptional circumstances exist and ~~((the student has requested in writing))~~ a request for a formal hearing has been made. The faculty appeal board shall also conduct formal hearings as provided in the supplemental provisions for cases involving an allegation of sexual misconduct set forth in WAC 478-120-137. Additionally, the faculty appeal board may conduct a formal hearing in other circumstances as the board deems appropriate.

(2) Within thirty days after receipt of a written petition for a formal hearing before the faculty appeal board, the board shall notify the requesting party of any obvious errors

or omissions in the party's petition, request any additional information the board wishes to obtain and is permitted by law to require, and notify the requesting party of the name, mailing address, and telephone number of an office or person who may be contacted regarding the formal hearing.

(3) Within ninety days after receipt of a written petition for formal hearing or within ninety days after the party's response to a timely request from the board as provided in subsection ~~((4))~~ (2) of this section, the board shall either deny the formal hearing or commence the formal hearing.

(4) Once the board decides to conduct a formal hearing, the chair of the faculty appeal board shall schedule the time and place of the hearing and give not less than seven days advance written notice of the hearing to all parties. That notice shall include:

(a) The names and addresses of all parties to whom notice is being given, and if known, the names and addresses of their representatives;

(b) The name, business address, and telephone number of the person designated to represent the university at the hearing;

(c) The official file number and name of the proceeding;

(d) The name, mailing address, and telephone number of the chair of the faculty appeal board;

(e) A statement of the time, place, and nature of the hearing;

(f) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(g) A reference to the particular sections of university rules that are involved;

(h) A short and plain statement of the charges against the ~~(student)~~ respondent; and

(i) A statement that a student requesting the hearing who fails to attend the hearing or otherwise respond to this notice may lose his or her right to a formal hearing.

(5) Hearings before the faculty appeal board shall be conducted in accordance with the provisions of this conduct code, the Administrative Procedure Act (chapter 34.05 RCW), and the model rules of procedure (chapter 10-08 WAC). To the extent there is a conflict between the conduct code and the model rules, this conduct code shall control.

(6) The faculty appeal board will make its own determination based on the record of the hearing before the faculty appeal board.

(7) If a student requesting the hearing fails to attend or participate in a formal hearing, the faculty appeal board may ~~(serve upon all parties)~~:

(a) Hold the hearing and issue an initial order based on a preponderance of evidence presented at the hearing; or

(b) Issue a default or other dispositive order which shall include a statement of the grounds for the order. Within seven days after service of a default order~~(, the)~~ or other dispositive order, a student may file a written ~~(motion requesting)~~ request that the order be vacated, and stating the grounds relied upon.

~~((6) The student)~~ (8) Each party may be represented by ~~(counsel)~~ an attorney and/or be accompanied by an advisor of ~~(the student's)~~ that party's choice. No student shall be compelled to give self-incriminating evidence. However, a

negative inference can be drawn from a refusal to testify or to answer a particular question.

~~((7))~~ (9) The chair shall determine whether discovery is to be available, and, if so, which forms of discovery may be used. The chair may condition the use of discovery procedures on a showing of necessity and unavailability by other means. In exercising such discretion, the chair shall consider:

(a) Whether all parties are represented by counsel;

(b) Whether undue expense or delay in bringing the case to a hearing will result;

(c) Whether the use of discovery will promote the orderly and prompt conduct of the proceeding; and

(d) Whether the interests of justice will be promoted.

(e) The chair may decide whether to permit the taking of depositions, the requesting of admissions, or any other procedures authorized by rules 26 through 37 of the superior court rules.

~~((8))~~ (10) At appropriate stages of the hearing, the chair may give all parties an opportunity to submit and respond to briefs, motions, proposed findings of fact and conclusions of law, and proposed initial or final orders. To the extent necessary for a full disclosure of all relevant facts and issues, the chair shall afford ~~(both)~~ the parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence. A party filing a pleading, brief, or other ~~(paper)~~ documents with the chair shall serve copies on all other parties at the same time submitted to the chair.

~~((9))~~ (11) Evidence, including hearsay evidence, is admissible if it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. Evidence is not admissible if it is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The chair shall decide all procedural questions and make rulings on the admissibility of evidence, ~~(and)~~ motions, objections, and on challenges to the impartiality of board members, unless a hearing examiner is appointed as provided below. The Washington rules of evidence shall serve as guidelines for those rulings on the admissibility of evidence.

~~((10))~~ (12) All testimony of parties and witnesses shall be made under oath or affirmation. The parties are responsible for informing their witnesses of the time and place of the hearing.

(13) At the discretion of the chair, and where the rights of the parties will not be prejudiced thereby, all or part of any hearing, including the testimony of witnesses, may be conducted by telephone, video, or other electronic means. Each party in the hearing must have an opportunity to participate effectively in, to hear, and if technically and economically feasible, to see the entire proceeding while it is taking place. Such measures may be taken to accommodate concerns raised by a complainant, a respondent, or any witness.

~~((11))~~ (14) The faculty appeal board may appoint ~~(an)~~ a hearing examiner to conduct the actual hearing, which includes managing administrative matters before, during, and following a hearing, and ruling on any motions, objections, procedural questions, and the admissibility of evidence. The decision to use a hearing examiner requires the approval of a majority of the board members. The hearing examiner will

then conduct the hearing and if requested by the board, will submit a detailed report to the faculty appeal board according to the provisions of this section.

(a) ~~((If a hearing examiner conducts the hearing, an audio recording of the hearing must be kept, and the recording and any transcription thereof must be provided to the board.))~~ The hearing examiner will have all the authority of the chair of the faculty appeal board with regard to hearing procedures and will be responsible for maintaining the official record of the hearing, including an audio or video recording of the hearing, and transmitting the full official record to the chair following the hearing.

(b) The faculty appeal board may, at its option, request the hearing examiner to provide recommendations as to findings, conclusions, and decisions, but those recommendations shall not be binding on the board. The ~~((hearing examiner shall transmit to the board the full and complete record of the hearing and the))~~ board shall make its own findings, conclusions, and decisions based on the official record.

(c) ~~((The hearing examiner will make initial rulings on the use of discovery, the admissibility of evidence, and the procedures for the hearing.))~~

~~((d))~~ The hearing examiner must be ((a member of the bar)) an attorney permitted to practice law in Washington state. Any member of the faculty appeal board who is also a member of the Washington state bar, including the chair, may serve as the hearing examiner.

~~((12))~~ (15) The chair of the faculty appeal board may issue subpoenas and enter protective orders. A party may request in writing that the chair issue a subpoena for the attendance of a witness at the hearing. The requesting party is responsible for serving the subpoena upon the witness.

~~((13) Members of the faculty appeal board must avoid ex parte communications with any party involved in the hearing regarding any issue other than communications necessary to maintaining an orderly procedural flow to the hearing.))~~

(16) All communications with the chair and/or members of the faculty appeal board, except for communications necessary to procedural aspects of maintaining an orderly process, must be in the presence of, or with a copy to, all other parties. Ex parte communications received by the chair or members of the board must be placed on the record, and ~~((the other party))~~ all other parties must be informed of the ex parte communication and given an opportunity to respond on the record.

~~((14))~~ (17) At the conclusion of a hearing, and following the submission of all evidence, any written closing arguments, and any proposed orders by the parties, the board shall determine, whether based on a preponderance of the evidence, the respondent is responsible for violating this conduct code and, if so, what sanction(s) are to be imposed. The faculty appeal board shall have the full authority to impose any of the sanctions specified in WAC 478-120-040, subject to review in accordance with this conduct code. (All orders of dismissal are subject to review by the president in accordance with WAC 478-120-125.) Decisions will be determined by majority vote. Findings, conclusions, and decisions by the faculty appeal board shall be based exclusively on the evidence of record from the hearing and on matters officially noted in the record.

~~((15))~~ (18) The board shall enter an initial order which shall be served in writing on ((the student)) all parties within ((ninety)) sixty days after conclusion of the hearing or after submission of memos, briefs, or proposed findings, whichever is later, unless the period is waived or extended for good cause shown. ((The student shall be informed of procedures for appealing the decision. If the student does not appeal the board's initial order within the time set out in WAC 478-120-075(1), the initial order of the board shall become the final order, except all orders of dismissal shall be reviewed by the president or the president's delegate.

~~((16))~~ The board's initial order shall:

(a) Include a statement of findings of fact and conclusions with any findings based substantially on credibility of evidence or demeanor of witnesses so identified;

(b) Specify the section(s) of this conduct code that the respondent is responsible for violating, if any;

(c) Indicate the sanction(s) imposed, if any;

(d) Provide a statement regarding the availability of presidential review and the applicable time limits; and

(e) Include a statement of the circumstances under which the board's initial order, without further notice, may become a final order.

(19) An initial order issued by the faculty appeal board will become a final order if the respondent (or a complainant in any case involving an allegation of sexual misconduct) does not submit a request for review in accordance with WAC 478-120-125 within twenty-one days of service of the initial order, except that any initial order imposing dismissal will be automatically forwarded to the president for review under WAC 478-120-125.

(20) The chair shall maintain an official record of the hearing. The record shall contain those items specified in RCW 34.05.476.

**AMENDATORY SECTION** (Amending WSR 96-10-051, filed 4/29/96, effective 5/30/96)

**WAC 478-120-125 Review by the president of the university.** (1) Any initial order of the faculty appeal board that is based on the findings of a formal hearing may be appealed for a final review to the president or the president's delegate ~~((The student must submit))~~ by a respondent, and in any case involving an allegation of sexual misconduct, a complainant (regardless of whether the complainant participated as a party in the hearing before the faculty appeal board). Upon the submittal of such an appeal, the complainant will be considered a party to the final review. An appeal must be submitted to the president and the conduct officer in writing within twenty-one days of service of the board's initial order ((or twenty-five days of mailing the order, unless the order specifies a different time limit)) for which review is sought. Upon receipt, the president (or president's delegate) shall promptly serve all other parties with a copy of the appeal. Any appeal shall ((specify the portion of the board's order to which exception is taken and shall refer to the evidence of record which is relied upon to support the petition)) include the reasons for the appeal. However, the president or the president's delegate shall review all orders of dismissal, regardless of whether ~~((the))~~ a student appeals. In



a case imposing dismissal, any request for review submitted by a respondent or, in a case involving an allegation of sexual misconduct, a complainant, will be considered concurrently with the president's (or president's delegate's) automatic review of the matter.

(2) The president or the president's delegate shall consider the entire record of the disciplinary proceeding or such portion as may be ~~((edited))~~ specified by the ~~((student))~~ parties. At the president's or the president's delegate's discretion, the parties may also supplement the record with additional evidence.

(3) The parties may present their arguments to the president or the president's delegate in writing, and the president or the president's delegate may, at his or her discretion, afford each party an opportunity for oral argument.

(4) Any review by the president or the president's delegate will be conducted in accordance with RCW 34.05.464.

(5) All communications with the president or president's delegate, except for communications necessary to procedural aspects of maintaining an orderly process, must be in the presence of, or with a copy to, all other parties. Ex parte communications received by the president or president's delegate must be placed on the record, and all other parties must be informed of the ex parte communication and given an opportunity to respond on the record.

(6) After reviewing the record and considering the arguments of ~~((the two))~~ all parties, the president or the president's delegate shall enter a final order disposing of the matter or remanding the case for further proceedings ~~((and provide the student with a copy of that order))~~. A final order shall include, or incorporate by reference to the initial order, all matters required by RCW 34.05.461(3). A copy of the final order shall be served upon all parties.

~~((5))~~ (7) In a case involving an ~~((alleged sexual offense))~~ allegation of sexual misconduct, both the ~~((accuser and the accused))~~ respondent and the complainant shall be informed of the outcome of the review. In a case where the ~~((student))~~ respondent is a minor, the decision of the president or the president's delegate may be reported to the ~~((student's))~~ respondent's parents or legal guardian at the discretion of the president or president's delegate.

~~((6))~~ (8) Notwithstanding any other provisions of this chapter, and before an initial order issued under this conduct code becomes final, the president or the president's delegate may ~~((review the order))~~ determine that the initial order should be reviewed. Upon such determination, a complainant, in any case involving an allegation of sexual misconduct, if not already a party in the hearing before the faculty appeal board, shall be given the opportunity to participate as a party for the purposes of review by the president or the president's delegate. Notice of the president's (or president's delegate's) decision to review any initial order under this subsection shall be provided to all parties. Any such review shall be in ~~((accord))~~ accordance with RCW 34.05.-464 and/or 34.05.491.

AMENDATORY SECTION (Amending WSR 96-10-051, filed 4/29/96, effective 5/30/96)

**WAC 478-120-135 Reconsideration of final orders.**

(1) Within ten days of the service of a final order from the president or the president's delegate, ~~((the student))~~ any party may file a request for reconsideration, stating in writing specific reasons for the request. The request shall be directed to the president or the president's delegate who issued the final order, and the conduct officer. Upon receipt, the president (or president's delegate) shall promptly serve all other parties with a copy of the request for reconsideration.

(2) A request for reconsideration does not stay the effectiveness of a final order.

(3) A request for reconsideration is only intended to correct obvious mistakes in the judgment or order and should not be used to reargue the case. Filing a request for reconsideration is not a prerequisite for ~~((obtaining))~~ seeking judicial review~~((, and denial of the request))~~ in accordance with chapter 34.05 RCW. An order denying reconsideration or a notice provided for in subsection (4)(b) of this section is not subject to judicial review.

~~((3))~~ The request for reconsideration shall be promptly considered. If, within twenty days from the date the request is filed, the president or president's delegate does not either (a) dispose of the request, or (b) serve the student with a written notice specifying the date by which it will act upon the request, the request is deemed to be denied. (4) If a request for reconsideration is timely and properly submitted, the time for filing a petition for judicial review of a final order does not commence until the university disposes of the request for reconsideration. The request for reconsideration is automatically deemed to have been denied if, within twenty days from the date the request for reconsideration is timely submitted, the president or president's delegate who issued the final order does not either:

(a) Dispose of the request; or

(b) Serve the parties with a written notice specifying the date by which he or she will act upon the request.

(5) Unless the request for reconsideration is deemed denied under subsection (4) of this section, the request shall be disposed of by the same president or president's delegate, who issued the final order, if reasonably available. The disposition shall be in the form of a written order denying the request, granting the request and dissolving or modifying the final order, or granting the request and setting the matter for further hearing.

NEW SECTION

**WAC 478-120-137 Supplementary provisions regarding sexual misconduct.**

(1) Investigations and adjudications of cases involving an allegation of sexual misconduct will be conducted by university officials who receive regular (no less than annual) training on issues related to sexual misconduct. The requirement applies to conduct officers, all members of the faculty appeal board, the president, and the president's delegates. The specific training requirements shall be established by the university's Title IX coordinator.

(2) All cases involving an allegation of sexual misconduct shall be subject to the following supplementary provisions:

(a) The conduct officer will concurrently serve both the respondent and any complainant(s) with a copy of the conduct officer's initial order.

(b) Either a complainant or the respondent may appeal such initial order to the faculty appeal board in accordance with this conduct code, and both the respondent and any complainant shall receive notice of any appeal and notice of any hearing before the faculty appeal board. An initial order by a conduct officer in a case involving an allegation of sexual misconduct may be subject to review by the faculty appeal board as follows:

(i) Initial order imposes sanction and exceptional circumstances exist. If the initial order imposes a sanction and exceptional circumstances as defined in WAC 478-120-100 (3)(b)(i) exist, the matter shall be referred to the faculty appeal board and both the respondent and any complainant shall each have twenty-one calendar days from the date of service of the initial order to request a formal hearing according to the procedures set forth in WAC 478-120-075(3). (The respondent and any complainant shall be informed that the faculty appeal board may increase a sanction imposed in an initial order only if a formal hearing is held.) If no timely request for a formal hearing is submitted, the faculty appeal board shall conduct administrative review in accordance with WAC 478-120-105.

(ii) Initial order imposes sanction, but no exceptional circumstances exist. If the initial order imposes a sanction and exceptional circumstances as defined in WAC 478-120-100 (3)(b)(i) do not exist, the respondent and any complainant shall each have twenty-one calendar days from the date of service of the initial order to submit an appeal to the faculty appeal board. If a timely appeal is submitted by either the respondent or any complainant, the faculty appeal board shall conduct a formal hearing in accordance with this conduct code. If no timely appeal is submitted by either the respondent or any complainant, all rights of appeal are waived and the order becomes the final order.

(iii) Initial orders do not impose a sanction. If the initial order does not impose a sanction, any complainant shall have twenty-one calendar days from the date of service of the initial order to submit an appeal to the faculty appeal board. (The respondent shall be informed that the complainant has this right, and that such an initial order shall not become final at least until the period for any complainant to submit an appeal has elapsed.) If a timely appeal is submitted by any complainant, the faculty appeal board shall conduct a formal hearing in accordance with this conduct code. If no timely appeal is submitted, all rights of appeal are waived and the order becomes the final order.

Any appeal petition must state the reasons for the appeal. Any appeal petition must be submitted to the faculty appeal board and to the conduct officer, who will promptly provide a copy of the appeal to any other party.

(c) If a formal hearing is held by the faculty appeal board in a case involving an allegation of sexual misconduct, such hearing shall be conducted in accordance with WAC 478-

120-100 and 478-120-115 and the following supplementary procedures shall also apply:

(i) Both the respondent and any complainant shall be provided with the notice of a formal hearing as specified in WAC 478-120-115 (2), (3), and (4). Both the respondent and any complainant will have the right to participate as a party in the hearing including, but not limited to, the right to be represented by an attorney and/or be accompanied by an advisor, to call witnesses, to cross-examine witnesses, and to submit documentary evidence. A complainant (with or without an attorney and/or an advisor) may attend the formal hearing in its entirety, regardless of whether the complainant decides to participate as a party.

(ii) The respondent and a complainant may not ask questions of each other directly, but will be allowed to submit written questions to the chair of the faculty appeal board, who will ask any relevant and appropriate questions submitted by these parties. The chair has the discretion to accept, reject, or rephrase any question submitted by the respondent or a complainant.

(iii) Both the respondent and any complainant shall be concurrently served with all orders issued by the faculty appeal board.

(d) In any case involving an allegation of sexual misconduct, any complainant shall have the same rights as the respondent to participate as a party in any administrative review under WAC 478-120-105, to appeal a faculty appeal board's initial order to the president of the university under WAC 478-120-125, to participate as a party in any appeal to the president, and to seek reconsideration of a final order under WAC 478-120-135. In the event that a complainant timely appeals an initial order, such order shall not become final until that appeal is resolved. Any notices or orders issued by the president shall be concurrently served on the respondent and any complainant(s), in addition to the conduct officer.

(e) Except as otherwise provided in this section, cases involving an allegation of sexual misconduct will be subject to all the other applicable provisions for this conduct code.

AMENDATORY SECTION (Amending WSR 14-17-097, filed 8/19/14, effective 9/19/14)

**WAC 478-120-140 Emergency authority of the president and chancellors of the university.** If there is reasonable cause to believe that a student's conduct represents a threat to the health, safety, or welfare of the university or any member of the university community, or poses an ongoing threat of substantially disrupting or materially interfering with university activities or operations, the president, the president's delegate, the vice-president for student life, the chancellors of the University of Washington Bothell and Tacoma campuses, or the chancellors' delegates, may immediately suspend that student from participation in any or all university functions or privileges.

(1) In such an emergency situation, (~~the president, the president's delegate, the vice-president for student life, the chancellors, or the chancellors' delegates,~~) the university official placing the student on emergency suspension shall issue a written order to be served upon the student describing

the terms of the emergency suspension and the reasons for ~~((imposing))~~ the emergency suspension. The order shall be effective immediately and emergency suspension shall, unless otherwise specified in the emergency suspension order, remain in effect until the conclusion of all disciplinary proceedings. The order shall advise the student that he or she may provide information in writing at any time as to why emergency suspension should not be continued or why it should be made less restrictive.

(2) The matter shall then be referred to the appropriate ~~((disciplinary campus official))~~ conduct officer, who shall proceed as quickly as feasible to ~~((complete any proceedings that would be required if the matter did not involve an immediate danger))~~ set the informal hearing. At the informal hearing, the student shall be given an opportunity to provide information as to why emergency suspension should not be continued or why it should be less restrictive.

(3) To the extent permissible under applicable law, in any case involving an allegation of sexual misconduct, a complainant may also be provided with notice of the respondent's emergency suspension and any terms of the emergency suspension that directly relate to the complainant.

(4) If a final order is entered exonerating a respondent, any emergency suspension order shall be lifted by the university official who issued the order.

**AMENDATORY SECTION** (Amending WSR 14-17-097, filed 8/19/14, effective 9/19/14)

**WAC 478-120-145 Recording and maintenance of records.** (1) Records related to disciplinary proceedings shall be maintained consistent with university records retention policies and this conduct code.

(2) The president, vice-president for student life at the University of Washington Seattle campus ~~((or)),~~ the chancellors of the University of Washington Bothell and Tacoma campuses, or their delegates, shall keep records ~~((of))~~ related to all disciplinary actions reported to their respective offices and may notify the dean or director of the college, school, or program, in which a respondent is enrolled, of any action related to disciplinary proceedings involving the respondent, provided that the school official to whom the information is being disclosed has a legitimate educational interest in receiving such information, as permitted by FERPA.

(3) Records related to disciplinary ~~((records))~~ proceedings shall be kept separate from academic records, and respondents' official academic transcripts ~~((of a student's academic record))~~ shall not contain ~~((no))~~ any notation of ~~((any))~~ disciplinary action taken pursuant to this conduct code.

~~((2))~~ (4) The deans of a college or school at the University of Washington Seattle, ~~((or))~~ the dean or directors of ~~((the))~~ a program ~~((in which the student is enrolled))~~ at the University of Washington Bothell and Tacoma campuses ~~((initiating disciplinary action)),~~ or their delegates, shall maintain records related to all disciplinary matters reported to their respective offices and shall ~~((report in writing to))~~ notify the office of the vice-president for student life, ~~((or))~~ the office of the chancellor for the University of Washington Bothell or Tacoma campuses, whichever is appropriate, or their delegates, ~~((all cases in which disciplinary action is~~

taken. The dean at the University of Washington Seattle)) of any disciplinary action imposed against a respondent, who is enrolled in their college, school, or program. The university officials named in this section shall also inform the appropriate registrar of any action affecting a student's official standing in the university ~~((The office of the vice president for student life, or the office of the chancellor for the University of Washington Bothell or Tacoma campuses, shall notify the dean of the college or school or director of the program in which the student is enrolled of any disciplinary action it takes and also shall notify the registrar or campus officer of student affairs of any action affecting a student's official standing in the university.~~

~~((3))~~ (e.g., suspension or dismissal).

(5) The chairs of the faculty appeal board and university disciplinary committees shall maintain the official record (as indicated in RCW 34.05.476) of each disciplinary hearing until a final order is issued or entered. At such time the respective chair will transmit the official record to the vice-president for student life, the chancellor for the University of Washington Bothell, or the chancellor for the University of Washington Tacoma, whoever is appropriate, or their delegates, who will maintain the official record in accordance with this section.

(6) Disciplinary records of ~~((students))~~ respondents not exonerated shall be maintained ~~((by the vice president for student life, or the chancellor at the University of Washington Bothell or Tacoma campuses, whichever is appropriate, or their delegates, and the registrar))~~ for seven years after the resolution of all disciplinary ~~((action has been taken and/or after))~~ proceedings (including the resolution of any petition for judicial review filed in superior court) or until the administrative purpose for retention has been served, whichever is later. Final orders imposing suspension or dismissal may be maintained indefinitely.

~~((4))~~ Disciplinary records of exonerated students shall not be maintained.

(5) Notwithstanding any other provision of this section, the vice president for student life, or the chancellor at the University of Washington Bothell or Tacoma campuses, whichever is appropriate, or their delegates, at their discretion, upon written request by the student, may expunge the student's disciplinary record.

(6) Records and information regarding student disciplinary proceedings are subject to the provisions of the Family Educational Rights and Privacy Act and supporting regulations (20 U.S.C. 1232g). (7) Student disciplinary records are "education records" as defined by FERPA and may only be disclosed consistent with FERPA and ~~((to))~~ chapter 478-140 WAC.

## **REPEALER**

The following sections of the Washington Administrative Code are repealed:

WAC 478-120-025 Off-campus conduct.

WAC 478-120-050 Jurisdiction.

**WSR 16-01-184**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

[Filed December 22, 2015, 3:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-21-021

Title of Rule and Other Identifying Information: Chapter 308-408 WAC, Definitions; chapter 308-408A WAC, Licensing; chapter 308-408B WAC, Education—Home inspector course approval; and chapter 308-408C WAC, Standards of practice.

Hearing Location(s): Department of Licensing, 2000 4th Avenue West, Black Lake Building #3, Conference Room 3204, Olympia, WA 98502, on February 23, 2016, at 9 a.m.

Date of Intended Adoption: February 23, 2016, at 9 a.m.

Submit Written Comments to: Dolly Casitas, Department of Licensing, Home Inspector Program, P.O. Box 9021, Olympia, WA 98507-9021, e-mail dcasitas@dol.wa.gov, fax (360) 586-0998, by February 22, 2016.

Assistance for Persons with Disabilities: Contact Dolly Casitas by February 22, 2016, TTY (360) 360-0116 [664-0116] or (360) 664-6506.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending home inspectors, chapters 308-408, 308-408A, 308-408B, 308-408C WAC, for effectiveness, clarity, intent, and statutory authority.

Amending WAC 308-408-010 Definitions, 308-408A-040 Application for home inspector examination, licensed in another jurisdiction, 308-408A-100 Home inspectors renewal—Expiration, 308-408A-105 Reinstatement of a canceled license for nonpayment of renewal fee, 308-408B-010 Course approval required, 308-408B-040 General requirements for course approval, 308-408B-060 Certificate of course completion, 308-408B-070 Course offered in a symposium or conference format, 308-408B-080 Disciplinary action—Procedures—Investigation, 308-408B-090 Grounds for denial or withdrawal of course approval, 308-408B-110 Record retention, 308-408B-120 Distance education delivery method approval required, 308-408C-070 Structure, 308-408C-080 Exterior, 308-408C-090 Roofs, 308-408C-110 Electrical system, 308-408C-120 Heating system, 308-408C-130 Air conditioning systems, 308-408C-140 Interiors, 308-408C-150 Insulation and ventilation, 308-408C-170 Site (minor change for housekeeping) and 308-408C-180 Attached garages or carports; new WAC 308-408C-190 Safety; and repealing WAC 308-408A-010 Application for a license—Fingerprinting and 308-408B-130 Fundamentals supplemental course.

Reasons Supporting Proposal: The amendments are needed because the rules written six years ago are incomplete, inconsistent, and at times contradictory. The proposed rule amendments are supported by industry.

Statutory Authority for Adoption: RCW 18.280.050.

Statute Being Implemented: Chapter 18.280 RCW.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Karen Jarvis, 2000 4th Avenue West, Olympia, WA 98502, (360) 664-6483.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are exempt under RCW 34.05.310 (4)(g)(ii).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to these proposed rules under the provisions of RCW 34.05 [34.05.328] (5)(a)(i).

December 22, 2015

Damon Monroe  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-13-001, filed 6/3/09, effective 7/4/09)

**WAC 308-408-010 Words and terms.** Words and terms used in these rules shall have the same meaning as each has under chapter 18.280 RCW unless otherwise clearly provided in these rules, or the context in which they are used in these rules clearly indicates that they be given some other meaning.

(1) "Active member of an association and/or local chapter" means a member who holds a position as an officer, director, or controlling person in a home inspector association.

(2) "Classroom" means training that takes place in a setting where individuals receiving training are assembled together and learn through lectures, study papers, class discussion, textbook study, or other means of organized formal education techniques, such as video, closed circuit, or other forms of electronic means.

((2)) (3) "Comment" means the act of stating one's observations clearly in the report.

((3)) (4) "Describe" means the act of stating one's observations clearly in the report.

((4)) (5) "Distance education" means a delivery method in which instruction takes place in other than a live classroom setting, the instructor and the student are in physically separate locations, and interactive instructional methods such as video-based instruction, computer conferencing, video conferencing, interactive audio, interactive computer software, correspondence or internet-based instruction are used.

((5)) (6) "Enter" means to physically go into an attic, crawlspace, or other area. Simply sticking one's head and shoulders into these areas is not entering.

((6)) (7) "Experienced inspector" is a currently licensed home inspector who has performed at least two hundred fifty home inspections and has at least three years experience.

(8) "Field training" is in addition to the one hundred twenty hours of classroom instruction and shall be done on actual inspection sites. Field training must include forty hours of instruction with a minimum of five actual complete home inspections done to the standards of practice under the supervision of an experienced inspector. The applicant will be required to complete written reports for each inspection and the supervisor will review the reports and certify that they are in full compliance with the standards of practice. The forty

hours of supervised instruction will not include travel time to and from inspection, meals, and report writing time.

~~((7))~~ (9) "Interactive" means the course structure and technologies promote active student involvement with the course content, including the ability to:

- (a) Access or bypass optional content, if applicable;
- (b) Submit questions or answer test items, and receive direct feedback; and
- (c) Communicate with the instructor and/or other students on an immediate or reasonably delayed basis.

Interactive instruction specifically excludes courses that only provide passive delivery of instructional content.

~~((8))~~ (10) "Passive" means there is no required or actual interaction or feedback between the student and instructor.

~~((9))~~ (11) "Preinspection agreement" is a written contract signed by the client that outlines the standards and work to be performed by the home inspector.

~~((10))~~ (12) "Preoffer consultation" is a verbal report that is limited in scope performed by a licensed home inspector. A preinspection agreement must be signed by the client and describe the limited scope of the consultation. This preoffer consultation is conducted only prior to mutual acceptance.

~~((11))~~ (13) "Readily accessible" means available for visual inspection without requiring moving personal property, dismantling, destructive measures, or any action that likely will involve risk to persons or property.

~~((12))~~ (14) "Record" means the act of stating one's observations clearly in the report.

~~((13))~~ (15) "Report" means the act of stating one's observations clearly in the report.

~~((14))~~ (16) "Standard home inspection" is a prelisting or presale written report that contains all or most of the components listed in the standards of practice. The components must be listed in the preinspection agreement. This standard home inspection report cannot be delivered verbally and must be in writing.

~~((15))~~ (17) "Technically exhaustive" is an investigation that involves dismantling, the extensive use of advanced techniques, measurements, instruments, testing, calculations or other means.

~~((16))~~ (18) "Traverse" means the act of physically moving through a crawlspace or attic or over the surface of a roof during an inspection when it is safe to do so.

AMENDATORY SECTION (Amending WSR 09-13-001, filed 6/3/09, effective 7/4/09)

**WAC 308-408A-040 Application for home inspector examination, licensed in another jurisdiction.** (1) Any person ~~((applying for a home inspector examination who has been licensed and actively practices as a home inspector for two years in the last four years in another jurisdiction that meets or exceeds the requirements under chapter 18.280 RCW and has maintained))~~ who has taken the national portion of the home inspector examination or who has been licensed and actively practices in another jurisdiction and his or her license is in good standing is eligible to take the Washington state portion of the examination.

(2) Any person applying to take the examination under this section shall submit an examination application approved by the department and shall submit evidence of licensure in good standing in another jurisdiction by a license verification form completed by an administrative officer of the licensure authority in such jurisdiction.

(3) After the qualifications for the examination have been verified by the department the candidate shall contact the testing service up to one day prior to the desired test date to schedule and pay for an examination. Candidates requesting a morning or afternoon test session shall be scheduled immediately for an examination and will be provided with a registration number confirming their reservation. On the day of the examination, the candidate shall submit at the test site the verified examination application.

AMENDATORY SECTION (Amending WSR 09-13-001, filed 6/3/09, effective 7/4/09)

**WAC 308-408A-100 Home inspectors renewal—Expiration.** The minimum requirements for a home inspector to be issued the renewal of a license are that the home inspector:

(1) Has ~~((furnished proof of successful completion of))~~ signed an affidavit certifying that they have successfully completed twenty-four hours in ~~((instruction in))~~ courses approved by the board.

(2) Submit a renewal fee.

(3) If the application for a renewal is not received by the ~~((director))~~ department or postmarked on or before the renewal date, a penalty fee as prescribed by the director by rule shall be paid.

(4) The license of any person whose license renewal fee is not received within one year from the date of expiration shall be canceled. This person may obtain a new license by satisfying the procedure and requirements as prescribed by the director by rule.

AMENDATORY SECTION (Amending WSR 09-13-001, filed 6/3/09, effective 7/4/09)

**WAC 308-408A-105 Reinstatement of a canceled license for nonpayment of renewal fee.** Any person desiring to be reinstated as a licensed home inspector within two years of cancellation may have their license reinstated by satisfying either of the following options:

(1) Submission of an application to the director providing proof of the following:

(a) Successful completion of twenty-four hours of approved home inspection coursework completed within one year preceding the application for reinstatement ~~((A minimum of three clock hours must include a course(s) in Washington home inspector laws and regulations))~~;

(b) Payment of all back renewal fees with penalty at the current rate; and

(c) Payment of reinstatement penalty fine of one hundred fifty dollars; or

(2) Satisfy the procedures and qualifications for initial licensing, including the following:

(a) Successful completion of the home inspection licensing examination; and

(b) Successful completion of the fundamentals of home inspection course pursuant to RCW 18.280.070(2); and

(c) Proof of up to forty hours of field training supervised by a licensed home inspector as required by RCW 18.280.070(3).

(3) Former licensees canceled for nonpayment of fees for periods in excess of two years will be required to satisfy the requirements of subsection (2) of this section.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-408A-010 Application for a license—Finger-printing.

AMENDATORY SECTION (Amending WSR 09-13-001, filed 6/3/09, effective 7/4/09)

**WAC 308-408B-010 Course approval required.** (1) Any education provider or course developer must submit a course to the department for approval.

(2) Course approval by the department is required prior to the date on which the course is offered for clock hour credit.

(3) ~~((Each application for approval of a course shall be submitted to the department on the appropriate application form provided))~~ The course provider must submit a completed course approval application using the method defined by the department.

(4) The director or designee shall approve, disapprove, or conditionally approve applications based upon criteria established by the board.

(5) Upon approval, disapproval or conditional approval, the applicant will be so advised in writing by the department. Notification of disapproval shall include the reasons therefor.

(6) Approval shall expire two years after the effective date of approval.

AMENDATORY SECTION (Amending WSR 09-13-001, filed 6/3/09, effective 7/4/09)

**WAC 308-408B-040 General requirements for course approval.** Courses shall meet one of the following requirements:

(1) Be offered by a private entity; or

(2) Be offered by a tax-supported, public technical or community college or other institution of higher learning that offers college credits; or

(3) Be offered by the Washington home inspector board; and

(4) Have a minimum of one hundred twenty hours of coursework or instruction for the student for prelicense; or

(5) Have a minimum of two hours of coursework or instruction for the student for continuing education. A clock-hour is a period of fifty minutes of actual instruction; and

(6) Provide practical information related to the practice of home inspection in any of the following home inspection topic areas:

(a) Department prescribed curricula for prelicense:

Fundamentals of home inspection.

(b) Continuing education:

(i) Communications;

(ii) Structures;

(iii) Plumbing;

(iv) Electrical;

(v) Heating;

(vi) Ventilation;

(vii) Air conditioning;

(viii) Law and business administration;

(ix) Current trends and issues;

(x) Exteriors;

(xi) Interiors;

(xii) Consumer protection;

(xiii) Report writing; ~~((and))~~

(xiv) Environmental conditions or hazardous materials;

(xv) Building science; and

(xvi) Risk management.

(7) Be under the supervision of an instructor, who shall, at a minimum, be available to respond to specific questions from students;

(8) The following types of courses will not be approved for clock hours:

(a) Mechanical office and business skills, such as, key-boarding, speed-reading, memory improvement, and grammar;

(b) Standardized software programs such as word processing, e-mail, spreadsheets or data bases; an example: A course specific to the reporting system necessary to deliver a home inspection would be acceptable, but a course teaching how to use a computer would not be acceptable;

(c) Orientation courses for licensees, such as those offered by trade associations;

(d) Personal and sales motivation courses or sales meetings held in conjunction with a licensee's general business;

(e) Courses that are designed or developed to serve other professions, unless each component of the curriculum and content specifically shows how a home inspector licensee can utilize the information in the practice of home inspection;

(f) Personal finance, etiquette, or motivational type courses;

(g) Courses that are designed to promote or offer to sell specific products or services to home inspector licensees such as warranty programs, client/customer data base systems, software programs or other devices. Services or products can be offered during nonclock hour time, such as breaks or lunch time. Letterhead, logos, company names or other similar markings by itself, on course material are not considered promotional;

(h) Clock hours will not be awarded for any course time devoted to meals or transportation.

(9) Prelicense courses which are submitted for approval shall include a comprehensive examination(s) and answer key(s) of no fewer than two hundred questions, and a requirement of passing course grade of at least seventy percent; essay question examination keys shall identify the material to be tested and the points assigned for each question; an examination is not required for continuing education courses;

(10) Include textbook or instructional materials approved by the director, which shall be kept accurate and current;

(11) ~~((Not have a title which misleads the public as to the subject matter of the course;~~

~~(12))~~ The provider's course application shall identify learning objectives and demonstrate how these are related to the practice of home inspection.

AMENDATORY SECTION (Amending WSR 09-13-001, filed 6/3/09, effective 7/4/09)

**WAC 308-408B-060 Certificate of course completion.** Each education provider must issue a certificate of course completion within thirty days to students who have satisfactorily completed the course requirements. The certificate shall include the following information:

- (1) Student's name;
- (2) ~~((School's))~~ Education provider's name;
- (3) The course commencement date and completion date;
- (4) Course title;
- (5) Clock hours for the course;
- (6) ~~((School administrator's))~~ Education provider's signature;
- (7) Course identification number issued by the department; and
- (8) ~~((Instructor name; and~~
- ~~(9))~~ Completion of a required examination, if applicable.

AMENDATORY SECTION (Amending WSR 09-13-001, filed 6/3/09, effective 7/4/09)

**WAC 308-408B-070 Courses offered in a symposium or conference format.** (1) ~~((Approved schools))~~ Education providers offering courses in a symposium or conference format with two or more modules of independent instruction may issue certificates of course completion for fewer clock hours than approved by the department on their original course approval application; and

(2) Students must complete a minimum of two clock hours of instruction to receive clock hour credit.

AMENDATORY SECTION (Amending WSR 09-13-001, filed 6/3/09, effective 7/4/09)

**WAC 308-408B-080 Disciplinary action—Procedures—Investigation.** (1) The department shall have the authority on its own motion or upon complaint made to it to investigate or audit any course to determine compliance with chapter 18.280 RCW and with the rules and regulations of this chapter.

(2) Complaints concerning approved courses should be made in writing to the department and contain the following information when appropriate:

- (a) The complainant's name, address, and telephone number;
- (b) ~~((School))~~ Education provider's name, address, and telephone number;
- (c) ~~((Instructor(s) name;~~

~~((d))~~ Nature of complaint and facts detailing dates of attendance, termination date, date of occurrence ~~((names, addresses and positions of school officials contacted)),~~ and any other pertinent information;

~~((e))~~ (d) An explanation of what efforts if any, have been taken to resolve the problem with the ~~((school;~~

~~((f) Copies of pertinent documents, publications, and advertisements))~~ education provider.

AMENDATORY SECTION (Amending WSR 09-13-001, filed 6/3/09, effective 7/4/09)

**WAC 308-408B-090 Grounds for denial or withdrawal of course approval.** Course approval may be denied or withdrawn if ~~((the instructor or any owner, administrator or affiliated representative of a school, or a course provider or developer))~~ an education provider:

(1) Submits a false or incomplete course application or any other information required to be submitted to the department;

(2) Includes in its title the phrase "fundamentals of home inspection" if the course was not submitted for approval of clock hours pursuant to WAC 308-408B-020;

(3) ~~((If the title of the course misleads the public and/or licensees as to the subject matter of the course;~~

~~(4))~~ If course materials are not updated within thirty days of the effective date of a change in the statute or rules;

~~((5))~~ (4) If course content or material changes are not submitted to the department for approval prior to the date of using the changed course content;

~~((6))~~ (5) Failed to meet the requirements under WAC 308-408B-040 and 308-408B-120;

~~((7))~~ (6) If a course or prescribed curriculum was approved through the mistake or inadvertence of the director.

AMENDATORY SECTION (Amending WSR 09-13-001, filed 6/3/09, effective 7/4/09)

**WAC 308-408B-110 Record retention.** (1) Each ~~((school))~~ education provider shall maintain for a minimum of ~~((five))~~ two years each student's record;

(2) A "student record" shall include:

(a) The name, address, and telephone number of the ~~((school))~~ education provider;

(b) Full name, address, and telephone number of the student;

(c) Beginning and ending dates of attendance;

(d) Clock hour courses completed and examination results.

(3) Each ~~((school))~~ education provider shall provide a copy of a student's record to the student or the department upon request.

AMENDATORY SECTION (Amending WSR 09-13-001, filed 6/3/09, effective 7/4/09)

**WAC 308-408B-120 Distance education delivery method approval required.** Applicants are required to submit an application for each separate distance education delivery method for which they propose to offer approved courses for clock hours. When submitting a distance education deliv-

ery method application, the following minimum criteria must be provided by the applicant:

(1) Specify the course learning objectives for each learning unit and clearly demonstrate that the learning objectives cover the subject matter and how these relate to the practice of home inspection. Objectives must be specific to ensure that all content is covered adequately to ensure mastery;

(2) Demonstrate how mastery of the material is provided by:

(a) Dividing the material into major learning units, each of which divides the material into modules of instruction;

(b) Specifying learning objectives for each learning unit or module of instruction. Learning objectives must be comprehensive enough to ensure that if all the objectives are met, the entire content of the course will be mastered;

(c) Specifying an objective, quantitative criterion for mastering, used for each learning objective and provide a structured learning method designed to enable students to attain each objective.

(3) Demonstrate that the course includes the same or reasonably similar informational content as a course that would otherwise qualify for the requisite number of clock hours of classroom-based instruction and how the provider will know that the student completed the required number of clock hours;

(4) Describe consistent and regular interactive events appropriate to the delivery method. The interactive elements must be designed to promote student involvement in the learning process, and must directly support the student's achievement of the course learning objectives. The application must identify the interactive events included in the course and specify how the interactive events contribute to achievement of the stated learning objectives;

(5) Demonstrate how the course provides a mechanism of individual remediation to correct any deficiencies identified during the instruction and assessment process;

(6) Measure, at regular intervals, the student's progress toward completion of the master requirement for each learning unit or module. In the case of computer-based instruction, the course software must include automatic shutdown after a period of inactivity;

(7) Demonstrate that instructors are available to answer questions regarding course content at reasonable times and by reasonable means, including in-person contact, individual and conference telephone calls, e-mail and fax;

(8) Demonstrate how reasonable security will be provided to ensure that the student who receives credit for the course is the student who enrolled in and completed the course. Both the ~~((approved school))~~ education provider and the student must certify in writing that the student has completed the course, and the required number of clock hours;

(9) Provide a complete description of any hardware, software, or other technology to be used by the provider and needed by the student to effectively engage in the delivery and completion of the course material and an assessment of the availability and adequacy of the equipment, software or other technologies to the achievement of the course's instructional claims;

(10) Provide an orientation session ~~((with the instructor or an affiliated representative of an approved school))~~.

anisms must be clearly in place which allow students an early orientation to discuss course specifics;

(11) Demonstrate how the provider determined the number of clock hours requested in the distance education delivery method approval application; and

(12) Provide with each distance education delivery method approval application a copy of a course evaluation form. The provider must provide each student with the mandatory evaluation form and retain the completed form in the ~~((school))~~ education provider's records as required under WAC 308-408B-110.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-408B-130 Fundamentals supplemental course.

AMENDATORY SECTION (Amending WSR 09-08-014, filed 3/20/09, effective 4/20/09)

**WAC 308-408C-070 Structure.** An inspection of the structure will include the visible foundation; floor framing; roof framing and decking; other support and substructure/superstructure components; stairs; ventilation (when applicable); and exposed concrete slabs in inspected garages, basements, crawl spaces, and habitable areas.

#### (1) **The inspector will:**

- **Describe** the type of building materials comprising the major structural components.

- **Enter** and **traverse** attics and subfloor crawlspaces.

- **Inspect**

(a) The condition ~~((and serviceability))~~ of visible, exposed foundations and grade slabs, walls, posts, piers, beams, joists, trusses, subfloors, chimney foundations, stairs and the visible roof structure and attic components where readily and safely accessible.

(b) Subfloor crawlspaces and basements for indications of flooding and moisture penetration.

- **Probe** a representative number of structural components where deterioration is suspected or where clear indications of possible deterioration exist. Probing is not required when probing will damage any finished surface or where no deterioration is suspected.

- **Describe** any deficiencies of these systems or components.

- **Report** all wood rot and pest-conducive conditions discovered.

- **Refer** all issues that are suspected to be insect related to a licensed structural pest inspector (SPI) or pest control operator (PCO) for follow up.

#### (2) **The inspector is not required to:**

- **Enter**

(a) Subfloor crawlspaces that require excavation or have an access opening less than eighteen inches by twenty-four inches or headroom less than eighteen inches beneath floor joists and twelve inches beneath girders (beams).

(b) Any areas that are not readily accessible due to obstructions, inadequate clearances or have conditions which, in the inspector's opinion, are hazardous to the health



and safety of the inspector or will cause damage to components of the home.

- **Move** stored items or debris or perform excavation to gain access.

AMENDATORY SECTION (Amending WSR 09-08-014, filed 3/20/09, effective 4/20/09)

**WAC 308-408C-080 Exterior.** An inspection of the exterior includes the visible wall coverings, trim, protective coatings and sealants, windows and doors, attached porches, decks, steps, balconies, handrails, guardrails, carports, eaves, soffits, fascias and visible exterior portions of chimneys.

(1) **The inspector will:**

- **Describe** the exterior components visible from ground level.

- **Inspect** visible wall coverings, trim, protective coatings and sealants, windows and doors, attached porches, decks, steps, balconies, handrails, guardrails, carports, eaves, soffits, fascias and visible exterior portions of chimneys.

- **Probe** exterior components where deterioration is suspected or where clear indications of possible deterioration exist. Probing is not required when probing will damage any finished surface or where no deterioration is suspected.

- **Describe** any deficiencies of these systems or components.

(2) **The inspector is not required to:**

• **Inspect**

(a) Buildings, decks, patios, fences, retaining walls, and other structures detached from the dwelling.

(b) ~~((Safety type glass or))~~ The integrity of thermal window seals.

(c) Flues or verify the presence of flue liners beyond what can be safely and readily seen from the roof or the firebox of a stove or fireplace.

- **Test** or **evaluate** the operation of security locks, devices or systems.

- **Enter** areas beneath decks with clearances of less than ((five feet of clearance from the underside of joists to grade)) **eighteen inches under joists and twelve inches under beams.**

- **Evaluate** the function or condition of shutters, awnings, storm doors, storm windows, screens, and similar accessories.

AMENDATORY SECTION (Amending WSR 09-08-014, filed 3/20/09, effective 4/20/09)

**WAC 308-408C-090 Roofs.** An inspection of the roof includes the roof covering materials; gutters and downspout systems; visible flashings; roof vents; skylights, and any other roof penetrations; and the portions of the chimneys and flues visible from the exterior.

(1) **The inspector will:**

- **Traverse** the roof to inspect it.

- **Inspect** the gutters and downspout systems, visible flashings, soffits and fascias, skylights, and other roof penetrations.

- **Report** the manner in which the roof is ventilated if ventilation is required.

- **Describe** the type and general condition of roof coverings.

- **Report** multiple layers of roofing when visible or readily apparent.

- **Describe** any deficiencies of these systems or components.

(2) **The inspector is not required to:**

- **Traverse** a roof where, in the opinion of the inspector, doing so can damage roofing materials or be unsafe. If the roof is not traversed, the method used to inspect the roof must be reported.

- **Remove** snow, ice, debris or other material that obscures the roof surface or prevents access to the roof.

- **Inspect** gutter and downspout systems concealed within the structure; related underground drainage piping; and/or antennas, lightning arresters, or similar attachments.

- **Operate** powered roof ventilators.

- **Predict** remaining life expectancy of roof coverings.

AMENDATORY SECTION (Amending WSR 09-08-014, filed 3/20/09, effective 4/20/09)

**WAC 308-408C-110 Electrical system.** The inspection of the electrical system includes the service drop through the ~~((main panel;))~~ service equipment subpanels ~~((including))~~, feeders; branch circuits, connected devices, and lighting fixtures as well as grounding and bonding of electrical components where visible/accessible.

(1) **The inspector will:**

(a) **Describe** in the report the type of primary service, whether overhead or underground, voltage, amperage, over-current protection devices (fuses or breakers) and the type or types of branch wiring used.

(b) **Report**

(i) The existence of a connected service-grounding conductor and service-grounding electrode when same can be determined.

(ii) When no connection to a service grounding electrode can be confirmed.

(c) **Inspect** the main and branch circuit conductors for proper over-current protection and condition by visual observation after removal of the readily accessible main and sub-electric panel cover(s).

(d) **Report**~~((, if present, solid conductor aluminum branch circuits. Include a statement in the report that solid conductor aluminum wiring may be hazardous and a licensed electrician should inspect the system to ensure it's safe))~~ the presence of electrical conductors known in the inspection industry as possibly hazardous and that a licensed electrical contractor should evaluate further the types and methods of branch wiring use.

(e) **Verify**

(i) The operation of ~~((a representative number of))~~ readily accessible switches, receptacles and light fixtures.

(ii) The grounding and polarity of ~~((a representative number of))~~ all readily accessible receptacles; particularly in close proximity to plumbing fixtures or at the exterior.

(iii) Ground fault circuit interrupter (GFCI) protection and arc-fault circuit interrupter (AFCI) protection where currently required.

(f) **Report** the location of any inoperative, absent, or missing GFCI and/or AFCI devices when they are recommended and/or required by current industry standards.

(g) **Advise** clients that homes without ground fault or arc fault protection should have GFCI and AFCI devices installed where recommended ~~((by))~~ and/or required by current industry standards.

(h) **Report** on any ~~((circuit breaker))~~ service panel ~~((or))~~, subpanel, and fuse boxes known within the home inspection profession to have ~~((safety concerns))~~ inherit safety risks based on either design or age.

(i) **Describe** any deficiencies of these systems or components.

(2) **The inspector is not required to:**

(a) **Insert** any tool, probe or testing device into the main or subpanels.

(b) **Activate** electrical systems or branch circuits that are not energized.

(c) **Operate** circuit breakers, service disconnects or remove fuses.

(d) **Inspect** ancillary systems, including but not limited to:

- (i) Timers.
- (ii) Security systems.
- (iii) Low voltage relays.
- (iv) Smoke/heat detectors.
- (v) Antennas.
- (vi) Intercoms.
- (vii) Electrical deicing tapes.
- (viii) Lawn sprinkler wiring.
- (ix) Swimming pool or spa wiring.
- (x) Central vacuum systems.
- (xi) Electrical equipment that's not readily accessible.

(e) **Dismantle** any electrical device or control, except for the removal of the deadfront covers from the main service panel and subpanels.

(f) **Move** any objects, furniture, or appliances to gain access to any electrical component.

(g) **Test** every switch, receptacle, and fixture.

(h) **Remove** switch and receptacle cover plates.

(i) **Verify** the continuity of connected service ground(s).

AMENDATORY SECTION (Amending WSR 09-08-014, filed 3/20/09, effective 4/20/09)

**WAC 308-408C-120 Heating system.** The inspection of the heating system includes the fuel source; heating equipment; heating distribution; operating controls; flue pipes, chimneys and venting; auxiliary heating units.

(1) **The inspector will:**

(a) **Describe** the type of fuel, heating equipment, and heating distribution systems.

(b) **Operate** the system using normal readily accessible control devices.

(c) **Open** readily accessible access panels or covers provided by the manufacturer or installer, if readily detachable.

(d) **Inspect**

(i) The condition of normally operated controls and components of systems.

(ii) The condition and operation of furnaces, boilers, heat pumps, electrical central heating units and distribution systems.

(iii) Visible flue pipes and related components to ensure functional operation and proper clearance from combustibles.

(iv) Each habitable space in the home to determine whether or not there is a functioning heat source present.

(v) Spaces where fossil fuel burning heating devices are located to ensure there is air for combustion.

(vi) Electric baseboard and in-wall heaters to ensure they are functional.

(e) **Report** any evidence that indicates the possible presence of an underground storage tank.

(f) Report any open flame combustion appliances/devices present in sleeping rooms.

(g) **Describe** any deficiencies of these systems or components.

(2) **The inspector is not required to:**

(a) **Ignite** pilot lights.

(b) **Operate:**

(i) Heating devices or systems that do not respond to normal controls or have been shut down.

(ii) Any heating system when circumstances are not conducive to safe operation or when doing so will damage the equipment.

(c) **Inspect or evaluate**

(i) Heat exchangers concealed inside furnaces and boilers.

(ii) Any heating equipment that is not readily accessible.

(iii) The interior of chimneys and flues.

(iv) Installed heating system accessories, such as humidifiers, air purifiers, motorized dampers, heat reclaimers; solar heating systems; or concealed distribution systems.

(d) **Remove** covers or panels that are not readily accessible or removable.

(e) **Dismantle** any equipment, controls, or gauges except readily identifiable access covers designed to be removed by users.

(f) **Evaluate** whether the type of material used to insulate pipes, ducts, jackets and boilers is a health hazard.

(g) **Determine:**

(i) The capacity, adequacy, or efficiency of a heating system.

(ii) Determine adequacy of combustion air.

(h) **Evaluate** thermostats or controls other than to confirm that they actually turn a system on or off.

AMENDATORY SECTION (Amending WSR 09-08-014, filed 3/20/09, effective 4/20/09)

**WAC 308-408C-130 Air conditioning systems.** The inspection of the air conditioning system includes the cooling equipment; cooling distribution equipment and the operating controls.

(1) **The inspector will:**

(a) **Describe** the central air conditioning system and energy sources.

(b) **Operate** the system using normal control devices ~~((and measure and record temperature differential))~~.

(c) **Open** readily accessible access panels or covers provided by the manufacturer or installer.

(d) **Inspect** the condition of controls and operative components of the complete system; conditions permitting.

(e) **Describe** any deficiencies of these systems or components in the inspection report.

(f) Report missing or damaged appliance disconnects.

(2) **The inspector is not required to:**

(a) **Activate** cooling systems that have been shut down.

(b) **Inspect**

(i) Gas-fired refrigeration systems.

(ii) Evaporative coolers.

(iii) Wall or window-mounted air-conditioning units.

(iv) The system for refrigerant leaks.

(c) **Check** the coolant pressure/charge.

(d) **Determine** the efficiency, or adequacy of the system.

(e) **Operate** cooling system components if the exterior temperature is below sixty degrees Fahrenheit or when other circumstances are not conducive to safe operation or when doing so might damage the equipment.

(f) **Remove** covers or panels that are not readily accessible.

(g) **Dismantle** any equipment, controls, or gauges except readily identifiable access covers designed to be removed by users.

(h) **Determine** how much current the unit is drawing.

(i) **Evaluate** digital-type thermostats or controls.

AMENDATORY SECTION (Amending WSR 09-08-014, filed 3/20/09, effective 4/20/09)

**WAC 308-408C-140 Interiors.** The inspection of the interior includes the walls, ceilings, floors, windows, and doors; steps, stairways, balconies and railings.

(1) **The inspector will:**

(a) **Verify**

That steps, handrails, guardrails, stairways and landings are installed wherever necessary and **report** when they are missing or in need of repair and **report** when baluster spacing exceeds four inches.

(b) **Inspect**

(i) The overall general condition of cabinets and countertops.

(ii) Caulking and grout at kitchen and bathroom counters.

(iii) The interior walls, ceilings, and floors for indicators of concealed structural deficiencies, water infiltration or major damage.

(iv) The condition and operation of a representative number of windows and doors.

(c) **Comment**

(i) On the presence or absence of smoke ((detectors)) alarms and carbon monoxide detectors and recommend that they be installed where required by current standards.

(ii) On the presence or absence of egress where required by current standards.

(d) **Describe** any noncosmetic deficiencies of these systems or components.

(2) **The inspector is not required to:**

(a) **Report** on cosmetic conditions related to the condition of interior components.

(b) **Verify** whether all walls, floors, ceilings, doorways, cabinets and window openings are square, straight, level or plumb.

AMENDATORY SECTION (Amending WSR 09-08-014, filed 3/20/09, effective 4/20/09)

**WAC 308-408C-150 Insulation and ventilation.** The inspection of the insulation and ventilation includes the type and condition of the insulation and ventilation in viewable unfinished attics and subgrade areas as well as the installed mechanical ventilation systems.

(1) **The inspector will:**

• **Inspect** the insulation, ventilation and installed mechanical systems in viewable and accessible attics and unfinished subfloor areas.

• **Describe** the type of insulation in viewable and accessible unconditioned spaces.

• **Report** missing or inadequate vapor barriers in sub-floor crawlspaces with earth floors.

• **Report** the absence of insulation at the interface between conditioned and unconditioned spaces where visible.

• **Report** the absence of insulation on heating system ductwork and supply plumbing in unconditioned spaces.

• **Report** the presence or absence of ventilation systems and their function when it can be determined.

• **Describe** any deficiencies of these systems or components.

(2) **The inspector is not required to:**

• **Determine** the presence, extent, and type of insulation and vapor barriers concealed in the exterior walls.

• **Determine** the thickness or R-value of insulation above the ceiling, in the walls or below the floors.

AMENDATORY SECTION (Amending WSR 09-08-014, filed 3/20/09, effective 4/20/09)

**WAC 308-408C-170 Site.** The inspection of the site includes the building perimeter, land grade, and water drainage directly adjacent to the foundation; trees and vegetation that adversely affect the structure; walks, grade steps, driveways, patios, and retaining walls contiguous with the structure.

(1) **The inspector will:**

(a) **Describe** the material used for driveways, walkways, patios and other flatwork around the home.

(b) **Inspect**

(i) ~~((For serviceability of the))~~ Driveways, steps, walkways, patios, flatwork and retaining walls contiguous with the structure.

(ii) For proper grading and drainage slope.

(iii) Vegetation in close proximity to the home.

(c) **Describe** any deficiencies of these systems or components.

(2) **The inspector is not required to:**

• **Inspect** fences, privacy walls or retaining walls that are not contiguous with the structure.

- **Report** the condition of soil, trees, shrubs or vegetation unless they adversely affect the structure.
- **Evaluate** hydrological or geological conditions.
- **Determine** the adequacy of bulkheads, seawalls, breakwalls, and docks.

AMENDATORY SECTION (Amending WSR 09-08-014, filed 3/20/09, effective 4/20/09)

**WAC 308-408C-180 Attached garages or carports.**

The inspection of attached garages and carports includes their framing, siding, roof, doors, windows, and installed electrical/mechanical systems pertaining to the operation of the home.

**(1) The inspector will:**

- **Inspect** the condition and function of the overhead garage doors and associated hardware.
- **Test** the function of the garage door openers, their auto-reverse systems and secondary entrapment devices (photo-electric and edge sensors) when present.
- **Inspect** the condition and installation of any pedestrian doors.
- **Inspect** fire separation between the house and garage when applicable.
- **Report** as a fire hazard the presence of any ignition source (gas and electric water heaters, electrical receptacles, electronic air cleaners, motors of installed appliances, etc.) that is within eighteen inches of the garage floor.
- **Describe** any deficiencies of these systems or components.

**(2) The inspector is not required to:**

- ~~(• **Determine** whether or not a solid-core pedestrian door that is not labeled is fire-rated.)~~
- **Verify** the functionality of garage door opener remote controls.
- **Move** vehicles or personal property.
- **Operate** any equipment unless otherwise addressed in the SOP.

NEW SECTION

**WAC 308-408C-190 Safety.** (1) Inspect for safety glass at locations currently requiring safety glass.

**The inspector will:**

- **Report** whether it is present, not present, or could not be determined.
- **Include** a recommendation in the inspection report that the presence of safety glazing at currently required locations be verified.
- **Include** a recommendation for upgrading to safety glazing where required by current standards.

(2) **Report** the presence of dead bolts that are keyed on both sides as being a safety hazard.

**WSR 16-01-186**

**PROPOSED RULES**

**HEALTH CARE AUTHORITY**

(Washington Apple Health)

[Filed December 22, 2015, 3:52 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-19-022.

Title of Rule and Other Identifying Information: WAC 182-550-4400 Services exempt from DRG payment.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at [http://www.hca.wa.gov/documents/directions\\_to\\_csp.pdf](http://www.hca.wa.gov/documents/directions_to_csp.pdf) or directions can be obtained by calling (360) 725-1000), on January 26, 2016, at 10:00 a.m.

Date of Intended Adoption: Not sooner than January 27, 2016.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax (360) 586-9727, by 5:00 p.m. on January 26, 2016.

Assistance for Persons with Disabilities: Contact Amber Lougheed by January 22, 2016, e-mail [amber.lougheed@hca.wa.gov](mailto:amber.lougheed@hca.wa.gov), (360) 725-1349, or TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 182-550-4400 (2)(i) is being revised to remove the list of approved hospitals for bariatric surgery. The list is outdated. Providers may refer to the agency's inpatient hospital provider guide or the agency's web site for the most updated list of approved hospitals for bariatric surgery. WAC 182-550-4400 (2)(f) is being revised to change the authorization requirements for administrative days.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Amy Emerson, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1348; Implementation and Enforcement: Lisa Humphrey, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1617.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has determined that the proposed filing does not impose a disproportionate cost impact on small businesses or nonprofits.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

December 22, 2015

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-12-047, filed 5/29/14, effective 7/1/14)

**WAC 182-550-4400 Services—Exempt from DRG payment.** (1) Inpatient services are exempt from the diagnosis-related group (DRG) payment method only if they qualify for payment methods specifically mentioned in other sections of this chapter or in this section.

(2) Subject to the restrictions and limitations in this section, the agency exempts the following services for medicaid and CHIP clients from the DRG payment method. This policy also applies to covered services paid through medical care services (MCS) and any other state-administered program, except when otherwise indicated in this section. The exempt services are:

(a) Alcohol or other drug detoxification services when provided in a hospital having a detoxification provider agreement with the agency to perform these services.

(b) Hospital-based intensive inpatient detoxification, medical stabilization, and drug treatment services provided to chemical-using pregnant (CUP) women by a certified hospital. These are medicaid program services and are not covered or funded by the agency through MCS or any other state-administered program.

(c) Acute physical medicine and rehabilitation (acute PM&R) services.

(d) Psychiatric services. A mental health designee that arranges to pay a hospital directly for psychiatric services may use the agency's payment methods or contract with the hospital to pay using different methods. Claims not paid directly through a mental health designee are paid through the agency's payment system.

(e) Chronic pain management treatment provided in a hospital approved by the agency to provide that service.

(f) Administrative day services. ~~((For patient days during an inpatient stay where no acute care services were provided, a hospital may request an administrative day designation on a case-by-case basis.))~~ The agency pays administrative days for one or more days of a hospital stay in which an acute inpatient or observation level of care is not medically necessary, and a lower level of care is appropriate. The administrative day((s)) rate is based on the statewide average daily medicaid nursing facility ((per diem)) rate, which is adjusted annually. The agency may designate part of a client's stay to be paid an administrative day rate upon review of the claim or the client's medical record, or both.

(g) Inpatient services recorded on a claim grouped by the agency to a DRG for which the agency has not published an all-patient DRG (AP-DRG) or all-patient refined DRG (APR-DRG) relative weight. The agency will deny payment for claims grouped to DRG 469, DRG 470, APR DRG 955, or APR DRG 956.

(h) Organ transplants that involve heart, intestine, kidney, liver, lung, allogeneic bone marrow, autologous bone marrow, pancreas, or simultaneous kidney/pancreas. The agency pays hospitals for these organ transplants using the ratio of costs-to-charges (RCC) payment method. The agency maintains a list of DRGs which qualify as transplants on the agency's web site.

(i) Bariatric surgery performed in hospitals that meet the criteria in WAC 182-550-2301. The agency pays hospitals

for bariatric surgery on a per case rate basis for clients in medicaid and state-administered programs when the services are prior authorized and take place at an approved hospital. ~~((The agency approves bariatric services at Sacred Heart Medical Center, the University of Washington Medical Center, and the Oregon Health Sciences University and may approve other hospitals based on agency discretion.))~~ See WAC 182-550-3000 and 182-550-3470.

## WSR 16-01-192

### PROPOSED RULES

### DEPARTMENT OF

### FISH AND WILDLIFE

[Filed December 23, 2015, 9:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-18-113 on September 2, 2015.

Title of Rule and Other Identifying Information: WAC 220-56-350 Clams other than razor clams, mussels—Areas and seasons and 220-56-380 Oysters—Areas and seasons.

Hearing Location(s): Natural Resources Building, 1111 Washington Street S.E., Room 172, Olympia, WA 98504, on February 26-27, 2016, at 8:30 a.m.

Date of Intended Adoption: On or after February 26, 2016.

Submit Written Comments to: Joanna Eide, Washington department of fish and wildlife (WDFW), Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Rules.Coordinator@dfw.wa.gov, fax (360) 902-2155, by February 17, 2016.

Assistance for Persons with Disabilities: Contact Tami Linger by February 17, 2016, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Recent clam and oyster survey data, sport harvest projections, and negotiations affecting intertidal treaty and nontreaty fisheries, along with public health considerations and administrative tasks, call for recreational clam and oyster seasons to be opened or extended on some public beaches and requires some beaches to be closed, removed, or the seasons shortened. This proposal reflects those openings and closures.

Reasons Supporting Proposal: The proposed amendments to recreational clam and oyster rules will perpetuate shellfish resources while maximizing recreational harvest opportunity and protecting public health.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.055, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.013, 77.04.055, and 77.12.047.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Richard Childers, 375 Hudson Street, Port Townsend, WA 98368, (360) 302-3030; Implementation: Ron Warren, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-

2799; and Enforcement: Steven Crown, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule only affects recreational shellfishers.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal does not involve hydraulics.

December 23, 2016 [2015]

Joanna M. Eide  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-09-046, filed 4/10/15, effective 5/11/15)

**WAC 220-56-350 Clams other than razor clams, mussels—Areas and seasons.** It is permissible to take, dig for, and possess clams and mussels for personal use (~~on Puget Sound~~) from public tidelands year-round, except the following restrictions apply to the public tidelands at the beaches listed below:

(1) Ala Spit: All public tidelands of Ala Spit are open May 1 through May 31 only.

(2) Alki Park: Closed year-round.

(3) Alki Point: Closed year-round.

(4) Bay View State Park: Closed year-round.

(5) Belfair State Park: Open (~~January 1 through May 31 only~~) year-round.

(6) Blake Island State Park Marina: Closed year-round.

(7) Blowers Bluff North: Closed year-round.

(8) Brown's Point Lighthouse: Closed year-round.

~~((7))~~ (9) Budd Inlet: All state-owned tidelands of Budd Inlet south of a line drawn due west from the southern boundary of Burfoot Park to the opposite shore near 68th Avenue N.W. are closed year-round.

(10) Cama Beach State Park: Closed year-round.

~~((8))~~ (11) Camano Island State Park: Closed year-round.

~~((9))~~ (12) Chimacum Creek Tidelands (Irondale Beach Park): Public tidelands south of the main Chimacum Creek channel are closed year-round.

(13) Chuckanut Bay: All tidelands of Chuckanut Bay north of the BNSF Railroad trestle are closed year-round.

~~((10))~~ (14) Coupeville: Closed year-round.

~~((11))~~ (15) Dave Mackie County Park: Closed year-round.

~~((12))~~ (16) Des Moines City Park: Closed year-round.

~~((13))~~ (17) Discovery Park: Closed year-round.

~~((14))~~ (18) DNR-142: Closed year-round.

~~((15))~~ (19) DNR-144 (Sleeper): Closed year-round.

~~((16))~~ (20) Dockton County Park: Closed year-round.

~~((17))~~ (21) Dosewallips State Park: Open year-round only in the area defined by boundary markers and signs posted on the beach.

~~((18))~~ (22) Dosewallips State Park South: Closed year-round south of the line defined by boundary markers on the beach.

(23) Drayton West: (~~Closed, except open April~~) All public tidelands of Drayton Harbor are closed year-round, except tidelands identified as conditionally approved by the department of health and defined by boundary markers and

signs posted on the beach are open February 1 through October 31 (~~only in the area defined by boundary markers and signs posted on the beach~~).

~~((19))~~ (24) Dungeness Spit and Dungeness National Wildlife Refuge Tidelands: Open May 15 through September 30 only.

~~((20))~~ (25) Eagle Creek: Open July 1 through July 31 only.

~~((21))~~ (26) East San de Fuca: (~~Closed year-round~~) Tidelands east of the Rolling Hills Glencairn Community dock are closed year-round.

~~((22))~~ (27) Evergreen Rotary Park (Port Washington Narrows): Closed year-round.

(28) Fay Bainbridge Park: Closed year-round.

~~((23))~~ (29) Fort Flagler State Park (~~including that portion of the spit west of the park boundary (Rat Island)~~): Open May 15 through (~~December 31 only~~) August 31 only, except that portion of Rat Island and the spit west and south of the park boundary is closed year-round from two white posts on the north end of the island at the vegetation line south to the end of the island.

~~((24))~~ (30) Freeland County Park: Open (~~April~~) March 1 through May 15 only.

~~((25))~~ (31) Frye Cove County Park: Open May 1 through May 31 only.

~~((26))~~ (32) Fudge Point State Park: Closed year-round.

(33) Garrison Bay: The tidelands at Guss Island and those tidelands at British Camp between the National Park Service dinghy dock at the north end and the park boundary at the south end are closed year-round.

~~((27))~~ (34) Gertrude Island: All tidelands at Gertrude Island are closed year-round.

~~((28))~~ (35) Golden Gardens: Closed year-round.

~~((29))~~ (36) Graveyard Spit: Closed year-round.

~~((30) Harrington Beach: Closed year-round.~~

~~(31))~~ (37) Hoodspport: Tidelands at Hoodspport Salmon Hatchery are closed year-round.

~~((32))~~ (38) Hope Island State Park (South Puget Sound): Open May 1 through May 31 only.

~~((33))~~ (39) Howarth Park: Closed year-round.

~~((34))~~ (40) Illahee State Park: Open April 1 through July 31 only.

~~((35))~~ (41) Indian Island County Park/Lagoon (~~Beach/Isthmus Beach: Open July 1 through August 15~~) Beach: From the jetty boundary with Port Townsend Ship Canal east to the beach access stairs on Flagler Road near milepost 4 open August 15 through September 15 only.

~~((36))~~ (42) Kayak Point County Park: Closed year-round.

~~((37))~~ (43) Kitsap Memorial State Park: Closed year-round.

~~((38))~~ (44) Kopachuck State Park: Open June 1 through July 31 only.

~~((39))~~ (45) Lent Landing (Port Washington Narrows): Closed year-round.

(46) Liberty Bay: All state-owned tidelands in Liberty Bay north and west of the Keyport Naval Supply Center are closed year-round.

~~((40))~~ (47) Lincoln Park: Closed year-round.

~~((41))~~ (48) Lions Park (Bremerton): Closed year-round.

~~((42)) Little Clam Bay: Closed year-round.~~

~~(43))~~ (49) Lofall: Closed year-round.

(50) Long Point West: Closed year-round.

(51) Lower Roto Vista Park: Closed year-round.

~~((44))~~ (52) Manchester State Park: Closed year-round.

~~((45))~~ (53) March Point Recreation Area: Closed year-round.

(54) McNeil Island: All tidelands on McNeil Island are closed year-round.

~~((46))~~ (55) Meadowdale County Park: Closed year-round.

~~((47))~~ (56) Mee-Kwa-Mooks Park: Closed year-round.

~~((48))~~ (57) Monroe Landing: Closed year-round.

~~((49))~~ (58) Mukilteo State Park: Closed year-round.

~~((50))~~ (59) Mystery Bay State Park: Open October 1 through April 30 only.

~~((51))~~ (60) Nisqually National Wildlife Refuge: ~~(Closed)~~ All state-owned tidelands of the Nisqually River delta south of a line drawn from Luhr Beach boat ramp to Sequalitchew Creek are closed year-round.

~~((52))~~ (61) North Beach County Park: Closed year-round.

~~((53))~~ (62) North Fort Lewis: Closed year-round.

~~((54))~~ (63) North Tabook Point: Closed year-round.

~~((55)) Northeast Cultus Bay: Closed year-round.~~

~~(56))~~ (64) Oak Bay County Park: Open ~~(April)~~ May 1 through May 31 only.

~~((57))~~ (65) Oak Harbor Beach Park: Closed year-round.

(66) Oak Harbor City Park: Closed year-round.

~~((58))~~ (67) Old Mill County Park (Silverdale): Closed year-round.

(68) Olympia Shoal: Closed year-round.

~~((59))~~ (69) Oyster Reserves: Puget Sound and Willapa Bay state oyster reserves are closed year-round except as follows:

(a) North Bay: State-owned oyster reserves and contiguous state-owned tidelands south and east of the powerline crossing are open May 1 through May 31 and September 1 through September 30 only.

(b) Oakland Bay: State-owned oyster reserves open year-round except in areas defined by boundary markers and signs posted on the beach.

(c) Willapa Bay - Long Island oyster reserve: Northwest side of Long Island between reserve monuments 39 and 41 and southwest side of Long Island between reserve monuments 58 and 59 are open year-round.

~~((60))~~ (70) Pat Carey Vista Park: Closed year-round.

(71) Penrose Point State Park: Open March 1 through May 15 only.

~~((61))~~ (72) Picnic Point County Park: Closed year-round.

~~((62))~~ (73) Pitship Point: Closed year-round.

~~((63))~~ (74) Pitt Island: All tidelands on Pitt Island are closed year-round.

~~((64))~~ (75) Pleasant Harbor State Park: Closed year-round.

~~((65))~~ (76) Pleasant Harbor WDFW Boat Launch: Closed year-round.

(77) Point Defiance: Closed year-round.

~~((66))~~ (78) Point No Point South: Closed year-round.

(79) Point Whitney ~~((excluding Point Whitney Lagoon): Closed year-round)~~ Lagoon: Open January 1 through April 30 only.

~~((67))~~ (80) Point Whitney ~~((Lagoon: Open January 1 through March 31 only))~~ Tidelands (excluding Point Whitney Lagoon): Open January 1 through March 15 only.

~~((68)) Port Angeles Coast Guard: Closed year-round.~~

~~(69))~~ (81) Port Angeles Harbor: ~~(Closed)~~ All public tidelands of Port Angeles Harbor and interior tidelands of Ediz Hook are closed year-round.

~~((70))~~ (82) Port Gamble Heritage Park Tidelands: Open January 1 through June 30 only.

(83) Port Gardner: Closed year-round.

~~((71))~~ (84) Port Townsend Ship Canal/Portage Beach: Open January 1 through July ~~((45))~~ 31 only.

~~((72))~~ (85) Post Point: Closed year-round.

~~((73))~~ (86) Potlatch DNR tidelands: Open ~~((June 1 through September))~~ April 1 through July 15 only.

~~((74))~~ (87) Potlatch State Park: Open ~~((June 1 through September))~~ April 1 through July 15 only.

~~((75))~~ (88) Priest Point County Park: Closed year-round.

~~((76))~~ (89) Purdy Spit County Park: The southern shore of the spit from the boat ramp east to the southern utility tower near Purdy Bridge is open April 1 through April 30 only.

~~((77))~~ (90) Quilcene Bay Tidelands: All state-owned tidelands in Quilcene Bay north of a line drawn from the Quilcene Boat Haven to Fisherman's Point are closed to the harvest of clams year-round, except those state-owned tidelands on the west side of the bay north of the Quilcene Boat Haven are open April 1 through December 31, daily from official sunrise to official sunset only.

~~((78))~~ (91) Reid Harbor - South Beach: Closed year-round.

~~((79))~~ (92) Retsil: Closed year-round.

~~((80))~~ (93) Richmond Beach Saltwater Park: Closed year-round.

~~((81))~~ (94) Salt Creek Recreation Area: Closed year-round.

(95) Saltair Beach (Kingston Ferry Terminal): Closed year-round.

(96) Saltwater State Park: Closed year-round.

~~((82))~~ (97) Samish ~~((Beach: Closed))~~ Bay: Public tidelands of Samish Bay between Scotts Point and an unnamed point on the shore (latitude N48.5745°; longitude W122.4440°) are closed year-round.

~~((83))~~ (98) Scenic Beach State Park: Closed year-round.

~~((84))~~ (99) Seahurst County Park: Closed year-round.

~~((85))~~ (100) Semiahmoo: Closed year-round.

~~((86))~~ (101) Semiahmoo County Park: Closed year-round.

~~((87))~~ (102) Semiahmoo Marina: Closed year-round.

(103) Sequim Bay State Park: Open ~~((May))~~ April 1 through ~~((May 31))~~ June 30 only.

~~((88))~~ (104) Shine Tidelands State Park: Open January 1 through May 15 only.

~~((89))~~ (105) Silverdale Waterfront Park: Closed year-round.

~~((90))~~ (106) Sinclair Inlet: ~~((Closed))~~ All public tidelands of Sinclair Inlet west of a line drawn from the intersection of Bancroft Road and Beach Drive East northerly to Point Herron are closed year-round.

~~((91))~~ (107) Skagit Bay Estuary Wildlife Areas: All public tidelands of Skagit Bay Estuary Wildlife Area, Fir Island Farms Reserve Wildlife Area, Island Wildlife Area, Camano Island Wildlife Area and Leque Island Wildlife Area are closed year-round.

~~((92))~~ (108) South Carkeek Park: Closed year-round.

~~((93))~~ (109) South Gordon Point: Closed year-round.

~~((94))~~ (110) South Mukilteo Park: Closed year-round.

~~((95) South Oro Bay: Closed year-round.~~

~~(96))~~ (111) Southworth Ferry Dock: Closed year-round.

~~((97))~~ (112) Spencer Spit State Park: Open March 1 through July 31 only.

~~((98))~~ (113) Taylor Bay: Closed year-round.

~~((99))~~ (114) Triton Cove Tidelands: Open July 15 through August 31 only.

~~((100))~~ (115) Twanoh State Park: Open ~~((September))~~ August 1 through September 30 only.

~~((101))~~ (116) Walker County Park: Closed year-round.

~~((102))~~ (117) West Dewatto: DNR Beach 44A open July 1 through September 30 only.

~~((103))~~ (118) West Pass Access: Closed year-round.

~~((104))~~ (119) Willapa Bay: State-owned tidelands east of the department Willapa Bay Field Station and Nahcotta Tidelands Interpretive Site are closed year-round.

~~((105))~~ (120) Wolfe Property State Park: Open January 1 through May 15 only.

~~((106))~~ (121) Woodard Bay Natural Resource Conservation Area: Closed year-round.

It is permissible to take, dig for, and possess clams, cockles, borers, and mussels, not including razor clams, for personal use in Grays Harbor and Willapa Harbor year-round, except from state oyster reserves, which are closed to clam digging year-round.

It is permissible to take, dig for, and possess clams, cockles, borers, and mussels, not including razor clams, for personal use from the Pacific Ocean beaches from November 1 through March 31 only.

**AMENDATORY SECTION** (Amending WSR 15-09-046, filed 4/10/15, effective 5/11/15)

**WAC 220-56-380 Oysters—Areas and seasons.** It is permissible to take and possess oysters for personal use from public tidelands year-round except the following restrictions apply to the public tidelands at the beaches listed below:

(1) Ala Spit: All public tidelands of Ala Spit open May 1 through May 31 only.

(2) Alki Park: Closed year-round.

(3) Alki Point: Closed year-round.

(4) ~~((Bangor: Closed year-round.~~

~~(5))~~ Bay View State Park: Closed year-round.

(5) Blake Island State Park Marina: Closed year-round.

(6) Blowers Bluff North: Closed year-round.

~~(7)~~ Brown's Point Lighthouse: Closed year-round.

~~((7))~~ (8) Budd Inlet: All state-owned tidelands of Budd Inlet south of a line drawn from the southern boundary of Burfoot Park to the opposite shore near 68th Avenue N.W. are closed year-round.

(9) Cama Beach State Park: Closed year-round.

~~((8))~~ (10) Camano Island State Park: Closed year-round.

~~((9))~~ (11) Chuckanut Bay: All tidelands of Chuckanut Bay north of the BNSF Railroad trestle are closed year-round.

~~((10))~~ (12) Chimacum Creek Tidelands (Irondale Beach Park): Public tidelands south of the main Chimacum Creek channel are closed year-round.

(13) Coupeville: Closed year-round.

~~((11))~~ (14) Dave Mackie County Park: Closed year-round.

~~((12))~~ (15) Des Moines City Park: Closed year-round.

~~((13))~~ (16) Discovery Park: Closed year-round.

~~((14))~~ (17) DNR-142: Closed year-round.

~~((15))~~ (18) DNR-144 (Sleeper): Closed year-round.

~~((16))~~ (19) Dockton County Park: Closed year-round.

~~((17))~~ (20) Dosewallips State Park: Open year-round only in the area defined by boundary markers and signs posted on the beach.

(21) Dosewallips State Park South: Closed year-round south of the line defined by boundary markers on the beach.

(22) Drayton West: ~~((Closed, except open April))~~ All public tidelands of Drayton Harbor are closed year-round, except tidelands identified as conditionally approved by the department of health and defined by boundary markers and signs posted on the beach are open February 1 through October 31 only ~~((in the area defined by boundary markers and signs posted on the beach)).~~

~~((18))~~ (23) Dungeness Spit/National Wildlife Refuge: Open May 15 through September 30 only.

~~((19))~~ (24) East San de Fuca: ~~((Closed year-round))~~ Tidelands east of the Rolling Hills Glencairn Community dock are closed year-round.

~~((20))~~ (25) Evergreen Rotary Park (Port Washington Narrows): Closed year-round.

(26) Fay Bainbridge Park: Closed year-round.

~~((21))~~ (27) Fort Flagler State Park ~~((including that portion of the spit west of the park boundary (Rat Island)))~~: Open May 15 through ~~((December 31 only))~~ August 31 only, except that portion of Rat Island and the spit west and south of the park boundary is closed year-round from two white posts on the north end of the island at the vegetation line south to the end of the island.

~~((22))~~ (28) Freeland County Park: Open ~~((April))~~ March 1 through May 15 only.

~~((23))~~ (29) Frye Cove County Park: Open May 1 through May 31 only.

~~((24))~~ (30) Fudge Point State Park: Closed year-round.

(31) Garrison Bay: The tidelands at Guss Island and those tidelands at British Camp between the National Park Service dinghy dock at the north end and the park boundary at the south end are closed year-round.

(32) Golden Gardens: Closed year-round.



~~((25))~~ (33) Graveyard Spit: Closed year-round.  
~~((26) Harrington Beach: Closed year-round.~~  
~~(27))~~ (34) Hoodspout: Tidelands at the Hoodspout Salmon Hatchery are closed year-round.  
~~((28))~~ (35) Hope Island State Park (South Puget Sound): Open May 1 through May 31 only.  
~~((29))~~ (36) Howarth Park: Closed year-round.  
~~((30))~~ (37) Illahee State Park: Open April 1 through July 31 only.  
~~((31))~~ (38) Indian Island County Park/Lagoon ((Beach/Isthmus Beach: Open July 1 through August 15)) Beach: From the jetty boundary with Port Townsend Ship Canal east to the beach access stairs on Flagler Road near milepost 4 open August 15 through September 15 only.  
~~((32))~~ (39) Kayak Point County Park: Closed year-round.  
~~((33))~~ (40) Kitsap Memorial State Park: Closed year-round.  
~~((34))~~ (41) Kopachuck State Park: Open March 1 through July 31 only.  
~~((35))~~ (42) Lent Landing (Port Washington Narrows): Closed year-round.  
(43) Liberty Bay: All state-owned tidelands in Liberty Bay north and west of the Keyport Naval Supply Center are closed year-round.  
~~((36))~~ (44) Lincoln Park: Closed year-round.  
~~((37))~~ (45) Lions Park (Bremerton): Closed year-round.  
~~((38) Little Clam Bay: Closed year-round.~~  
~~(39))~~ (46) Lofall: Closed year-round.  
(47) Long Point West: Closed year-round.  
(48) Lower Roto Vista Park: Closed year-round.  
~~((40))~~ (49) Manchester State Park: Closed year-round.  
~~((41))~~ (50) March Point Recreation Area: Closed year-round.  
(51) Meadowdale County Park: Closed year-round.  
~~((42))~~ (52) Mee-Kwa-Mooks Park: Closed year-round.  
~~((43))~~ (53) Monroe Landing: Closed year-round.  
~~((44))~~ (54) Mukilteo State Park: Closed year-round.  
~~((45))~~ (55) Mystery Bay State Park: Open October 1 through April 30 only.  
~~((46))~~ (56) Nisqually National Wildlife Refuge: All state-owned tidelands of the Nisqually River delta south of a line drawn from Luhr Beach boat ramp to Sequelitchew Creek are closed year-round.  
~~((47))~~ (57) North Beach County Park: Closed year-round.  
~~((48))~~ (58) North Fort Lewis: Closed year-round.  
~~((49))~~ (59) North Tabook Point: Closed year-round.  
~~((50) Northeast Cultus Bay: Closed year-round.~~  
~~(51))~~ (60) Oak Bay County Park: Open ((April) May 1 through May 31 only.  
~~((52))~~ (61) Oak Harbor Beach Park: Closed year-round.  
~~((53))~~ (62) Oak Harbor City Park: Closed year-round.  
~~((54))~~ (63) Old Mill County Park (Silverdale): Closed year-round.  
(64) Olympia Shoal: Closed year-round.

~~((55))~~ (65) Oyster Reserves: Puget Sound and Willapa Bay oyster reserves are closed year-round except ((the following are open during the dates specified)) as follows:  
(a) North Bay: State-owned reserves and contiguous state-owned tidelands south and east of the powerline crossing are open May 1 through May 31 and September 1 through September 30 only.  
(b) Oakland Bay: State-owned oyster reserves are open year-round except in areas defined by boundary markers and signs posted on the beach.  
~~((b) North Bay: State-owned reserves are open May 1 through May 31 and September 1 through September 30 only.))~~  
(c) Willapa Bay - Long Island oyster reserve: Northwest side of Long Island between reserve monuments 39 and 41 and southwest side of Long Island between reserve monuments 58 and 59 are open year-round.  
~~((56))~~ (66) Pat Carey Vista Park: Closed year-round.  
(67) Penrose Point State Park: Open March 1 through May 15 only.  
~~((57))~~ (68) Pitship Point: Closed year-round.  
(69) Picnic Point: Closed year-round.  
~~((58))~~ (70) Pitt Island: Closed year-round.  
~~((59))~~ (71) Pleasant Harbor State Park: Closed year-round.  
~~((60))~~ (72) Pleasant Harbor WDFW Boat Launch: Closed year-round.  
(73) Point Defiance: Closed year-round.  
~~((61))~~ (74) Point No Point South: Closed year-round.  
(75) Point Whitney Tidelands (excluding Point Whitney Lagoon): Open January 1 through June 30 only.  
~~((62) Port Angeles Coast Guard: Closed year-round.~~  
~~(63))~~ (76) Port Angeles Harbor: All public tidelands of Port Angeles Harbor and interior tidelands of Ediz Hook are closed year-round.  
~~((64))~~ (77) Port Gamble Heritage Park Tidelands: Open January 1 through June 30 only.  
(78) Port Gardner: Closed year-round.  
~~((65))~~ (79) Port Townsend Ship Canal/Portage Beach: Open January 1 through ((July 15)) July 31 only.  
~~((66))~~ (80) Post Point: Closed year-round.  
~~((67))~~ (81) Potlatch DNR Tidelands: Open ((June 1 through September)) April 1 through July 15 only.  
~~((68))~~ (82) Potlatch State Park: Open ((June 1 through September)) April 1 through July 15 only.  
~~((69))~~ (83) Priest Point County Park: Closed year-round.  
~~((70))~~ (84) Purdy Spit County Park: The southern shore of the spit from the boat ramp east to the southern utility tower near Purdy Bridge is open April 1 through April 30 only.  
~~((71))~~ (85) Quilcene Bay Tidelands: All state-owned tidelands in Quilcene Bay north of a line drawn from the Quilcene Boat Haven to Fisherman's Point are closed year-round except those state-owned tidelands on the west side of the bay north of the Quilcene Boat Haven are open April 1 through December 31, daily from official sunrise to official sunset, only.  
~~((72))~~ (86) Reid Harbor - South Beach: Closed year-round.

~~((73))~~ (87) Retsil: Closed year-round.

~~((74))~~ (88) Richmond Beach Saltwater Park: Closed year-round.

~~((75))~~ (89) Salt Creek Recreation Area: Closed year-round.

(90) Saltair Beach (Kingston Ferry Terminal): Closed year-round.

(91) Saltwater State Park: Closed year-round.

~~((76))~~ (92) Samish ~~(Beach)~~ Bay: Public tidelands of Samish Bay between Scotts Point and an unnamed point on the shore (latitude N48.5745°; longitude W122.4440°) are closed year-round.

~~((77))~~ (93) Scenic Beach State Park: Closed year-round.

~~((78))~~ (94) Seahurst County Park: Closed year-round.

~~((79))~~ (95) Semiahmoo: Closed year-round.

~~((80))~~ (96) Semiahmoo County Park: Closed year-round.

~~((81))~~ (97) Semiahmoo Marina: Closed year-round.

(98) Sequim Bay State Park: Open ~~((May))~~ April 1 through ~~((May 31))~~ June 30 only.

~~((82))~~ (99) Shine Tidelands State Park: Open January 1 through May 15 only.

~~((83))~~ (100) Silverdale Waterfront Park: Closed year-round.

~~((84))~~ (101) Sinclair Inlet: All public tidelands of Sinclair Inlet west of a line drawn from the intersection of Bancroft Road and Beach Drive East northerly to Point Herron are closed year-round.

~~((85))~~ (102) Skagit Bay Estuary Wildlife Areas: All public tidelands of the Skagit Bay Estuary Wildlife Area, Fir Island Farms Reserve Wildlife Area, Island Wildlife Area, Camano Island Wildlife Area and Leque Island Wildlife Area are closed year-round.

~~((86))~~ (103) South Carkeek Park: Closed year-round.

~~((87))~~ (104) South Gordon Point: Closed year-round.

~~((88))~~ (105) South Mukilteo Park: Closed year-round.

~~((89))~~ South Oro Bay: Closed year-round.

~~((90))~~ (106) Southworth Ferry Dock: Closed year-round.

~~((91))~~ (107) Spencer Spit State Park: Open March 1 through July 31 only.

~~((92))~~ (108) Taylor Bay: Closed year-round.

~~((93))~~ (109) Walker County Park: Closed year-round.

~~((94))~~ (110) West Pass Access: Closed year-round.

~~((95))~~ (111) Willapa Bay: State-owned tidelands east of the department Willapa Bay Field Station and the Nahcotta Tidelands Interpretive Site are open only between boundary markers and posted signs.

~~((96))~~ (112) Wolfe Property State Park: Open January 1 through May 15 only.

~~((97))~~ (113) Woodard Bay Natural Resource Conservation Area: Closed year-round.

## WSR 16-01-197

### PROPOSED RULES

### DEPARTMENT OF

### RETIREMENT SYSTEMS

[Filed December 23, 2015, 9:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-15-145.

Title of Rule and Other Identifying Information: Law enforcement officers' and firefighters' (LEOFF) plan 2 duty disability.

Hearing Location(s): Department of Retirement Systems, Conference Room 115, 6835 Capitol Boulevard S.E., Tumwater, WA 98502, on Wednesday, January 27, 2016, at 10:30 a.m.

Date of Intended Adoption: January 27, 2016.

Submit Written Comments to: Jilene Siegel, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail [jilenes@drs.wa.gov](mailto:jilenes@drs.wa.gov), fax (360) 753-3166, by January 26, 2016, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Jilene Siegel by January 22, 2016, TTY (866) 377-8895 or (360) 586-5450.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule-making activity codifies the department's existing practice of granting a LEOFF plan 2 duty disability benefit. The rule clarifies that the work actions and activities defined in WAC 415-104-480(2) must be the proximate cause of the member's disability (but need not be the sole cause of the member's disability).

Statutory Authority for Adoption: RCW 41.50.050(5).

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

Name of Agency Personnel Responsible for Drafting: Jacob White, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7219; and Implementation: Dave Nelsen, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7304.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable. These rules do not impact small businesses and are not being submitted by the state board of education.

A cost-benefit analysis is not required under RCW 34.05.328. The department of retirement systems is not listed in RCW 34.05.328 as required to prepare a cost-benefit analysis.

December 23, 2015

Jilene Siegel

Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-18-034, filed 8/28/13, effective 10/1/13)

**WAC 415-104-480 LEOFF Plan 2 duty disability benefits.** This section applies to you if you are a LEOFF Plan 2 member who incurs a disability in the line of duty per RCW 41.26.470 (6) and (7) and this section. A "disability" is total incapacitation for further LEOFF employment (although not necessarily for any other employment).

(1) **Who is entitled to duty disability benefits?** Any member of LEOFF Plan 2 who the department determines has:

- (a) Incurred a physical or mental disability in the line of duty;
- (b) Become totally incapacitated for continued employment in a LEOFF eligible position; and
- (c) Separated from a LEOFF eligible position due to the disability.

(2) **How is "line of duty" defined?** Line of duty means any action or activity occurring in conjunction with your employment or your status as a law enforcement officer or firefighter and required or authorized by law, rule, regulations, or condition of employment or service.

(3) **How does the department decide if a disability was incurred in the line of duty?** A physical or mental disability is caused by the performance of LEOFF Plan 2 duty if it was the member's good faith performance of LEOFF duty that produced the disability, in a direct sequence and unbroken by any new independent cause, and if the disability would not have been incurred but for the member's performance of duty. There may be more than one cause of a disability.

(4) **When are the duty disability provisions effective?** The duty disability provisions under RCW 41.26.470 (6) and (7) are effective June 10, 2004.

~~((4))~~ (5) **How do I apply for duty disability benefits?** The department must receive:

- (a) A completed three-part disability retirement application on the form provided by the department.
  - (i) Part 1: Disability retirement application. You must complete and sign the application. If you are married, your spouse must sign consenting to the retirement payment option you choose. Your signature(s) must be notarized.
  - (ii) Part 2: Employer's statement and report. Your employer must complete, sign and return it directly to the department.
  - (iii) Part 3: Medical report. You must complete Section 1. The remainder must be completed and signed by a person licensed according to Washington state law to practice medicine and surgery, osteopathic medicine and surgery, chiropractic, clinical psychology, podiatry, dentistry, or optometry;
- (b) Additional information requested by the department; and
- (c) Any other material you want the department to consider.

~~((5))~~ (6) **What evidence will the department use to determine whether I am entitled to benefits under this section?** The department will consider any relevant information submitted by you or your employer, or otherwise available to the department, including:

- (a) Information and determinations by the department of labor and industries (L&I) or a ~~((self-insurer))~~ self-insured LEOFF employer;
- (b) Medical, vocational, and other information about your disability;
- (c) Your job description;
- (d) Your membership records, maintained by the department; and

(e) Any other relevant evidence.

~~((6))~~ (7) **What would disqualify me for duty disability benefits?** You are not eligible for duty disability benefits if any of the following apply:

- (a) Your application does not provide adequate proof that you are totally incapacitated for continued employment in a LEOFF-eligible position;
- (b) Your application does not provide adequate proof that your disability was incurred in the line of duty;
- (c) The disability occurred as a result of intentional misconduct including ~~((but not limited to))~~:
  - (i) An action you took intentionally to bring about your own disability;
  - (ii) Gross negligence on your part; or
  - (iii) Your voluntary intoxication. As used in this section, "intoxication" means a disturbance of mental or physical faculties resulting from the introduction of:
    - (A) Alcohol into the body as evidenced by:
      - (I) A blood alcohol level of .20 per centum or greater; or
      - (II) A blood alcohol level of at least .10 per centum but less than .20 per centum unless the department receives convincing evidence that the officer or firefighter was not acting in an intoxicated manner immediately ~~((prior to))~~ before the injury; or
    - (B) Drugs or other substances in the body.

(A) Alcohol into the body as evidenced by:

- (I) A blood alcohol level of .20 per centum or greater; or
- (II) A blood alcohol level of at least .10 per centum but less than .20 per centum unless the department receives convincing evidence that the officer or firefighter was not acting in an intoxicated manner immediately ~~((prior to))~~ before the injury; or

(B) Drugs or other substances in the body.

~~((7))~~ (8) **Who decides if I meet the requirements for benefits under this section?** The LEOFF plan administrator.

~~((8))~~ (9) **May I petition a decision made by the LEOFF plan administrator?** Yes. If the LEOFF plan administrator denies your request for a disability benefit under this section, you may petition for review under chapter 415-04 WAC.

~~((9))~~ (10) **What are the duty disability retirement benefits?** As a duty disability retiree, you may choose between:

- (a) A nontaxable, one-time lump sum payment equal to one hundred fifty percent of your retirement contributions; except that, any payments you have previously made to restore service credit after the five-year deadline will be paid at one hundred percent; or
- (b) A monthly allowance equal to:
  - (i) Ten percent of your final average salary (FAS), which is nontaxable; and
  - (ii) Two percent of your FAS for each year of service beyond five years.

Your monthly allowance will not be adjusted for early retirement. However, if you choose a benefit option with a survivor feature as described in WAC 415-104-215, your monthly allowance will be actuarially reduced to offset the cost. See WAC 415-02-380 for more information on how your monthly allowance is affected by choosing a survivor feature.

**Example:** Tom incurs a duty disability at age 42 after twenty years of service. His final average salary is \$5,000 per month. Tom's wife is also age 42. He chooses Benefit Option Two so that, after his death, his wife will receive a monthly allowance equal to the gross monthly allowance he was receiving. For illustration purposes in this example only, we will use 0.87 as the corresponding Option Two joint and survivor factor (actuarial factors change periodically) for zero age difference between Tom and his wife.

Tom will receive a minimum allowance of \$435 (nontaxable) plus an additional \$1,305 (taxable), for a total monthly allowance of \$1,740. The department will use the following formula to determine Tom's monthly allowance:

$$\begin{aligned}
 \$5,000 \times 10\% \times 0.87 &= \$435 \text{ (nontaxable); PLUS} \\
 15 \times 2\% \times \$5,000 \times 0.87 &= \$1,305 \text{ (taxable)} \\
 \text{TOTAL} &= \$1,740
 \end{aligned}$$

~~((10))~~ **(11) Are my duty disability benefits taxable?**

The department reports disability benefits to the Internal Revenue Service as required by federal law. Based on current federal law, part of your benefit may be taxable. You should consult with your own tax advisor regarding all questions of federal or state income, payroll, personal property or other tax consequences regarding any payments you receive from the department.

The department does not:

- (a) Guarantee that payments are exempt from federal income tax;
- (b) Guarantee that it was correct in withholding or not withholding taxes from benefit payments to you;
- (c) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its determination; or
- (d) Assume any liability for your compliance with the Internal Revenue Code.

~~((11))~~ **(12) If I previously withdrew my contributions, may I apply for duty disability benefits?** If you separated from employment due to a disability and withdrew your contributions, you may apply for duty disability benefits according to the provisions of subsection ~~((4))~~ **(5)** of this section.

~~((12))~~ **(13) If I previously withdrew my contributions and am approved for duty disability benefits, what will I receive as a benefit?** If the LEOFF plan administrator determines you are entitled to duty disability benefits, ~~((the department will amend Internal Revenue Service reporting to designate your previous withdrawal as nontaxable. In addition,))~~ you may choose either of the following:

- (a) If you previously withdrew 100% of your contributions, you may choose to receive an additional lump sum payment equal to 50% of the contributions you withdrew. The payment will be nontaxable; or
- (b) If you previously withdrew 100% or 150% of your contributions, you may choose to receive a monthly allowance according to subsection ~~((9))~~ **(10)** of this section. You must repay the amount you withdrew, either in a lump sum payment or by having your monthly allowance permanently actuarially reduced to offset the amount of your previous withdrawal.

**Example:** John was injured on the job and separated from his LEOFF position in March 2002. At the time he separated, he was 43 years old, had 10 years of service, and his final average salary was \$5,000.00 per month. At that time, John chose to withdraw ~~((\\$75,000, which equaled))~~ 150 percent of his retirement contributions, which equaled \$75,000.

John subsequently applied under the provisions of RCW 41.26.470 (6) and (7) and was deemed eligible for duty disability benefits.

The department calculated John's benefit according to the methods in subsection ~~((9))~~ **(10)** of this section. For illustration purposes in this example only, we will use .0049904 as the corresponding annuity factor for age 43 (actuarial factors change periodically). John determined it was to his advantage to take a monthly allowance.

If John **repays the entire amount he withdrew in a lump sum**, his monthly allowance will be calculated according to the formula in subsection ~~((9))~~ **(10)(b)** of this section:

$$\begin{aligned}
 \$5,000 \times 10\% &= \$500 \text{ (nontaxable); PLUS} \\
 5 \times 2\% \times \$5,000 &= \$500 \text{ (taxable)} \\
 \text{TOTAL} &= \$1,000^1
 \end{aligned}$$

If John **repays the withdrawn amount through a permanent actuarial reduction**, his monthly allowance will be reduced as follows:

$$\begin{aligned}
 \text{Monthly amount from above} &= \$1,000; \text{ LESS} \\
 \$75,000 \times .0049904 &= -\$374.28 \\
 \text{Monthly allowance} &= \$625.72^1
 \end{aligned}$$

<sup>1</sup> If John chooses a benefit option with a survivor feature, as described in WAC 415-104-215, his monthly allowance will be actuarially reduced to offset the cost. See also WAC 415-02-380.

~~((13))~~ **(14) When does a duty disability retirement benefit end?** ~~((The department may require comprehensive medical examinations to reevaluate your eligibility for continued disability benefits according to the provisions of RCW 41.26.470(2).))~~ Your duty disability benefit will cease if:

- (a) You return to work in a LEOFF-eligible position; or
- (b) Medical examination reveals that you are no longer totally incapacitated for employment in a LEOFF eligible position and you are no longer entitled to workers' compensation benefits under Title 51 RCW. As authorized by RCW 41.26.470(2), the department may require comprehensive medical examinations to reevaluate your eligibility for continued disability benefits.

~~((14))~~ **(15) If I retire for a duty disability and die, will my survivor beneficiary receive a monthly allowance?** If you choose a benefit option with a survivor feature under WAC 415-104-215(2) at the time of retirement, your survivor beneficiary will receive a monthly allowance after your death.

~~((15))~~ **(16) What happens if I return to a LEOFF-eligible position?** If you return to a LEOFF-eligible position, your monthly allowance will stop.

~~((16))~~ **(17) If I return to a LEOFF-eligible position, how will my future retirement benefit be affected?** When

you retire, your monthly allowance will be calculated ((~~pur-~~  
~~suant to~~)) as required by RCW 41.26.500 and WAC 415-104-  
111.

AMENDATORY SECTION (Amending WSR 13-18-034,  
filed 8/28/13, effective 10/1/13)

**WAC 415-104-485 LEOFF nonduty disability benefits.** This section applies to you if you are a LEOFF Plan 2 member who incurs a disability not in the line of duty. A "disability" is total incapacitation for further LEOFF employment (although not necessarily for any other employment). If your disability or injury was incurred in the line of duty, see WAC 415-104-480.

(1) **Who is entitled to nonduty disability benefits?** Any member of LEOFF Plan 2 who the department determines has:

- (a) Incurred a physical or mental disability while not in the line of duty;
- (b) Become totally incapacitated for continued employment in a LEOFF eligible position; and
- (c) Separated from a LEOFF-eligible position due to the disability.

(2) **How is "line of duty" defined?** Line of duty means any action or activity occurring in conjunction with your employment or your status as a law enforcement officer or firefighter and required or authorized by law, rule, regulations, or condition of employment or service.

(3) **How do I apply for nonduty disability benefits?** The department must receive:

- (a) A completed three-part disability retirement application on the form provided by the department.
  - (i) Part 1: Disability retirement application. You, or a person with legal authority to apply on your behalf, must complete and sign the application. If you are married, your spouse must sign consenting to the retirement payment option you choose. Your signature(s) must be notarized.
  - (ii) Part 2: Employer's statement and report. Your employer must complete, sign and return it directly to the department.
  - (iii) Part 3: Medical report. You must complete Section 1. The remainder must be completed and signed by a person licensed according to Washington state law to practice medicine and surgery, osteopathic medicine and surgery, chiropractic, clinical psychology, podiatry, dentistry, or optometry;

(b) Additional information requested by the department; and

(c) Any other material you want the department to consider.

(4) **Is there a time limit for filing an application for nonduty disability benefits?** No. There is no time limit for applying for benefits. However, if you have separated from employment, your application must be based on your condition at the time of separation.

(5) **What evidence will the department use to determine whether I am entitled to benefits under this section?** The department will consider any relevant information submitted by you or your employer, or otherwise available to the department, including:

- (a) Information and determinations by the department of labor and industries (L&I) or a self-insurer;
- (b) Medical, vocational, and other information about your disability;
- (c) Your job description;
- (d) Your membership records, maintained by the department; and
- (e) Any other relevant evidence.

(6) **What would disqualify me for nonduty disability benefits?** You are not eligible for nonduty disability benefits if any of the following apply:

- (a) Your application does not provide adequate proof that you are totally incapacitated for continued employment in a LEOFF-eligible position;
- (b) Your disability is the result of your criminal conduct committed after April 21, 1997. See RCW 41.26.061.

(7) **Who decides if I meet the requirements for benefits under this section?** The LEOFF plan administrator.

(8) **May I petition a decision made by the LEOFF plan administrator?** Yes. If the LEOFF plan administrator denies your request for a disability benefit under this section, you may petition for review under chapter 415-04 WAC.

(9) **What are the nonduty disability retirement benefits?** As a nonduty disability retiree, your retirement benefit is a monthly allowance equal to:

(a) Two percent times your final average salary times your service credit years. This allowance will be actuarially reduced to reflect the difference in your age at the time of disability retirement and age 53. If you qualify for alternative early retirement per RCW 41.26.430(3), your reduction will be three percent per year before age 53.

(b) If you choose a benefit option with a survivor feature as described in WAC 415-104-215, your monthly allowance will be actuarially reduced to offset the cost. See WAC 415-104-380 for more information on how your monthly allowance is affected by choosing a survivor feature.

**Example:**

Tom incurs a nonduty disability at age 42 after twenty years of service. His final average salary (FAS) is \$5,000 per month. Tom's wife is also age 42. He chooses Benefit Option Two so that, after his death, his wife will receive a monthly allowance equal to the gross monthly allowance he was receiving. For illustration purposes in this example only, we will use 0.39 as the corresponding factor for retiring 11 years early, and 0.87 as the Option Two factor (actuarial factors change periodically). As a result, Tom's monthly allowance will be \$678.60.

The department will use the following formula to determine Tom's monthly allowance:  $20 \text{ (years of service)} \times 2\% \times \$5,000 \text{ (FAS)} \times 0.39 \text{ (early retirement factor)} \times 0.87 \text{ (Option Two factor)} = \$678.60$ .

(10) **Are my nonduty disability benefits taxable?** The department reports disability benefits to the Internal Revenue Service as required by federal law. Based on current federal law, your benefit may be taxable. You should consult with your own tax advisor regarding all questions of federal or state income, payroll, personal property or other tax consequences regarding any payments you receive from the department.

The department does not:

- (a) Guarantee that payments are exempt from federal income tax;

(b) Guarantee that it was correct in withholding or not withholding taxes from benefit payments to you;

(c) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its determination; or

(d) Assume any liability for your compliance with the Internal Revenue Code.

**(11) If I previously retired for service under the alternative early retirement provisions of RCW 41.26.430(3), but I qualified for a disability retirement, can I apply for duty or nonduty disability benefits?** Yes. If you retired under the alternative early retirement provisions of RCW 41.26.430(3) on or before January 1, 2001, you can apply to retire under the disability provisions of RCW 41.26.470. Your benefit will be reduced by three percent per year before age 53 instead of actuarially reduced by the early retirement factors in WAC 415-02-320.

**(12) If I previously retired for disability but was otherwise qualified for a service retirement under the alternative early retirement provisions of RCW 41.26.430(3), can I have my benefit recalculated to reflect a three percent reduction instead of being actuarially reduced by the early retirement reduction factors in WAC 415-102-320?** Yes. If you retired on or after January 1, 2001, and met the requirements of RCW 41.26.430(3), you can have your disability benefit recalculated under those provisions.

**(13) When does a nonduty disability retirement benefit end?** (~~The department may require comprehensive medical examinations to reevaluate your eligibility for continued disability benefits according to the provisions of RCW 41.26.470(2).~~) Your nonduty disability benefit will cease if:

(a) You return to work in a LEOFF-eligible position; or

(b) Medical examination reveals that you are no longer totally incapacitated for employment in a LEOFF-eligible position and you are no longer entitled to workers' compensation benefits under Title 51 RCW. The department may require comprehensive medical examinations to reevaluate your eligibility for continued disability benefits according to the provisions of RCW 41.26.470(2).

**(14) If I retire for a nonduty disability and die, will my survivor beneficiary receive a monthly allowance?** If you choose a benefit option with a survivor feature under WAC 415-104-215(2) at the time of retirement, your survivor beneficiary will receive a monthly allowance after your death.

**(15) What happens if I return to a LEOFF-eligible position?** If you return to a LEOFF-eligible position, your monthly allowance will stop.

**(16) If I return to a LEOFF-eligible position, how will my future retirement benefit be affected?** When you rereire, your monthly allowance will be calculated (~~pursuant to~~) as required by RCW 41.26.500 and WAC 415-104-111.

**WSR 16-01-199**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**  
[Filed December 23, 2015, 9:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-09-137.

Title of Rule and Other Identifying Information: Purchasing additional annuities and service credits.

Hearing Location(s): Department of Retirement Systems, 6835 Capitol Boulevard S.E., Conference Room 115, Tumwater, WA 98502, on Wednesday, January 27, 2016, at 10:30 a.m.

Date of Intended Adoption: January 27, 2016.

Submit Written Comments to: Jilene Siegel, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail [jilenes@drs.wa.gov](mailto:jilenes@drs.wa.gov), fax (360) 753-3166, by January 26, 2016, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Jilene Siegel by January 22, 2016, TTY (866) 377-8895 or (360) 586-5450.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To define, document and clarify how the agency administers statutes that provide for the purchase of additional annuities and service credits in certain retirement systems.

Statutory Authority for Adoption: RCW 41.50.050(5).

Statute Being Implemented: RCW 41.32.067, 43.43.315, 41.26.463.

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

Name of Agency Personnel Responsible for Drafting: Shawn Merchant, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7303; and Implementation: Dave Nelsen, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7304.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable. These rules do not impact small businesses and are not being submitted by the state board of education.

A cost-benefit analysis is not required under RCW 34.05.328. The department of retirement systems is not listed in RCW 34.05.328 as required to prepare a cost-benefit analysis.

December 23, 2015  
Jilene Siegel  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-18-034, filed 8/28/13, effective 10/1/13)

**WAC 415-02-177 May I purchase additional service credit? (1) What is the option for purchasing additional service credit?** The following statutes provide an option for eligible members to purchase additional service credit that provides a guaranteed, lifetime increase to their monthly retirement benefit:

(a) RCW 41.26.199 for LEOFF Plan 1 members;

(b) RCW 41.26.432 for LEOFF Plan 2 members;

(c) RCW 41.40.034 for PERS Plan 1, 2, and 3 members;

- (d) RCW 41.37.265 for PSERS Plan 2 members;
  - (e) RCW 41.35.183 for SERS Plan 2 and 3 members;
  - (f) RCW 41.32.066 for TRS Plan 1, 2, and 3 members;
- and
- (g) RCW 43.43.233 for WSPRS Plan 1 and 2 members.

**(2) Am I eligible to purchase additional service credit?**

(a) You may purchase additional service credit if you are eligible to retire from one or more of the following plans and you elect a monthly benefit rather than a lump sum payment:

- (i) LEOFF Plan 1 or 2 under RCW 41.26.090 or 41.26.-430;
- (ii) PERS Plan 1, 2, or 3 under RCW 41.40.180, 41.40.-630, or 41.40.820;
- (iii) PSERS Plan 2 under RCW 41.37.210;
- (iv) SERS Plan 2 or 3 under RCW 41.35.420 or 41.35.680;
- (v) TRS Plan 1, 2, or 3 under RCW 41.32.480, 41.32.-765, or 41.32.875; or
- (vi) WSPRS Plan 1 or 2 under RCW 43.43.250.

(b) If you retire as a result of a disability, you may purchase additional service credit if you meet the requirements in (a) of this section.

**(3) How much additional service credit may I purchase?** If you are eligible, you may purchase from one to

sixty months of additional service credit in whole month increments.

**(4) May I use the additional purchased service credit to qualify for normal retirement or an early retirement?** No. You may not use the purchased service credit to qualify for normal retirement or to qualify for an early retirement.

**(5) When must I apply to purchase additional service credit?** You must submit your request to purchase additional service credit to the department at the same time you submit your application for retirement.

**(6) How much will my monthly retirement benefit increase if I purchase additional service credit?** The increase in your monthly retirement benefit will be calculated using the benefit formula for your system and plan, with a reduction for early retirement, if applicable.

**Example 1 (PERS Plan 2):** John is a member of PERS Plan 2. He applies for retirement, effective the first month after his 62nd birthday and chooses to purchase an additional sixty months (five years) of service credit. His average final compensation (AFC) is \$4000 per month. For illustration purposes in this example only, we will use .7240000 as the corresponding early retirement factor (ERF) for retiring three years early (actuarial factors change periodically). As a result, John's monthly benefit will increase by \$289.60 per month, calculated as follows:

$$\begin{aligned}
 \text{Amount of increase} &= 2\% \times \text{additional service credit years} \times \text{AFC} \times \text{ERF} \\
 &= 2\% \times 5 \text{ years} \times \$4000 \times .7240000 \\
 &= \$289.60
 \end{aligned}$$

**Example 2 (TRS Plan 3):** Jane is a member of TRS Plan 3. She applies for retirement, effective the first month after her 62nd birthday and chooses to purchase an additional sixty months (five years) of service credit. Her AFC is \$4000 per month. For illustration purposes in this example only, we will use .7240000 as the corresponding ERF for retiring three years early (actuarial factors change periodically). As a result, Jane's monthly retirement benefit will increase by \$144.80 per month, calculated as follows:

$$\begin{aligned}
 \text{Amount of increase} &= 1\% \times \text{additional service credit years} \times \text{AFC} \times \text{ERF} \\
 &= 1\% \times 5 \text{ years} \times \$4000 \times .7240000 \\
 &= \$144.80
 \end{aligned}$$

**Example 3 (LEOFF Plan 2):** Jim is a member of LEOFF Plan 2. He applies for retirement, effective the first month after his 53rd birthday and chooses to purchase an additional sixty months (five years) of service credit. His final average salary (FAS) is \$4000 per month. No ERF is needed for this calculation as Jim has already reached normal retirement age for LEOFF Plan 2. Jim's monthly retirement benefit will increase by \$400 per month, calculated as follows:

$$\begin{aligned}
 \text{Amount of increase} &= 2\% \times \text{additional service credit years} \times \text{FAS} \\
 &= 2\% \times 5 \text{ years} \times \$4000 \\
 &= \$400
 \end{aligned}$$

**(7) How is the cost of the additional purchased service credit calculated?** The cost to purchase additional service credit is calculated by dividing the amount of the increase in subsection (6) of this section by the age-based annuity factor in effect at the time of retirement. (See WAC 415-02-340 for more information.)

**Example.** In subsection (6) of this section, Example 1, it was determined that John's retirement benefit would increase by \$289.60 per month. For illustration purposes in this example only, we will use .0065016 as the annuity factor for John's retirement date (actuarial factors change periodically). As a result, John's cost to purchase the five years of additional service credit would be \$44,542.88, calculated as follows:

$$\begin{aligned}
 \text{Cost} &= \text{Amount of increase} \div \text{age-based annuity factor} \\
 &= \$289.60 \div .0065016 \\
 &= \$44,542.88
 \end{aligned}$$

**(8) How and when do I pay for the additional service credit?** The department will generate a bill to you for the cost of the additional service credit.

(a) Payment may be made with an eligible rollover, a direct rollover or a trustee-to-trustee transfer, if allowed by the transferring plan. Payment may also be made with after-tax dollars, such as money from a personal savings account. However, IRS regulations limit the amount of after-tax dollars you may use to purchase additional service credit.

(b) Payment must be made in full within ninety days after the bill issue date.

**(9) If I choose a benefit option with a survivor feature, will my ~~((survivor beneficiary's))~~ survivor's monthly benefit reflect the additional purchased service credit?**

Yes. Depending upon the rules for your retirement system and plan and the benefit option you choose at retirement, your ~~((survivor beneficiary's))~~ survivor's monthly benefit will be a percentage of the gross monthly retirement benefit you were receiving at the time of your death. Since the additional service you purchased is included in the calculation of your monthly benefit, the survivor option you designate for your monthly benefit will also be applied to the benefit from the purchased service credit. You cannot choose a different survivor. If you choose a benefit option with a survivor feature and your survivor ~~((beneficiary))~~ dies before you, your monthly retirement benefit will increase to the amount it would have been had you not selected a survivor option.

**(10) Will I receive a cost of living adjustment (COLA) on the portion of my benefit that is based on the additional purchased service credit?**

(a) For all systems and plans, except as noted in (b) of this subsection, your COLA will be based on your gross monthly retirement benefit, including the increase due to the purchased service credit.

(b) If you retire from PERS Plan 1 or TRS Plan 1 and you do not elect the optional auto COLA, you will not receive a COLA on the additional purchased service credit amount.

**(11) If I purchase additional service credit and then return to work, how will my retirement benefit be affected?**

Your entire retirement benefit, including the amount attributable to purchased service credit, is subject to the return to work provisions of your system and plan. The following rules describe the impact on your benefit if you return to work as a retiree of the referenced systems and plans:

PERS Plans 1, 2, and 3:	WAC 415-108-710
TRS Plan 1:	WAC 415-112-541
TRS Plans 2 and 3:	WAC 415-112-542
SERS Plans 2 and 3:	WAC 415-110-710
PSERS Plan 2:	WAC 415-106-700
LEOFF Plan 2:	WAC 415-104-111

**(12) If I retire and purchase less than sixty months of additional service credit, may I purchase more at a later time?** No. You may not purchase additional months of service credit from the same plan unless you return to membership and retire again from the same system and plan. You must meet the eligibility requirements provided in subsection

(2) of this section at the time you retire again. You may not purchase more than a total of sixty months of service credit regardless of how many times you retire again from the same system and plan.

**(13) May I purchase service credit from more than one retirement plan?**

(a) If you are a dual member under chapter 415-113 WAC, Portability of public employment benefits, and you combine service credit to retire as a dual member, you may purchase up to sixty months of additional service credit from each of your dual member plans.

(b) If you retire from more than one plan, but are not a dual member under chapter 415-113 WAC, you may purchase up to sixty months of additional service credit from each plan in which you meet the eligibility requirements in subsection (2) of this section.

**(14) How are the funds I paid to purchase the additional service credit treated upon my death (and the death of my survivor ~~((beneficiary))~~, if applicable)?**

(a) Plans 1 and 2. The amount paid to purchase the additional service credit is credited to your individual account as part of your accumulated contributions. Distribution of accumulated contributions after your death (and the death of your survivor ~~((beneficiary))~~, if any) is governed by the statutes and rules applicable to your plan. See:

- (i) WAC 415-108-326 for PERS Plan 1 and 2;
- (ii) WAC 415-112-504(9) for TRS Plan 1;
- (iii) WAC 415-112-505(7) for TRS Plan 2;
- (iv) WAC 415-110-610(7) for SERS Plan 2;
- (v) WAC 415-106-600(7) for PSERS Plan 2;
- (vi) WAC 415-103-215 for WSPRS Plan 1;
- (vii) WAC 415-103-225(7) for WSPRS Plan 2;
- (viii) WAC 415-104-202 for LEOFF Plan 1; or
- (ix) WAC 415-104-215(7) for LEOFF Plan 2.

(b) Plan 3. ~~((The amount paid to purchase the additional service credit is credited to the Plan 3 trust fund and not to your member account. There are no circumstances under which the amount will be distributed upon your death.))~~ If you and your survivor (if you selected a survivor option) die before the amount of your purchased service credit has been paid back to you in your monthly retirement benefit, the difference will be refunded to your designated beneficiary.

**NEW SECTION**

**WAC 415-02-178 May I purchase an annuity? (1)**

**Am I eligible to purchase an annuity?** You are eligible to purchase an annuity at the time of retirement from your defined benefit for either service or disability if you are a member of TRS (RCW 41.32.067), WSPRS (RCW 43.43-315), or LEOFF Plan 2 (RCW 41.26.463). This annuity provides a lifetime increase to your monthly benefit. (For purchasing an annuity from your Plan 3 defined contribution account, refer to WAC 415-111-320.)

**(2) Can I purchase an annuity if I take a lump sum payment?** No, you may not purchase an annuity if you elect a lump sum payment instead of a monthly benefit.

**(3) Are there limits to the annuity amount I may purchase?** There is no maximum limit on the purchase amount. If you are a LEOFF Plan 2 member or WSPRS member the



minimum amount you may purchase is \$25,000. There is no minimum required for TRS members.

(4) **When can I apply to purchase an annuity?** You must submit your request to purchase an annuity to the department at the time you apply for retirement.

(5) **How much will my monthly benefit increase if I purchase an annuity?** The increase in your monthly benefit will be calculated using the following formula:

$$\text{Purchase Annuity Amount} \times \text{Annuity Factor} = \text{Increase to Monthly Benefit}$$

The annuity factor is determined by your age on the later of your retirement date or the date your retirement application is submitted to the department.

**Example:** John is a member of LEOFF Plan 2. He applies for retirement and requests to purchase an annuity for \$45,000. For illustration purposes in this example only, we will use .0051025 as the corresponding annuity factor (factors change periodically). John's monthly benefit will increase by \$229.61 per month, calculated as follows:

$$\text{Purchase Annuity Amount} \times \text{Annuity Factor} = \text{Increase to Monthly Benefit}$$

$$\$45,000 \times .0051025 = 229.61$$

(6) **How and when do I pay for the annuity?** The department will generate a bill to you for the cost of the annuity after we receive your request to purchase.

(a) For all TRS members, payment may be made by making a one-time cash, check, or electronic fund transfer; or you may roll over funds from another tax-deferred retirement account.

(b) For LEOFF Plan 2 and WSPRS members, the annuity must be purchased by rolling over funds from an "eligible retirement plan" which is a tax qualified plan offered by a governmental employer (like the state of Washington's deferred compensation program).

(c) Payment must be made in full by ninety days after the later of your retirement date or bill issue date. Your annuity will begin once your payment is received and your retirement is processed. The effective date for the start of this benefit is the later of your retirement date or the payment in full date plus one day.

(7) **Are there benefit options that allow me to choose a survivor to receive a continuing payment after my death?** Yes. The survivor option you designate for your monthly benefit must also be used for your purchase of annuity.

Depending upon the rules for your retirement system and plan and the benefit option you choose at retirement, your survivor's monthly benefit will be a percentage of the gross monthly benefit you were receiving. If you choose a benefit option with a survivor feature and your survivor dies before you, your monthly benefit will increase to the amount it would have been had you not selected a survivor option.

(8) **Will I receive a cost of living adjustment (COLA) on the portion of my benefit that is based on the purchased annuity?**

(a) If you are eligible for an annual COLA adjustment on your monthly benefit, you will receive the same COLA percentage on this annuity.

(b) If you retire from TRS Plan 1 you must elect the optional auto COLA in order to receive a COLA on the annuity amount.

(9) **If I purchase an annuity and then return to work, how will the annuity portion of my benefit be affected?** You will continue to receive the annuity portion of your monthly benefit payment even if you return to work, or return to membership.

(10) **If I retire then return to membership and rere-tire, may I purchase another annuity?** Yes. You may purchase another annuity when you rere-tire provided you are rere-tiring from an eligible plan that allows an annuity purchase.

(11) **May I purchase an annuity from more than one retirement plan?**

(a) If you are a dual member under chapter 415-113 WAC, Portability of public employment benefits, and you combine service credit to retire as a dual member, you may purchase an annuity from each dual member plan that allows an annuity purchase.

(b) If you are not a dual member and retire separately from more than one plan you may purchase an annuity from each eligible plan that allows an annuity purchase.

(12) **How are the funds I paid to purchase the annuity treated upon my death (and the death of my survivor beneficiary, if applicable)?**

(a) Plans 1 and 2. The amount paid to purchase the annuity is credited to your individual account as part of your accumulated contributions. Distribution of accumulated contributions after your death (and the death of your survivor beneficiary, if any) is governed by the statutes and rules applicable to your plan. See:

- (i) WAC 415-112-504(9) for TRS Plan 1;
- (ii) WAC 415-112-505(7) for TRS Plan 2;
- (iii) WAC 415-104-215(7) for LEOFF Plan 2;
- (iv) WAC 415-103-215 for WSPRS Plan 1;
- (v) WAC 415-103-225(7) for WSPRS Plan 2.

(b) TRS Plan 3. If you and your survivor (if you selected a survivor option) die before the amount of your purchased annuity has been paid back to you in your monthly benefit, the difference will be refunded to your designated beneficiary.